Conditions: Tendering
Amendments to the General Conditions
and
Special Conditions of Contract
for
NPWC Edition 3

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**Note:**

Highlighted items in these Conditions are variables inserted as applicable in the RFT issued.

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# Conditions of Tendering

## General

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

In these Conditions of Tendering the following definitions apply:

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

**'RFT'** means this request for tender and includes all conditions, annexures, schedules, attachments and addenda.

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

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

## Lodgement of Tenders

For the Tender to be considered, the Tenderer shall complete and submit one copy of the documents listed in the clause titled “Documents to be Lodged” in these Conditions of Tendering (ie. all Response Schedules).

1. in English;
2. in the form required, and
3. to be fully received by the stated time and date for closing of the Tender.

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

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

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

### Closing Time and Date

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

### Lodged by Hand

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

### Lodged by Post

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

### Lodged by Facsimile

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

### Lodged by Electronic Lodgement

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

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

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

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

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

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

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

|  |  |  |
| --- | --- | --- |
| For enquiries about lodgement contact: | Name | Tenders Manager |
|  |  | Telephone | (08) 8999 1934 |
|  | Email | CAPSAssist@nt.gov.au |
|  |

### Late Tenders

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

Notwithstanding the preceding paragraph the Tenderer may appeal such decisions however:

1. Tenders submitted by prepaid post received after the stated time and date for closing of Tenders may be considered only if it can be established to the satisfaction of the Procurement Review Board that the Tender was posted or despatched before the stated time and date for closing of Tenders and in the ordinary course of business would not have been received late. Impressions of company owned franking machines are not acceptable evidence of timely posting or despatch.
2. 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.
3. 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.
4. Times and dates displayed on transmissions from company owned facsimile transmission devices are not acceptable evidence of timely transmission.

## Documents to be Lodged

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

|  |
| --- |
| **Title** |
| Tenderer’s DetailsDeclaration by TendererResponse to Assessment Criteria## |

## Tenderer to Inform Themselves

Tenderers at their own expense shall inform themselves fully of all circumstances and conditions relating to submitting a Tender, including compliance with all legislation applicable to 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 including the NT Procurement Code is available from the web address:
www.dob.nt.gov.au/business/tenders-contracts/legislative\_framework/Pages/default.aspx

## Compliance with NT Procurement Code

1. In preparing its Tender, submitting its Tender and throughout the tendering period and process the Tenderer shall comply with the Northern Territory Procurement Code (‘**Code**’).
2. A copy of the Code is available at the web address specified in the clause entitled “Tenderers to Inform Themselves”.
3. If the Principal:
4. has evidence that the Tenderer has not complied with the Code; or
5. is of the reasonable opinion that the Tenderer has not complied with the Code,

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

## Enquiries

Should the Tenderer

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

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

|  |  |  |
| --- | --- | --- |
| For enquiries about the Works contact: | Name | # |
|  |  | Telephone | # |
|  | Facsimile | # |
|  | Email | # |
|  |

**Additional contact only applicable to Power and Water Contracts**

|  |  |  |  |
| --- | --- | --- | --- |
|  | If unable to contact above | Name | Procurement Officer |
|  |  | Telephone | (08) 8924 5089 |
|  |  | Email | pwc.procurement@powerwater.com.au |
|  |

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

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

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

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

## Site Inspection

**Option 1 Not Applicable**

A Site Inspection is not applicable to this RFT.

**Option 2 Anytime**

Prior to submitting a Tender it is recommended that the Tenderer visit the Site.

**Option 3 Permission Required**

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site. Inspection of the Site is **not mandatory**. However permission to visit the Site must be first obtained by contacting the following during business hours:

|  |  |  |
| --- | --- | --- |
| Permission to visit Site contact: | Name | # |
|  |  | Agency | # |
|  |  | Telephone | # |
|  |

**Option 4 Set Time – Not Mandatory**

Prior to submitting a Tender the Tenderer is encouraged to inspect the Site.

|  |  |  |
| --- | --- | --- |
| Contact for Site Inspection | Name | # |
|  |  | Telephone | # |
|  | Location of Site | # |
|  | Designated Time/Day for Inspection/Meeting | # |
|  | Attendance at Site Inspection | **Not Mandatory**  |
|  |

Any subsequent Site Inspections will be solely at the Principal’s discretion and, where subsequent Site Inspections are organised, Tenderers will be advised and invited to attend by issue of an addendum.

