|  |
| --- |
| User Guidance  The following document is part of the Construction Consultancy Services (CCS) standard form for preparation of a Request for Tender document for Construction Consultancy Services above $50,000.  **Part 1: Conditions of Tendering**  Please refer to buy.nsw website at [*https://buy.nsw.gov.au/categories/construction*](https://buy.nsw.gov.au/categories/construction) to locate all documents referenced throughout this text. Guidance is based on Microsoft 365 Word.  Guide Notes  This standard form contains guidance in hidden text, ie:  **GUIDE NOTES:**  Guide Note examples  If the Guide Notes are not visible, click on the **Show/Hide** button “¶”.  If still not visible, then:  **•** Go to Microsoft Word **File/Options** menu;  • Select the **Display** tab; then  **•** 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.  General  Insertion Points  Each ‘»’ shows where input is required. Click onto each ‘»’ and overtype.  When Completed:  1. Remove all Guide Notes manually or by the following steps:  **•** On the **Editing** menu click **Replace**, then (if required)  **•** Click the **More** button;  **•** Click the **Format** button, click on **Font**;  **•** Tick the **Hidden** check box and click the **OK** button;  **•** Click the **Special** button, click on **Any Character**; then  **•** Click the **Replace All** button.  2. Delete this **User Guidance**, along with the following **Page Break**. |



*New South Wales Government*

Construction Consultancy Services

Conditions of Tendering

(Standard Version of General Conditions as at 11 July 2022)

Space

insert the AGREEMENT nAME and REQUEST FOR TENDER nUMBER in the footer.

The details must match those on the title page.

to update the table of contents:

* Click and highlight the table;
* Press “F9” Key; and
* in the “update table of contents” box select “update entire table”

remember to account for any and all movement of pages.

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CONDITIONS OF TENDERING

Include the Conditions of tENDERING without alteration except for sections to be deleted where indicated by a guide note.

1. Description of the Services

Include a short description of the Services to be carried out under the Agreement.

»

1. Contact person

Refer requests for information about the Tender to:

Insert the name and contact details of the person best able to answer tenderer’s questions.

Ensure that the person has a copy of the RFT documents and will be available for the duration of the tender period.

|  |  |
| --- | --- |
| Name: | » |
| Telephone number: | » |
| Email address: | » |

1. NSW Government Supplier Code of Conduct

Tenderers must comply with the NSW Government Supplier Code of Conduct which is available at [www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct](http://www.buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct).

The Code is a statement of ethics. It imposes behavioural obligations on people involved in tendering processes, including calling, reviewing and accepting tenders

Lodgement of a tender is evidence of the Tenderer’s agreement to comply with the Code for the duration of any agreement awarded as a result of the tender process. If a tenderer fails to comply with the Code, the Principal may take the failure into account when considering this or any subsequent tender from the tenderer, and may pass over such the tender.

1. Government Policies

#### **Dealing with Modern Slavery**

**Include the above subheading and the FOLLOWING paragraphs where the responsible agency requires the consultant to:**

* **provide the information required in Tender Schedules - Schedule of Compliance for dealing with Modern Slavery; and**
* **comply with the requirements of *Modern slavery act NSW* (2018) in the agreement.**

**Otherwise delete THIS CLAUSE AND THE ABOVE HEADING**

**If this clause is deleted, also:**

* **Delete Tender Schedule – SCHEDULE OF COMPLIANCE FOR DEALING WITH MODERN SLAVERY.**
* **delete general conditions of agreement clause - dealing with modern slavery**

**the *Modern slavery act NSW* (2018) requires 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.**

**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)

Tenderers must demonstrate that they understand Modern Slavery and will implement processes and procedures to identify and manage the risks of Modern Slavery.

Submit with the Tender the completed Tender Schedules - **Schedule of Compliance for Dealing with Modern Slavery.**

**End – modern slavery**

#### **Aboriginal Participation**

**only include the above subheading and the FOLLOWING paragraphs**:

* for all contracts with an estimated value greater than $7.5M; and
* for contracts valued at up to $7.5M where the responsible agency requires the contractor to meet specified targets for aboriginal participation.

delete this clause and the above heading if not required.

