

Conditions: Tendering and Contract Purchase and Removal of Goods

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CONDITIONS OF TENDERING AND CONTRACT PURCHASE AND REMOVAL OF GOODS

TABLE OF CONTENTS

1.	CONDITIONS OF TENDERING	5
1.1	LODGEMENT OF TENDERS	5
1.2	TENDERERS TO INFORM THEMSELVES.....	6
1.3	DOCUMENTS TO BE LODGED WITH TENDER FORM	6
1.4	TENDER VALIDITY.....	7
1.5	INSPECTION	7
1.6	PART OFFER AND PART ACCEPTANCE.....	7
1.7	PRICING	8
1.8	TENDER ASSESSMENT CRITERIA.....	8
1.10	ADDITIONAL INFORMATION	8
1.11	NOTIFICATION OF ACCEPTANCE	8
2.	CONDITIONS OF CONTRACT	10
2.1	INTERPRETATION OF TERMS	10
2.2	NATURE OF CONTRACT	10
2.3	PAYMENT	10
2.4	VARIATIONS.....	11
2.5	REMOVAL OF GOODS WITHIN THE TIME STATED	11
2.6	COMPLIANCE WITH RELEVANT ACTS, REGULATIONS AND BY-LAWS.....	11
2.7	NO WARRANTY GIVEN	11
2.8	RESPONSIBILITY/RISK, SAFEGUARDING GOODS.....	11
2.9	DIRECTIONS AND NOTICES	11
2.10	RESPONSIBILITY FOR SUB-CONTRACTORS	11
2.11	SERVICE OF DOCUMENTS	11
2.12	DEFAULT OR BANKRUPTCY	12
2.13	RIGHTS OF PRINCIPAL TO RECOVER MONIES	12
2.14	DISPUTES	12
2.15	GOODS AND SERVICES TAX.....	12

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1. CONDITIONS OF TENDERING

1.1 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.

1.1.1 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).

1.1.2 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	Department of Business and Employment Ground Floor, Arnhem Village Arnhem Road NHULUNBUY NT 0880
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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.

1.1.3 Delivery By Post

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

1.1.4 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 will be deemed late and will not be admitted for consideration.

1.1.5 Lodged via Electronic Lodgement

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

- in the electronic format as specified (ie .arf, .doc, .jpg, .pdf, .rft, .tif, .txt, .xls, .zip); and
- 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 the Tender will not be admitted 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.

CONDITIONS OF TENDERING

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

If, for any reason, the electronic Tender (except pricing schedule[s]) submitted becomes corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc. a hard copy or a further electronic copy of the Tender must be provided by the Tenderer on request from the Principal. Pricing schedule(s) submitted electronically that become corrupt, illegible, inadequate or incomplete as a result of transmission, storage, etc will result in the Tender being invalid and not admitted for consideration.

1.1.6 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:

- (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 Principal 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 Principal 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 Principal 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.

1.2 TENDERERS TO INFORM THEMSELVES

Tenderers shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including an inspection of the Goods if appropriate, and shall satisfy themselves as to the correctness and sufficiency of the RFT documentation.

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

Tenderers who have any doubts as to the meaning of any part of the RFT shall seek clarification in writing from the person specified in the Annexure to the Conditions of Tendering and Contract (the Annexure).

Arrangements for inspection are as stated in the Annexure.

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.

1.3 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 in the Annexure.

Any Tender that does not comply with these conditions or which contains provisions not required or allowed by the RFT may be regarded as informal and rejected.

The Principal will neither be responsible for, nor pay for, any expense or loss, which may be incurred by Tenderers 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.

CONDITIONS OF TENDERING

- (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 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.

1.4 TENDER VALIDITY

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

1.5 INSPECTION

The Goods are offered for sale ex site on an "as is where is" basis and may be inspected at the location stated in the Annexure. Being available for inspection, allowance will not be made nor will the Tenderer be permitted to claim on the Principal on the grounds that they have not been correctly described.

1.6 PART OFFER AND PART ACCEPTANCE

Unless otherwise stated in the Annexure, Tenderers may tender for any item or items or any group or groups of items. Where part offers are allowed, the Principal reserves the right to accept separate tenders for each

or any item or items or item groups, which have been tendered for, unless the Tenderer specifically states to the contrary in its offer.

1.7 PRICING

All prices shall be stated in Australian dollars. The Tenderer shall complete each line item in the Schedule of Prices against which a price is offered and lodge the Schedule with the Tender. The price(s) shall include all costs necessary and incidental to the removal of the Goods.

1.8 TENDER ASSESSMENT CRITERIA

Selection of the successful Tenderer will be based on, but not necessary limited to, assessment of Tenders against the following Tender Assessment Criteria and the price(s) submitted.

