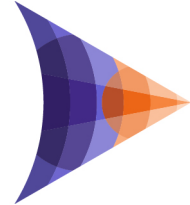




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## Request for Proposal Conditions

### **1 General Conditions**

- 1.1 This is a Request for Proposals (RFP). Proposals received in response to this Request for Proposals will be assessed in accordance with these conditions.
- 1.2 Following this RFP process, the Commonwealth intends to shortlist respondents and be asked to participate in a Project Definition Study to further refine their proposal. The Commonwealth will determine the basis on which any Project Definition Study will be undertaken.
- 1.3 The Commonwealth may change the innovation priorities or capability streams at any time.
- 1.4 The Commonwealth may amend, suspend, defer or terminate this RFP, and any aspect or the whole of the process (including the response to Response to For Proposals form), at any time by issuing a notice in writing via AusTender.
- 1.5 To the extent permitted by law, no binding contract or other understanding (including any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and a respondent unless and until a Contract is signed by the Commonwealth and a successful respondent following any subsequent procurement process.
- 1.6 To the extent of any inconsistency, these Terms take precedence over:
  - a. information set out in the RFP, or on relevant Defence websites including business.gov.au, AusTender or on Defence social media pages;
  - b. Proposal Data Requirements List (PDRL) and any annexes to the PDRL; and
  - c. any other guidance documents on completing the “EDT White Paper Template”.

### **2 Interpretation of Request for Proposal**

- 2.1 The RFP comprises:
  - a. the Cover Letter;
  - b. these RFP Conditions (including PDRL and any attachments);
  - c. the Opportunity Statements (including Annexures); and
  - d. the RFP White Paper Response template.
- 2.2 In this RFP, unless the contrary appears:
  - a. headings are for the purpose of convenient reference only and do not form part of the RFP;
  - b. the singular includes the plural and vice-versa;
  - c. a reference to one gender includes the other;
  - d. a reference to a person includes a body politic, body corporate or a partnership;
  - e. if the last day of any period prescribed for the doing of an action falls on a day which is not a Working Day, the action is to be done no later than the end of the next Working Day;
  - f. a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
  - g. a reference to a clause includes a reference to a subclause of that clause;
  - h. a reference to a ‘dollar’, ‘\$’, ‘\$A’ or ‘AUD’ means the Australian dollar unless otherwise stated;

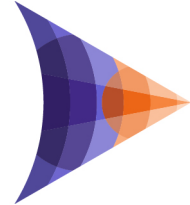


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- i. a reference to a specification, publication, Commonwealth policy or other document is a reference to that specification, publication or document, in effect on the date of release of this RFP or alternatively, a reference to a revised version of the document if agreed in writing between the parties;
- j. the word 'includes' in any form is not a word of limitation;
- k. a reference to a party includes that party's administrators, successors, and permitted assigns, or its officers, employees, agents or advisers;
- l. words, abbreviations and acronyms have the meaning given to them by the RFP Acronym and draft Contract glossary and/or definitions.

### **3 Amendment of the Request for Proposal**

- 3.1 The Commonwealth may amend this RFP upon giving respondents timely written notice of an amendment.
- 3.2 If the Commonwealth amends this RFP under clause 3.1 after proposals have been submitted, it may seek amended proposals.
- 3.3 Respondents will have no claim against the Commonwealth or its officers, employees or advisers in connection with either the exercise of, or failure to exercise, the Commonwealth's rights under this clause 3.

### **4 Exclusion**

- 4.1 The Commonwealth may, at any time, exclude a submission from further consideration if:
  - a. clause 11, clause 18 or clause 23 of these Terms is breached;
  - b. the assessment of the submission against any one or more assessment criteria suggests that there is no reasonable prospect of the proposed innovation being progressed by the Commonwealth;
  - c. the Commonwealth considers that there is a more appropriate program or source of funding for the proposed innovation;
  - d. the proposed innovation is covered by existing procurement activities the Commonwealth is undertaking;
  - e. the proposed innovation has been developed by or with the assistance of an individual during the course of their employment with the Commonwealth;
  - f. the proposed innovation has been developed under a contract with the Commonwealth (unless the contract specifically allows this);
  - g. the submission is made by, or with the assistance of, an entity or individual that is working or has worked with the Commonwealth on the RFP or the process; or
  - h. the submission includes information that cannot be read or decrypted, or the Commonwealth believes the submission may contain a virus, malicious code or anything else which may compromise the integrity or security of its ICT environment.

### **5 Termination, Suspension or Deferral of RFP**

- 5.1 Without limiting its rights under the RFP, at law or otherwise, the Commonwealth may suspend, defer or terminate this RFP process at any time prior to the execution of a formal written contract. The Commonwealth will notify tenderers to this effect.

### **6 Other Commonwealth Rights**

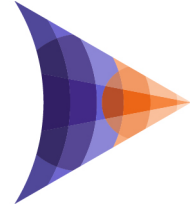
- 6.1 Without limiting its other rights under this RFP or at law or otherwise, the Commonwealth may at any time during this RFP process, do all or any of the following:



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- a. consider and accept or reject any proposal that is nonconforming or consider alternative proposals;
- b. terminate further participation in the RFP process by any respondent for any reason, regardless of whether the proposal submitted conforms with the requirements of this RFP; and
- c. negotiate with a respondent and enter into a contract outside this RFP process.

6.2 Any time or date in this RFP is for the convenience of Defence. The establishment of a time or date in this RFP does not create an obligation on the part of Defence to take any action or exercise any right established in the RFP or otherwise.

## **7 Australian Government Requirements**

7.1 The Commonwealth will not enter into a Contract with a proposer which has a judicial decision against it (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid.

7.2 In accordance with the Workplace Gender Equality Procurement Principles, the Commonwealth will not enter into any resultant Contract with a proposer who is non-compliant under the *Workplace Gender Equality Act (Cth) 2012*.

