



**Conditions: Tendering
Amendments to the General Conditions
and
Special Conditions of Contract
for
National Public Works Council Edition 3
(NPWC)**

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CONDITIONS OF TENDERING, AMENDMENTS TO GENERAL CONDITIONS AND SPECIAL CONDITIONS OF CONTRACT FOR NPWC EDITION 3

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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:

‘**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.

‘**RFT**’ means this request for tender and includes all conditions, annexures, schedules, attachments and addendums.

1.2 LODGEMENT OF TENDERS

Tenders shall be in the form required by the Clause titled “Documents to be Lodged with Tender Form”. Tenders shall be enclosed in a sealed envelope marked with the Tender Number and closing date. Oral Tenders or Tenders submitted by electronic mail (other than via Quotations and Tenders Online eLodgement Service) shall not be considered.

1.2.1 Closing Time and Date

Tenders will close at the time and on the date stated on the front cover of the Request for Tender (RFT).

1.2.2 Delivered by Hand

The preferred Tender Box for lodgement of the Tender is as stated on the cover of the RFT.

Tenders however may be lodged by hand in any of the following Quotation and Tender Boxes:

Department of Business and Employment Contract and Procurement Services Ground Floor, Enterprise House 28-30 Knuckey Street DARWIN NT 0800	Department of Business and Employment 1 st Floor, Herbarium (Gaymark Plaza) 4 Mansfield Street PALMERSTON NT 0830
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Department of Business and Employment 1 st Floor, NT Government Centre 5 First Street KATHERINE NT 0850	Department of Business and Employment 1 st Floor, Alice Plaza Corner Parsons Street and Todd Mall ALICE SPRINGS NT 0870
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Department of Business and Employment
Shop 2, Ground Floor, Barkly House
99 Paterson Street
TENNANT CREEK NT 0860

Tenderers lodging by hand in other than the Quotation and Tender Box referred to on the front cover of the RFT must take particular care to show the Tender Number and closing time and date on the envelope.

1.2.3 Delivery by Post

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

1.2.4 Sent by Facsimile

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

Where facsimile lodgement is used, Tenders must be faxed in full, by the closing time and date stated on the cover of the RFT. Tenders transmitted by facsimile that are not received in full by the stated time and date for closing of Tenders will be deemed late and declared ineligible for consideration.

1.2.5 Lodged via Electronic Lodgement

Where electronic lodgement has been allowed, Tenders must be submitted:

- (a) in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip); and
- (b) using the eLodgement button;

on the Quotations and Tenders Online eLodgement Service as stated on the front cover of the RFT.

Tenders lodged at a different address or in an unspecified electronic format will be invalid and declared ineligible for consideration.

Where electronic lodgement has been allowed and the selected RFT is available from an e-mail link, Tenders must be submitted electronically using the same e-mail link.

The Tender (ie. tender form and all other response schedules) 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 (with the exception of the 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 invalid and 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 not admitted for consideration.

Notwithstanding the preceding paragraph Tenderer may appeal such decisions however:

- (a) Tenders submitted by prepaid post or a commercial courier service, 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 it 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 Quotation 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 TENDERER TO INFORM THEMSELVES

Tenderers shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to performance of the Works, an inspection of the Site if applicable, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

The NT Government Procurement Framework which includes the NT Procurement Code can be found at the web address www.nt.gov.au/dbe/procurement_policy/framework.html or is available at the point of issue of the RFT.

Arrangements for a Site inspection, are as stated in the clause titled "Permission to Visit Site" below.

Tenderers who have any doubts as to the meaning of any part of the RFT shall seek clarification from the following:

- any enquiries of a technical nature regarding the Works required by the RFT document should be referred to ### telephone no. ### facsimile no. ### e-mail ##.

The RFT, Response Schedules and Bill of Quantities (if any) have been collated by mechanical means and Tenderers should check to ensure that they include all pages that are numbered consecutively and that all supplements referred to are also included.

CONDITIONS OF TENDERING

Where supplements have been referred to in any section of the RFT these are included at the back of the RFT and should be read in conjunction with the section to which they refer.

Complete sets of drawings as scheduled in the RFT are usually issued with the RFT. If for any reason they are not issued, complete sets are available for inspection at the point of issue of the RFT document.

Should the Tenderer find any discrepancy, error or omission in the RFT they shall notify the Director, Contract and Procurement Services in writing as early as possible but in any event before the stated time and date for closing of Tenders.

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.

Any Tenderer who believes the RFT to be discriminatory, restrictive or biased should inform the Director, Contract and Procurement Services in writing as early as possible, but in any event before the stated time and date for closing of Tenders.

1.4 PERMISSION TO VISIT SITE

OPTION 1 PERMISSION REQUIRED

Permission to visit the Site prior to submitting a Tender must be first obtained by contacting ###, telephone No. ## during business hours.

OPTION 2 SET TIME

Prior to submitting a Tender, the Tenderer is to attend a Site meeting, the meeting shall be at ## ##. Failure to attend the Site meeting where expressed as **mandatory** will result in the Tenderer's Tender being declared ineligible for consideration.

OPTION 3 ANYTIME

It is recommended that the Tenderer visit the Site prior to submitting a Tender.

1.5 DOCUMENTS TO BE LODGED WITH TENDER FORM

Tenders shall be in English. The Tenderer shall complete in full, and submit one copy of the documents listed hereunder:

TITLE
##

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

The Principal will neither be responsible for, nor pay 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.

The Tenderer shall sign its Tender as indicated below, and have the signature witnessed.

(a) In the case of a corporation:

(i) With its common seal, and the fixing of the seal witnessed by:

- 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:

- 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 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,
 - (ii) Or in the case of firms having more than five 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.
 - (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" or "witnessed" blocks on the Tender Form.

Where the Tender is from a:

- (a) person or persons, full given names are to be provided.
- (b) firm or business or trading name, full given names of each member of the firm are to be provided.
- (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.

1.6 TECHNICAL INFORMATION REQUIRED FOR ASSESSING TENDERS

OPTIONAL – APPLICABLE IF SPECIFIED

A Schedule of Technical Data is attached and shall be completed and lodged with the Tender. The schedule shall be accompanied by such additional information, by way of further details, illustrations, catalogues, brochures and the like, as may be necessary to fully describe the Tender.

1.7 TENDER VALIDITY PERIOD

Tenders shall remain valid for a period of ## days. If a Tender is not formal in accordance with these Conditions of Tendering the tender validity period shall commence from 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.

1.8 INDUSTRY ACCREDITATION

OPTION 1 NO CAL REQUIRED

The Tenderer is not required to be accredited by Contractor Accreditation Limited (CAL) to be eligible to undertake the Works.

OPTION 2 CAL REQUIRED

To be eligible to undertake the Works described in the RFT:

- (a) the Tenderer; and
- (b) the Tenderer's sub-contractors and their sub-contractors undertaking sub-contract work valued at \$50,000 or greater,

must, at the time the Tenderer submits its Tender, be accredited by Contractor Accreditation Limited (CAL) to a rating of no less than the value of the Tenderer's Tender or the sub-contractors' work, in an applicable CAL category or sub-category.

The Tender must state:

- (a) the Tenderer's CAL Registration Number on the Tender Form; and
- (b) the CAL Registration Numbers of all proposed sub-contractors on the Schedule of Proposed Sub-contractors.

CONDITIONS OF TENDERING

If, at the time of submitting its Tender, the Tenderer has an existing CAL accreditation in an applicable CAL category or sub-category, but requires an upgrade of the rating in that category or sub-category in order to tender for the works set out in the RFT, the Tenderer has fourteen (14) calendar days from the stated time and date for closing on front cover of the RFT to:

- (a) obtain an upgrade of the rating of that existing CAL accreditation; and
- (b) provide written evidence of the upgrade in of the rating to the Agency Project Officer identified in the RFT.

If written evidence from the Tenderer, of the upgrade in CAL accreditation, is not provided to the Agency Project Officer by the time that is fourteen (14) calendar days from the stated time and date for closing of Tenders (i.e.2:00 pm, fourteen (14) calendar days after the stated time and date for closing of Tenders as specified on the front cover of the RFT), the Tender will be deemed non-conforming and will not be considered further.

For the avoidance of doubt, where the Tenderer intends to obtain an upgrade of the rating of its existing CAL accreditation, it is still required to submit its Tender by the stated time and date for closing on the front cover of the RFT.

Nothing in this clause allows a Tenderer to obtain CAL accreditation in a new CAL category or sub-category in relation to the works tendered for after the stated date and time for closing of Tenders.

Any Tender not complying with the requirements of this clause may be invalid and set aside. The Procurement Review Board shall be the sole arbiter of any Tender set aside under the provisions of this clause.

Contractor Accreditation Limited (CAL) administers the accreditation process. More information on CAL, accreditation details and application forms can be found at the web address www.accreditation.com.au or is available from:

CAL Registrar
PO Box 125
PARAP NT 0804
Telephone: (08) 8922 4600

Facsimile: (08) 8984 4003

1.9 LOCAL DEVELOPMENT

The NT Government is committed to supporting businesses that use local contractors and suppliers and train and hire Territorians. Assessment will take into consideration businesses that demonstrate a commitment to employing Territorians including indigenous Territorians, employment of apprentices/trainees on the Works, accredited training of its employees and sourcing goods and services from local businesses.

Tenderers must include in the Response Schedules provided and submit with its Tender, details of sub-contractors to be used (where applicable), indigenous employees, apprentices/trainees to be used on the Works and all employees undertaking accredited training.

1.9.1 Apprentices and Trainees

The Tenderer shall, if awarded the Contract, agree to employ and train a minimum number, as prescribed below, of apprentices/trainees who are registered in the Northern Territory:

SCHEDULE OF MINIMUM NUMBER OF APPRENTICES/TRAINEEES.

VALUE OF CONTRACT (\$000)	TRADE APPRENTICE/TRAINEE	NON-TRADE TRAINEE
300 – 599	1	-
600 – 999	2	-
1000 – 1999	3	1
2000 – 2999	4	1
3000 – Plus	5	1
Maximum Requirement	5	1

Employees undertaking apprenticeships/traineeships training will only be recognised as being compliant for Tender purposes if:

- (a) a signed contract of training for the apprentice/trainee is currently registered with the Australian Apprenticeships NT Office; or

CONDITIONS OF TENDERING

- (b) the apprentice/trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Education and Training (DET); or
- (i) In complying with the use of accredited apprentices/trainees, the Tenderer may be:
- directly employing apprentices/trainees;
 - utilising group training scheme apprentices/trainees;
 - utilising sub-contractors apprentices/trainees;
 - utilising any combination of the above.
- (ii) For contract values of \$1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Trainees.
- (iii) The level of compliance with this requirement will be reported on at the end of the Contract and taken into consideration on future tenders for a period of twelve (12) months.
- (c) the training being undertaken is a recognised accredited training course.