If this clause is deleted, also:

* delete tender Schedule of aboriginal participation information
* delete general conditions of agreement clause – aboriginal participation and conditions of agreement annexure - aboriginal participation

Guide notes: 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 REVISED ABORIGINAL PROCUREMENT POLICY (APP) APPLIES TO THE PROCUREMENT OF GOODS AND SERVICES AND CONSTRUCTION BY NSW GOVERNMENT AGENCIES FROM 1 JANUARY 2021. THE APP INCORPORATES THE PREVIOUS ABORIGINAL PARTICIPATION IN CONSTRUCTION POLICY.

the Parliament of NSW and local councils are not covered by this policy. state owned corporations may choose to adopt the policy in full or in part where it is consistent with their corporate intent.

AGENCIES MUST INCLUDE MINIMUM REQUIREMENTS FOR ABORIGINAL PARTICIPATION IN ALL CONTRACTS VALUED AT $7.5 MILLION. the minimum requirement is based on 1.5% of the contract value (less exclusions) being directed to aboriginal participation.

AGENCIES CAN CONSIDER APPROPRIATE EXCLUSIONS which MAY INCLUDE EXPENDITURE UNRELATED TO DESIGN WITH VERY LIMITED OPPORTUNITIES FOR ABORIGINAL PARTICIPATION.

AGENCIES MAY also INCREASE THE ABORIGINAL PARTICIPATION PERCENTAGE TO HIGHER THAN 1.5%, IF THIS IS CONSIDERED APPROPRIATE FOR THE PARTICULAR CONTRACT. IF THIS APPLIES AMEND ALL REFERENCES TO 1.5% IN THE RELEVANT CLAUSES.

the agreement VALUE LESS THE VALUE OF EXCLUSIONS is the ‘APP CONTRACT VALUE’ and is to be confirmed by the principal at agreemeNt award.

Refer to GENERAL CONDITIONS OF AGREEMENT clause – Aboriginal Participation for more details.

The Tenderer’s attention is drawn to the requirements of the NSW Government *Aboriginal Procurement Policy (APP).* The policy document is available from buy.nsw website *at*

<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>

Refer to General Conditions of Agreement Clause, **Aboriginal Participation** for specific requirements.

The Principal will consider the demonstrated capacity of tenderers to meet obligations under the Policy and the extent to which the Tenderer’s proposed Service Delivery Plan will meet the minimum Aboriginal participation requirements when evaluating the tenders.

Submit the completed Schedule and the information required by Tender Schedules - **Schedule of Aboriginal Participation Information.** The Principal may exclude a Tender from further consideration if the Tenderer does not submit a complying Schedule. Where a Tenderer has no or very limited past experience with Aboriginal Participation in Construction, its response will be assessed on its understanding of practical steps to improve Aboriginal participation and the detail of its proposed Aboriginal Participation Plan.

**End - Aboriginal Participation**

1. Goods and Services Tax

Fees, rates and other amounts in this Tender must include GST if it is payable.

1. Submission of Tender

#### **Documents to be submitted**

The following documents must be completed and/or submitted by the Tenderer:

* Tender Form;
* Other Tender Schedules;
* Information called for in the Tender Schedules; and

List any other returnable documents.

if none, remove the prompt.

* »

Submit all information identified in the RFT documents as being required with the Tender.

Delete the following paragraph when Conditions of Tendering clause Alternative Tenders does not allow alternative tenders.

Where any alternative tender is offered, submit alternative Tender Schedules and associated information describing where the alternative tender(s) differ from the conforming tender. Identify in each schedule the alternative to which it applies.

End of paragraph

Where Addenda have been received, refer to each one on the Tender Form to confirm that the Tender allows for the instructions it contains.

Delete the following paragraph if not applicable.

General information about your firm, such as brochures and the firm's history, is not required with the Tender.

End of paragraph

#### **Submission procedure**

Submit the Tender Form, Tender Schedules marked ‘Submit with Tender Form’ and other required documents or information by the date and time given in the advertisement or invitation.

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

Submit when requested, by the date, time and method stipulated in the request, Tender Schedules marked ‘Submit when requested’ and any other information requested by the Principal to allow further consideration of the Tender.

Failure to meet these requirements may result in the Tender being passed over.

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

1. ETendering

Delete this clause and the above heading if this method is not applicable.

Agencies are expected to use the etendering system where possible.

An agency may establish an etendering site, or make arrangements to use the etendering site, by contacting the NSW Procurement Service Centre on 1800 679 289 or through:

[NSWbuy@treasury.nsw.gov.au](mailto:NSWbuy@treasury.nsw.gov.au)

Unless alternative arrangements have been agreed in writing before tenders are due to close, tenders must be lodged through the NSW Government eTendering website at: <https://tenders.nsw.gov.au>.