The elements under each standard 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 standard criterion are not to be considered exclusive to any specific tender.

- (a) Past Performance:
 - (i) Performance history.
 - (ii) References.
- (b) Timeliness;
 - (i) Completion time offered or compliance with timeframes specified.
- (c) Capacity:
 - (ii) Ability to perform services.
 - (iii) Financial capacity (eg current credit rating) and Risk.
- (d) Local Development and Value Adding:
 - (i) Enhancement of industry and business capability in the Northern Territory (if applicable).
- (e) Scope Specific Criteria (specified as required)
 - (i) Scope Specific Criteria are those criteria that are considered relevant to the nature of the Goods being sold. 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.

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

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

1.10 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 in accordance with the requirements of the RFT.

The Tenderer shall within the time specified comply with any such requests. Should the Tenderer fail to submit any or all of the information required, in the time stipulated, their Tender may be treated as informal and rejected.

1.11 NOTIFICATION OF ACCEPTANCE

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

Notice of acceptance of the Tender shall be given in the form of a written notice and this notice shall constitute a binding Contract between the Principal and the successful Tenderer (hereinafter called the "Contractor"). Written notices of acceptance will, at the Principal's discretion, be issued by pre-paid post, facsimile or email to the address stated in the Tender Form.

CONDITIONS OF TENDERING

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

2. CONDITIONS OF CONTRACT

2.1 INTERPRETATION OF TERMS

In these Conditions, unless the context otherwise requires:

'Contract' means the document, which constitutes or evidences the final and concluded agreement between the Principal and the Contractor.

'Contractor' means the person who as party to the Contract, undertakes to purchase the Goods as provided by the Contract and includes that person's heirs, executors, administrators and permitted assigns and in the case of a corporate body its successors and permitted assigns.

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

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

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

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

'Ordering Officer' means the officer or officers authorised by the Principal to arrange and oversight the disposal of surplus, obsolete or damaged public property (hereinafter referred to as "Goods"). Details of the Ordering Officer are in the Annexure.

'Principal' means the Northern Territory of Australia. The address of the Principal for service of notices is as stated in the Annexure. The Principal for Power and Water contracts is the Power and Water Corporation.

'Description of Goods' means the statement set out in the Contract specifying and describing the Goods.

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

Where two or more persons are named as a party to this Contract, the terms, conditions and warranties of this Contract shall bind all such persons jointly and each of them severally and they shall be jointly and severally entitled to the benefits and rights conferred by this Contract.

Clause headings shall not be used in the interpretation of these Conditions.

Words in the singular include the plural and words in the plural include the singular according to the requirements of the context.

Words importing a gender include every gender.

A reference to persons includes Corporations.

2.2 NATURE OF CONTRACT

The Contractor shall pay on a Schedule of Prices basis. The Contract shall be on a firm price basis.

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

2.3 PAYMENT

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

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

2.4 VARIATIONS

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

2.5 REMOVAL OF GOODS WITHIN THE TIME STATED

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

Access to and removal of the Goods will be allowed when the Contractor has provided the Ordering Officer with satisfactory proof of payment.

2.6 COMPLIANCE WITH RELEVANT ACTS, REGULATIONS AND BY-LAWS

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

2.7 NO WARRANTY GIVEN

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

2.8 RESPONSIBILITY/RISK, SAFEGUARDING GOODS

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

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

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

2.9 DIRECTIONS AND NOTICES

The Contractor shall comply with any direction issued, given or served on the Contractor either orally or in writing by the Ordering Officer. Any direction given orally shall as soon as practicable after it is given, be confirmed in writing by the Ordering Officer.

2.10 RESPONSIBILITY FOR SUB-CONTRACTORS

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

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

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

2.11 SERVICE OF DOCUMENTS

Any notice in writing by the Principal, the Ordering Officer or the Contractor, sent to the address set out in the Contract, shall be deemed to have been duly received:

- (a) in the case of delivery by post, two (2) business days after the date of posting; and

- (b) in the case of electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient's machine.

2.12 DEFAULT OR BANKRUPTCY

If the Contractor:

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

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

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

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

2.13 RIGHTS OF PRINCIPAL TO RECOVER MONIES

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

2.14 DISPUTES

Disputes or differences arising from the Contract shall be resolved as follows:

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

If the Contractor is dissatisfied with the decision of the Principal, he may, not later than twenty-eight (28) days after the decision is given, notify the Principal that he requires the matter to be referred for expert determination, in accordance with the expert determination process detailed in "Northern Territory of Australia - Expert Determination", a copy of which is available from the place of issue of the RFT or from the following web address http://www.nt.gov.au/dbe/procurement_policy/conditions_contract/index.html

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

2.15 GOODS AND SERVICES TAX

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