## **8 Complaints**

8.1 In the event proposers wish to lodge a formal complaint regarding this procurement, the complaint is to be directed in writing to: [procurement.complaints@defence.gov.au](mailto:procurement.complaints@defence.gov.au). On the request of the Commonwealth, proposers are to cooperate with the Commonwealth in the resolution of any complaint regarding this procurement.

## **9 Statement of Tax Record (STR) (Not Used)**

## **10 Contact Officer and RFP Inquiries**

10.1 Proposers are to direct any questions or concerns regarding this RFP in writing to the Contact Officer.

Email: [asca.edt@defence.gov.au](mailto:asca.edt@defence.gov.au)

10.2 Proposers may submit questions or concerns to the Contact Officer up until five Working Days prior to the Closing Time specified in the Tender Details Schedule.

10.3 Any question or concern submitted by proposers is submitted on the basis that the Commonwealth may circulate it and the Commonwealth's response to all other proposers without disclosing the source of the question or concern, Confidential Information or revealing the substance of a proposed tender.

## **11 Proposal Preparation**

11.1 Proposers are to complete and provide the information requested in the annexes and are to do so in the manner requested in the annexes.

11.2 Your submission, including attachments, must be in English, and measurements must be in Australian legal units of measurement.

11.3 Your submission must include a valid Australian Business Number (ABN) or New Zealand Business Number (NZBN) that relates to the entity lodging the submission.

11.4 Your submission must not contain viruses, malicious code, or other disabling features which may affect the Commonwealth's ICT environment.

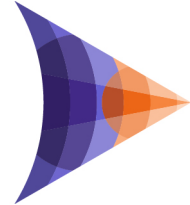
11.5 Do not rely on any representation, letter, document or statement, either oral or in writing, or other conduct as adding to or amending these Terms other than amendments issued by the Commonwealth in accordance with clause 1.4 of these Terms.



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- 11.6 Do not include security classified material (Australian or foreign) in your submission.
- 11.7 Do not engage in any collusive bidding, anti-competitive conduct or other similar conduct in connection with your submission or any engagement with the Commonwealth in relation to your submission.
- 11.8 You must make sure that your officers, employees, agents and advisors involved in the submission or the process also observe this restriction.

## **12 Responsibility for Proposal Costs**

- 12.1 The respondent's participation in any stage of the RFP process, or in relation to any matter concerning the RFP, is at the respondent's sole risk, cost and expense. The Commonwealth will not be responsible for any costs or expenses incurred by any respondent in preparation or lodgement of a proposal or taking part in the RFP process.
- 12.2 In addition to clause 1.4, the Commonwealth is not liable to the respondent for any costs on the basis of quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the respondent's participation in the RFP process, including without limitation, instances where:
  - a. a respondent is not engaged to undertake the performance of any resultant contract;
  - b. a respondent is not shortlisted to participate in any subsequent procurement process;
  - c. the Commonwealth decides not to proceed with the RFP process;
  - d. the Commonwealth's defence capability requirements change; or
  - e. the Commonwealth exercises any other right under the RFP or at law

## **13 Security Requirements**

- 13.1 Security considerations will depend on the work to be performed, however it is likely that the work will be conducted at a minimum Official security classification level. Official level work is intended to be publishable in the open literature where appropriate. Identity of staff and students and their citizenship will need to be provided to DST. Detailed requirements will be provided to successful applicants. DST may request additional security information if this is required to adequately assess a proposal. If attractive Proposals are received with outputs that DST considers to be at a higher security classification, appropriate Defence Security Procedures will be mandated to the proposal(s) if selected.
- 13.2 During the life of this project, DST will be implementing changes to the administration of Collaborative Research Security arrangements under the new Defence Research Collaboration Security Framework (DRCSF). Proposers should be aware that full compliance of those changes can be expected to be negotiated in the future when full ratification of the arrangement occurs. Further advice is available from DST Security.
- 13.3 Under the present security arrangements the proposer will be required to achieve Defence Industry Security Program (DISP) Entry Level Membership within 12 months and must have submitted the DISP membership application request within 3 months of signing the contract.

## **14 Proposal Lodgement**

***Note to proposers: The Closing Time will be displayed in the relevant AusTender webpage together with a countdown clock that displays in real time the amount of time left until Closing Time (for more information please see AusTender Terms of Use). For the purposes of determining whether a tender response has been lodged before the Closing Time, the countdown clock will be conclusive.***

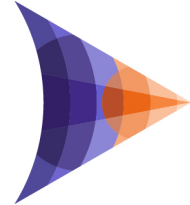
- 14.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this RFP



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proposers are to comply with those terms and conditions and any applicable instructions, process, procedures and recommendations as advised on AusTender at: <https://www.tenders.gov.au/infolinks/termsfuse> .

- 14.2 All queries and requests for AusTender technical or operational support are to be directed to:

AusTender Help Desk

Telephone: 1300 651 698

International: +61 2 6215 1558

Email: [tenders@finance.gov.au](mailto:tenders@finance.gov.au)

The AusTender Helpdesk is available between 9am and 5pm Australian Capital Territory (ACT) Local Time, Monday to Friday (excluding ACT and national public holidays).

- 14.3 Proposals are to be lodged electronically via AusTender (<https://www.tenders.gov.au>) **before 16:00 local time in the ACT on the 09<sup>th</sup> February 2024**, in accordance with the tender lodgement procedures set out in this RFP and on AusTender.

- 14.4 Proposals are to be lodged in PDF format. All file names should:

- a. sufficiently identify the proposer by including their name; and
- b. reflect the parts of the response they represent, where the response comprises multiple files.

- 14.5 The proposal is to include a PDF copy of the executed Declaration by Respondent.