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

Two-Envelope System

Delete this Subclause and the above Subheading when the Two Envelope system will not be Used.

Use the two envelope system when the tender evaluation involves scored and weighted non-price criteria.

This RFT process is being managed under the Two-Envelope system. The Tender must submitted in two separate files. The first file is for Tender Schedules and other documents containing non-price information. The second file is for the Tender Form and other Tender Schedules containing price information. Each file must have a cover sheet with the appropriate identifier:

* “Tender for » - Envelope 1: Non-price information”
* “Tender for » - Envelope 2: Price information”

Each separate file may be more than one file zipped and named appropriately. The separate files may be lodged together or in separate actions.

end SubClause - two envelope system.

Legal Status

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.

Signatures are not required for a Tender submitted electronically. It is the responsibility of the Tenderer to ensure that the Tender is lodged by a person authorised by the Tenderer.

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

The Principal may decline to consider for acceptance tenders that cannot be effectively evaluated because they are incomplete or corrupt.

Electronic Format for submissions

Tenders submitted electronically must be in a file format that can be read, formatted, displayed and printed by a current version of Microsoft Word, or any format required by the RFT.

Use the following paragraph if applicable where cad files must be submitted, otherwise delete.

Any CAD files submitted with an electronically lodged tender must be in DGN, DWG, or DXF format. The Principal uses Microstation and Tenderers must ensure that any CAD files submitted will correctly display and print in Microstation.

Insert any specific file requirements, otherwise delete

File Compression

Tenderers may compress electronic tenders in any format that can be decompressed by WinZip. Tenderers must not submit self-extracting (\*.exe) zip files.

Text in Tender Forms

Tenderers must not change existing text in electronic tender forms other than to insert required information.

End of Clause - ETendering

1. Physical Tender Box

delete this clause and the above heading if this method is not used.

the tender box must be approved for use by the agency responsible for the project.

The Tender may be submitted in the Tender Box at:

Insert the name and address of the tender closing office.

»

Insert the RFT NUMBER AND name of the AGREEMENT in the following paragraph.

Submit the Tender in a sealed envelope addressed to the Secretary of the Tender Opening Committee and marked with “Tender for »” and the closing date and time.

Use the following paragraph when the two-envelope system will be used, ie, where the evaluation will include scored and weighted non-price criteria. Otherwise delete.

The Tenderer must:

* enclose all (and only) the Tender Schedules and other documents containing non-price elements of the Tender in an envelope sealed and labelled "Envelope 1: Non-price Information";
* enclose all (and only) the Tender Form, other Tender Schedules and other documents containing price elements of the Tender in another envelope sealed and labelled "Envelope 2: Price Information", and
* submit Envelope 1 and Envelope 2 inside a sealed envelope addressed and marked as described above.

End of paragraph on two-envelope system

End of Clause – physical Tender Box

1. 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>*.*

1. Alternative Tenders

Select either option 1, 2 or 3 below and delete the two options not selected.

* Option 1 does not allow any alternative tender.
* Option 2 allows the Tenderer to submit an alternative tender, provided a fully compliant tender for the Services specified in the Agreement is also submitted.
* Option 3 allows the tenderer to submit a non-complying tender without submitting a fully compliaNT one.

option 1

Submit a Tender in full compliance with the specified requirements, without any conditions or qualifications.

End option 1

option 2

You must submit a Tender that fully complies with the specified requirements, without any conditions or qualifications. You may also submit alternative Tenders. For any alternative Tender, you must fully describe and price any applicable conditions, qualifications, or departures from the specified requirements.

End option 2

option 3

Submit one or more Tenders for the Services. You must fully describe and price any applicable conditions, qualifications or departures from the specified requirements.

End option 3

Nominated Alternative Tenders

delete this Subclause and the above heading if Nominated Alternative Tenders are not required.

Insert a list of Nominated alternative tenders where these are sought, EG, for alternative completion times.

When alternative tenders are nominated, describe and specify relevant details, such as:

* The information to be submitted with an alternative tender;
* Technical or other references in the briefing documents; and/or
* The Tenderer's obligation to detail, the effect of an alternative tender.

»

End of Subclause - Nominated Alternate Tenders.

1. Evaluation and Acceptance of Tenders

Include the Following paragraph if part of the Services may be awarded separately. Follow this with a list of engagements that may be separately awarded, otherwise delete.

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

* »

End of Paragraph.