**Option 4 Set Time – Mandatory**

Prior to submitting a Tender, the Tenderer must attend a **mandatory** Site Inspection.

|  |  |  |
| --- | --- | --- |
| Contact for Site Inspection | Name | # |
|  |  | Telephone | # |
|  | Location of Site | # |
|  | Designated Time/Day for Inspection/Meeting | # |
|  | Attendance at Site Inspection | **Mandatory**  |
|  |

**All prospective Tenderers must attend the Site Inspection regardless of any previous knowledge or familiarity with the Site**. Subsequent or alternative inspections for individual Tenderers will not be permitted.

In addition to attending the Site Inspection the Tenderer is required to have the Schedule of Attendance at the Mandatory Site Inspection (‘**Schedule**’) (which is included in the response schedules) signed by the principal’s officer conducting the Site Inspection. The completed and signed schedule must be lodged as part of the tenderer’s tender. Where the tender is lodged electronically via the Quotations and Tenders Online elodgement Service, the schedule shall include the signature of Principal’s Officer conducting the Site Inspection (ie be a scanned document lodged in .pdf format or similar).

A Tenderer may authorise a third party to attend a Site Inspection as its authorised representative, however, it remains the responsibility of the Tenderer to have the Schedule of Attendance at Mandatory Site Inspection completed and attendance on its behalf noted in the Principal’s record of attendees at the Site Inspection.

Failure to attend the Site Inspection and/or lodge the signed Schedule where expressed as mandatory will result in the Tenderer’s Tender being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.

## Industry Briefing

**Option 1 Not Applicable**

An Industry Briefing is not applicable to this RFT.

**Option 2 Set Time – Not Mandatory**

An Industry Briefing will be held as follows:

|  |
| --- |
|  |
| Contact for Industry Briefing: | Name | # |
|  |  | Telephone | # |
|  | Location of Industry Briefing: | # |
|  | Designated Time/Day for Industry Briefing: | # |
|  | Attendance at Industry Briefing: | **Not Mandatory**  |
|  |

Attendance at the Industry Briefing is **not mandatory** however Tenderers are encouraged to attend.

Any additional information provided at the Briefing will be distributed to Tenderers by issue of an addendum.

Any subsequent Industry Briefings will be solely at the Principal’s discretion and, where subsequent Industry Briefings are arranged, Tenderers will be advised and invited to attend by issue of an addendum.

**Option 3 Set Time - Mandatory**

An Industry Briefing will be held as follows:

|  |
| --- |
|  |
| Contact for Industry Briefing | Name | # |
|  |  | Telephone | # |
|  | Location of Industry Briefing:  | # |
|  | Designated Time/Day for Industry Briefing: | # |
|  | Attendance at Industry Briefing: | **Mandatory**  |
|  |

**All prospective Tenderers must attend the Industry Briefing regardless of any previous knowledge or familiarity with the Works**. Subsequent or alternative briefings for individual Tenderers will not be permitted. Any additional information provided at the Briefing will be distributed to Tenderers by issue of an addendum.

In addition to attending the Industry Briefing the Tenderer is required to have the Schedule of Attendance at the Mandatory Industry Briefing (‘**Attendance Record**’) (which is included in the Response Schedules) signed by the Principal’s Officer conducting the Industry Briefing. The completed and signed Attendance Record must be lodged as part of the Tenderer’s Tender. Where the Tender is lodged electronically via the Quotations and Tenders Online eLodgement Service, the Attendance Record shall include the signature of Principal’s Officer conducting the Industry Briefing (ie be a scanned document lodged in .pdf format or similar).

A Tenderer may authorise a third party to attend the mandatory Industry Briefing as its authorised representative, however, it remains the responsibility of the Tenderer to have the Schedule of Attendance at the Mandatory Industry Briefing completed and attendance on its behalf noted in the Principal’s record of attendees at the Industry Briefing.

Failure to attend the Mandatory Industry Briefing and/or lodge the signed Attendance Record where expressed as mandatory will result in a Tenderer’s Tender being declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender declared ineligible for consideration under the provisions of this clause.

## Signing of Documents

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

1. In the case of a corporation:
2. With its common seal, and the fixing of the seal witnessed by:
	* two (2) directors of the company; or
	* a director and a company secretary of the company; or
	* for a proprietary company that has a sole director who is also the sole company secretary – that director; or
3. Without its common seal, if signed by:
	* two (2) directors of the company; or
	* a director and a company secretary of the company; or
	* for a proprietary company that has a sole director who is also the sole company secretary – that director; or
4. By signature of two (2) persons (other than the persons described in clause (ii)) authorised by the corporation to bind it in contract. In such circumstances a copy of the authorisation duly executed by the corporation in accordance with clause (i) or (ii) must be submitted with the Tender.
5. In the case of a firm (including a firm trading under a business or trading name and a partnership):
6. By signature of each proprietor of the firm,
7. Or in the case of firms having more than five (5) proprietors, by signature of the proprietors authorised to bind the firm in contract. In the case of the later evidence of the authority of those proprietors to bind the firm may be required by the Principal.
8. 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 Declaration by Tenderer form.

