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| --- |
| User Guidance  This document (MW21 Preliminaries) is part of the MW21 standard form. To locate all documents referenced throughout this text, refer to buy.nsw website at [https://buy.nsw.gov.au/categories/construction](https://buy.nsw.gov.au/categories/construction%20) Note the User Guidance is based on Microsoft 365 Word.   1. **General**   All clauses and text are mandatory unless indicated in the Guide Notes or as otherwise required by your Agency’s procurement policy. Some clauses require options to be selected and others may not be applicable in specific circumstances. Read and follow all Guide Notes carefully.  Avoid changing any of the standard text. It reflects the NSW Procurement recommended contract risk allocation for collaborative contracting. Any change may introduce unexpected risks and/or compromise the integrity of the contract.  If additional clauses or paragraphs are required to suit project-specific needs, carefully consider the associated risks. Include text to resolve any ambiguities and inconsistencies in the documents.   1. **Guide notes**   This standard form contains drafting guidance in hidden text, i.e.:  **GUIDE NOTES,**  Guide Note examples   1. **Viewing the guide notes**   If the guide notes are not visible, click on the Home/ **Show/Hide** button Paragraph Show / Hide button in Word  If this does not work   * Go to **File/** **Options** menu; * Select the **Display** tab; * Tick the **Hidden Text** check box and click the **OK** button.   This process can also be used to hide guide notes in a finished document.   1. **Insertion points**   Each ‘»’ shows where input is required. Click onto each ‘»’ and overtype.  **(new)** For inserting Contract Title and Contract Number:   * On the **File/ Info** menu select ‘**show all properties’**; * Overwrite the ‘***title*’ property** ‘*Contract Name’* with the new contract title/ name; * Overwrite the ‘***subject*’ property** ‘*Contract No*.’ with the new contract number.   This will insert the entered Contract Title and Contract No. in the footer for each page.   1. **When drafting is completed**   Remove all ‘hidden text’ guide notes manually or by the following steps:  **•** On the Home/ **Editing** menu click **Replace**, then  **•** Click the **More** button;  **•** Click the **Format** button, click on **Font**;  **•** Tick the **Hidden** check box, untick other boxes and click the **OK** button;  **•** Click the **Special** button, click on **Any Character**; then  **•** Click the **Replace All** button.  Check that the option ‘**Print hidden text’** has **not** been checked in File/ Options/ Display.   1. **After drafting is completed and the ‘hidden text’ guide notes are hidden or removed**   Update the Table of Contents and number of pages automatically when printing by ensuring that File/ Options/ Display/ Printing options – ‘Update Fields before printing’ box is checked. Alternatively, update before printing by:   1. **Table of Contents**  * Right click anywhere in the Table of Contents; * Select ‘**Update Field’**; * Select ‘**Update entire table’;** and * Click the **OK** button.  1. **Number of pages**  * Right click the number in ‘***THERE ARE 29 PAGES IN THIS******SECTION****’* above the first clause 1’; * Select ‘Update Field’.  1. Finally, delete this User guidance, along with the following Page Break.   **Always** check that the final document (printed or saved as a pdf) is complete. |

Conditions of Tendering

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“Ctrl + A” keys; then

“F9” key; and

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# Conditions of Tendering

Insert the contract name and contract number in The footer.

THERE ARE PAGES IN THIS SECTION

The Conditions of Tendering do not form part of the Contract.

The Conditions of Tendering include any notices to tenderers.

## General

### Requests for information and clarifications

Include either Option 1 or Option 2 and delete the option that does not apply.

Use Option 1 where an online forum has been established for communications and to control direct contact to the contact person.

Use Option 2 where communications are to be directed to the contact person.

option 1

All communications with the Principal and all requests for information or clarification with regard to this Request for Tenders (RFT) must be made through the Principal’s online forum.

Requests for information or clarification will be directed to the nominated Contact Person. The Contact Person will respond in writing and may issue an addendum related to the enquiry and the response.

Tenderers should not approach the Contact Person directly unless requested to do so.

The Principal’s online forum is: »

Access to the Principal’s online forum is by web address: »

end of option 1

Option 2

All communications with the Principal and all requests for information or clarification with regard to this Request for Tenders (RFT) must be made to the Principal’s Contact Person.

The Contact Person will respond in writing and may issue an addendum related to the enquiry and the response. The Contact Person is:

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| E-mail address: | » |

end of option 2

The Principal reserves the right not to respond to enquiries made within 5 Business Days prior to the close of tenders.

end of Clause Requests for information and clarifications

## Tenderer Eligibility

### Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities. The Principal does not contract with firms under any form of external administration. Any tender submitted by an unincorporated business such as a sole trader, partnership or business name must identify the legal entity that proposes to enter into the Contract.