Further information on NT Government Policy on the use of apprentices/trainees on Government Contracts and accredited training programs can be obtained from:

Training Operations Unit, Department of Education and Training 11 th Floor, Mitchell Centre Mitchell Street DARWIN NT 0800 Telephone: (08) 8901 1321	OR	GPO Box 4821 DARWIN NT 0801 Facsimile: (08) 8901 1326
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Further information regarding the employment of apprentices/trainees can be obtained from:

Australian Apprenticeships NT 6 Searcy Street DARWIN NT 0800 Telephone: 1300 137 130	OR	GPO Box 3049 DARWIN NT 0801 (08) 8935 8200
19 Hartley Street ALICE SPRINGS NT 0870	OR	Telephone: (08) 8953 3311

1.9.2 Indigenous requirements for Shire Councils

OPTIONAL - APPLICABLE IF SPECIFIED

The Tenderer shall, if awarded the Contract, maintain an indigenous employment rate which will be no less than 30% of the total workforce engaged in the delivery of the Works.

1.10 INDIGENOUS DEVELOPMENT PLAN

OPTIONAL- APPLICABLE IF SPECIFIED

The Works have been identified as an opportunity to develop employment outcomes for indigenous Territorians. Tenderers must submit, as part of its Tender, an Indigenous Development Plan Proposal.

Any Tender not complying with the requirements of this clause will be declared ineligible for consideration.

1.11 QUALITY ASSURANCE/PROJECT CONTROL

OPTION 1 – NOT APPLICABLE

The Tenderer is not required to carry out the Works using Quality Assurance/Project Control.

OPTION 2 – APPLICABLE

The Works required under the Contract are to be carried out using Quality Assurance/Project Control. The Tenderer's attention is drawn to the section titled "Quality Assurance/Project Control" in the Technical Section of this RFT.

The Tenderer is required to submit a Project Quality Plan Proposal/Project Control Plan Proposal with the Tender. Any Tender in which the Project Quality Plan Proposal/Project Control Plan Proposal is not provided may be considered as informal and rejected.

1.12 ALTERNATIVE TENDERS

OPTION 1 NOT ALLOWED

Tenders shall be submitted strictly in accordance with the RFT document and no alternatives will be considered.

OPTION 2A ALLOWED NO CONFORMING REQUIRED

Tenderers may submit alternative proposals.

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

OPTION 2B ALLOWED BUT CONFORMING REQUIRED

Tenderers may submit alternative proposals. Alternative Tenders must be accompanied by a conforming Tender.

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

OPTION 3 ALLOWED SOME ITEMS EXCLUDED

Tenderers may submit alternatives to equipment, plant or materials specified except for those items for which it is specified and/or nominated below that alternatives will not be considered.

Alternatives will not be considered for:

##

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

OPTION 4 ALLOWED FOR SPECIFIC ITEMS ONLY

Tenderers may submit alternatives for only those items nominated below.

##

Alternative Tenders must be clearly identified as an “Alternative Tender”.

Tenderers are encouraged to offer options or solutions, which may (for example in a novel or innovative way), contribute to Principal’s ability to carry out its business in a more cost-effective manner. These may be related to the outputs; or functional, performance and technical aspects of the requirement.

Where a Tenderer submits an offer which meets the requirements in an alternative and practical manner, it shall include any supplementary material, together with associated prices, which demonstrates in detail that such an alternative will fully achieve and/or exceed all the specified requirements, together with references as to why the additional features may be advantageous.

1.13 CHANGE TO CONDITIONS OF CONTRACT

OPTION 1 CHANGES NOT ALLOWED

Tenderers are not permitted to request changes, or propose alternatives to the Conditions of Contract applicable to the RFT. If a Tenderer does so, its Tender will be deemed non-conforming and will not be considered.

OPTION 2 CHANGES ALLOWED

Tenderers may request changes, or propose alternatives, to the Conditions of Contract applicable to the RFT.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions, they must clearly specify in the Tender Response Schedules that changes to the Conditions are being requested or that alternative Conditions are being proposed.

Where Tenderers request changes to the Conditions of Contract or propose alternative Conditions of Contract, they do so at their own risk, as the changes will be deemed to have formed part of their offer and their Tender will be assessed on that basis. If the requested changes or the alternative Conditions included in a Tender are not acceptable to the Principal, the Tender will not be successful.

This clause does not allow Tenderers to request changes or propose alternatives to the Conditions of Tendering applicable to this RFT. Any Tenderer who attempts to do so will have their Tender declared ineligible for consideration.

Nothing in this clause affects the Principal's right to negotiate with one or more Tenderers, as provided for in this RFT.

1.14 TAXES, DUTIES, FEES, ETC

The Tenderer shall ensure that the Tender is inclusive of all taxes, fees, duties, royalties, premiums, costs, charges and the like which will be due and payable to any person or authority under the Contract.

1.15 PRICING

All prices shall be stated in Australian dollars and where applicable be inclusive of GST. Unless otherwise indicated prices shall allow for labour, materials, transport, freight, overheads, profits and all other costs as applicable.

Any Schedule of Rates/Lump Sum Price Breakdown, which is included in the RFT shall be completed and lodged with the Tender.

Pricing shall be submitted for each item in the Schedule. Any Tender in which the Schedule is not fully completed may be declared ineligible for consideration.

1.16 COMPETITIVE NEUTRALITY

Government owned businesses, Local, Territory, State and Federal Government agencies and authorities responding to public tenders must submit two prices against each item in the pricing schedule provided. One price is to be the tendered price offered and the other being the adjusted competitively neutral price. The competitively neutral price is to be prepared in accordance with the "Northern Territory Government Competitive Tendering Guidelines". A copy of the Guidelines is available from the place of issue of the RFT documents or from the following web address:

www.nt.gov.au/dbe/tendering/competitive_neutrality/competitive_neutrality.html

1.17 WHOLE OF THE WORKS

Unless stated otherwise, Tenders must be submitted for the whole of the Works.

1.18 TENDER ASSESSMENT CRITERIA

Selection of the successful Tenderer will be based on a value for money assessment of Tenders against the following Tender Assessment Criteria and the rate(s)/price(s) submitted.

CONDITIONS OF TENDERING

The elements under each criterion are offered for the purpose of providing Tenderers examples of the types of consideration that may form part of each criterion. These elements as stated under each criterion are not to be considered exclusive to any specific tender.

- (a) Past Performance:
 - (iv) Performance history including standard of work/quality of product.
 - (v) Experience in work of a similar nature.
 - (vi) Extent of supervision of the Contractor required.
 - (vii) Previous disputes and claims history.
 - (viii) References (including Contractor Accreditation Limited if applicable).
 - (ix) Safe and fair workplace record.
- (b) Timeliness:
 - (i) Compliance with timeframe required/completion time offered
 - (ii) Vulnerability of completion timeframe.
- (c) Capacity:
 - (i) Ability to perform the Works.
 - (ii) Number and value of Contracts in progress.
 - (iii) Appropriate CAL accreditation (where applicable).
 - (iv) Legal action pending.
 - (v) Financial capacity (including current credit rating).
 - (vi) Risk.
- (d) Local Development and Value Adding:
 - (i) Enhancement of industry and business capability in the Northern Territory.
 - (ii) Improved capacity and quality in supply and service response.
 - (iii) Proposed level of usage of apprentices, trainees and local indigenous enterprise.
 - (iv) Accredited training programs supported by the Tenderer including programs specifically for indigenous Territorians.
 - (v) Proposed number of jobs for Territorians including jobs for indigenous Territorians.
 - (vi) Regional development opportunities.
 - (vii) Any Northern Territory research and development proposals being undertaken by the Tenderer.
- (e) Scope Specific Criteria (specified as required):
 - (i) Scope Specific Criteria are those criteria that are considered relevant to the nature of the Works being sought. Scope Specific Criteria could include, but are not limited to, any one or more of the following: environmental issues or requirements, technical requirements, and specific experience and expertise.
- (f) Innovation (specified as required):
 - (i) New technology.
 - (ii) Alternative solutions.
- (g) Whole of Life Cost (specified as required):
 - (i) Operating costs.
 - (ii) Expected life and potential for upgrade.
 - (iii) Support services and reliability.
 - (iv) Warranties.
 - (v) Compatibility with existing equipment.

- (vi) Any other factors that would impact on costs to the Government.

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 in its sole discretion reserves the right to apply weightings to each criterion, having regard to requirements contained in the NT Government Procurement Framework.

1.19 ADDITIONAL INFORMATION

The Tenderer may be called upon to supply information additional to that provided in their Tender to demonstrate to the satisfaction of the Principal that the Tenderer has the capacity to perform the Works.

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 consideration.

1.20 DISCLOSURE OF PERCENTAGE WEIGHTINGS

Disclosure of percentage weightings will apply to all tenders with an estimated value equal to or greater than \$200,000.

Tender assessment criterion may include sub-criteria, although percentage weightings shall only be published as a cumulative percentage against the tender assessment criterion. If sub-criteria are used and the sub-criteria are to be given relative percentage weightings, the weightings applying to the sub-criteria shall not be disclosed or published.

The clause titled "Tender Assessment Criteria" in the Conditions of Tendering provides examples of the types of consideration that may form part of each criterion if not stated as sub-criteria.

The Principal reserves the right to apply percentage weightings to each criterion in its total discretion, having regard to the required outcomes of the Tender.

Tender Assessment Criteria, including Scope Specific Tender Assessment Criteria and Relative Percentage Weightings are detailed in the document titled "Tender Assessment Criteria – Schedule of Percentage Weightings".

1.21 INDUSTRY PARTICIPATION PLAN

OPTIONAL– APPLICABLE IF SPECIFIED

In accordance with the Northern Territory Government's framework of Building Northern Territory Industry Participation, Tenderers must submit, as part of its Tender, an Industry Participation Plan for the Works.

Information on Building Northern Territory Industry Participation and an information guide about Industry Participation Plans are included with the RFT.