- 14.6 Proposal files should not exceed a combined file size of 500 megabytes per upload.

## **15 Period of Proposal**

- 15.1 The Commonwealth requires that proposals submitted in response to this RFP remain valid for a period of not less than 12 months after the Proposal Closing Time

- 15.2 If this procurement is suspended under the Government Procurement (Judicial Review) Act 2018 (Cth), the period identified in clause 15.1 is extended by the period of suspension, up to 18 months.

- 15.3 Without limiting clause 15.2, the Commonwealth may request an extension of the period identified in clause 15.2.

## **16 Unintentional Errors of Forms**

- 16.1 If the Commonwealth considers that there are unintentional errors of form in a proposal, the Commonwealth may request the respondent to correct or clarify the error but will not permit any material alteration or addition to the proposal.

## **17 Confidentiality**

- 17.1 In accordance with paragraph 7.23 of the Commonwealth Procurement Rules (CPRs), the Commonwealth will treat Proposals as confidential before and after the award of any resultant Contract.

- 17.2 Despite clause 17.1 the Commonwealth may disclose information:

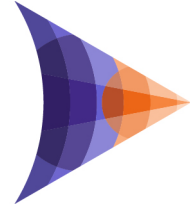
- a. if required by law or statutory or portfolio duties, or required for public accountability reasons, including following a request by parliament or a parliamentary committee;
- b. for the purpose of defending any claim or proceeding in relation to this RFP process or any resultant Contract;
- c. in the public domain otherwise than due to a breach of confidence; or
- d. as contemplated under clause 19.



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- 17.3 You agree that the Commonwealth can use the information in your submission and any further information you give the Commonwealth about your submission (where requested by the Commonwealth):
- to determine whether to invite you to make a formal proposal (through a Request for Proposal) to enter into an Contract for funding and development of the proposed innovation in your submission;
  - to inform the assessment of your response to a Request for Proposal; and
  - for internal management purposes, including to evaluate and review its processes, in order to make improvements in relation to future calls for Proposals.
- 17.4 You agree that the Commonwealth may disclose or provide access to information included in your submission to:
- authorised personnel within the Department of Industry, Innovation and Science, to allow the Centre for Defence Industry Capability (including its contractors and advisers) to perform its functions, including to provide you with updates on the progress of your submission, for internal management and reporting purposes and to provide advice to the Commonwealth;
  - other government agencies, including state and territory government agencies, to consult with them about the claims you have made in your submission; and
  - take appropriate action if any statement made in your submission is incorrect, incomplete, false or misleading, including using the information contained in the proposal for a fraud investigation that would be consistent with the Australian Government's Investigations Standard and Fraud Control Guidelines.
- 17.5 The Commonwealth will not use or disclose information in your submission other than as set out in clauses 17.3 or 17.4 unless:
- you agree;
  - the information is in the public domain otherwise than due to a breach of confidence;
  - to comply with legal obligations or statutory or portfolio duties, or for public accountability reasons; or
  - to defend any claim made in relation to the process or a procurement by the Commonwealth (whether or not of the innovation proposed in your submission).

## 18 Probity Assurance

**Note to proposers: Proposers should note that the Proposer's Deed of Undertaking sets out a number of acknowledgements and undertakings to be given by proposers, including in relation to probity, conflict of interest and bribery.**

- 18.1 The Commonwealth may exclude a proposal from further consideration if in the opinion of the Commonwealth; the proposer fails to comply with clause 4 of the Proposer's Deed of Undertaking. The Commonwealth may exclude a proposal from further consideration if the proposer, any of its Related Bodies Corporate or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials at any time during the last seven years.

## 19 Use of Proposal Documents

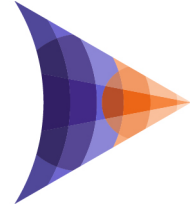
- 19.1 All proposal documents submitted in response to this RFP become the property of the Commonwealth. Proposers submit documents in response to this RFP on the basis that the Commonwealth may use, retain and copy the information contained in those documents for the purposes of:
- evaluation and selection of any proposal;
  - preparation and negotiation of any resultant Contract with respect to the RFP; and



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- c. verifying the currency, consistency and adequacy of information provided under any other RFP process conducted by the Commonwealth.

19.2 The Commonwealth may disclose all or part of the proposal documents to a third party (including to a foreign government technical advisor) for the purposes of assisting the Commonwealth in the conduct of the RFP process, and for the purposes contained in clause 18.1. The Commonwealth may obtain appropriate confidentiality undertakings from the third party prior to disclosure.

19.3 Nothing in this clause 19 changes or affects the ownership of IP in the information contained in the tender documents.

## **20 Evaluation Process**

20.1 Subject to clause 1, this RFP process will be followed by a subsequent procurement process. It is intended that only shortlisted respondents will be requested to submit tenders in response to the refined proposal. The preferred tender to any subsequent procurement process will be selected on the basis of value for money.

20.2 The Commonwealth may invite additional tenderers to submit a tender in response to any subsequent tender at any time during the tender process, irrespective of whether or not such additional tenderers submitted an RFP response.

20.3 Respondents are advised that any subsequent procurement process will be governed by its own conditions of proposal, including a draft contract. In this process, it is proposed that the draft contract will be based on the Defence Science Partnerships (DSP 2.0) or Research Industry Contract v2.3 templates, modified as considered appropriate by the Commonwealth.

## **21 Proposal Evaluation Criteria**

21.1 The evaluation criteria for the call for white paper process are as follows, not in any order of importance:

- a. Potential to deliver asymmetry / game-changing advantage to the ADF;
- b. Alignment with strategic priorities;
- c. Capacity to deliver (including track record of delivery, access to specialist skills, capability and infrastructure and leverage from other programs, relationships and partnerships).