The criteria for evaluating the Tenders are:

Insert the criteria and subcriteria and the relative weightings of the price and the non-price criteria as a whole. Do not show the weightings for individual subcriteria. for example:

For a price only evaluation:

* Price (weighting 100%)
  + Lump Sum Fee

OR, for an evaluation involving scored and weighted non-price criteria:

* Price (weighting 60%)
  + Lump Sum Fee
  + Rates for Variations
* Non-Price (weighting 40%)
  + Demonstrated experience in similar engagements
  + Understanding of the Services
  + Proposed measures to ensure environmental sustainability’

See Procurement Practice Guide [Tender planning for consultancy services engagements](https://www.procurepoint.nsw.gov.au/documents/consultancy-services-tender-planning-engagements.docx) for guidance on criteria weightings.

* Price (weighting »%)

- Fee

DELETE “RATES FOR VARIATIONS” IF NOT REQUESTED IN THE TENDER schedules.

- Rates for variations

Delete the following information relating to non-price criteria if the evaluation will not involve scored and weighted non-price criteria.

See Procurement Practice Guide [Tender planning for consultancy services engagements](https://www.procurepoint.nsw.gov.au/documents/consultancy-services-tender-planning-engagements.docx) for guidance on selecting appropriate criteria.

Insert the percentage weighting for the price criteria.

* Non-price (weighting »%)

Insert the non-price criteria to be used in the tender evaluation.

- »

The evaluation of non-price criteria will be based on information provided in the Tenders.

end of information relating to non-price criteria.

Tenders considered unsatisfactory for any of the non-price criteria may not be considered further.

The Principal may also take into consideration factors including, but not limited to: whole of life costs; ability to meet requirements of the NSW Government Supplier Code of Conduct innovation; delivery time; quality offered; previous performance; experience; capability; work health and safety performance; environmental management performance; community relations; value adding; and conformity.

Include the following paragraph when the engagement involves design or design management, otherwise delete.

Note that for any engagement with a Fee exceeding $50,000 where there is no prequalified panel, you must make every effort to invite tenderers who have certified quality management systems. Only when this is impractical, or regional/local consultants may be suitable, can you include tenderers who do not have certified quality management systems.

Tenderers with a Quality Management System certified as meeting the requirements of AS/NZS ISO 9001 receive a 10% price preference over those without such a certified Quality Management System.

End of paragraph

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

1. Acceptable Legal Entities

The Principal contracts only with recognised and acceptable legal entities with appropriate financial assets and current professional indemnity insurance cover. Tenders will not be considered from entities such as business names.

Tenderers may be required to provide evidence of their legal entity by submitting a copy of an official document, such as:

* company registration and names of office bearers issued by the Australian Securities and Investments Commission; or
* a statement confirming the legal entity signed by a practicing solicitor.

If requested to do this, submit the information within three working days after receiving the request.

1. Financial Capacity

DELETE THIS CLAUSE AND THE ABOVE HEADING UNLESS:

* THE AGREEMENT IS FOR A LONG TERM; AND
* THERE IS CONCERN THAT A TENDERER LIKELY TO BE IN CONTENTION MAY NOT BE EITHER PREQUALIFIED UNDER a NSW Government CONSULTANT PREQUALIFICATION SCHEME OR KNOWN BY THE RESPONSIBLE AGENCY TO BE SUITABLE; AND
* A MANAGER WITH THE APPROPRIATE AUTHORITY HAS GIVEN APPROVAL TO INCLUDE THE CLAUSE.

Tenderers must have sufficient financial capacity to perform the services required under the Agreement.

If requested to do so, the Tenderer must provide a statement from a qualified accountant certifying that the Tenderer has met:

* all of its statutory obligations including payment of pay as you go (PAYG) taxation instalments, PAYG withholding tax, GST Business Activity Statements, Superannuation Guarantee payments and payroll tax, if applicable; and
* other obligations including payment of rentals and interest, as well as payment of subcontractors, subconsultants and suppliers within acceptable business credit periods.

Tenderers do not need to provide financial statements.

End of clause - Financial Capacity

1. Quality Management System

**Delete this clause and above heading if the estimated fee is less than $250,0000. prequalification schemes scm1191 & scm10611 require certified quality management systems for consultants in the above $250,000 fee categories.**

The Tenderer must have in place a Quality Management System certified to AS/NZS ISO 9001 or demonstrate that equivalent QMS systems are in place.