Further information and assistance in relation to Industry Participation Plans is available from:

Department of Business and Employment
Development House, 76 The Esplanade
DARWIN NT 0800
Telephone: (08) 8999 5317

GPO Box 3200
DARWIN NT 0801
Facsimile: (08) 8999 5106

Website: <http://www.nt.gov.au/dbe/business/documents/general/BNTIP.pdf>

Failure to submit an Industry Participation Plan with the Tender will result in the Tender being declared ineligible for consideration.

1.22 OCCUPATIONAL HEALTH AND SAFETY ACCREDITATION SCHEME

OPTIONAL– APPLICABLE IF SPECIFIED

A Tenderer at the time of tendering must be accredited under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme ('**Scheme**') established by the *Building and Construction Industry Improvement Act 2005*.

The Tenderer if awarded the Contract, must be compliant with all conditions of Scheme accreditation.

Failure to meet this condition will result in the Tender being declared ineligible for consideration.

1.23 NATIONAL CODE OF PRACTICE AND GUIDELINES

OPTIONAL – APPLICABLE IF SPECIFIED

The Tenderer's attention is drawn to the National Code of Practice for the Construction Industry (**'National Code'**) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (**'Guidelines'**), revised September 2005, and reissued June 2006. Copies of the Code and Guidelines are available at www.workplace.gov.au/building

Tenderers must comply with the National Code and Guidelines in participating in the tender process. It is also a condition of participation in the tender process that, at the time they lodge their tender, the Tenderer must not have been:

- (a) precluded from tendering for Australian Government funded work; or
- (b) specifically excluded from participating in this Tender.

Failure to meet this condition will result in the Tender being declared ineligible for consideration..

1.24 PERFORMANCE REPORT

The Tenderer will, if awarded the Contract, agree to the preparation and use of the Contractor's Performance Report in the manner set out in the Special Conditions of Contract.

1.25 PRIVACY NOTICE

The Principal is collecting the information on the Declaration of Business Status form to determine eligibility to contract with the Principal. This is required by Procurement Regulation 6 (7)(h). The Principal usually gives some or all of this information to the Procurement Review Board. Failure to provide the information in full or in part may result in your Tender being declared ineligible for consideration..

Personal information provided in this form can be accessed by the Tenderer on request. Any queries should be directed to the Officer stated in the clause titled "Tenderer to Inform Themselves" as the contact point.

1.26 ACCEPTANCE OF TENDER

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

A Tender shall not be deemed to have been accepted unless and until notice in writing of such acceptance is at the discretion of the Principal, handed to the Tenderer or is sent by prepaid post, facsimile or email to or is left at the address stated in the Tender Form.

On acceptance of its Tender the Tenderer shall comply with clause 6.2 of the General Conditions of Contract.

1.27 DEBRIEFING TENDERERS

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

1.28 SPECIFIC SITE CONDITIONS – ROYAL DARWIN HOSPITAL

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to "Royal Darwin Hospital Site Rules for Contractors, Subcontractors and Tradespersons Engaged for the Purpose of Undertaking Work within the Royal Darwin Hospital" (**'Site Rules'**) copies of which are available from the Major Projects Manager Engineering Services (MPMES).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Royal Darwin Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the MPMES. The designated day is shown in the clause titled "Permission to Visit Site".

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in its Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Royal Darwin Hospital are aware of the Site Rules, their application and that they comply with the Site Rules.

1.29 SPECIFIC SITE CONDITIONS – KATHERINE HOSPITAL

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to “Katherine Hospital Site Rules for Contractors, sub-contractors and Tradespersons” (**'Site Rules'**) copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Katherine Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the clause titled “Permission to Visit Site”.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Katherine Hospital are aware of the Site Rules, their application and that they comply with the Site Rules.

1.30 SPECIFIC SITE CONDITIONS – GOVE DISTRICT HOSPITAL

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to “Gove District Hospital Site Rules for Contractors, sub-contractors and Tradespersons” (**'Site Rules'**) copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Gove District Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the clause titled “Permission to Visit Site”.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Gove District Hospital are aware of the Site Rules, their application and that they comply with the Site Rules.

1.31 SPECIFIC SITE CONDITIONS – TENNANT CREEK HOSPITAL

OPTIONAL - APPLICABLE IF SPECIFIED

Attention is drawn to “Tennant Creek Hospital Site Rules for Contractors, sub-contractors and Tradespersons” (**'Site Rules'**) copies of which are available from the Hospital Maintenance Manager (HMM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Tennant Creek Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the HMM. The designated day is shown in the clause titled “Permission to Visit Site”.

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Tennant Creek Hospital are aware of the Site Rules, their application and that they comply with the Site Rules.

1.32 SPECIFIC SITE CONDITIONS – ALICE SPRINGS HOSPITAL

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to “Alice Springs Hospital Site Rules for Contractors, sub-contractors and Tradespersons” (**'Site Rules'**) copies of which are available from the Engineering Services Manager (ESM).

The Tenderer shall inspect the Site of the Works and become familiar with the rules that apply to work at the Alice Springs Hospital, prior to submitting a Tender.

Inspections are to be made only on the designated day and in conjunction with the ESM. The designated day is shown in the clause titled "Permission to Visit Site".

Failure of the Tenderer to inspect the Site or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the Alice Springs Hospital are aware of the Site Rules, their application and that they comply with the Site Rules.

1.33 SPECIFIC SITE CONDITIONS – ULURU – KATA TJUTA NATIONAL PARK

OPTIONAL – APPLICABLE IF SPECIFIED

The Tenderer shall become familiar with the rules applicable to work at Uluru - Kata Tjuta National Park.

Attention is drawn to the *National Parks and Wildlife Conservation Act* and to "Environmental Protection - Uluru - Kata Tjuta National Park" both which are available from:

Uluru – Kata Tjuta National Park
PO Box 119
YULARA NT 0872
Telephone: (08) 8956 1100
Attention: Works and Contracts Officer

Facsimile: (08) 8956 2064

1.34 SPECIFIC SITE CONDITIONS – KAKADU NATIONAL PARK

OPTIONAL – APPLICABLE IF SPECIFIED

The Tenderer shall become familiar with the rules applicable to work at Kakadu National Park.

Attention is drawn to the *National Parks and Wildlife Conservation Act* and to "Environmental Protection - Kakadu National Park" both of which are available from:

Kakadu National Park
PO Box 71
JABIRU NT 0886
Telephone: (08) 8938 1100
Attention: Works and Contracts Officer

Facsimile: (08) 8938 1115

1.35 SPECIFIC SITE CONDITIONS – WORKERS ACCOMMODATION JABIRU

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers shall become familiar with all rules and regulations limiting the locations, which can be occupied by construction workers at Jabiru.

Further information can be obtained by contacting the:

West Arnhem Shire Council (now incorporates Jabiru Town Council)
PO Box 4646
JABIRU NT 0886
Telephone: (08) 8979 9444

Facsimile: (08) 8979 2488

1.36 SPECIFIC SITE CONDITIONS – GROOTE EYLANDT

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers are advised that there are restrictions on carrying out work in this area. It is the Tenderer's responsibility to ascertain from GEMCO details of any conditions, restrictions and requirements in performing work in this area and to allow for the associated costs in the Tender price.

Tenderers are required to submit with their Tender, written confirmation that their price includes for these requirements and that satisfactory credit arrangements, if necessary, have been made with GEMCO for the provision of services etc. Failure to provide this information with the Tender may result in their Tender being declared ineligible for consideration.

1.37 SPECIFIC SITE CONDITIONS – WORK ON COMMUNITIES

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers are advised that restrictions may apply to entering and working in an Aboriginal Community. It is the Tenderer's responsibility to ascertain from the relevant Community Council or Land Council details of any permits, conditions, restrictions, requirements, fees etc applicable to working in that Community. All permissions, permits and charges are the responsibility of the successful Tenderer.

1.38 SPECIFIC SITE CONDITIONS – NT PRISONS

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to the Northern Territory Correctional Services publication titled: "Application To Visit Prison" ('**Site Rules**') which is available from:

Northern Territory Correctional Services
Old Admiralty House
66 The Esplanade
DARWIN NT 0800
Telephone: Darwin (08) 8922 0111
Attention: Chief Prison Officer - Security

Alice Springs: (08) 8951 8911

The Tenderer shall become familiar with the rules that apply to work to be carried out in a NT Prison, prior to submitting a Tender.

If so required in the clause titled "Permission to Visit Site", inspection of the Site is to be made only at the designated time and date and in conjunction with the Prison Superintendent.

Failure of the Tenderer to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract, will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within a NT Prison are aware of the Site Rules, their application and that they comply with the Site Rules.

1.39 SPECIFIC SITE CONDITIONS – NT SCHOOLS

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to "Site Rules for Contractors Entering School Premises" ('**Site Rules**') copies of which are available from the relevant School Principal.

The Tenderer shall become familiar with the rules that apply to work to be carried out in the NT Schools, prior to submitting a Tender.

If so required in the clause titled "Permission to Visit Site", inspection of the Site is to be made only at the designated time and date stated.

Failure of the Tenderer to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within the school are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.40 SPECIFIC SITE CONDITIONS – ACCESS TO PARLIAMENT HOUSE

OPTIONAL – APPLICABLE IF SPECIFIED

Attention is drawn to "Parliament House Site Rules for Contractors, Sub-contractors and Tradepersons" ('**Site Rules**'). Copies are available from the reception desk in Parliament House.

Tenderers shall become familiar with the rules that apply to work to be carried out in Parliament House, prior to submitting a Tender.

If so required in the clause titled "Permission to Visit Site", inspection of the Site is to be made only at the designated time and date stated.

Failure of Tenderers to inspect the Site (if required to do so) or failure to be familiar with the Site Rules will result in their Tender being declared ineligible for further consideration.

The Tenderer if awarded the Contract will be required to agree in writing to comply with the Site Rules and to ensure that their employees and sub-contractors undertaking work within Parliament House are made aware of the Site Rules, their application and that they comply with the Site Rules.

1.41 SPECIFIC SITE CONDITIONS – AERODROMES

OPTIONAL – APPLICABLE IF SPECIFIED

The attention of the Tenderer is particularly drawn to Appendix 1 (Directions Relating to Aerodrome Works) to Chapter 13 of the Civil Aviation Safety Authority document "Rules and Practices for Aerodromes" issued by Air Services Australia.