If a tenderer is a trustee, the Principal may require:

an unconditional undertaking in accordance with Preliminaries Clause - **Additional Security and Obligations for Trustees**; and

a signed statement from the tenderer, provided before a Contract is awarded, making the following undertaking:

‘If (insert the legal name of the tenderer) is awarded Contract No. (insert the contract number) for (insert the contract description) it will provide security in the amount of (insert the amount of security advised by the Principal) in accordance with Preliminaries Clause - **Additional Security and Obligations for Trustees**, and it undertakes to ensure that, for the duration of the Contract, the total value of the trust beneficiaries’ loans to the trustee is always greater than the total value of trust beneficiaries’ loans from the trustee.’

Failure to provide the signed statement may result in the tender being passed over.

### Quality Management

Delete this Clause and the above heading unless the contract is valued at $50,000 or more.

Note: If this Clause is deleted also delete tender schedules - schedule of quality management information.

The Principal may elect to pass over a tender from a tenderer that does not demonstrate the capacity to systematically plan and manage the quality of its work in accordance with the NSW Government *Quality management guidelines* (Construction Procurement) (Edition 4)*,* available on the Buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of Quality Management Information.**

### Work Health and Safety Management

Tenderers must demonstrate their capacity to manage work, health and safety (WHS) in accordance with the NSW Government *Work Health and Safety (WHS) management guidelines* (for Construction Procurement) (Edition 6)*.* These *Guidelines* are available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

following ENDORSEMENT by THE CONSTRUCTION LEADERSHIP GROUP (CLG) on 03 NOVEMBER 2020:

* FOR CONTRACTS WITH AN ESTIMATED VALUE LESS THAN $3M (EX GST), A CERTIFIED WHS MANAGEMENT SYSTEM IS NOT REQUIRED; BUT
* A SAFETY MANAGEMENT PLAN, AS REQUIRED BY NSW LEGISLATION, AND CONSISTENT WITH THE 6TH EDITION OF THE WHS GUIDELINES IS REQUIRED. SECTION 7 AND APPENDIX B OF THE GUIDELINES DEAL WITH THE PLAN REQUIREMENTS; AND
* THE SAFETY MANAGEMENT PLAN WILL NEED TO SATISFY THE AUDIT CHECKLIST IN APPENDIX D OF THE WHS GUIDELINES.

Submit with the Tender Form, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information - PART A**.

Submit when requested, the completed Schedule and the information required by Tender Schedules - **Schedule of WHS Management Information – PART B**.

### Environmental Management

Tenderers must demonstrate their capacity to manage environmental matters in accordance with the NSW Government *Environmental management (EM) guidelines* (Construction Procurement) (Edition 4)available on the buy.nsw website at: <https://buy.nsw.gov.au/categories/construction>

Submit with the Tender Form the completed Schedule and the information required by Tender Schedules - **Schedule of Environmental Management Information – PART A**.

delete option 1 unless the responsible agency/ senior manager determines it is required because:

* the work has a high environmental risk;
* the work interfaces with other projects that have a high environmental risk;
* the work is otherwise sensitive in terms of the environment; or,
* the project as a whole requires its application.

Note: If option 1 is deleted also delete tender Schedules - schedule of environmental management information – part b.

option 1

A tender will only be accepted from a Tenderer that has submitted a site-specific environmental management plan acceptable to the Principal in accordance with the *EM guidelines 4th Edition*.

Submit, when requested, the Schedule and the information required by Tender Schedules - **Schedule of Environmental Management Information – PART B**.

end of option 1

### Financial Assessment

By tendering for this Contract, the Tenderer agrees that the Principal may engage private sector consultants to financially assess tenderers. Financial details of tenderers may be obtained by an external Financial Assessor for assessment. Financial Assessors have a contract with the Principal to safeguard the financial details obtained. Financial Assessors must not disclose such details, either in whole or in part to any party other than NSW Government departments or agencies without the express written permission of the tenderer.

Information about the financial assessment services scheme SCM2491 is available on the buy.nsw website at:

<https://buy.nsw.gov.au/schemes/financial-assessment-services-scheme>

The criteria considered in the financial assessment of tenderers include:

Net Tangible Assets (total assets, less total liabilities, less intangible assets);

Current Ratio (ratio of current assets to current liabilities); and

Working Capital (current assets less current liabilities).

Taking into account, the value of work started in the six (6) weeks prior to the financial assessment, the Principal considers a tenderer with the following financial indicators, and no other significant detrimental financial characteristics, to be financially satisfactory in respect of its tender:

Net Tangible Assets exceed 5% of the tender price;

Current Ratio exceeds 1;

Working Capital exceeds 10% of the tender price; and

Where a tenderer is a trustee, the total value of trust beneficiaries’ loans to the trustee exceeds the total value of trust beneficiaries’ loans from the trustee.

Deviations from the above indicators will not necessarily prevent the Principal from considering any tender.

Submit, within five (5) business days after receiving a request from the appointed financial assessor or the Principal, the information required by Tender Schedules - **Schedule of Financial Assessment Information**.