Where the Tender is from a:

1. person or persons, full given names are to be provided.
2. firm or business or trading name, full given names of each member of the firm are to be provided.
3. 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/ARBN/ABN) 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.

## 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.

## 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.

## Whole of the Works

**Option 1 Part Offers Not Allowed**

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

**Option 1 Part Offers Allowed**

Tenders may be submitted for part of the Works or the whole of the Works as indicated in the Response Schedules - Schedule of Rates.

Where part offers are allowed, the Principal reserves the right to accept a portion or the whole of any Tender at the price or prices tendered unless the Tenderer specifically states to the contrary in its offer.

## 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.

## 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 as required in the Schedule. Any Tender in which the Schedule is not fully completed may be declared ineligible for consideration.

## 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.dob.nt.gov.au/business/tenders-contracts/legislative\_framework/tendering-contract/Pages/competitive-neutrality.aspx

## 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:

1. the Tenderer; and
2. 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 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/group/sub-group.

The Tender in the spaces provided, must state:

1. the Tenderer’s CAL Registration Number; and
2. the CAL Registration Numbers of all proposed sub-contractors.

If, at the time of submitting its Tender, the Tenderer has an existing CAL accreditation in an applicable CAL category/group/sub-group, but requires an upgrade of the rating in that category/group/sub-group 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:

1. obtain an upgrade of the rating of that existing CAL accreditation; and
2. 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 declared ineligible for consideration.

The Procurement Review Board shall be the sole arbiter of any Tender set aside under the provisions of this clause.

Contractor Accreditation Limited administers the accreditation process. More information on CAL and application forms can be found at:

web address: www.accreditation.com.au

Or

CAL Registrar
PO Box 125
Parap NT 0804
Telephone: (08) 8922 4600
Facsimile: (08) 8984 4003

## Local Development

The NT Government is committed to supporting businesses that use local contractors and suppliers and hire and train 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/suppliers to be used (where applicable), indigenous employees, apprentices/trainees to be used on the Works and all employees undertaking accredited training.

### 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/Trainees.** |
| --- |
| **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:

1. a signed contract of training for the apprentice/trainee is currently registered with the Australian Apprenticeships NT Office; or
2. the apprentice/trainee details appear on the Data Entry Level Training Agreement (DELTA) database, maintained by the Department of Business; or
3. 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.
4. 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.
5. 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.
6. 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 Business

11th Floor, Mitchell Centre

Mitchell Street

Darwin NT 0800

Telephone: (08) 8935 7707

Facsimile: (08) 8901 1326
email: govtcontracts@nt.gov.au

Or

GPO Box 3200

Darwin NT 0801

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 (08) 8935 8200
email: Darwin@aacnt.com.au

Or

GPO Box 3049

Darwin NT 0801

Or

19 Hartley Street

Alice Springs NT 0870

Telephone: (08) 8953 3311

### Indigenous requirements for Shire Councils

**Option 1 – Not Applicable**

Not Applicable.

**Option 2 – Applicable**

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

## Indigenous Development Plan

**Option 1– Not Applicable**

The Tenderer is **not required** to submit an Indigenous Development Plan.

**Option 2– Applicable**

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.

## Industry Participation Plan

**Option 1 – Not Applicable**

The Tenderer is **not required** to submit an Industry Participation Plan.

**Option 2 – Applicable**

The Tenderer will be required to provide an Industry Participation Plan. Tenderers **must submit** an Industry Participation Plan Proposalfor the Works to be provided. Failure to submit an Industry Participation Plan Proposal with the Tender will result in the Tender being declared ineligible for consideration.

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

76 The Esplanade

Darwin NT 0800

Telephone: (08) 8999 5201

Facsimile: (08) 8901 5106
email: industryparticipation@nt.gov.au

Or

GPO Box 3200

Darwin NT 0801

## Quality Assurance/Project Control

**Option 1 – Not Applicable**

The Tenderer is **not required** to carry out the Works using Project Control.

**Option 2 – Applicable – Project Control Required**

The Works required under the Contract are to be carried out using Project Control.

The Tenderer **is required** to submit a Project Control Summary with the Tender. Any Tender in which the Project Control Summary is not provided will result in the Tender being declared ineligible for consideration.