1.42 SPECIFIC SITE CONDITIONS – WORK IN DEFENCE AREAS

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers are advised that there are restrictions on carrying out work in Proclaimed Defence Areas.

Tenderers shall become familiar with the rules and regulations in force at the Site as issued by the Commonwealth security authorities.

1.43 SPECIAL SECURITY CONDITIONS

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers are advised that there are restrictions on carrying out work in the area.

Tenderers shall become familiar with the rules and regulations in force at the Site as issued by the relevant security authority.

1.44 TENDER PRICE MARK-UP – ESCROW DOCUMENTS

OPTIONAL – APPLICABLE IF SPECIFIED

Tenderers shall be prepared to submit complete documentation of all backup information used in the preparation of their Tender price. This material is hereinafter referred to as the Escrow Documents.

Tenderers may submit Escrow Documents in their usual cost estimating format; a standard format is not required. However, sufficient detail shall be included to ensure that the Escrow Documents are adequate to enable complete understanding and proper interpretation of their content.

The Escrow Documents shall clearly itemise and separate the estimated cost of performing each item contained in the RFT Response Schedules. Scheduled items should be separated into sub-items as required to present a detailed cost estimate. Labour, equipment, estimated quantities, and rates of production shall be detailed. Increments of cost shall include but not be limited to such items as direct labour, permanent materials, supplies and consumables, subcontracts, equipment charges, and allocations of overheads and profit. Plant and equipment and indirect costs should be detailed. All costs included in the Tender price must be specifically identified and methods of allocation described.

The Escrow Documents shall include all quantity takeoffs, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, memoranda narratives and all other information used by the Tenderer to arrive at the prices included in the Tender.

As required Escrow Documents shall be lodged with the Principal in a sealed container within twenty-four (24) hours of notice to provide them. Each container shall be clearly marked on the outside with the Tenderer's Name, date of lodgement, RFT title, RFT number and the words "Escrow Documents".

The Escrow Documents shall include a certificate from the Tenderer stating that they include all of the documentary information used in the preparation of the Tender.

The Escrow Documents of the preferred Tenderer will be opened by the Tenderer for joint examination during tender assessment interview. This examination is to ensure the documents are legible and complete. Should the examination indicate that any data is incomplete or missing the Tenderer shall supply it within twenty-four (24) hours or as directed.

Upon completion of the examination receipt of the Escrow Documents will be acknowledged by the Principal and the documents placed in escrow for the life of the Contract as mutually agreed. Any storage costs will be paid by the Principal.

CONDITIONS OF TENDERING

It is acknowledged by the Tenderer and the Principal that the Escrow Documents are the property of the Tenderer, are confidential and will not form part of the Contract. They may only be examined at a time deemed necessary by the Principal and the successful Tenderer to assist in the settlement of disputed claims on the Contract related to the documents and are to be used solely for this purpose.

The Escrow Documents will be returned to the successful Tenderer when the Contract is certified as complete and security deposit returned.

Escrow Documents from unsuccessful Tenderers will be returned unopened upon the award of the Contract.

2. AMENDMENTS TO THE GENERAL CONDITIONS OF CONTRACT

2.1 GENERALLY

The General Conditions of Contract NPWC Edition 3 (1981) apply to any Contract awarded as a result of this Request for Tender.

Set out hereunder are alterations, omissions, additions and amendments to the General Conditions of Contract N.P.W.C. Edition 3 (1981).

A copy of General Conditions of Contract NPWC Edition 3 is available from the Internet at: www.nt.gov.au/dbe/procurement_policy/conditions_contract/index.html or at the point of issue of the RFT.

2.2 INTERPRETATION OF TERMS

Add to Clause 2 of the General Conditions of Contract as follows:

'Indigenous Person' is a person of Australian Aboriginal or Torres Strait Islander descent who identifies themselves as indigenous and is accepted in the community in which they live as an indigenous person."

'Request for Tender (RFT)' means the document containing or referring to the Conditions of Tendering, General Conditions of Contract N.P.W.C. – Edition 3 (1981) (including Annexure and amendments to the said General Conditions of Contract), Special Conditions of Contract (if any), Northern Territory Procurement Code, Preliminary Clauses, Specification, Drawings and other documents (except those documents provided specifically for information and/or excluded from forming a part of the Contract), as are issued by the Principal for the purpose of inviting tenders for the Works.

2.3 SECURITY

Clause 5 of the General Conditions of Contract is amended as follows:

Delete sub-clause 5.3 and replace with:

"5.3 Form of Security

The security shall be in the form of an unconditional bank guarantee approved by the Principal and issued by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth)

If the security is not transferable by delivery it shall be accompanied by an executed transfer thereof to the Principal and the costs and expenses (including all stamp or other duties) of and incidental to the said transfer shall be borne and paid by the Contractor."

Delete sub-clause 5.7 **Reduction of Security and Retention Moneys** in its entirety.

There shall be no reduction of security at issue of a Certificate of Practical Completion.

Insert after sub-clause 5.10:

"5.11 Lodgement of Security: Commencement of Work:

Notwithstanding that possession of sufficient of the Site has been given to the Contractor, then unless otherwise approved by the Superintendent, the Contractor shall not be permitted to commence work on Site until he has:

- (a) Provided security as required by Clause 5.4 of the General Conditions of Contract;
- (b) Shown evidence of insurance in accordance with Clause 22 of the General Conditions of Contract."

2.4 ASSIGNMENT AND SUB-CONTRACTING

In addition to Clause 9 of the General Conditions of Contract, insert after sub-clause 9.2(b):

- (c) and that any sub-contract is in writing and contains 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; and

- (d) all sub-contractors, and their sub-contractors, for any part of the Works valued at \$50 000 or greater must be accredited by Contractor Accreditation Limited (CAL) to a category, sub-category and rating commensurate with the type and value of the Works to be performed."

2.5 REQUIREMENTS OF STATUTES AND SUBORDINATE LEGISLATION

In addition to Clause 14.1 of the General Conditions of Contract insert after first paragraph:

"Without limiting the generality of the foregoing paragraph, the Contractor shall comply with all occupational health and safety and workers compensation legislation, safe working practices, licensing and registration requirements, Code of Practice and Standards established or promulgated by any relevant authority or regulator or standard setting entity (including but not limited to those prescribed in the *Fair Work Act 2009*) as shall be in force in the place affecting or applicable to the Works or the execution of the work under the Contract.

14.1.1 Industry Accreditation and Standards

Where applicable, the Contractor shall:

- (a) maintain the currency of the required accreditation with Contractor Accreditation Limited (CAL) during the life of the Contract; and
- (b) comply with all industry standards on:
- (i) training;
 - (ii) engagement, supervision and payment of sub-contractors;
 - (iii) compliance measures;
 - (iv) penalties; and
 - (v) termination arrangements.

Sub clause is only applicable to Power and Water Contracts

14.1.2 Rates of Wages to be Paid

- (a) Subject to subclause 14.1.2(b) the terms and conditions of employment for employees of the Contractor shall be those contained in the Contractor's relevant Federal or State Award/Agreement.
- (b) When employees of the Contractor perform the work as defined in Clause 14.1.2(e) of this Contract they shall be entitled to rates of pay and allowances which in aggregate shall be no less favourable than the current minimum rate that applies to the same or similar classifications of employees engaged under the Northern Territory Power and Water Corporation Employees Award 2002. Such aggregation shall include the following:
- (i) Salary/Wages: At base trade level where applicable;
 - (ii) Allowances: Applicable Industry, Power Station or other Site allowance;
 - (iii) Locality Allowance, Shift Allowance and other allowances paid to Power and Water employees under the Award.
- (c) Superannuation/Severance Payments: The Contractor shall make payments on behalf of the Contractor's employees to superannuation funds and severance funds in accordance with the relevant Federal or State Award/Agreement/Legislation.
- (d) Preservation of Salary/Wage Rates: Employees of the Contractor shall not have their actual ordinary all purpose hourly rate reduced as a result of the application of Clause 14.1.2(c) of this clause but nor shall any allowance already paid by the Contractor be ignored.
- (e) Definitions:
- (i) Generation activities shall mean operations and routine maintenance work (other than major overhauls) currently performed by Power and Water Corporation employees on the following power station plant which is directly associated with the generation of electricity:
 - Boilers;
 - Turbo Generators;
 - Unit Auxiliary Plant;
 - Chemical Plant.

- (ii) Transmission activities shall mean work which is directly associated with the operation and routine maintenance work (other than major overhauls) of substation plant, control systems and associated in house communications and electronics, lines and cables and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water Corporation employees.
- (iii) Distribution activities shall mean work which is directly associated with the operations and routine maintenance (other than major overhauls) of substation plant, overhead mains, underground cabling and jointing, pole inspection and street lighting, customer emergency services (eg loss of supply, voltage complaints) and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water Corporation employees."

2.6 INSURANCE

2.6.1 Clause 17 - Insurance of the Works

Delete the fourth paragraph, "The insurance policy shall be in joint names stated in sub-clause 16.3 cease." and replace by the following paragraph:

"The insurance policy shall cover the Principal, the Contractor, the Superintendent and all sub-contractors employed from time to time in relation to the Works for their respective rights, interests and liabilities and unless otherwise specified elsewhere in the Contract, shall be effected with an insurer or insurers approved in writing by the Principal, which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor's liabilities and obligations respectively stated in sub-clause 16.3 cease."

2.6.2 Clause 19 - Public Liability Insurance

Delete the first paragraph, "Before commencing work under the as set out in clause 18" and replaced by the following paragraph:

"Before commencing work under the Contract, the Contractor shall take out, and shall maintain during the currency of the Contract, a Public Liability policy of insurance to cover its liabilities to third parties, including the liabilities as set out in the first paragraph of clause titled "Insurance of the Works".

The Policy shall:

- (a) note the Principal for its respective rights and interests;
- (b) include a cross-liability clause in which the insurer accepts the term "insured" as applying to each of the persons covered by the insurance as if a separate policy of insurance had been issued to each of them; and
- (c) be for an amount of not less than the sum stated in the Annexure, for any one occurrence.

The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

The Contractor shall ensure that all sub-contractors take out Public Liability Insurance that meets the requirements of this clause."

2.6.3 Workers' Compensation

In addition to the requirements of the following clauses of the General Conditions of Contract,

Clause 20 - Accident or Injury to Employees

Clause 21 - Insurance of Employees

Clause 22 - Inspection and Provisions of Insurance Policies,

the following provisions apply:

"For the purpose of this clause "worker" shall have the definition it is given in the *Workers Rehabilitation and Compensation Act 2009*.