## Contract Details

### Provisional Sums

delete this clause and the above heading unless Provisional sums are included in the contract. If this clause is deleted also delete tender Schedules – schedule of Provisional sums.

The Contract includes work subject to payment as a Provisional Sum. Refer to General Conditions of Contract Clause - **Payment and Retention** and Tender Schedules - **Schedule of Provisional Sums**.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Provisional Sums**.

### Provisional Rate Amounts

delete this clause and the above heading unless Provisional rate AMOUNTS ARE included in the contract. If this clause is deleted also delete:

* tender Schedules – schedule of Provisional rate amounts; and
* the parts of
  + the schedule of prices – lump sum; and
  + the schedule of rates

dealing with provisional rate amounts

refer to the tender SCHEDULE for the application and guidance on the use of Provisional rate AMOUNTS.

The Contract includes provisional items of work subject to payment on the basis of tendered rates. Refer to General Conditions of Contract Clause - **Payment and Retention,** Tender Schedules - **Schedule of Provisional Rate Items** and Preliminaries Clause **– Application of Provisional Rate Amounts**.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Provisional Rate Amounts**.

### Insurance

#### Works and Public Liability Insurance

for contracts under $10m, nsw government agencies may obtain works and public liability insurance through *icare* or may require the contractor to obtain the insurance (see NSW Treasury Circular TC 16-11).

socs may arrange works and public liability insurance through an insurer or broker other than *icare* if they can demonstrate that the price is more competitive than the price offered by *icare*.

PAI INSURANCE through *icare* is not directly available to local government authorities. HOWEVER, *icare* has arrangements to insure councils indirectly where a NSW government agency is associated with the insured works. the policy is procured by the agency on behalf of the council.

alternatively, local government authorities MAY ARRANGE INSURANCE THROUGH THEIR OWN INSURERS OR BROKERS.

Information about principal Arranged insurance is AVAILABLE on the [*icare* website](https://www.icare.nsw.gov.au/government-agencies/our-funds-and-schemes/construction-risk-insurance-fund/#gref).

Note that, if insurance is to be obtained through *icare*, the contract should be registered in ceecat when the RFT Documents are ready for release.

for access to the ceecat system and to obtain insurance for projects outside the standard criteria, contact *icare* at:

[insuranceforNSW@icare.nsw.gov.au](mailto:insuranceforNSW@icare.nsw.gov.au)

Include the applicable works & public liability insurance options below and delete the options that do not apply.

note THAT the Works and Public Liability Insurances may be arranged by different parties.

wks ins option 1 and PL ins option 1 apply where the principal arranges the insurance.

wks ins option 2 and PL ins option 2 apply where the contractor is required to arrange the insurance.

Also select the corresponding option and delete other options in Contract Information item 9.

note that insurance policies submitted by the contractor will need to be examined for compliance with clause 5.3 of the General conditions of contract.

#### Works Insurance

wks ins option 1

The Principal will arrange insurance of the Works (and any temporary works) as required under General Conditions of Contract clause - **Insurance**. Tenderers are not required to allow in tenders for payment of premiums for this insurance.

The Principal will provide a copy of the insurance policy on request.

Include wks ins option 1a where the insurance of the works will be obtained through *icare*, otherwise delete option 1A.

wks ins option 1A

The insurer will be ***icare*** and relevant information **is**available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>.

end of wks ins option 1A

wks ins option 2

The Contractor must arrange insurance of the Works (and any temporary works) and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

end of wks ins options

#### Public Liability Insurance

PL ins option 1

The Principal will arrange public liability insurance as required under General Conditions of Contract clause - **Insurance**. Tenderers are not required to allow in tenders for payment of premiums for this insurance.

The Principal will provide a copy of the insurance policy on request.

Include PL ins option 1a where the insurance of the works will be obtained through *icare*, otherwise delete option 1A.

PL ins option 1A

The insurer will be ***icare*** and relevant information ***is*** available on the buy.nsw website at <https://buy.nsw.gov.au/categories/construction>.

end of PL ins option 1A

PL ins option 2

The Contractor must arrange insurance for public liability and pay all premiums in accordance with General Conditions of Contract clause - **Insurance**.

end of PL ins options

#### Other Insurance

Unless otherwise advised by the Principal, the Contractor is to arrange and pay all premiums for all other insurance required by law or under General Conditions of Contract Clause - **Insurance**.

For professional indemnity insurance, a Certificate of Currency or evidence of the ability to obtain the required insurance, such as a letter from a broker or insurer, may be required as a condition of acceptance of the tender.

end of Clause INSURANCE

### Preferred Subcontractors

Delete this clause and the above heading unless preferred contract work is included in the contract and preferred subcontractors are listed in preliminaries clause – preferred subcontractors.

Note: if this clause is deleted also delete preliminaries clause – preferred subcontractors.