The Tenderer if awarded the Contract will be required to comply with the section titled "Project Control" in the RFT.

**Option 3 – Applicable – Project Quality Required**

The Works required under the Contract are to be carried out using ISO 9000 Quality Assurance.

The Tenderer's attention is drawn to the section titled "Quality Assurance" in the RFT.

The Tenderer **is required** to submit a Project Quality Plan Proposal with the Tender.

Any Tender in which the Project Quality Plan Proposal is not provided will result in the Tender being declared ineligible for consideration.

## Occupational Health and Safety Accreditation Scheme

**Option 1– Not Applicable**

The Tenderer is not required to carry out the Works using the Occupational Health and Safety Accreditation Scheme.

**Option 2– Applicable**

A Tenderer at the time of tendering **must be accredited** under the Australian Government Building and Construction Occupational Health and Safety Accreditation Scheme ('**Scheme**') *Fair Work (Building Industry) Act 2012* (FWBI Act).

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.

## National Code of Practice and Guidelines

**Option 1– Not Applicable**

The Tenderer is not required to carry out the Works using National Code of Practice for the Construction Industry 1997 ('**National Code**') and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry May 2012.

**Option 2– Applicable**

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**'), May 2012. 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:

1. precluded from tendering for Australian Government funded work; or
2. specifically excluded from participating in this Tender.

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

## Change to Conditions of Contract

### Conditions of Tendering

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

### 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 declared ineligible for further consideration.

**Option 2 Changes Allowed**

Tenderers may request changes, or propose alternatives, **only** 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 space provided 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.

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

## Impartiality of Requirements

Unless otherwise specified if an item is specified as being similar or equivalent to a particular brand in the Scope of Works this is to set an acceptable standard only and no preference is given to that brand.

Any items offered must be at least of the same standard and potential as specified in the Scope of Works, or as is inherent in the equivalent brand. The Principal may accept items of higher standard than specified if the items offer better value-for-money outcomes. Where such is being offered full details by way of illustrations, catalogues, brochures and the like, should be provided with the Tender.

## Disclosure of Weightings

Assessment criteria and percentage weightings applicable to the RFT are as follows:

|  |  |
| --- | --- |
| Past Performance | #% |
| Timeliness | #% |
| Capacity | #% |
| Local Development & Value Adding | #% |
| Innovation | #% |
| Scope Specific Criteria | #% |
| Price | #% |
| TOTAL | 100% |
|  |

Although tender assessment criterion may include sub-criteria, 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 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

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.

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.

1. Past Performance:
2. Performance history including experience in providing similar Works and extent to which previous undertakings were achieved.
3. Standard of work/quality of products.
4. Extent of supervision of the Contractor required.
5. Previous disputes and claims history.
6. References (including Contractor Accreditation Limited if applicable).
7. Safe and fair workplace record.
8. Timeliness:
9. Capability and capacity to meet timeframes required.
10. Vulnerability to achieving the completion timeframe.
11. Capacity:
12. Ability to perform the Works including the experience of the business and personnel nominated to perform the Works (eg physical and technical capacity).
13. Number and value of Contracts in progress.
14. Appropriate CAL accreditation (where applicable).
15. Legal action pending.
16. Financial capacity (including current credit rating).
17. Risk.
18. Local Development and Value Adding:
19. Enhancement of industry and business capability in the Northern Territory.
20. Improved capacity and quality in service response.
21. Accredited training programs supported by the Tenderer and/or opportunities that will be supported or generated from this requirement.
22. Proposed level of usage of apprentices and/or trainees and/or opportunities that will be supported or generated from this requirement.
23. Proposed number of jobs for Territorians and/or opportunities that will be supported or generated from this requirement.
24. Proposed number of jobs for Indigenous Territorians and/or opportunities that will be supported or generated from this requirement.
25. Proposed level of usage of local Indigenous enterprise and/or opportunities that will be supported or generated from this requirement.
26. Regional development opportunities.
27. Any Northern Territory research and development proposals being undertaken or proposed by the Tenderer.
28. Building Northern Territory Industry Participation Plans (where applicable).
29. Innovation (specified as required):
30. New technology.
31. Alternative solutions.
32. Scope Specific Criteria (specified as required):
33. 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 applicable to the Works required.
34. Price:
35. Upfront costs; or
36. Through-life costs eg
* Operating costs;
* Cost of transit in and out or implementation from one Contractor to another.
1. 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.