1. Work Health and Safety Management System

**only include this clause and above heading if using the following work categories of consultants in construction prequalification scheme SCM1191:**

* **Independent Safety Assessor (Work Category 406)**
* **Occupational hygienists (Work Category 402)**
* **Project Manager Planning & Delivery – Health Infrastructure (Work Category 336)**
* **Project Management (Work Category 313)**

**only include this clause and above heading if using the following work categories of consultants in construction prequalification scheme SCM10611:**

* **Project Manager Planning & Delivery – Health Infrastructure**
* **Project Management**

The Tenderer must have in place:

* + - 1. Work Health and Safety Management System accreditation to ISO 45001 (or AS 4801 until 13 July 2023) or
      2. Staff having relevant qualifications in managing safety with a Certificate 4 (C4) in Work Health and Safety or above such as a diploma or
      3. Two written examples of second party audit reports where the Consultant has satisfactorily overseen implementation of a Work Health and Safety system on a construction project

1. SubConsultants

DELETE THIS CLAUSE AND THE ABOVE HEADING UNLESS:

* The tender is likely to include significant subconsultant packages with fees greater than $50,000; or
* subconsultant work is critical to the engagement.

For each subconsultant service listed below, nominate in the Outline Services Delivery Plan the subconsultant you propose to carry out the Services.

List the relevant subconsultant packages.

|  |
| --- |
| **Subconsultant Service** |
| » |
| » |

End of clause - Sub-Consultants

1. Disclosure of Contract Information

Details of this tender and the contract awarded as a result of this tender process must be disclosed in accordance with the *Government Information (Public Access) Act 2009* (NSW).

1. Consultant Performance

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

During the term of the Agreement, the Consultant's performance will be monitored. Unsatisfactory performance is taken into account when considering future tendering opportunities for the provision of services to NSW Government agencies.

1. Multiple Use of Contract Material

DELETE THIS CLAUSE AND THE ABOVE HEADING UNLESS multiple use of the contract material is intended or may occur.

The Contract Material produced under the Agreement may be adapted or changed by the Principal for the purpose of constructing similar facilities on the same or a different site. Refer to Conditions of Agreement clause – **Copyright and Intellectual Property**.

End of clause - Multiple Use of Contract Material

1. Novation

Delete this clause and above heading if novation is not required

**If this clause is deleted, also:**

* **delete general conditions of agreement clause – novation and annexure - novation**

Include the following where the Principal will novate the consultant to a contractor who will be engaged on a Design Development and construct (DD&C) or design and Construct (D&C) contract.

The Principal intends to novate the obligations and liabilities in connection with this Agreement (the "Novation Agreement") to the successful tenderer and Contractor for <contract no and name> (the "Head Contract").

The Principal intends that the novation will occur at the Date of Contract for the Head Contract.

The Principal may take into account information relating to the Tenderer’s performance with respect to cooperation in considering the award of the contract.

The novation will be on the basis detailed in the Novation clause of the Conditions of Agreement.

GUIDE NOTE: Normally tenders for consultant agreements to be novated should not be called until the list of Tenderers for the Head Contract is established.

noRMALLY use Option 1

Otherwise If the list of Tenderers for the Head Contract has nOT been established, use Option 2. iN THIS CASE, BE MINDFUL THAT TENDERERS MAY ALLOW EXTRA FOR BEING REQUIRED TO WORK WITH AN UNKNOWN HEAD CONTRACTOR

Option 1

The following Tenderers may be invited to tender on the Head Contract

|  |  |
| --- | --- |
| 1. | » |
| 2. | » |
| 3. | » |

Option 2

The Principal will advise the successful tenderer for this Agreement (the "Novation Consultant") of the tenderers for the Head Contract once the final list of tenderers has been established.

Include for both Option 1 and Option 2

The “Novation Consultant” (the successful tenderer for this Agreement) must assist all the identified tenderers for the Head Contract to become familiar with all aspects of the work under the Novation Contract, including, but not limited to, any design requirements, and execute a Novation Deed as shown in the Annexure of the Conditions of Agreement with each tenderer.

The Head Contract tenderers must submit the partially executed Novation Deeds with their tenders for the Head Contract. Following award of the Head Contract, the Principal intends to execute the Novation Deed between the selected Head Contractor and the Novation Consultant.

1. Other Matters

Include in this section any other conditions that may apply to tenderers. for example:

* pre-tender meetings and briefings
* pre-tender site visits
* preferred subconsultants
* early tenderer involvement

If none, then delete the heading and the prompt below.

»