21.2 The Commonwealth may, at any time, seek clarification of your submission and enter into discussions with you in relation to your submission or with other respondents in relation to their Proposals.

21.3 Your submission will be assessed in accordance with these Terms, against the evaluation criteria, and in accordance with the RFP - Evaluation Criteria and Assessment Process.

21.4 The Commonwealth reserves the right to determine the order in which it assesses the Proposals it receives in response to this RFP.

## **22 Minimum Content and Format Requirements**

22.1 Subject to clause 16, the Commonwealth may exclude a tender from further consideration if the Commonwealth considers that the tender is non-compliant with any of the Minimum Content and Format Requirements specified in the Proposal Data Requirements List (PDRL)

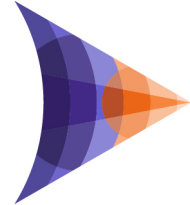
22.2 Proposals are to include a PDF copy of the Proposer's Deed of Undertaking in the form of Annex A to the PDRL duly signed by the proposer.



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## **23 Conditions for Participation**

- 23.1 Potential Suppliers wishing to respond to this procurement will be required to fully comply with and meet the following conditions for participation:
- a. Clause 13 - Defence Security requirements;
  - b. Applicants must hold an Australian Business Number (ABN) or a New Zealand Business Number (NZBN) to participate in this procurement; and

## **24 Debriefing of Proposals**

- 24.1 You will be notified whether your submission has been successful, unsuccessful or considered suitable. You may request a debriefing from the Commonwealth in relation to a successful or unsuccessful submission.
- 24.2 Proposers will be debriefed against the Evaluation Criteria clause 21.

## **25 Disclaimer**

- 25.1 The Commonwealth of Australia is not committed contractually or in any way to those organisations that respond to this RFP. The issue of this call does not commit or otherwise oblige the Commonwealth of Australia to proceed with the proposed work.

## **26 Contract Mechanism**

### **26.1 University Responses**

- a. All agreements between the Commonwealth and a potential Applicant University shall be entered into under the existing Defence Science Partnering (DSP) Deed. Costings for the work should be calculated accordingly (as per the DSP Costing Model as defined in Schedule 2 of the Defence Science Partnering Deed).

### **26.2 Industry Responses**

- a. All agreements between the Commonwealth and an Industry shall be entered into under the Research Contract (see Contract Agreement Terms and Conditions for details).

## **27 Interpretation of these Terms**

- 27.1 In these Terms, unless the contrary appears:
- a. the singular includes the plural and vice-versa;
  - b. a reference to one gender includes the others;
  - c. "The Commonwealth" refers to the Commonwealth of Australia as represented by the Department of Defence, including its advisers or contractors;
  - d. "Contract" means a contract between the Commonwealth and a respondent, formed after the respondent has provided a successful response to a Call for Proposal;
  - e. "Terms" means these terms for the RFP, and includes the RFP – Evaluation Criteria and Process; and
  - f. "the process" refers to the procurement process commenced by this RFP.

## **28 Intellectual Property (IP) Management**



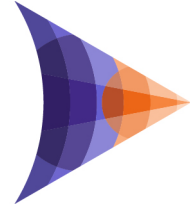


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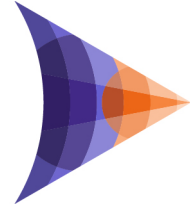
- 28.1 Intellectual Property (IP) management arrangements have been established to ensure the management of IP is addressed throughout all stages of the procurement.
- 28.2 The IP arrangements for universities are outlined in detail under the Defence Science Partnering (DSP) Deed and within each supporting agreement.
  - a. Foreground IP ownership is to be consistent with a Standard Research Project in the Defence Science Partnering Deed (see DSP Research Agreement template for details). The Commonwealth reserves the right for the foreground IP ownership to be consistent with a Defence Project for the remainder of the work package (if the Commonwealth chooses to continue with the package).
- 28.3 The IP arrangements for industry are outlined in detail in the Research Contract and within each supporting agreement.
  - a. Foreground IP ownership is to be consistent with the options available and agreed to within the Research Contract (see Research Contract Terms and Conditions for details).



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**ATTACHMENT A TO THE REQUEST FOR PROPOSAL CONDITIONS**

**PROPOSAL DATA REQUIREMENTS LIST**

<b>Proposal Data Requirement Number</b>	<b>Proposal Response Volume</b>
<b>A</b>	Proposer's Deed of Undertaking
<b>B</b>	Statement of Non-Compliance
<b>C-1.1</b>	Proposer's Profile
<b>C-1.2</b>	Statement of Tax Record (Not Used)
<b>C-1.3</b>	Tax Residency
<b>C-2</b>	Payment
<b>C-3</b>	Insurance
<b>C-4</b>	Subcontractors
<b>C-5</b>	Confidential Information
<b>C-6</b>	Liability
<b>C-7</b>	Economic Benefit to the Australian Economy (Not Used)
<b>D</b>	Employer Sponsored Superannuation
<b>E</b>	Australian Industry Capability (Not Used)

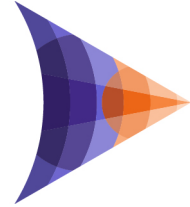


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**ANNEXES TO THE REQUEST FOR PROPOSAL CONDITIONS**

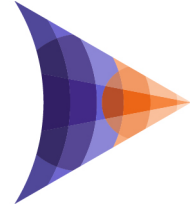
PROPOSER'S DEED OF UNDERTAKING	A-1
STATEMENT OF NON-COMPLIANCE	B-1
INFORMATION TO BE PROVIDED BY PROPOSERS	C-1
EMPLOYER SPONSORED SUPERANNUATION	D-6
AUSTRALIAN INDUSTRY CAPABILITY (NOT USED)	E-1



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## ANNEX A

### PROPOSER'S DEED OF UNDERTAKING

**Note to Proposers: Proposers must provide a deed in the following format.**

This deed poll is made on the **(INSERT DATE)**

BY:

(INSERT NAME, ACN/ABN and ARBN If APPLICABLE) (Proposer)

#### 1. DECLARATIONS

- 1.1 The Proposer declares that this deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 (**Commonwealth**).
- 1.2 This deed poll is provided in connection with the Request for Proposal **[INSERT RFP NUMBER] (RFP)** issued by the Commonwealth and the tender (**Tender**) submitted by the Proposer in response to the RFP. Terms defined in the RFP will have the same meaning when used in this deed poll.
- 1.3 The Proposer submits its Proposal to provide the Services solicited by the RFP at the prices tendered and, subject to the statement of non-compliance included as part of its Tender, in accordance with the draft Contract.