## Clarification and Additional Information

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

## Treatment of Low or Aberrant Price

During Tender assessment the following approach may be taken to low or aberrant prices. Where a tender price (or a key element of a tender price) is considered well below the median price and/or the projects estimated value, the Tenderer, as a part of the assessment process, may be requested to confirm the tendered price and /or respond to questions regarding particular aspects of the tender. The Tenderer may also be asked to provide written confirmation that the scope of work and contractual obligations are fully understood. Where the price submitted is confirmed the Principal will, at its discretion, either:

1. proceed with the evaluation of the tender; or
2. where there is evidence that acceptance of the Tender may pose a substantial risk to the project and the sustainability of Tenderer, give consideration to passing over that Tender.

## Negotiation

1. The Principal may engage in detailed discussions and negotiations with one or more Tenderers.
2. Without limiting sub-clause 1.29(a) the selection of Tenderers under this clause does not bind the Principal to a contractual relationship and is not a representation that a contract will be entered into between the Principal and the Tenderer.
3. The selection of a preferred Tenderer is subject to the successful conclusion of negotiations. The result of any negotiations will be incorporated into the final Contract.
4. If the parties fail to complete satisfactory negotiations, the Principal may, at its sole discretion, terminate negotiations with that Tenderer and commence negotiation with another Tenderer or to terminate this Tender process or to exercise any other right reserved to the Principal under law or elsewhere in this RFT.

## 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.

## Privacy Notice

The Principal is collecting the information on the Response Schedules 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 the Response Schedules can be accessed by the Tenderer on request. Any queries should be directed to the Officer stated in the clause titled “Enquiries” as the contact point.

## Notification of 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 given.

The Notice of Acceptance will, at the Principal’s discretion be issued, by prepaid post, facsimile, email, or handed to the Tenderer, at the address stated in the Tender.

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

## 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.

## 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 sub-clause titled “Site Inspection”.

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.

## 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 sub-clause titled “Site Inspection”.

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.

## 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 sub-clause titled “Site Inspection”.

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.

## 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 sub-clause titled “Site Inspection”.

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.

## 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 sub-clause titled “Site Inspection”.

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.

## 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

Attention: Works and Contracts Officer

Telephone: (08) 8956 1100

Facsimile: (08) 8956 2064

## 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

Attention: Works and Contracts Officer

Telephone: (08) 8938 1100

Facsimile: (08) 8938 1115

## 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

## 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 Groote Eylandt Mining Company (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.

## 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.

## 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

Attention: Chief Prison Officer - Security

Telephone: Darwin (08) 8922 0111 or

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 sub-clause titled “Site Inspection”, 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.

## 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 sub-clause titled “Site Inspection”, 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.

## Specific Site Conditions – Access to Parliament House

**Optional – Applicable if Specified**

Attention is drawn to “Parliament House Site Rules for Contractors, Sub-contractors and Tradespersons” ('**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 sub-clause titled “Site Inspection”, 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.

## Specific Site Conditions – NT Police Fire and Emergency Services Assets

**Optional – Applicable if Specified**

Attention is drawn to the Northern Territory Police, Fire and Emergency Services (NTPFES) publication titled: "Instructions and Procedures - Security – Annexure A" (‘**Site Rules**’) which is available from the Facilities Manager, NTPFES Facilities Management Branch Telephone: 8922 3301.

Tenderers shall become familiar with the rules (which may include a Criminal History Check) that apply to work to be carried out in a NTPFES facility, prior to submitting a Tender.

If so required in the sub-clause titled “Site Inspection”, inspection of the Site is to be made only at the designated time and date stated and in conjunction with the OIC of the NTPFES facility.

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 comply with the Site Rules pay all associated fees and to ensure that their employees and sub-contractors undertaking work within a NTPFES facility are made aware of the Site Rules, their application and that they comply with the Site Rules.

## 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.

## 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.

## Special Security Conditions

**Optional – Applicable if Specified other than those mentioned above**

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.

## 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.

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.

# Amendments to the General Conditions of Contract

## 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.dob.nt.gov.au/business/tenders-contracts/legislative\_framework/Pages/default.aspx

## Interpretation of Terms

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

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

**'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, Response Schedules 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.

**‘Special Conditions’** means the conditions specified (if any) to the General Conditions of Contract NPWC Edition 3.

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

## 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:

1. Provided security as required by sub-clause 5.4 of the General Conditions of Contract;
2. Shown evidence of insurance in accordance with Clause 22 of the General Conditions of Contract."