Before commencing work under the Contract, the Contractor shall take out and shall maintain for the duration of the Contract appropriate Workers Compensation insurance cover for all workers employed by the Contractor. This cover shall comply with the *Workers Rehabilitation and*

Compensation Act 2009 of the Northern Territory and policies shall be purchased from Northern Territory approved insurers.

The following information shall be provided with all tenders and as requested during the currency of the Contract:

- (a) for Contractors employing workers:
 - (i) workers compensation policy number;
 - (ii) name of insurer; and
 - (iii) date of expiry.
- (b) for Contractors not employing workers:
 - (i) written advice that they are not employing nor intending to employ workers during the currency of the Contract.

The Contractor shall ensure that all sub-contractors who employ workers have Workers Compensation insurance cover in accordance with the *Workers Rehabilitation and Compensation Act 2009*.

The Contractor shall ensure that all persons employed under labour hire agreements, whether by the Contractor or through a Labour Hire Firm, are appropriately covered by Workers Compensation insurance.

Self-employed Contractors should ensure that they have adequate insurance coverage in place.

The Contractor shall be responsible for ensuring that all sub-contractors have appropriate insurance policies, and, upon request, shall provide to the Principal copies of all insurance documents, including those of any sub-contractors (including self-employed Contractors and persons employed under Labour Hire Agreements)."

2.7 SUPERINTENDENT'S REPRESENTATIVES

Delete Clause 24 of the General Conditions of Contract in its entirety and replace it with the following clause:

"The Superintendent may from time to time in writing appoint persons named by him as Superintendent's Representatives to exercise such of the powers, duties, discretions and authorities vested in him as he may think fit and shall give notice to the Contractor of the name and address of each person so appointed and the extent of the powers, duties, discretions and authorities exercisable by that person.

The Superintendent shall not at any time appoint more than one person to exercise a particular power, duty, discretion or authority vested in him.

A Superintendent's Representative may, from time to time in writing, appoint one or more persons to exercise a particular power, duty, discretion or authority, exercisable by him. A Superintendent's Representative shall give notice to the Contractor in writing of the name of any person so appointed and particulars of the power, duty, discretion or authority to be exercised by such person.

Upon receipt of any notice given to the Contractor by the Superintendent or the Superintendent's Representative pursuant to this clause, the Contractor shall recognise and accept each person so appointed as lawfully entitled to exercise for the purposes of the Contract the powers, duties, discretions and authorities referred to in the notice.

An appointment under this clause shall not prevent the exercise of a power, duty, discretion or authority by the Superintendent and the Superintendent may at any time revoke any such appointment by notice to the Contractor.

Where the word "Superintendent" is used in these General Conditions of Contract or elsewhere in the Contract, it shall, so far as concerns the powers, duties, discretions and authorities exercisable by the Superintendent's Representative by virtue of his appointment under this clause, be deemed to include a Superintendent's Representative."

2.8 CONTRACTOR'S REPRESENTATIVE

In addition to Clause 25 of the General Conditions of Contract, insert after the first paragraph:

"The Contractor's Representative shall have sufficient command of the English language and of Australian construction and technical terminology to be able to read, converse and receive instructions in English."

2.9 SITE

2.9.1 CLAUSE 27.1 – Possession of Site

In addition to clause 27.1 of the General Conditions of Contract, insert after the first paragraph:

"Notwithstanding that the Superintendent has granted possession of Site, it shall be the Contractor's responsibility to obtain all permits necessary to commence work on the Site. "

2.9.2 CLAUSE 27.3 – Access to Work

In addition to Clause 27.3 of the General Conditions of Contract, insert:

"The person nominated in the clause titled "Specific Site Conditions" in the Preliminary Clauses, or his appointed representative, is authorised to enter the Site for the purposes of administering the Site Rules for persons engaged for the purpose of undertaking Works within the specified Site."

2.10 WORKING HOURS

Delete Clause 32 of the General Conditions of Contract in its entirety and substitute the following:

"The customary working hours and ordinary working days shall be those for day workers as stated in the Building and Construction Industry (NT) Award or other relevant awards and no work will be performed outside of customary working hours or on other than ordinary working days without the prior approval of the Superintendent.

The working hours and working days of Departmental supervisory personnel shall be 8.00 am to 4.30pm Monday to Friday excluding a day that is a public holiday in the Northern Territory. The Contractor shall provide at least 48 hours written prior notice to the Superintendent of the intention to work outside the working hours and working days of Departmental supervisory personnel.

Notwithstanding the preceding paragraphs, the Contractor may carry out work outside the customary working hours or ordinary working days without the prior approval of the Superintendent, where it is necessary in the interests of safety of the Works or where the work is required to protect life or property. In such circumstances the Contractor shall inform the Superintendent in writing of the circumstances as early as possible."

Or Electrical Engineering and Contracting Industries (NT) for Power and Water Contracts

2.11 VARIATIONS

2.11.1 Clause 40.2 - Valuation of Variations

Delete the first paragraph, "A variation shall ... to the Variation" and replace by the following paragraph:

"A variation shall be valued in accordance with the rates included in the Priced Bill of Quantities or Schedule of Rates or in a schedule of prices with the provision that a percentage addition of 6% will be applied to the net value of the variation, whether the variation is for the addition or omission of works, if and in so far as the Superintendent determines that those rates are applicable to the variation".

2.12 SETTLEMENT OF DISPUTES: WAIVER OF CONDITIONS

For the purposes of Clauses 45 and 47 of the General Conditions of Contract, the Principal shall be the person who is for the time being occupying or carrying out the duties of, ##.

2.13 CERTIFICATES AND PAYMENT

Progress Certificates and Progress Payments

Delete the first paragraph and the first sentence of the second paragraph of Clause 42.1 of the General Conditions of Contract, and replace with the following:

"For the purposes of this clause, "Tax Invoice" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999*. The Contractor shall submit to the Superintendent a Tax Invoice every month showing the Contract value of the work carried out in performance of the Contract and incorporated in the Works. The Contractor's Tax Invoice shall include details of any Adjustments

under the clause titled "Goods and Services Tax" of the Special Conditions of Contract and an explanation as to how such Adjustments were calculated. The Contractor shall provide any further details in regards to the work upon request by the Superintendent.

Principal shall issue a progress certificate and make payments within thirty (30) days of receipt of claims that are correct and in order for payment."

To sub-clause 42.1 of the General Conditions of Contract, insert the following after item (c) of the second paragraph:

".....and,

(d) any debt or monies due from the Contractor to the Principal under or by virtue of any provision of this Contract."

Add the following new paragraph to the end of sub clause 42.1:

"Failure by the Principal to pay the amount by the due date:

- (a) will not be grounds to vitiate or avoid the contract; and
- (b) will entitle the Contractor to make a claim for interest penalties on the late payment.

Interest penalties must be claimed within ninety (90) days of the date the late payment was made by the Principal and the claim must be in the form of a tax invoice. Interest penalties are to be calculated daily, for the period after the due date until the date payment is made by the Principal, at the ninety (90) day bank bill rate published on 1 June each year. Where an interest penalty period spans 1 June in any year, the rate shall be the rate published in the year the original invoice was issued.

The Principal will not be liable for interest penalties on any payments in respect of interest penalties."

2.14 RIGHT OF PRINCIPAL TO RECOVER MONIES

Delete Clause 46 of the General Conditions of Contract in its entirety and replace it with the following clause:

"46 RIGHT OF PRINCIPAL TO RECOVER MONIES

Without limiting the Principal's rights under any other provision in the Contract, any debt due from the Contractor to the Principal under or by virtue of any provision of the Contract may be deducted by the Principal from any monies which may be or thereafter become payable to the Contractor by the Principal whether under this Contract or under any other Contract whatsoever between the Contractor and the Principal, including any retention monies held by the Principal, and, if such moneys are insufficient for this purpose, then from the Contractor's security held under or given pursuant to the Contract or any other Contract whatsoever between the Contractor and the Principal. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction."

2.15 MATERIALS AND WORK

Quality of Materials and Work

Delete the second paragraph of sub clause 30.1, "Unless otherwise specified in the Contract standard of the Standards Association of Australia" and replace by the following paragraph:

"Unless otherwise specified in the Contract, any materials to be incorporated in the Works shall be new and, where applicable, materials and workmanship shall be in accordance with the relevant standard of Standards Australia."

3. SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract are in addition to the conditions of contract applicable to the Request for Tender, being General Conditions of Contract NPWC. Edition 3 (1981)(General Conditions).

3.1 INTERPRETATION AND INCONSISTENCIES

Words and phrases used in these Special Conditions that are defined in the General Conditions have the meanings given to them in the General Conditions.

In the event of any inconsistency between the General Conditions and these Special Conditions, these Special Conditions prevail to the extent of the inconsistency.

3.2 NATURE OF CONTRACT

See Clause 3, of the General Conditions of Contract and the Annexure herein. The basis of payment under the Contract shall be **# (Lump Sum) or (a Schedule of Rates) #** basis and the Contract shall **# not #** be subject to adjustment for rise and fall in costs.

3.3 ADJUSTMENT FOR RISE AND FALL IN COSTS

OPTIONAL – APPLICABLE IF SPECIFIED

Where allowed, adjustments for rise and fall in costs will be calculated as specified under the Contract. Such calculations will not provide for adjustment to more than 90% of the Contract sum.

3.4 ADJUSTMENT OF RATES

For the purposes of Clause 3.3(c) of the General Conditions of Contract, the lower and upper limits of accuracy of each quantity in the Schedule of Rates, unless specifically stated otherwise, are eighty five percent of the stated quantity and one hundred and fifteen percent of the stated quantity respectively.

3.5 SCALES AND LEVELS OF SECURITY

Refer General Conditions of Contract Sub-Clauses 5.2, 5.4 and 42.1.

The following provisions shall apply:

The scales and levels of security monies applying to this Contract shall be:

- (a) Where the Contract sum equals or exceeds \$1,000,000: Security equivalent to 3% of the Contract sum, or
- (b) Where the Contract sum is less than \$1,000,000: Nil security.