#### 2. ACKNOWLEDGEMENTS

- 2.1 The Proposer acknowledges and agrees:
  - a. to the Commonwealth's rights as set out in the RFP and this deed poll, including the Commonwealth's rights to exclude the Proposal;
  - b. that the Proposal has been prepared in accordance with the RFP and is accurate, complete and not misleading;
  - c. that the Commonwealth can utilise all relevant information about the Proposer's performance on Commonwealth procurement activities;
  - d. that the Proposer has conducted and will conduct itself during the RFP process in a manner that is at least consistent with:
  - e. the Commonwealth's obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money; and
  - f. the requirements set out in the 'Promoting Confidence in Defence Procurement Processes' section of the Defence publication Defence and the Private Sector - An Ethical Relationship;
  - g. that the Commonwealth can rely on the Proposal in accurately assessing compliance with the RFP, risks and risk management options, and value for money in accordance with the RFP;
  - h. that representations made in the Proposal, when incorporated in any resultant Contract, will be fully complied with by the Proposer;
  - i. that the Proposer has relied entirely upon its own inquiries and inspection in preparing its Proposal;

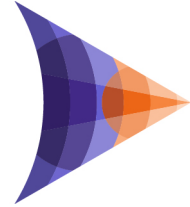


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- j. that the Proposer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFP, except for any addendum issued by the Commonwealth that expressly add to or amend the RFP;
- k. that in any resultant Contract the Proposer will not use ACM in providing the Services and no ACM will be taken onto Commonwealth Premises in connection with providing the Services;
- l. that the Proposer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
- m. that Defence may provide any information collected or provided during the course of the RFP process (including regarding breaches of workplace relations law, work health and safety law or worker's compensation law) to other Commonwealth agencies or regulatory bodies;
- n. that Defence, as a Commonwealth agency, is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFP process on the successful Proposer and information on any resultant Contract in the AusTender website; and
- o. that the Proposer is aware of the impact of the *Auditor-General Act 1997* (Cth) on its participation in the RFP and on any resultant Contract and any Subcontract under a resultant Contract.

2.2 The Proposer acknowledges and agrees that:

- a. the RFP and any communication or dealings of any kind in relation to the RFP (other than this deed poll) between the Commonwealth and the Proposer, or between the Commonwealth and any other person with an interest in the RFP, do not constitute a contract between the Commonwealth and the Proposer;
- b. no binding contract (including a process contract) or other understanding (including, without limitation, any form of contractual, quasi-contractual or restitutionary rights, or rights based upon similar legal or equitable grounds) will exist between the Commonwealth and the Proposer unless and until a Contract is signed by the Commonwealth and the Proposer; and
- c. the Commonwealth has no liability to pay the Proposer, or any other person, and is not liable to the Proposer for any compensation on the basis of any quantum meruit or any other contractual, quasi contractual or restitutionary grounds whatsoever as a consequence of any matter or thing relating to, or incidental to the Proposer's participation in the RFP.

**3. ACCEPTANCE**

- 3.1 The Proposer acknowledges and agrees that the Proposal is an unconditional offer and, to the extent reasonably possible, the Proposer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.

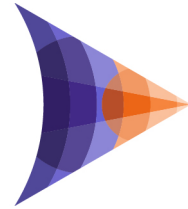


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#### **4. UNDERTAKINGS AND WARRANTIES**

- 4.1 The Proposer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:
- a. the preparation or lodgement of Proposals;
  - b. the evaluation and clarification of Proposals; and
  - c. the conduct and content of negotiations, including final Contract negotiations, in respect of the RFP process.
- 4.2 For the purposes of clause 4.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is confidential to the Commonwealth or any other Proposer or any other person or entity.
- 4.3 The Proposer represents and warrants:
- a. that the Proposal has not been compiled;
  - b. with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
  - c. with the utilisation of information improperly obtained from the Commonwealth; or
  - d. in breach of an obligation of confidentiality to the Commonwealth;
  - e. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFP process, comply with any applicable laws (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with their Proposal;
  - f. without limiting clause 4.3a that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Proposal or the RFP process, if:
  - g. the person was involved at any time in the planning of the procurement to which this RFP relates, the preparation of this RFP, or the management of the RFP process; or
  - h. the person was at any time during the 12 months immediately preceding the date of issue of the RFP involved in a Defence procurement process or activity relevant or related to the RFP; and
  - i. that the Proposer is aware of the provisions of the *Australian Consumer Law* (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)), and Division 137 of the *Criminal Code Act 1995* (Cth) and that its Proposal does not contain any false, misleading or deceptive misrepresentations, claims or statements.
- 4.4 Except to the extent identified in clause 4.6, the Proposer represents and warrants that it and any Related Bodies Corporate, and their officers have not been convicted of bribery of Commonwealth, state, territory or foreign government officials during the last seven years.
- 4.5 Except to the extent identified in clause 4.6, the Proposer represents and warrants that it and its Related Bodies Corporate officers, employees, agents and advisers have no actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Proposer's interests in relation to the RFP process. The Proposer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under clause 4.6.