The Contract includes work by Preferred Subcontractors in accordance with Preliminaries Clause – **Preferred Subcontractors.**

### Design and Documentation Resources

Delete this clause and the above heading unless option 2 or 3 in contract information - Item 7 is used and the proposed design resources will be assessed as part of the tender evaluation.

note: if this clause is deleted also delete tender Schedules – Schedule of design and documentation resources.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Design and Documentation Resources** to demonstrate that the key design and documentation consultants/personnel have the qualifications, competencies and experience required to satisfactorily carry out the design specified in Contract Information - **Item 7**.

The Principal may elect to pass over any tender that does not identify design and documentation consultants/personnel with satisfactory qualifications, competencies and experience.

## Current Policies

### Disclosure of Tender and Contract Information

Details of this tender process and any contract awarded as a result of the tender process may be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW) and Premier’s Memorandum 2007-01.

### Procurement Policy Framework, Supplier Code and Industrial Relations Guidelines

The Tenderer’s attention is directed to the:

* [NSW Government Procurement Policy Framework](https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework) (Procurement Framework);
* NSW Government Supplier Code of Conduct (the ‘Code’); and
* NSW Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines).

The Procurement Framework, the Code and the NSW Guidelines apply to the Contract.

Refer to Preliminaries clause 1.6 - **Procurement Policy Framework,** **Supplier Code and Industrial Relations Guidelines** for further information.

The NSW Government Procurement Policy Framework is available at: <https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework>

The Supplier Code of Conduct is available at:

<https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>

The NSW Industrial Relations Guidelines are available at:

<https://www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/>

Tenderers have obligations under the Procurement Framework. Tenderers must demonstrate that they understand and will comply with the Code and the NSW Guidelines.

Submit, with the Tender, the completed Tender Schedules - **Schedule of Compliance with NSW Supplier Code and Industrial Relations Guidelines: Building and Construction Procurement.**

A Tender will not be accepted from a Tenderer that does not provide the completed Schedule which comprises a declaration by the Tenderer.

### Exchange of Information by the Principal

By submitting a tender, the tenderer authorises the Principal to gather, monitor, assess, and communicate to NSW Government agencies or local government authorities, information about the tenderer’s performance in respect of any contract awarded as a result of the tender process. Such information may be used by those agencies or authorities in considering whether to offer the tenderer future tendering opportunities.

### Aboriginal Participation

**Include this clause and the above heading where the responsible agency wishes to promote Aboriginal participation on contracts. This may include where tenders are being called:**

* **to promote Aboriginal participation in the contract; or**
* **SPECIFICALLY, for Aboriginal businesses**

**mandatory REQUIREMENTS apply for contracts over $7.5M. refer to the Aboriginal participation clauses in the GC21 suite of documents for APPROPRIATE clauses.**

**The Aboriginal Procurement Policy (APP) supports the NSW Government’s framework Growing NSW’s First Economy under the NSW government plan for Aboriginal Affairs, OCHRE. It meets the specific aims of increasing the number of Aboriginal people employed, and the number of Aboriginal-owned businesses.**

**It is NSW Government policy to** **create opportunities for Aboriginal businesses and encourage the employment and training of Aboriginal business through the supply chain of NSW Government contracts.**

The Tenderer’s attention is drawn to the NSW Government *Aboriginal Procurement Policy.* The policy document is available from:

[*https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy*](https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy)

Refer to Preliminaries clause – **Aboriginal Participation** for contract-specific information and the meaning of an **‘**Aboriginal business’ applying to this Contract.

Include either option 1 or option 2 and delete the option that does not apply.

include option 1 where the agency wishes to PROMOTE ABORIGINAL PARTICIPATION IN THE CONTRACT.

include option 2 where tenders are being called only from aboriginal businesses.

option 1

The Tenderer is requested to detail how it will increase its:

* purchasing from Aboriginal businesses; and
* employment of Aboriginal people in the delivery of the Contract.

The Principal may consider the practical initiatives proposed by the Tenderer in increasing Aboriginal participation in the evaluation of tenders.

end of option 1

option 2

It is a mandatory condition for participation for tenderers to be an Aboriginal business. The Principal will only award a Contract to a Tenderer that is an Aboriginal Business.

The Tenderer must notify the Principal in writing immediately if:

* + - there is any change to the status of the Tenderer’s Aboriginal ownership; or
    - it is removed or suspended from the list of recognised businesses maintained by an indigenous business verification organisation acceptable to the Principal.