3.6 LOCAL DEVELOPMENT

The Contractor shall, except in those cases where the Contractor can reasonably demonstrate to the Principal that it is impractical for commercial, technical or other reasons so to do:

- (a) use labour, including indigenous labour, available within the Northern Territory;
- (b) use the services located and obtain supplies/materials available within the Northern Territory; and
- (c) use accredited apprentices/trainees who are registered in the Northern Territory on the Works in accordance with the Contract.
 - (i) In complying with the use of accredited apprentices/trainees, the Contractor may:
 - directly employ apprentices/trainees;
 - utilise group training scheme apprentices/trainees;
 - utilise sub-contractors apprentices/trainees;
 - utilise any combination of the above.

- (ii) For contract value of \$1 million and above one non-trade trainee may be substituted for a trade apprentice/trainee for the purpose of determining compliance with the Schedule of Minimum Number of Trainees.
- (iii) The Contractor's level of compliance with this requirement will be taken into consideration for further Northern Territory Government contracts for a period of twelve (12) months.

(d) The Contractor is solely responsible for ensuring that the specified requirements are met.

The Contractor shall, provide statements as required on the use of accredited apprentices/trainees and/or indigenous employees on the Works. The Principal may conduct spot audits on compliance with the use of accredited apprentices/trainees and/or indigenous employees on the Works. The Contractor's level of compliance with the use of accredited apprentices/trainees and/or indigenous employees on the Works will be included in the Performance Report on the Contractor at the completion of the Contract and will be taken into consideration for future Works for a period of twelve (12) months.

The Contractor shall, when requested by the Principal, submit a written report concerning the compliance with all provisions of this clause.

3.7 INDUSTRY PARTICIPATION PLAN

OPTIONAL – APPLICABLE IF SPECIFIED

Where an Industry Participation Plan has been specified, the Contractor will implement and maintain the Industry Participation Plan throughout the course of the Contract.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Industry Participation Plan within thirty (30) days of the completion of the Contract.

3.8 INDIGENOUS DEVELOPMENT PLAN

OPTIONAL – APPLICABLE IF SPECIFIED

Where an Indigenous Development Plan has been specified, the Contractor will maintain and implement the Indigenous Development Plan throughout the course of the Contract.

Within fourteen (14) days of award of Contract, the Contractor shall submit one copy of the Indigenous Development Plan to the Superintendent for approval. The Superintendent shall within a reasonable time from receipt, either approve the Indigenous Development Plan, or reject it, giving reasons for the rejections. The Contractor shall rectify the deficiencies and resubmit the Plan for approval.

The Contractor shall provide timesheets with employment (hours worked) and training records for all indigenous people engaged on the works with all Progress claims for Payment.

The Contractor will be required to provide the Principal with a report on compliance (achievements against the objectives/goals) with the Indigenous Development Plan within thirty (30) days of the completion of the Contract.

3.9 OCCUPATIONAL HEALTH AND SAFETY ACCREDITATION SCHEME

OPTIONAL – APPLICABLE IF SPECIFIED

To the extent that the Works are carried out in the Northern Territory, this clause applies to the Contractor as the entity that has, to any extent, control of the Work Site, or a means of access to or egress from the Work Site or plant or substances on the Work Site.

For the purposes of this clause, the following terms have these meanings:

'Construction Work' means the construction and completion of the Works together with any other construction work to which the Act or Regulations apply which is carried out by the Contractor, sub-contractors or sub-subcontractors on the Work Site during the term of the Contract.

'Principal Contractor' means a person who is appointed or taken to be the principal contractor for the Construction Work.

'the Act' means the *Work Place Health and Safety Act (NT)* and includes any amendment, re-enactment or replacement of it.

'the Regulations' means the *Work Place Health and Safety Regulations (NT)* and includes any amendment, re-enactment or replacement of them.

'Work Site' means a workplace within the terms of the Act or the Regulations.

- (a) Without limiting or in any way affecting the Contractor's obligations under the Contract, on and from the date of acceptance of tender the Principal appoints and the Contractor accepts such appointment as the Principal Contractor for the Construction Work and the Contractor must:
- (i) strictly comply with the Act and the Regulations and do all things necessary and in a manner which ensures that both the Contractor and the Principal satisfy their obligations under the Act and the Regulations;
 - (ii) accept that, as Principal Contractor, the Contractor is the person responsible for the control and management of the Construction Work at all times until the Construction Work is completed pursuant to the terms of the Contract;
 - (iii) ensure that it satisfies its obligations under the Act and Regulations as they apply to other persons (e.g. employees of sub-contractors);
 - (iv) immediately comply with directions on safety issued by any relevant authority or by the Principal under the Contract;
 - (v) on and from the date of acceptance of tender, to the extent permitted by law, indemnify the Principal against any loss, expense, liability or damage suffered or incurred by the Principal which may arise as a result of any breach by the Contractor of the Act, the Regulations or of this clause;
 - (vi) ensure that any sub-contract entered into for the Works or any part of the Works contains enforceable obligations requiring the sub-contractor to:
 - comply with the Contractor's obligations in paragraphs (i), (iii) and (iv) as if the sub-contractor were the Contractor (except that the subcontractor will not be appointed or accept any appointment as the Principal Contractor for the Construction Work);
 - acknowledge the appointment of the Contractor as the Principal Contractor and the person responsible for the control and management of the Construction Work at all times until the Construction Work has reached Practical Completion;
 - not interfere with, disturb, impede or obstruct the carrying out by the Contractor of its obligations as Principal Contractor;
 - cooperate and comply with any direction of the Contractor; and
 - ensure that any sub-subcontract entered into for the Works or any part of the Works contains enforceable obligations requiring the sub-subcontractor to comply with subparagraph (iv) as if the sub-subcontractor were the Contractor.
- (b) Where there is any inconsistency or ambiguity between this clause and the Act or the Regulations, the Act and the Regulations will prevail.
- (c) The Contractor is authorised by this clause to exercise such of the Principal's authority as is necessary to enable the Contractor to discharge the responsibilities imposed on it under this clause and under the Act and the Regulations. If the Contractor becomes aware that the authority is not sufficient for this purpose, the Contractor must immediately provide detailed written notice to the Contract Administrator.

3.10 NATIONAL CODE OF PRACTICE AND GUIDELINES REQUIREMENTS

OPTIONAL – APPLICABLE IF SPECIFIED

3.10.1 General

The Contractor must comply with the National Code of Practice for the Construction Industry (**'National Code'**) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (**'Guidelines'**) in the performance its obligations under the Contract.

3.10.2 Responsibility not affected

Compliance with the National Code or the Guidelines does not relieve the Contractor from its other obligations under the Contract or otherwise arising out of or in connection with the Works or the Contractor's other obligations under the Contract.

3.10.3 Notice of effect on compliance with Code and Guidelines

If the Contractor considers a change to the Contract is proposed which affects the Contractor's compliance with the National Code or the Guidelines, it must immediately give the Principal notice in writing specifying the extent to which the Contractor's compliance with the National Code or the Guidelines will be affected.

The Principal will instruct the Contractor as to the course it must adopt within twenty-one (21) days of the notice under sub-paragraph above.

3.10.4 Records

The Contractor must maintain adequate records of compliance with the National Code and the Guidelines by the Contractor, its sub-contractors and its related entities.

3.10.5 Access to Site, Construction Sites and Other Places

The Contractor must permit the Commonwealth of Australia, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to the Site and any other construction sites or places including privately funded construction sites or places to which the National Code and the Guidelines apply, to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant the Works or the work under the Contract;
- (c) interview any person; and
- (d) request the Contractor to produce any specified document within a specified period (being not less than fourteen (14) days from the date of the request) in person, by fax or by post,

as is necessary to allow validation of the Contractor's progress in complying with the National Code and the Guidelines.

The Contractor must ensure that it and its related entities and sub-contractors provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:

- (a) inspect any work, material, machinery, appliance, article or facility;
- (b) inspect and copy any record relevant to the Contractor's Activities, the Works or the work the subject of this Contract;
- (c) interview any person; and
- (d) request the related entity or subcontractor to produce any specified document within a specified period (being not less than fourteen (14) days from the date of the request) in person, by fax or by post,

as is necessary to allow validation of the related entity's or subcontractor's progress in complying with the National Code and the Guidelines.

3.10.6 Application of Sanctions

If the Contractor does not comply with the requirements of this clause such that sanction is applied by the Code Monitoring Group, the Principal, without prejudice to any rights that would otherwise accrue, may record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Contractor or a related corporation in respect of work for any part of the Principal or its agencies.

3.10.7 Sub-contracting

Notwithstanding any other provision of this Contract, the Contractor must not appoint a sub-contractor in relation to the Works where the appointment of that sub-contractor would breach a sanction imposed by the Code Monitoring Group.

The Contractor must ensure that all sub-contracts impose obligations on the sub-contractors functionally equivalent to the obligations under this clause.

3.11 CONFIDENTIALITY, PUBLICITY AND MEDIA

3.11.1 Confidentiality

- (a) For the purposes of this clause 3.11.1 "Confidential Information" means any information or material relating to the Contract or the Works including (without limitation):

- (i) any information that by its nature is confidential;
 - (ii) any information designated as confidential; and
 - (iii) any information that the Contractor knows is confidential.
- (b) The Contractor shall hold all Confidential Information in confidence and shall not make any use of it, except for the purposes of performing its obligations or exercising its rights under the Contract and shall not disclose or permit or cause the Confidential Information to be disclosed to any person, except:
- (i) as authorised by the Principal under the Contract or otherwise;
 - (ii) to its employees or contractors, to the extent needed to perform their obligations under the Contract;
 - (iii) where the disclosure is required to be disclosed by law.
- (c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause 3.11.1.

3.11.2 Media and Publicity

- (a) The Contractor shall not issue or be involved with the release of, any information, publication, statement, interview, advertisement (other than the legitimate advertising for Subcontractors), award nomination, document or article for publication concerning the Contract, the Works or the Site in any media without the prior written approval of the Principal.
- (b) Prior to taking any action or doing anything the Contractor shall refer:
- (i) any media enquiries concerning the Contract, the Site, the Principal or the Works to the Principal for the Principal's written response; and
 - (ii) any media requests concerning the Contract, the Site, the Principal or the Works (including, without limitation, requests to access or take photographic or video footage of the Site) to the Principal, for the Principal's written consent, which consent may be given or withheld, in the Principal's absolute discretion.
- (c) The Contractor shall ensure that its employees and all consultants, contractors and suppliers engaged by the Contractor for the performance of the Contract comply with the requirements of this clause 3.11.2 and obtain the Principal's prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in this clause 3.11.2.