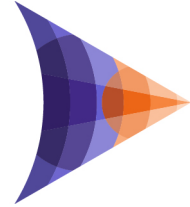


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- 4.6 The following conviction for bribery, or actual, potential or perceived conflict of interest currently exist:

[INSERT ANY CONVICTION FOR BRIBERY OF COMMONWEALTH, STATE, TERRITORY OR FOREIGN GOVERNMENT OFFICIALS DURING THE LAST 7 YEARS; INSERT ANY ACTUAL, POTENTIAL OR PERCEIVED CONFLICT OF INTEREST; OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE'] .

- 4.7 If in relation to the RFP a conflict of interest exists, arises, or appears likely to arise, that the Proposer has not previously disclosed, the Proposer must notify the Commonwealth promptly in writing. The Proposer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFP process.

- 4.8 The Proposer acknowledges and agrees that the Commonwealth may exclude the Proposal from further consideration if in the opinion of the Commonwealth:

- a. the Proposer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
- b. the Proposer fails to comply in any other respect with this clause 4; or
- c. any representation or warranty of the Proposer under this clause 4 is incorrect or misleading in any material respect.

- 4.9 In addition to clause 4.8, the Proposer acknowledges and agrees that the Commonwealth may exclude the Proposal from further consideration if the Proposer, any of its Related Bodies Corporate, or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials during the last seven years.

- 4.10 The Proposer represents and warrants that none of the Proposer, its Related Bodies Corporate, or officers of either:

- a. have been found in the past 3 years to have committed a material breach; or
- b. are currently in material breach,

of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:

[INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS 'NOT APPLICABLE']

and the following actions have been taken to remedy any such material breach:

[INSERT DETAILS OF ACTION TAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT 'NOT APPLICABLE']

- 4.11 The Proposer represents and warrants that, in accordance with clause 5.3 of the Request for Proposal Conditions, it has obtained and holds as at the Closing Time all of the satisfactory and valid STRs required under Table 1 of Annex C (or an STR receipt confirming that the STRs required under Table 1 of Annex C were requested prior to the Closing Time) of any entity that the Proposer proposes to engage as a direct Subcontractor, where the total value of the work under the Subcontract is expected to exceed \$4 million (inc GST).

## **5. SURVIVAL**

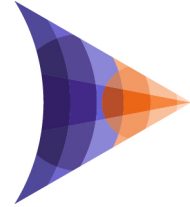
- 5.1 This deed poll survives the termination or expiry of the RFP.



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**6. APPLICABLE LAW**

6.1 The Proposer agrees that the laws of South Australia apply to this deed poll and the Proposer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings in connection with the RFP.

**7. TERMINATION AND AMENDMENT**

7.1 This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.

**8. CONTACT DETAILS**

8.1 The Proposer’s contact details for the purpose of the RFP and this deed poll are set out below.

NAME (Block Letters):

TELEPHONE NUMBER:

-----

-----  
FACSIMILE NUMBER:

-----  
EMAIL ADDRESS:

-----

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**Executed as a Deed Poll**

**Note for Deed Signature:** *Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:*

<http://drnet.defence.gov.au/casq/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

*This guidance is developed for Commonwealth Personnel and should be used to assess the Tenderer’s execution of the Deed. The Tenderer should seek its own independent legal advice on its execution of the Deed.*

**(INSERT APPROPRIATE TENDERER’S EXECUTION CLAUSE)**

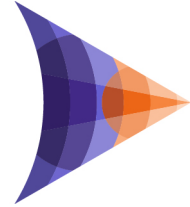




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## ANNEX B

### STATEMENT OF NON-COMPLIANCE

#### 1. STATEMENT OF NON-COMPLIANCE

- 1.1 If a proposer does not fully comply with any clause of the annexes to the RFP Conditions (excluding Annex A) and the draft COC and attachments, it is to state its non-compliances in a Statement of Non-Compliance Format at Table 1. Proposers are to include details of:
- a. the extent, justification and impact of non-compliance;
  - b. details of any proposed drafting amendments; and
  - c. the location in the proposal where further non-compliance details and comments (if any) can be found.
- 1.2 Responses are to be in the order in which the clauses appear and refer to the relevant clause number, annex or attachment.
- 1.3 A proposer will be deemed to be fully compliant with any clause not listed in the Statement of Non-Compliance.

**Note to Proposers: Failure to indicate all non-compliances in Table 1 may constitute false, misleading or deceptive conduct for the purposes of Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010 (Cth)) or Division 137 of the Criminal Code Act 1995 (Cth).**

Table 1: Statement of Non-Compliance Format

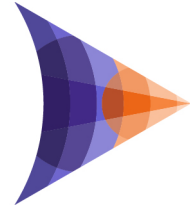
	Clause Number	Comments
Annexes (excluding Annex A) to the Conditions of Proposal		
Draft Conditions of Contract		
Attachments to the draft Conditions of Contract		



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## ANNEX C

### INFORMATION TO BE PROVIDED BY PROPOSERS

#### 1. PROPOSER'S PROFILE

1.1 Proposers are to provide the following information:

- a. detail of how they would complete the Commonwealth's requirements as outlined in the Statement of Work at Attachment A;
- b. the Proposer's background, experience and resources relevant to its ability to meet the requirement;
- c. details of the personnel the proposer proposes to use i.e. names of the individuals, intended extent of involvement in the assignment, and the individuals' qualifications and experience;
- d. information on other assignments or any other matter which the proposer considers to be relevant to its competence; and
- e. the following details of the proposer, as applicable:
  - f. the full name of the proposer;
  - g. any trading or business name;
  - h. if a company or corporation, the registered office, principal place of business and an outline of the company structure;
  - i. the date and place of incorporation;
  - j. for a foreign firm or company, details of its registration, incorporation and place of business in Australia, the name of any Australian representative and its ACN/ARBN and its ABN as applicable;
  - k. if an Australian company, its ACN/ARBN and its ABN as applicable;
  - l. if the company has any third party quality certification (i.e. International Standards Organisation compliance), details of that certification;
  - m. if the proposer is a Small Business; and