The Principal may exclude the Tenderer from further consideration if it becomes aware that the Tenderer has been removed or suspended from the list of recognised businesses maintained by Supply Nation or the NSW Indigenous Chamber of Commerce.

end of option 2

Submit the completed Schedule and the information required by Tender Schedules - **Schedule of Aboriginal Participation Information.**

**Note: If this clause is deleted, delete:**

* **preliminaries clause – aboriginal participation; and**
* **Schedule of aboriginal participation information.**

**End of clause - Aboriginal Participation**

### Dealing with Modern Slavery

**Include this clause and the above heading where the responsible agency requires the contractor to Comply with the REQUIREMENTS of Preliminaries clause - dealing with modern slavery.**

**The Modern slavery act NSW (2018) requires that reasonable steps be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery. The act applies from From 1 January 2022,**

**Agencies are required to include the steps taken to deal with modern slavery in their annual report. note that state owned corporations (SOCS) are treated diffently to other government agencies under the Act.**

**Guidance on Modern slavery and procurement is available at:**

[***https://buy.nsw.gov.au/resources/modern-slavery-and-procurement***](https://buy.nsw.gov.au/resources/modern-slavery-and-procurement)

The Contract requires the Contractor to take reasonable steps to ensure that Modern Slavery is not occurring in its operations and supply chains and to assist the Principal, in accordance with Preliminaries Clause – **Dealing with Modern Slavery.**

## Further Information

### Addenda to RFT Documents

If, as a result of a request for clarification from a tenderer or for any other reason, the Principal issues an instruction amending the RFT documents, the instruction will be issued in writing to all tenderers in the form of an Addendum, which becomes part of the RFT documents. Written Addenda issued by the Principal are the only recognised explanations of, or amendments to, the RFT documents.

### Site Access Restrictions

Delete this Clause and the above heading unless it is required by reference to the following guide note.

Mandatory for education, health, police and Justice projects.

for other agencies include this Clause when part of the site or building(s) is occupied and unrestricted access by Tenderers is not desirable or possible.

In consultation with the client, establish security and access restrictions to be imposed on visitors associated with tendering and insert details as required.

Tenderers and their agents or representatives must:

obtain permission to inspect the Site from the Client’s Representative at least 48 hours before access to the Site is required; and

upon arrival, at the pre-arranged time, introduce themselves at the Client Representative’s office prior to undertaking their inspection of the Site.

Insert relevant details.

The Client’s Representative’s details are:

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| e-mail address: | » |
|  |  |
| The Client’s Representative may be contacted: | |
| on the following days: | » |
| between the hours of: | » |

Contact the Contact Person if difficulty is experienced in securing an appointment with the Client’s Representative for an inspection of the Site.

### Pre-tender Meeting

Delete this clause and the above heading unless the Project Manager determines a pre-tender meeting will be held.

A pre-tender meeting will be held on the date, at the time and at the place nominated in the tender advertisement or invitation.

The Contact Person will be available at that time to answer any tenderer’s queries regarding the RFT.

if it is essential that all tenderers attend the pre-tender meeting (i.e. a tender will not be considered unless the tenderer was present at the pre-tender meeting) advice and approval must be obtained from the relevant senior manager prior to including the following words, to be typed into the clause below:

“Attendance by tenderers at the pre-tender meeting is mandatory. Tenders submitted by tenderers who fail to attend will be passed over.”

Delete the following insertion point unless a mandatory pre-tender meeting is required.

»

Include the following PARAGRAPH FOR non-mandatory meetings if considered useful, otherwise delete.

paragraph

Tenderers are requested to confirm, via email to the Principal’s Contact Person, that they will attend the pre-tender meeting at least 3 Business Days prior to the nominated date.

end of paragraph

end of clause pre-tender meeting

## Preparation of Tenders

### Alternative Tenders

Alternative Tenders are different proposals/solutions that meet the essential requirements of the RFT.

Where a tenderer proposes an alternative tender, the tenderer must submit a detailed description of the alternative stating clearly the manner in which it differs from the requirements of the RFT documents. Where the tenderer submits more than one tender and the relevant information is different for the alternative(s), submit separate Tender Schedules. Clearly identify in each Tender Schedule the applicable alternative.

The Principal will consider alternative tenders, that meet the scope and functional intent expressed in the RFT documents but may elect not to accept an alternative tender.

delete option 1 only if a senior manager determines that a conforming tender is not required.

include option 2 where alternatives will not be considered for certain parts of the works.

If option 2 is used, list the parts, areas or elements for which alternative tenders will not be considered, E.G.: site footprint; general layout and interrelation of major spaces; products; systems.

option 1

Alternative tenders will not be considered unless the tenderer has submitted a conforming tender.

option 2

Alternatives will not be considered for the following parts of the Works:

»

#### Mandatory Alternative Tenders

include this sub-clause if tender prices are required from every tenderer for specified alternatives such as alternative materials, construction methods or systems, eg roof tiles may be the primary specified work but the Principal may seek prices for using sheet metal as well.

clearly Identify in the schedule of MANDATORY alternative tenders which materials, construction methods or systems are to be included in the price stated on the tender form.

ensure the nominated alternatives are fully specified, and list them in tender Schedules - Schedule of mandatory alternative tenders.