3.12 PAYMENT FOR MATERIALS, PLANT AND EQUIPMENT

Payment in advance for the provision by the Contractor of materials, plant and equipment for incorporation in the Works may be made by the Principal and in accordance with this clause in respect of any item approved from time to time by the Superintendent.

Payment in advance equal to the value (as determined by the Superintendent) of the materials, plant and equipment provided by the Contractor for incorporation into the Works will be made by the Principal upon application in writing to the Superintendent by the Contractor and subject to the following conditions:

- (a) the Superintendent is satisfied that the material, plant or equipment has not been prematurely delivered to the Site of the Works or place of storage and has been stored and protected in a location and manner that is appropriate and adequate having regard to its nature.
- (b) the Contractor has lodged with the Principal security by way of an undertaking in a form approved by the Principal, and given by a bank approved by the Principal under which the bank undertakes to be responsible to pay the Principal on demand a sum equal to the amount of any advance payments that from time to time have been made by the Principal and have not been taken into account in the making of progress payments.
- (c) the amount of the payments in advance that has been made by the Principal and have not been taken into account in the making of progress payments shall not at any time exceed a sum equal to security lodged with the Principal under this clause.

SPECIAL CONDITIONS OF CONTRACT

A payment in advance made as aforesaid shall be accepted as having been made at the express request of the Contractor and the making of the payment shall not:

- (a) import the implication that the materials, plant or equipment in respect of which the advance is made is satisfactory and will subsequently be accepted by the Superintendent as being in accordance with the Contract when built, fixed or installed into the Works;
- (b) prejudice the right of the Superintendent to reject or direct the removal of any material, plant or equipment, whether fixed or not, that is not in accordance with the Contract.

3.13 TIME AND PERFORMANCE SCHEDULE

OPTIONAL – APPLICABLE IF SPECIFIED

The Contractor shall execute the work under the Contract to Practical Completion of each separable part of the Works specified in the Schedule hereunder within the times nominated in the Schedule. The times so nominated shall commence on and from the date of acceptance of tender.

Liquidated Damages for delays and the Defects Liability period/s shall be as indicated in the Schedule.

SEPARABLE PART	TIME FOR COMPLETION (WEEKS)	LIQUIDATED DAMAGES (\$ - WEEK)	DEFECTS LIABILITY (WEEKS)
##			

3.14 COMPLIANCE WITH STANDARDS AND CODES

Where the Contract requires the Contractor to comply with any standard or code, that standard or code shall, unless otherwise specified, be that which is current at the closing date for tenders.

If, subsequent to the award of the Contract, any such standard or code is amended, the Superintendent may direct that the Contractor comply with such amendments and the cost to the Contractor of such compliance will be dealt with under Clause 40 of the General Conditions of Contract.

3.15 AUSTRALIAN STANDARDS MARK

When any manufactured product, required by the Specification to comply with an Australian Standard, is offered as complying with that Standard by virtue of its being marked "Approved to Australian Standard" under a licensing scheme of Standards Australia, then either:

- (a) The product may be accepted by the Superintendent as meeting the requirements of the Australian Standard; or
- (b) The Superintendent, before accepting the product as complying with the Australian Standard, may require some or all of the tests set out in the Australian Standard to be done and passed and may require inspection of manufacture by his representative.

Such acceptance will not cancel any provision of the Specification that the product meets requirements other than those of the Australian Standard.

Before acceptance under (a) above, the Superintendent may require from the Contractor written evidence that the product was manufactured during the currency of the relevant licence of Standards Australia.

3.16 PROPRIETARY ITEMS

A proprietary item shall be any item specified by naming one or more of the following: manufacturer, supplier, installer, trade name, brand name, catalogue or reference number and the like.

The specification of a proprietary item shall not necessarily imply exclusive preference for the item so identified, but shall be deemed to indicate the required properties of the item, such as type, quality, appearance, finish, method of construction, performance and the like.

A similar alternative item having the required properties may be offered for approval. The Superintendent may in his absolute discretion approve or reject the alternative. No claim shall arise from any rejection, nor unless otherwise agreed, shall adoption of an alternative be ground for any claim for variation to cost or time.

When offering an alternative for approval, provide all available technical information and any other relevant information requested by the Superintendent. If so requested obtain and submit reports on relevant tests by an independent testing authority.

The offer should also state whether the use of the alternative will require alteration to any other part of the Works. If the alternative is approved, the Contractor will be responsible for and carry out any such alteration without extra charge.

3.17 CONNECTION OF SERVICES

Unless otherwise specified the Contractor is responsible for connection of all water, drainage, sewerage, gas and electricity services to the Works and the Contractor shall apply for all relevant permits and pay all associated fees and/or charges which are levied by the appropriate Authority.

3.18 SAFE WORK PRACTICES

Further to the General Conditions of Contract, in particular Clause 14 the Contractor shall ensure that his employees, agents or sub-contractors or their employees or agents comply with the requirements of the *Workplace Health and Safety Act*, the *Dangerous Goods Act*, Australian Standards and the requirements of Power and Water and NT Gas Pty Ltd in so far as they are applicable to the execution of the work under the Contract.

The Contractor shall make itself aware of all potential hazards and of all safety requirements relating to the Works.

3.18.1 Work in the Vicinity of Power and Water Assets

Prior to commencing work in the vicinity of any sewerage system, high voltage cable or power line or other high voltage structure, the Contractor shall contact Power and Water and obtain and become cognisant with written guidelines or procedures setting out safe practices for working in or adjacent such hazardous areas.

Whilst working in the vicinity of sewerage systems, high voltage cables or power lines or other high voltage structures the Contractor shall follow all directions and instructions issued by Power and Water.

3.18.2 Work in the Vicinity of Natural Gas Pipelines

In accordance with the *Energy Pipelines Act*, the Contractor shall obtain the written approval of NT Gas Pty Ltd before commencing any of the following activities in the vicinity of high-pressure natural gas pipelines:

- (a) Any activities within the pipeline right-of-way that involve construction of any kind including:
 - i) excavation for drains, pipelines or sewers;
 - ii) excavation for buried utilities or services;
 - iii) construction or maintenance of roads or tracks;
 - iv) boring of holes for fence posts or installation of power/telephone poles;
 - v) any survey or exploration work involving excavation, explosives or vibration.
- (b) Any nearby construction activities which are likely to affect the right-of-way, such as re-routing surface water flows, construction of high voltage lines, or erection of large metal structures.
- (c) Any passage of heavy vehicles and equipment over the pipeline other than on public roads.

Whilst working in the vicinity of natural gas pipelines the Contractor shall follow all directions and instructions issued by NT Gas Pty Ltd.

3.18.3 Asbestos

Where the Contractor removes, repairs and/or renovates products containing asbestos, it must do so in accordance with the National Code of Practice for the Safe Removal of Asbestos, 2nd Edition [NOHSC:2002(2005)] and NT WorkSafe Information Bulletins published by the NT WorkSafe.

In accordance with the *Workplace Health and Safety Act*, and (Regulations) the Contractor shall obtain necessary approvals before commencing any work on or with products that contain asbestos; evidence of approval shall be presented to the Superintendent before commencing work.

3.18.4 Fire Precautions

The Contractor shall take all necessary precautions to ensure that no fire hazard is created through the carrying out of the Works.

3.18.5 Scaffolding and Excavation

All scaffolding and excavation must conform to the *Workplace Health and Safety Act* and Workplace Health and Safety Regulations. The Contractor is to provide all ladders and scaffolding necessary to carry out the Works.

3.18.6 Disabled Access

Where there is likelihood that the Works may cause a danger or inconvenience to the disabled, the Contractor shall seek advice from the Department of Health and Families, Office of Disability. The Contractor may be required to advertise in relevant newspapers or on community radio programs giving forewarning of the Works.

3.19 JOINING UP

Where the method of joining up of work is not otherwise specified, the joining of all old and new work and the cutting away in connection therewith shall be carried out in a manner approved by the Superintendent and made good in all trades to match existing adjacent work.

3.20 DAMAGE TO SERVICES

The Contractor shall contact the officer-in-charge of the area, or his representative, before work commences and in company with the Superintendent check with them the location of all services.

The Contractor shall immediately notify the Superintendent and the officer-in-charge of the area, in the event of damage to any water, gas, steam, compressed air, electric, drainage, sewerage, telephone, fire alarm, control cable or other services in the area.

The Contractor shall render any assistance required in connection with any such incident, but otherwise work in that vicinity shall be stopped immediately and not recommenced until instructions are received from the Superintendent.

Where the service is indicated on the drawing and/or in the Specification, or is evident on the Site, or has been pointed out by the officer-in-charge of the area or by the Superintendent or by a representative of either, the Contractor shall be liable for the cost of any necessary repairs.

Where the Contractor encounters any services, details of which are not given in the drawings and/or specification and which are not evident on the Site or which have not been pointed out to him, and has carried out his operation with reasonable care, the cost of reinstatement, diversion or other associated work may be paid as an extra to the Contract.

3.21 PROTECTION AGAINST DUST, DEBRIS, WATER AND THE LIKE

Where work is carried out in occupied or partially occupied premises, the Contractor shall arrange the execution of the work to minimise nuisance to the occupants. The occupants are to be protected against dust, dirt, noise or other nuisance. Installed equipment is to be protected against damage by dust, dirt, shock or other cause. Appropriate measures are to be taken to afford such protection.

All equipment, whether supplied under the Contract or existing at the Site and surroundings, likely to be damaged or affected by ingress or deposit of foreign matter resulting from the Contractor's operations or those of his sub-contractors or agents shall be properly protected by the Contractor. If necessary protected equipment shall be able to function.

3.22 STRONG WIND PRECAUTIONS

The Contractor shall ensure that unfinished work, equipment, sheds, hoardings, materials and any other movable items on the Site, are protected, stored, or secured to the extent necessary to ensure that in strong wind conditions they will not be a danger to persons or property because of collapse, movement or any other cause.

3.23 CUSTODY OF KEYS – POWER AND WATER ASSETS

The Contractor will be provided with keys for the purposes of accessing Power and Water assets. The Contractor must not label the keys with the name of the asset or make duplicate keys and shall take all care to prevent theft or loss of the keys.

All keys issued to the Contractor shall be returned at the completion of the contract. Failure to return keys within seven (7) days of the contract completion date will incur a fee of \$100.00 per key.

The cost of replacing lost or stolen keys shall be at the Contractor's expense and if the Superintendent so determines shall include the cost of replacing or re-keying master locks.