## Service of Documents

Clause 7 of the General Conditions of Contract is amended as follows:

Delete sub-clause 7.1, 7.2 & 7.3 and replace with

“**7.1 Service of Documents on Contractor**

Subject to clause 25 any document which is to be or may be issued or given to or served upon the Contractor under the Contract shall be deemed to have been sufficiently issued or given to or served upon the Contractor if it is hand delivered, sent by prepaid post or sent by electronic means to the Contractor at the address of the Contractor stated in the tender of the Contractor for the Works or at such other address as is notified in writing by the Contractor to the Principal.

**7.2 Service of Documents on Principal or Superintendent**

Any document which is to be or may be issued or given to or served upon the Principal or the Superintendent under the Contract shall be deemed to be sufficiently issued or given to or served upon the Principal or the Superintendent, as the case requires, if it is hand delivered, sent by prepaid post or sent by electronic means to the Principal or the Superintendent at the address of the Principal or of the Superintendent stated in the Annexure hereto.

**7.3 Service Effective on Receipt**

Any document given in accordance with sub-clause 7.1 or 7.2 sent to the address set out in the Annexure hereto, takes effect when it is taken to be received (or at a later time specified in it) and is taken to be received:

1. if hand delivered, on delivery;
2. if sent by post, three (3) Business Days after the date of posting; and
3. if sent by electronic transmission, on receipt by the sender of a transmission report from the despatching machine indicating that the notice sent was received in its entirety at the recipient’s machine unless, within eight (8) working hours after the transmission, the recipient informs the sender that it has not received the entire document;

but if the delivery, receipt or transmission is not on a Business Day or is after 4.30pm on a Business Day, the document is taken to be received at 8.00am on the next Business Day.

## 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 the Tax Invoice from the sub-contractor; 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/group/sub-group and rating commensurate with the type and value of the Works to be performed."

## 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:

1. maintain the currency of the required accreditation with Contractor Accreditation Limited (CAL) during the life of the Contract; and
2. comply with all industry standards on:
3. training;
4. engagement, supervision and payment of sub-contractors;
5. compliance measures;
6. penalties; and
7. termination arrangements.

**The following sub-clause is only applicable to Power and Water Contracts**

**14.1.2 Rates of Wages to be Paid**

1. Subject to sub-clause 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.
2. When employees of the Contractor perform the work as defined in sub-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:
3. Salary/Wages: At base trade level where applicable;
4. Allowances: Applicable Industry, Power Station or other Site allowance;
5. Locality Allowance, Shift Allowance and other allowances paid to Power and Water employees under the Award.
6. 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.
7. 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 sub-clause 14.1.2(c) of this clause but nor shall any allowance already paid by the Contractor be ignored.
8. Definitions:
9. 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.
1. 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, fines and cables and trimming and removal of trees within minimum approach distances to energised conductors currently performed by Power and Water Corporation employees.
2. 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."

## Insurance

### 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."

### 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:

1. note the Principal for its respective rights and interests;
2. 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
3. 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."

### 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. Details can be found at the following web address:

www.worksafe.nt.gov.au/ServiceProviders/Insurers/Pages/Find-an-Approved-Insurance-Company.aspx

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

1. for Contractors employing workers:
2. workers compensation policy number;
3. name of insurer; and
4. date of expiry.
5. for Contractors not employing workers:
6. 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)."

## 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."

## 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."

## Site

### Clause 27.1 – Possession of Site

In addition to sub-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. "

### Clause 27.3 – Access to Work

In addition to sub-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.”

## 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 Electrical Engineering and Contracting Industries (NT) for Power and Water Contracts**) 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 the Principal’s supervisory personnel shall be 8.00 am to 4.30 pm Monday to Friday excluding a day that is a public holiday in the Northern Territory. The Contractor shall provide at least forty eight (48) hours written prior notice to the Superintendent of the intention to work outside the working hours and working days of the Principal’s 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.”

## Variations

### 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 six (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”.

## 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, ##.

## Certificates and Payment

**Progress Certificates and Progress Payments**

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

"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 Works or any claim for payment upon request by the Superintendent.

Principal shall issue a progress certificate and make payments within thirty (30) days of receipt of claims that are not disputed."

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:

1. will not be grounds to vitiate or avoid the contract; and
2. 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 swap rate published on 1 June each year by the Australian Financial Markets Association. 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."

## 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."

## 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."

# 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**’).

## 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.

## 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.

## 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 Contact sum.

## 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 (85%) per cent of the stated quantity and one hundred and fifteen per cent (115%) of the stated quantity respectively.

## 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:

1. Where the Contract sum equals or exceeds $1,000,000: Security equivalent to 3% of the Contract sum, or
2. Where the Contract sum is less than $1,000,000: Nil security.