Note: if this sub-clause is deleted also delete tender Schedules – schedule of mandatory alternative tenders.

Complete and submit with the Tender Form, Tender Schedules – **Schedule of Mandatory Alternative Tenders**. Include the price of the Primary Specified Work in the price stated on the Tender Form. Do not include the price of any mandatory, or nominated, alternative in the price stated on the Tender Form.

The Principal may elect not to proceed with any mandatory alternative tender.

### Optional Additional Work

Delete this Clause and the above heading unless tenderers are required to submit tenders for optional additional work.

If this clause is deleted also delete tender Schedules – Schedule of optional additional work.

Optional Additional Work must be distinct items of work that are fully specified in the RFT documents.

only include optional additional work when there is a firm commitment to proceed with the work within available funds. limit optional additional work to a maximum of 10% of the pre-tender estimate.

Complete and submit with the Tender Form, Tender Schedules - **Schedule of Optional Additional Work**. Do not include the price for any optional additional work in the price stated on the Tender Form.

The Principal may elect not to proceed with any optional additional work.

### Technical Data

Delete this clause and the above heading unless specific technical information is required for the evaluation of tenders.

If this clause is deleted also delete Tender Schedules - Schedule of Technical Data.

Keep the number of items to a minimum and only ask for information which is required for tender evaluation, eg where non-price criteria are to be scored and weighted.

Do not ask for confirmation of compliance with Contract requirements.

Complete and submit Tender Schedules - **Schedule of Technical Data**.

### Weighted Non-Price Evaluation

Delete this sub-clause and the above heading unless the responsible agency/senior manager approves the use of a weighted price to non-price scoring process or the use of the schedule for another purpose.

this schedule can also be used to seek specific non-price information from tenderers by deleting references to ‘weighted’

If this sub-clause is deleted also delete the following where required:

* tender Schedules – Schedule of weighted non-price criteria information.
* SubClause – Weighted Non-Price Evaluation Criteria in conditions of tendering Clause – evaluation of tenders,
* SubClause – special requirements for the two envelope system in conditions of tendering Clause – tender lodgement methods.

Complete and submit Tender Schedules - **Schedule of Weighted Non-Price Criteria Information**.

## Submission of Tenders

### Documents to be submitted

#### Part A: Documents to be Lodged at close of Tenders

Complete and lodge, by the date, time and method stated in the tender advertisement and/or invitation, the following documents and information:

**Tender Form**

Delete from the list below any tender schedules that are not required to be LODGED at close of TENDERs. Only require schedules that are ESSENTIAL to compare tenders. these are PRIMARILY the schedules with prices.

the Schedule of Compliance with NSW Supplier Code etc is required to be included in part a as it applies from the start of the procurement process.

**Schedule of Prices – Lump Sum**

**Schedule of Rates**

**Schedule of Provisional Sums**

**Schedule of Provisional Rate Amounts**

**Schedule of Mandatory Alternative Tenders**

**Schedule of Optional Additional Work**

**Schedule of Weighted Non-Price Criteria Information**

**Schedule of WHS Management Information: Part A**

**Schedule of Environmental Management Information: Part A**

**Schedule of Compliance with NSW Supplier Code and Industrial Relations Guidelines: Building and Construction Procurement**

list any additional tender schedules and documents required to be lodged at close of tenders, otherwise delete the insertion point.

»

Any tender that is not received in full at close of tenders may be passed over.

Do not change the text on the Tender Form or Tender Schedules, other than to insert the required information.

Acknowledge on the Tender Form, by listing the Addendum numbers, that the tender allows for all Addenda issued.

If more than one tender is lodged, mark each tender clearly as to whether it is a copy, an alternative tender, or a tender superseding another submission.

#### Part B: Documents to be Submitted When Requested:

Complete and submit, by the date, time and method stipulated in any request, the following Tender Schedules, marked ‘**Submit When Requested**’, and any other documents and information requested:

list below any tender schedules that are marked ‘Submit When Requested’ in the final RFT Documents, for example:

* **Schedule of Design and Documentation Resources**
* Schedule of Technical Data
* Schedule of Quality Management Information
* Schedule of WHS Management Information: Part B
* Schedule of Environmental Management Information: Part B
* **Schedule of Aboriginal Participation Information**
* Schedule of Financial Assessment Information

Note: Tender schedules listed HERE MUST BE REQUESTED FROM THE PREFERRED TENDERER DURING THE tender evaluation.

»

Failure to meet this requirement may result in the tender being passed over.

### Tender Lodgement Methods

where a nsw government agency is responsible for the project, the proposed tender box must be approved by the agency.

#### Electronic Tenders

all NSW Government Agencies are expected to use the etendering system.