**Note to Proposers: The Approved Contractor Viability Program (ACVP) prequalifies as financially viable a small number of key suppliers to Capability Acquisition and Sustainment Group. Further information on the Approved Contractor Viability Program (ACVP), including eligibility criteria and the register of participating suppliers is available at <https://www.defence.gov.au/casg/DoingBusiness/ProcurementDefence/PoliciesGuidelinesTemplates/Program%20Guidelines.asp>.**

- n. whether the company is a participant in the Approved Contractor Viability Program (ACVP) (i.e. those that are listed in the ACVP register as at the time of proposal lodgement).

1.2 Not Used.

**Note to Proposers: In accordance with the Buy Australian Plan and to support transparency in Australian Government procurement, tenderers for Australian Government contracts worth over \$200,000 (GST Inclusive) are required to disclose their country of tax residency. For further**

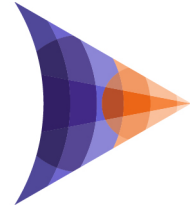


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**information, see the Department of the Treasury, Department of Finance and the Australian Tax Office:**

- <https://treasury.gov.au/policy-topics/taxation/country-tax-residency-disclosures>;
- <https://www.finance.gov.au/business/buyaustralianplan>; and
- <https://www.ato.gov.au/Business/International-tax-for-business/Working-out-your-residency/>.

**This information will not be used to exclude a potential tenderer from further participation in the RFT process. Queries relating to the collection and use of data identifying an entity's country of tax residency can be directed to the Department of the Treasury at [MNETaxTransparency@treasury.gov.au](mailto:MNETaxTransparency@treasury.gov.au).**

- 1.3 Proposers are to provide:
- a. the proposer's country of tax residency; and
  - b. the proposer's ultimate parent entity's country of tax residency.
- 1.4 In responding to clause 1.3, if the proposer or the proposer's ultimate parent entity has multiple tax residencies, each of the countries of which they are a tax resident shall be disclosed.
- 1.5 Tie-breaker rules (where an entity is considered a resident of one treaty country only for the purposes of that treaty) are not relevant in determining how to respond to clauses 1.3 and 1.4.

## **2. PRICING**

*Research draft conditions of contract reference: Item 16, clause 15*

*DSP Research Agreement – Agreement Terms: Item 6, clauses 2.5 and 2.6*

- 2.1 Proposers are to provide a statement of proposed price based on the proposer's intended approach and basis for pricing. To assist evaluation of the offer the statement should distinguish between service fees (that include overheads and profits) and other costs that might be associated with conduct of the assignment, such as travel and accommodation costs to which overhead and profit is not to be applied. These associated costs should be identified as separate line items. Separate line items should include the amount of GST associated with each item.
- 2.2 Prices for tendered Services are to be tendered in Australian dollars, and the Commonwealth will make contractual payments on that basis.
- 2.3 Tendered prices are to be inclusive of all costs of complying with the conditions of tender and associated with providing the Services and carrying out all matters and doing all things necessary for the due and proper performance and completion of the draft Contract. These include licence fees, royalty payments, arranging customs clearance and services of representatives. Proposers are to apply the CASG Cost Principles, as amended from time to time, when preparing tendered prices.

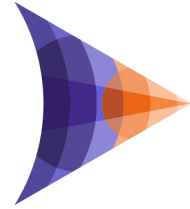
**Note to proposers: The successful proposer will be responsible for ensuring that it is registered in accordance with the requirements of the GST Act (as amended). Proposers who are non-residents of Australia and are not currently registered for GST, are advised to obtain independent**



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**advice on whether they will be required to be registered for GST purposes in accordance with the GST Act.**

**If the successful proposer fails to quote an A.B.N. in its dealings with the Commonwealth, the Commonwealth may be required to withhold a percentage of all payments under any resultant Contract in accordance with Australian taxation legislation.**

2.4 Proposers are to submit tender prices inclusive of all overseas taxes, duties and charges and all Australian (Federal, State and Local Government) taxes, duties and charges including GST and customs duty.

### 3. **INSURANCE**

*Research draft conditions of contract reference: Item 10, clause 38*

*DSP Research Agreement – Agreement Terms: Item 11, clause 2.12*

**Note to proposers: The ACIP Initiative permits proposers with ACIP status to rely on the ACIP pre-qualification process as evidence of the tender's compliance with the draft COC insurance requirements that will be covered by a proposer's ACIP. Information on the ACIP Initiative and the list of companies with current ACIP status is at: <https://www1.defence.gov.au/business-industry/procurement/policies-guidelines-templates/acip-initiative>**

**For proposers without ACIP status, evidence of the tender's compliance with the draft COC insurance requirements should not be returned with the tender. This evidence will be sought only from the preferred proposer(s) prior to negotiations.**

**Proposers should note that on the basis of the details and pricing information provided by a proposer, the Commonwealth may require that the proposer's current insurance policies (or for proposer's with ACIP status, those policies falling outside the proposer's ACIP) be maintained or extended and any proposed insurance policies be obtained. The Commonwealth may also require that additional insurance policies be obtained following negotiations with a preferred proposer.**

Proposers without ACIP Status:

- 3.1 Prior to negotiations, proposers without ACIP status that are selected as a preferred proposer are to provide all relevant details of current or proposed insurance policies required by the draft Contract, including:
- a. name of the insurer;
  - b. type of insurance;
  - c. terms and coverage of the insurance including person(s) insured, conditions and exclusions;
  - d. limits of indemnity per claim or occurrence and details of any aggregate limits or relevant sublimits which apply;
  - e. for a current policy, whether or not any past or current claims made under the policy have materially affected, or are likely to materially affect, the proposer's ability to meet its obligations under any resultant Contract;
  - f. coinsurance, self-insured retention or deductible amounts; and
  - g. period of insurance.