## 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:

1. use labour, including indigenous labour, available within the Northern Territory;
2. use the services located and obtain supplies/materials available within the Northern Territory; and
3. use accredited apprentices/trainees who are registered in the Northern Territory on the Works in accordance with the Contract.
4. 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.
5. 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.
6. 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.
7. 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.

## Indigenous Development Plan

**Optional – Applicable if Specified**

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

## 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.

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

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.

## 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 Health and Safety (National Uniform Legislation) Act 2011 (NT)* and includes any amendment, re-enactment or replacement of it.

**'the Regulations'** means the *Work Health and Safety (National Uniform Legislation) 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.

1. 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:
2. 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;
3. 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;
4. ensure that it satisfies its obligations under the Act and Regulations as they apply to other persons (e.g. employees of sub-contractors);
5. immediately comply with directions on safety issued by any relevant authority or by the Principal under the Contract;
6. 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;
7. 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.
8. Where there is any inconsistency or ambiguity between this clause and the Act or the Regulations, the Act and the Regulations will prevail.
9. 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.

## National Code of Practice and Guidelines Requirements

**Optional – Applicable if Specified**

### 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.

### 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.

### 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.

### 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.

### 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:

1. inspect any work, material, machinery, appliance, article or facility;
2. inspect and copy any record relevant the Works or the work under the Contract;
3. interview any person; and
4. 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:

1. inspect any work, material, machinery, appliance, article or facility;
2. inspect and copy any record relevant to the Contractor’s Activities, the Works or the work the subject of this Contract;
3. interview any person; and
4. 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.

### 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.

### 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.

## Confidentiality, Publicity and Media

### Confidentiality

1. For the purposes of this sub-clause 3.11.1 “Confidential Information” means any information or material relating to the Contract or the Works including (without limitation):
2. any information that by its nature is confidential;
3. any information designated as confidential; and
4. any information that the Contractor knows is confidential.
5. 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:
6. as authorised by the Principal under the Contract or otherwise;
7. to its employees or contractors, to the extent needed to perform their obligations under the Contract;
8. where the disclosure is required to be disclosed by law.
9. 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 sub-clause 3.11.1.

### Media and Publicity

1. 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.
2. Prior to taking any action or doing anything the Contractor shall refer:
3. any media enquiries concerning the Contract, the Site, the Principal or the Works to the Principal for the Principal’s written response; and
4. 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.
5. 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 sub-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 sub-clause 3.11.2.

## 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:

1. 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.
2. 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.
3. 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.

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:

1. 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;
2. 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.

## 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) |
| ## | ## | ## | ## |

## 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.

## 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:

1. The product may be accepted by the Superintendent as meeting the requirements of the Australian Standard; or
2. 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.

## 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.

## 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.

## 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 *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*, 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.

### 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.

### 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:

1. Any activities within the pipeline right-of-way that involve construction of any kind including:
2. excavation for drains, pipelines or sewers;
3. excavation for buried utilities or services;
4. construction or maintenance of roads or tracks;
5. boring of holes for fence posts or installation of power/telephone poles;
6. any survey or exploration work involving excavation, explosives or vibration.
7. 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.
8. 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.

### 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.

### Fire Precautions

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

Where a fire alarm is activated due to actions of the Contractor or his sub-contractors, resulting in a call out of the Fire Service, the Contractor will be required to pay for the subsequent call out fee.

### 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.

### 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, Office of Disability.

The Contractor may be required to advertise in relevant newspapers or on community radio programs giving forewarning of the Works.

## 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.

## 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.

## 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.

## 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.

## 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.

## Contractor's Performance Report

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

1. The Superintendent will prepare a Contractor's Performance Report ('**Report**').
2. 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
3. The Principal will use and/or 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.

## 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* ('**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* ('**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.

## 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:

1. policies for the management of personal information; and
2. 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:

1. either return to the Principal all records containing Personal information;
2. retain any material containing Personal Information in a secure manner as approved by the Principal; or
3. destroy or delete any Personal Information.

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

## Design to be Prepared by Contractor

1. The Contractor must:
2. design the parts of the Works which the Contract expressly or impliedly requires it to design;
3. ensure that its design complies with the Contract;
4. provide the design it prepares to the Superintendent for his or her permission to use the design; and
5. ensure that it has completed its design and the Superintendent has given permission to use its design by the time set out in the Request for Tender issued in respect to this Contract (“RFT”), or otherwise in the time directed by the Superintendent.
6. For the purposes of sub-clause 3.27(a)(iii) the Contractor must provide its design in:
7. hard copy; and
8. electronic copy,

in each case in accordance with the requirements set out in the RFT or directed by the Superintendent.