An agency may establish its own etendering website or arrange to use the NSW Government etendering website, through

NSWbuy@treasury.nsw.gov.au

Under the NSW Procurement Board’s Direction C2014 – 04, tenderers for work valued at up to $1M are to be selected from the *prequalification scheme for general construction works valued up to $1m.* in this case, RFt Documents must be published and tenders lodged via the equote system.

use option 1 if the *prequalification scheme for general construction works valued up to $1m* is to be used. Delete Options 2 & 3.

If the *prequalification scheme for general construction works valued up to $1m* is not applicable:

* use option 2 where the nsw government Etendering website is to be used. Delete Options 1 & 3.
* use option 3 if an alternative etendering system is to be used. Delete Options 1 & 2.

option 1

Tenders must be lodged through the NSW Buy eQuote system, found on the NSW Government *eTendering* website at:

[tenders.nsw.gov.au.](https://tenders.nsw.gov.au./)

Login as an eQuote system user, select the relevant RFX and follow on-screen instructions. Access is generally available 24 hours a day, 7 days per week.

option 2

Unless alternative arrangements have been agreed in writing before tenders are due to close, tenders are to be lodged through the NSW Government *eTendering* website at:

[tenders.nsw.gov.au.](https://tenders.nsw.gov.au./)

Login as an *eTendering* system user, locate the RFT web page and follow on-screen instructions. Access is generally available 24 hours a day, 7 days per week.

end of option 2

Tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by Microsoft Word 2007, or any other format required by the RFT documents. Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (\*.exe) zip files. Refer to the *Help* page at the NSW Government *eTendering* website for more information.

use the following paragraph if applicable, where CAD files must be submitted, otherwise delete.

Any computer-aided design (CAD) files submitted with an electronically lodged tender must be in DGN, DWG, or DXF format. Tenderers must ensure that any CAD files submitted will correctly display and print in Microstation.

end of paragraph

Insert any other specific electronic file requirements, otherwise delete the insertion point.

»

option 3

Tenderers are encouraged to lodge tenders in the electronic tender box at:

»

Insert any specific requirements, otherwise delete the insertion point.

»

End of options

include the following paragraphs for all options.

Lodgement of a tender electronically is evidence of a tenderer’s acceptance of any conditions shown on the eTendering website.

Tenders submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than tenders submitted by other means.

A tender that cannot be evaluated because it is incomplete or electronically corrupted may be passed over.

#### Hard Copy Tenders

Delete this SUB-Clause and the above heading if this method of LODGEMENT is not applicable.

An agency may use its own physical tender box or arrange to use another agency’s physical tender box. do not use a P.O. Box.

The option of using a facsimile tender box has been deleted. Include the following if required:

“Tenders may be lodged through a facsimile tender box at:”*<inset fax no.>*

**Also include the following:**

“Tenders lodged through a facsimile tender box must have a cover sheet marked with the relevant tender box, RFT/Contract number, name of contract, closing date and time.

Tenders sent by facsimile and not completely received by the close of tenders may be excluded from consideration for acceptance even if transmission or receipt is delayed due to the receiving facsimile machine being engaged, faulty or otherwise inoperative.”

insert relevant information and delete options that do not apply.

Tenders may be lodged in the physical tender box at:

insert the relevant street address.

»

Tenders lodged in hard copy through a physical tender box must be:

enclosed in a sealed package such as an envelope and marked with the relevant tender box, RFT/Contract Number, name of contract, closing date and time; and

packaged to fit into the physical tender box unless alternative arrangements have been made with the tender closing office. Any tender that does not comply with this requirement may be passed over. Note that tender boxes may vary in size, however the standard tender box slot is 400mm wide by 90mm high.

#### Special Requirements for the Two-Envelope System

Delete this sub-clause and the above heading unless a senior manager determines that use of the two-envelope system is required. Use of A two-envelope system is required where a weighted price to non-price scoring process is approved for use.

This RFT process is being managed under the Two-Envelope system. The tender must be lodged in two clearly-identified ‘packages’. A package may be an electronic file, an identified set of files (including a set within a zipped file), an envelope or a separate facsimile transmission.

The first package is for Tender Schedules and other documents containing information responding to non-price tender evaluation criteria and must not include any price information. The second package is for the Tender Form and any other Tender Schedules containing price information. Price information includes Contract Prices, Rates, Lump Sum Amounts, Provisional Sums and Amounts for Optional Additional Works or Alternative Tenders.

Each package, document or file lodged with the tender form must be marked with the applicable identifier, as shown below:

“Envelope 1: Non-price information”

“Envelope 2: Price information”

### Late Tenders

In accordance with the NSW Government *Supplier Code of Conduct,* late tenders will not be accepted, except where the integrity and competitiveness of the tendering process will not be compromised.The *Supplier Code of Conduct* is available on the buy.nsw website at <https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>*.*

## Procedures after Closing of Tenders

### Evaluation of Tenders

# refer to <https://buy.nsw.gov.au/buyer-guidance/source/select-suppliers/evaluation-criteria> https://info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/evaluation-criteria https://info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/evaluation-criteriafor information on tender evaluation criteria.