Proposers with ACIP Status:

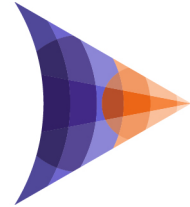
- 3.2 Proposers with ACIP status are not required to provide the information under paragraph 3.1, to the extent that the insurance policies they intend to rely upon in respect of the draft Contract are within the scope of their ACIP status. However, proposers with ACIP status who intend to



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rely on any insurance policy which falls outside the scope of their ACIP status, are to comply with the requirements of paragraph 3.1 in respect of such insurance.

- 3.3 Proposers with ACIP status are to indicate in their Statement of Non-Compliance against Annex C-3 that they have ACIP status and they are to identify any insurance policy which falls outside the scope of their ACIP status that they intend to rely upon in respect of the draft Contract.

#### **4. SUBCONTRACTORS**

*Research draft conditions of contract reference: Item 12, clause 31*

*DSP Research Agreement – Agreement Terms: Item 10, clause 2.11*

- 4.1 Proposers are to provide details of any Subcontractors that the proposer proposes to use under the Contract. Such detail is to include (for each proposed Subcontractor) the name and A.C.N./A.R.B.N. and A.B.N. of the company, the elements of work to be subcontracted, the technical significance of the work and the cost of the Subcontract.

#### **5. CONFIDENTIAL INFORMATION**

*Research draft conditions of contract reference: Item 9, clause 26*

*DSP Research Agreement – Agreement Terms: Item 13, clause 3.1 and 3.2*

- 5.1 Proposers are to provide, a list of all draft Contract clauses and Contract outputs that they consider to be Confidential Information. For each clause or output, proposers are to justify their identification of the information as Confidential Information in accordance with the draft conditions of contract.

#### **6. LIABILITY**

*Research draft conditions of contract reference: Item 10, clause 40*

*DSP Research Agreement – Agreement Terms: Item 11, clause 3.1 and 3.2*

**Note to proposers: Proposers should familiarise themselves with the limitation of liability amount and insurance requirements in Item 10 and 11 respectively of the draft COC. The liability caps and insurance requirements were determined by the Commonwealth based on a liability risk assessment conducted in accordance with the Defence Liability Principles, and the standard Defence methodology described in the Liability Risk Assessment template, both of which can be accessed at:**

**<https://www.defence.gov.au/casg/DoingBusiness/ProcurementDefence/PoliciesGuidelinesTemplates/Liability%20Risk%20Management.asp>**

- 6.1 Proposers are to specify the basis for Contractor liability that they propose will apply to any resultant Contract.
- 6.2 If a proposer proposes to limit its liability on an alternative basis to that set out in Item 10 and 11 of the draft COC (eg. by proposing a liability limitation or exclusion additional to those set out in Item 10 and 11), the proposer is to conduct its own liability risk assessment applying the Defence Liability Principles and the standard Defence methodology described in the Liability Risk Assessment template, and provide the following details:
- the terms of the proposer's proposed limitation of liability (if different to those set out in Item 10 and 11 of the draft COC), including their proposed monetary cap for Item 10 and 11 of the draft COC;
  - an explanation of why the proposer requires a limitation of its liability regime different to that proposed in Item 10 and 11 of the draft COC; and

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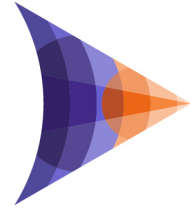


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c. the impact (if any) of these changes on the insurance requirements of the draft COC.

**7. ECONOMIC BENEFIT TO THE AUSTRALIAN ECONOMY (NOT USED)**



**ANNEX D**

**EMPLOYER SPONSORED SUPERANNUATION**

**Table 1: Questions to determine Eligibility**

Questions to Determine Eligibility	Proposer's Response
1. Are you contracting as a natural person rather than a company or trust?	
2. If you are a partner in a partnership, do you tender for the Contract in your own personal capacity rather than on behalf of the partnership?	
3. Is the value of the labour component of this tender more than 50% of the total value of this tender?	
4. Do you already have employer-sponsored superannuation of any type for this tender?	
5. Is the value of the labour component of the tender more than \$450 in any month when payments are made? Superannuation entitlements are only to be paid when the payment for a single calendar month equals or exceeds \$450. If the total payment is less than \$450 for a calendar month, the contractor is not eligible to receive superannuation entitlements for that month. Monthly payments of less than \$450 do not accumulate with successive monthly payments.	
6. What is the full name of the person to whom the superannuation benefit will accrue and into whose fund the benefit will be paid if a Contract is awarded in response to this tender?	
7. Please state that person's address.	
8. a. Are you a member of either the Commonwealth Superannuation Scheme or the Public Sector Superannuation Scheme, or are you eligible to have contributions made to either of these superannuation funds? Persons who are eligible to have contributions paid into either of the Commonwealth schemes should do so. b. Do you have an account with the Australian Government Employees Superannuation Trust (AGEST)? If the answer is yes please provide details. AGEST is the default fund for a person who does not make an election about where their Superannuation Guarantee contribution is to be placed.	
9. What is the name and business address of the preferred Regulated Superannuation fund into which the benefit is to be paid? Does the fund accept electronic transfer of contributions? The payment of contributions may not be acceptable to Defence unless they can be processed electronically.	

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**ANNEX E**

**AUSTRALIAN INDUSTRY CAPABILITY (NOT USED)**