### Superintendent to Give Permission to Use Design

1. The Superintendent must reject or give his or her permission to use the design provided by the Contractor or any resubmitted design within a reasonable time of submission by the Contractor.
2. Where the design is rejected by the Superintendent the Contractor must submit an amended design to the [Superintendent](#ContractAdministrator) and must not commence construction of the part of the Works to which the design applies until the  [Superintendent](#ContractAdministrator) gives his or her permission to use the design.

### Contractor's Design Warranty

The Contractor warrants that:

1. any design which it prepares:
2. will be fit for its intended purpose; and
3. complies with:
* all Statutory Requirements, the Building Code of Australia and all relevant standards of Standards Australia;
* the requirements of the Contract or, to the extent that the standard is not prescribed, a standard consistent with best industry standard for designs of a nature similar to that required for the Works; and
* any direction of the Superintendent; and
1. the Works complies with the design which has been the subject of the Superintendent’s permission under sub-clause 3.27.2.

### Prior Design Work

1. The Contractor acknowledges that it is aware that work may have been carried out upon the design of the Works and if so this design work is set out in the RFT or will be provided to the Contractor at a later date by the Superintendent.
2. Despite this the Contractor agrees to comply with its obligations to complete the Works as required by this Contract and for this purpose (but without limiting the generality of the foregoing) it acknowledges that there may be errors in the design documents included in the RFT or later provided to the Contractor and that any errors or any work required to overcome the errors will not constitute a variation under the Contract;
3. the Principal will not be liable upon any claim arising out of or in connection with any such errors; and
4. the Contractor will at its cost:
5. provide any further details required to enable it to complete the design and construction of the Works; and
6. perform any additional work required to overcome any errors in the design documents included in the RFT or provided to the Contractor by the Principal.

### No Duty to Review

1. The Superintendent owes no duty to the Contractor to review the design submitted by the Contractor for errors, omissions or compliance with the Contract.
2. No comments on, reviews or rejection of or permission to use the design by the Superintendent will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

### Professional Indemnity Insurance

Before commencing work under the Contract the Contractor must take out a professional indemnity insurance policy to cover claims made against the insured of civil liability for breach of professional duty (whether owed in contract or otherwise) by the [Contractor](#Contractor) or its subcontractors in carrying out the [Works](#ContractorsActivities) and the Contractor’s design obligations in the amount of $500,000.00 per claim and $1,000,000.00 in the aggregate.

## Occupational Health, Safety and Environment – Powerwater Assets Only

### Definitions

In this clause:

**'Contractor's OHS&E System'** includes:

1. 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
2. any documents created pursuant to those procedures, policies or systems in respect of the work under the Contract.

**'Laws'** includes:

1. 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
2. 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:
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.

### Priority to safety issues

The Contractor must:

1. give priority to and is responsible for ensuring safe work practices in relation to this Contract;
2. carry out the work under the Contract safely and so as to protect persons and property; and
3. 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.

### Compliance with laws and standards

Without limiting sub-clause 3.28.2 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:

1. the PWC Contractor OHS&E Procedure as it applies to category # contractors;
2. 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;
3. all Laws and Standards that are applicable to the performance of the work under the Contract; and
4. any direction by the Superintendent given in connection with this clause 3.27.3

### 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:

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

### Reporting and compliance

The Contractor must:

1. 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;
2. 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;
3. 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
4. produce evidence to the Superintendent upon request of its compliance with its obligations under this sub-clause 3.28.

### 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 sub-clause 3.28.

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.

### Unsafe work

If the Superintendent considers:

1. there is a risk of injury to people or damage to property arising from the work under the Contract; or
2. there is an unsafe or potentially unsafe practice or breach of the requirements of this clause 3.28,

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

1. direct the Contractor to change its manner of working; or
2. 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 sub-clause 3.28.7 are the responsibility of the Contractor.

### 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:

1. the implementation of, and compliance with, the requirements of any OHS&E Plan;
2. any direction or other action by the Superintendent, or anyone else acting on behalf of the Principal, under this sub-clause 3.28.
3. 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 sub-clause 3.28 or
4. 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 sub-clause 3.28, including where any such failure arises from any negligence on the part of the Superintendent or other person.

### Substantive breach

1. Where in the opinion of the Principal, the Contractor has committed a substantive breach of its obligations under this sub-clause 3.28, the Principal may terminate this Contract, by notice to the Contractor.
2. The remedy provided in this sub-clause 3.27.9:
3. applies notwithstanding any other provision of the Contract; and
4. is in addition to the other remedies under this Contract.