3.24 CONTRACTOR'S PERFORMANCE REPORT

The Contractor agrees that upon completion of the Works or the termination of the Contract,

- (a) The Superintendent will prepare a Contractor's Performance Report (**'the Report'**).
- (b) The Superintendent shall liaise with the Contractor in completing the Report although the Superintendent reserves the ultimate right to complete the Report (other than the contractor's comments); and
- (c) The Principal will release the Report to Contractor Accreditation Limited and be entitled to release the report to any other department of the Commonwealth or any State or Territory.

The Contractor agrees that neither the Contractor nor any other person shall have any claim against the Principal or employees or agents of the Principal under any circumstances as a result of the preparation and use of the Report.

3.25 GOODS AND SERVICES TAX

For the purposes of this Clause unless the context otherwise requires:

'GST' means any tax imposed on Supplies by or through the *New Tax System (Goods and Services Tax) Act 1999 ('the Act')* and any related *Tax Imposition Act* and **'New Tax System Changes'** has the meaning it bears in the *New Tax System (Trade Practices Amendment) Act 1999 ('the TPA')*. Where any other term is used in this clause which is defined in the Act or the TPA it shall have the meaning which it bears in the Act, or (if the term is not defined in the Act) then the meaning which it bears in the TPA;

'GST Rate' means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time;

'Input Tax Credit' has the meaning it bears in the Act;

'Recipient' 'Entity' and 'Supplies' have the meaning they bear in the Act, and, in addition for the purposes of this Contract shall also be read as follows:

"Entity" shall also mean Contractor;

"Recipient" shall also mean Principal;

"Supplies" shall also mean the Works.

'Adjustment' means each form of adjustment to consideration provided for in this clause.

The parties acknowledge that the consideration under this Contract is inclusive of GST, where GST is calculated using the GST rate at the time of forming this Contract.

The Contractor shall provide the Recipient with a Tax Invoice and/or adjustment notes in relation to the supply prior to an amount being paid by the Recipient under this Contract, and shall do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any Input Tax Credit available to it in respect of a Supply.

Where the GST rate is changed after the date of formation of this Contract the consideration under this Contract will be increased or decreased so that the consideration remains inclusive of GST, with GST calculated using the new GST Rate from the date of the change of the GST Rate that applies at the date of formation of this Contract.

3.26 PRIVACY

For the purposes of this Clause unless the context otherwise requires:

'Act' means the *Information Act (NT)*;

'Privacy Laws' means the Act; and the Information Privacy Principles set out in the Act or any "code of practice" approved under the Act that applies to any of the parties to this Contract.

'Personal Information' means all information about a person that is "personal information" as defined in the Act, which is collected and/or handled by any of the parties in connection with this Contract.

The Contractor agrees to deal with all Personal Information in a manner, which is consistent with the Privacy Laws and any other relevant privacy legislation, as if the Contractor were a public sector organisation.

The Contractor is to collect, use, disclose or otherwise deal with Personal Information only for the purposes of fulfilling its obligations under this Contract.

The Contractor is not to disclose Personal Information without the written authority of the Principal, and in any event disclosure is to be in accordance with the Privacy Laws. The Contractor is to immediately notify the Principal where it becomes aware that a disclosure of Personal Information may be required by law.

The Contractor is to ensure that any employees, agents or sub-contractors, and any other person who may have access to Personal Information held by the Contractor, are aware of the obligations of the Contractor under this Contract and undertake to not collect, access, use, disclose or otherwise deal with Personal Information except in performing their duties of employment and in accordance with this Contract.

The Contractor is to take all reasonable measures to ensure that Personal Information is protected from misuse and loss and from unauthorised access, modification, disclosure or other misuse and that only personnel necessary to fulfil the obligations under this Contract have access to the Personal Information.

The Contractor is to develop, and obtain the written approval of the Principal:

- (a) policies for the management of personal information; and
- (b) complaint handling procedures.

Each party is to immediately notify the other when a complaint is received. The Contractor acknowledges that individuals have the right to request access to, or correction of, the Personal Information held about them.

The Contractor must not transfer Personal Information outside the Northern Territory without the prior approval of the Principal. The Contractor, in respect to Personal Information, is to immediately notify the Principal where the Contractor becomes aware of a breach of this clause or the Privacy Laws.

The Contractor indemnifies the Principal in respect of any liability, loss or expense incurred arising out of or in connection with a breach of the obligations of the Contractor under this Contract.

When this Contract expires or is terminated, the Contractor must, at the Principal's discretion:

- (a) either return to the Principal all records containing Personal information;
- (b) retain any material containing Personal Information in a secure manner as approved by the Principal;
or
- (c) destroy or delete any Personal Information.

This sub-clause will survive the expiration or termination of this Contract.

3.27 OCCUPATIONAL HEALTH & SAFETY & ENVIRONMENT – POWERWATER ASSETS ONLY

3.27.1 Definitions

In this clause:

'Contractor's OHS&E System' includes:

- (a) any procedures, policies or systems in respect of OHS&E implemented by the Contractor or any person for whom the Contractor is responsible or over which it is capable of exercising control (including its sub-contractors); and
- (b) any documents created pursuant to those procedures, policies or systems in respect of the work under the Contract.

'Laws' includes:

- (a) any law concerned with occupational health or safety applicable to the carrying out of the work under the Contract, including Acts, ordinances, regulations, by-laws and other subordinate legislation; and
- (b) any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the work under the Contract, or under any other applicable law, which is concerned with occupational health or safety and which must be obtained or satisfied to carry out the work under the Contract.

'OHS&E' means occupational health and safety and the environment.

'OHS&E Plan' means the specific occupational health and safety plan, if any, which the Contractor was required to prepare as part of its tender for the Works.

'PWC Contractor OHS&E Procedure' means the document produced by the Power and Water Corporation entitled "Contractor Occupational Health, Safety and Environmental Management Procedure" which sets out the OHS&E obligations of consultants and contractors engaged by the Principal, as revised and updated from time to time, a copy of which can be downloaded from the website at <http://www.powerwater.com.au/business/suppliers>

'Standards' means the standards or codes of practice concerned with OHS&E or industry training (including standards or codes engaged in or approved by a significant portion of the industry for works of a similar nature to the Works in Australia) that, at the relevant time, in the exercise of reasonable skill and judgment, would have been expected to accomplish the desired result in the manner consistent with applicable Laws, reliability, safety, and includes the latest release of relevant standards published by Standards Australia.

3.27.2 Priority to safety issues

The Contractor must:

- (a) give priority to and is responsible for ensuring safe work practices in relation to this Contract;
- (b) carry out the work under the Contract safely and so as to protect persons and property; and
- (c) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site or otherwise in carrying out the work under the Contract.

3.27.3 Compliance with laws and standards

Without limiting clause 3.27.2 and any other provision in this Contract, in carrying out the work under the Contract, the Contractor must, and must ensure that all persons for whom it is responsible or over whom it is capable of exercising control (including its sub-contractors), comply with:

- (a) the PWC Contractor OHS&E Procedure as it applies to category # contractors;
- (b) any other of the Principal's policies or procedures concerned with OHS&E notified by the Superintendent to the Contractor or which are referred to in the PWC Contractor OHS&E Procedure;
- (c) all Laws and Standards that are applicable to the performance of the work under the Contract; and
- (d) any direction by the Superintendent given in connection with this clause 3.27.3

3.27.4 OHS&E Plan

If the Contractor was required, as part of its tender for the Works, to prepare an OHS&E Plan, the Contractor must:

- (a) carry out the work under the Contract in accordance with, and otherwise implement, the OHS&E Plan;
- (b) periodically revise the OHS&E Plan, and provide any revised plan to the Superintendent for approval; and
- (c) if any revised OHS&E Plan is rejected, submit an amended revised draft to the Superintendent.

3.27.5 Reporting and compliance

The Contractor must:

- (a) keep the Superintendent fully informed of all OHS&E and rehabilitation matters arising out of, or in any way in connection with, the work under the Contract, as soon as they occur;
- (b) provide to the Superintendent a monthly report on OHS&E and work health indicators, in the form and containing the information required by PWC Contractor OHS&E Procedure, or as otherwise reasonably required by the Superintendent;
- (c) submit to the procedures and other compliance mechanisms contained in the PWC Contractor OHS&E Procedure and provide such other assistance as is necessary to ensure that all requirements of the PWC Contractor OHS&E Procedure are complied with; and
- (d) produce evidence to the Superintendent upon request of its compliance with its obligations under this clause 3.27.

3.27.6 Audit and monitoring

The Superintendent may or may appoint a third party to monitor or audit the Contractor's compliance with its obligations under this clause 3.27.

The Contractor must allow the Superintendent or appointee access to the Contractor's OHS&E System relevant to the work being carried out under the Contract, and to any documents or activities so as to enable monitoring and quality auditing.

3.27.7 Unsafe work

If the Superintendent considers:

- (a) there is a risk of injury to people or damage to property arising from the work under the Contract; or
- (b) there is an unsafe or potentially unsafe practice or breach of the requirements of this clause 3.27,

then, in addition to any other rights under this Contract, the Superintendent may:

- (a) direct the Contractor to change its manner of working; or
- (b) suspend the performance of the work under the Contract associated with the unsafe practice or breach, and not lift the suspension until the work area is made safe and the unsafe practice removed, or the breach rectified.

All costs and delay and disruption caused by any action taken under this clause 3.27.7 are the responsibility of the Contractor.

3.27.8 Contractor not relieved

The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:

- (a) the implementation of, and compliance with, the requirements of any OHS&E Plan;
- (b) any direction or other action by the Superintendent, or anyone else acting on behalf of the Principal, under this clause 3.27.
- (c) any audit or other monitoring by the Superintendent, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the OHS&E Plan or the Contractor's other obligations under this clause 3.27; or
- (d) any failure by the Superintendent, or anyone else acting on behalf of the Principal, to detect any failure to comply with the OHS&E Plan or the Contractor's other obligations under this clause 3.27, including where any such failure arises from any negligence on the part of the Superintendent or other person.

3.27.9 Substantive breach

- (a) Where in the opinion of the Principal, the Contractor has committed a substantive breach of its obligations under this clause 3.27, the Principal may terminate this Contract, by notice to the Contractor.

- (b) The remedy provided in this clause 3.27.9:
 - (i) applies notwithstanding any other provision of the Contract; and
 - (ii) is in addition to the other remedies under this Contract.