# Note that Unless it is expressly stated that unsigned tenders will not be considered, Tenders where the tender Form and/ or other Tender Schedules are unsigned or the signature blocks are incomplete may be considered for EVALUATION provided it is clear what legal entity submitted the tender.

however, The signature blocks in the tender Form and other Tender Schedules for the PREFERRED tenderer should be completed prior to an award of contract, as this provides evidence of the tenderer’s acceptance of applicable tender conditions.

#### General Evaluation Criteria

In evaluating tenders, the Principal may take into consideration not only price but also other factors affecting value for money, including but not limited to:

whole-of-life costs, including costs of disposal;

ability to meet requirements of the NSW Government Code of Practice for Procurement;

innovation;

delivery time;

WHS management performance;

quality offered;

previous performance and relevant experience;

organisational, technical and resource capability and capacity to meet RFT requirements, including financial capacity;

workplace and industrial relations management performance;

environmental management performance;

stakeholder, community relations management performance;

value adding, including economic, social and environmental initiatives; and

conformity to RFT requirements.

The Principal may treat any detail required by the RFT documents which is omitted, illegible or unintelligible as failing to fulfil the relevant requirement.

The Principal may assess the value of any qualification in any tender without reference to the tenderer and compare tenders on the basis of the Principal’s assessed valuation.

Delete the following paragraph unless tenderers are required to submit tender prices for optional additional work.

Where the Principal elects to proceed with optional additional items of work, the price used in the tender evaluation will be the Tender Price stated on the Tender Form plus the prices submitted for optional additional items of work that the Principal determines will be included in the Contract.

#### Weighted Non-Price Evaluation

Delete this sub-clause and the above heading unless the responsible agency/senior manager approves the use of a weighted price to non-price scoring process.

Insert the ratio of price to non-price criteria, eg ‘60:40’.

Tenders will be evaluated using a weighted scoring process based on information provided with the tender. The ratio of price to non-price criteria will be: »

The weighted non-price criteria will be:

Insert the non-price criteria that will be weighted and scored. Do not show individual weightings. for guidance, the criteria may be listed in order of importance.

do not include mandatory criteria that are specified elsewhere, such as Financial capacity or WHS, IR or environmental management performance. Carefully consider and only Use criteria relevant to the project that can be measured and compared, such as:

* Tenderer’s recent experience and performance in comparable work;
* proposed construction methodology and program;
* relevant qualifications, competence and experience of proposed personnel and subcontractors;
* Demonstrated Understanding of the environmental management objectives and requirements under the contract; and
* Demonstrated capacity to meet Aboriginal participation requirements.

Limit the number of weighted non-price criteria to a maximum of three (3) to ensure the tender assessment process is manageable and not overly complicated.

ensure that relevant tender schedules are included in the RFT documents identifying specific information tenderers are required to provide to address the specified non-price criteria. Include additional schedules if required.

»

If, for any of these weighted non-price criteria, a tender is assessed as scoring less than a threshold score acceptable to the Principal, the Principal may elect to pass over that tender.

### Acceptance of Tender

The Principal may accept tenders that do not conform strictly with all requirements of the RFT documents.

The Principal is not bound to accept the lowest or any tender. Tenders which do not comply with any requirement of, or which contain conditions or qualifications not required or allowed by, the RFT documents may be passed over.

The Principal reserves the right to not accept a rate for a provisional rate item that it considers is not reasonable

No tender, or qualification or departure from the RFT documents, is accepted unless and until the Principal gives an acceptance or agreement in writing.

note that a letter of award accepting a tender accepts all qualifications in that tender that have not been removed by agreement with the tenderer.

include the next paragraph when parts of the work may not be included in the contract awarded, otherwise delete.

detail the principal’s options.

Tenders may be accepted for the whole of the Works or specific parts of the Works as follows:

»

End of Paragraph

delete the following paragraph unless compelling reasons exist to award parts of the Works to different Tenderers.

Ensure that the agency responsible for funding is aware of a potential increase in total costs for site establishment, preliminaries and contract administration when separate contracts for specific parts of the works are awarded to different tenderers.

Detail the Principal’s options.

Separate contracts may be awarded to different tenderers for specific parts of the Works as follows:

»

End of Paragraph

### Protection of Privacy

The tenderer warrants, in respect of any personal information provided in its tender or for the purpose of any contract awarded as a result of the tender process, that the information is accurate, up to date and complete, and that nominated individuals authorise its collection and are aware:

that the information is being collected for the purpose of evaluating tenders and administering contracts and may be made available to NSW government agencies or local government authorities for those purposes;

of any consequences for the individual if the information (or any part of it) is not provided;

whether the supply of information by the individual is required by law or is voluntary; and

of the existence of any right to access or correct the information.

**END OF SECTION – CONDITIONS OF TENDERING**