

TRANSPORT FOR NSW (TfNSW)
CONTRACT DOCUMENT C12
REQUEST FOR TENDERS
MAJOR ROADWORKS AND BRIDGEWORKS
REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 0		New document	GM, RNIC	28.01.04
Ed 1/Rev 1	Various 1.3, 6.9 1.3, 1.4, 3 3.3 6.10 8.1	Formatting of paragraphs revised Cross references corrected Minor editorial changes Removed references to e-tendering guidelines Removed duplicate 'General' heading Transferred to Clause 10.2 New clause Reference concerning apprentices deleted	GM, RNIC	03.06.04
Ed 1/Rev 2	2.1	Amended to reference new Code of Practice for Procurement	GM RNIC	08.07.04
Ed 1/Rev 3	8.6	Additional dot point on project risks	GM RNIC	15/08/04
Ed 1/Rev 4	2.7 Annexure 5	Return of Sensitive documents added	GM RNIC	
Ed 1/Rev 5	Annexure 4	Removal of tender price summary sheet from lump sum and SoR tenders	GM RNIC	4/10/05
Ed1/Rev 6	5.6, 8.11 & Annexure 4 & 6	New requirements for National Code of practice for the Construction Industry	GM RNIC	03.03.06
Ed 1/Rev 7	6.9	National Code requirements moved to Clause 6. Requirement for a 'make up of tenderer's prices' removed	GM RNIC	03.07.06
Ed 1/Rev 8	2.8	New clause for RMS' Statement of Business Ethics	GM RNIC	29.09.06
Ed 1/Rev 9	8.10 & 8.11	New requirement for Related Corporate Body particulars added. Other information renumbered to 8.11	GM RNIC	10.01.07
Ed 1/Rev 10	6.9 and Annexure 6	New requirement for accreditation under the Australian Government Building and Construction WHS Accreditation Scheme	GM, IC	19.09.07
Ed 1/Rev 11	8.9	New requirements for Aboriginal Participation in Construction	GM, IC	19.05.08

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 12	6.9 and Annexure 6	New requirements for National Code of Practice	A/GM, IC (M Andrew)	25.09.09
Ed 1/Rev 13	6.7	Allowing for declaration to be witnessed outside NSW	Manager Contract Strategy	25.11.09
Ed 1/Rev 14		Clauses 2.5, 2.6, 11.2 and 11.3 referring to NSW Government purchasing policy including Preference Schemes and Margins removed. Accordingly all clauses following these have been renumbered. Clause 6.6 referring to Imported Content removed. Accordingly all clauses following this have been renumbered.	Manager Contract Strategy	12.05.10
Ed 1/Rev 15	2.7 5.1	New clause on System requirements Reference to prequalification with RMS under the National prequalification System	Manager Contract Strategy	22.12.10
Ed 1/Rev 16		Reference to RTA changed to RMS	Manager Contract Strategy	03.11.11
Ed 1/Rev 17		Definition of RTA and Roads and Traffic Authority added.	Manager Contract Strategy	17.11.11
Ed 1/Rev 18	Clause 6.8	Reference to National Code of Practice for the new Construction Industry Implementation Guidelines May 2012	Manager Contract Strategy	27.04.12
Ed 1/Rev 19	Annexure RFT 1	Statutory Declaration includes Authorised Witness' Certificate	Manager Contract Strategy	25.07.12
Ed 1/Rev 20	Clause 2.6	Reference to RMS Customer Charter	Manager Contract Strategy	02.11.12
Ed 1/Rev 21		Reference to WHS instead of OHS	Manager Contract Strategy	03.12.12
Ed 1/Rev 22	Clause 6.8	National Code updated to Building Code 2013	Manager Contract Strategy	18.03.13
Ed 1/Rev 23	Clause 9	Revised financial requirements	Manager Contract Strategy	18.06.13
Ed 1/Rev 24	Clause 2.1	New NSW Government Code of Practice for Procurement and Implementation Guidelines requirements	Manager Contract Strategy	01.07.13

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 25	Schedule RFT7	Schedule of Compliance with NSW Government Code of Practice for Procurement and Implementation Guidelines added	Manager Contract Strategy	07.07.13
Ed 1/Rev 26	Clause 2.1 Schedule RFT7 Annexure RFT4	Minor edits and formatting corrections	Manager Contract Strategy	28.10.13
Ed 1/Rev 27	Clause 1.3 Annexure RFT 2	“Possible Traffic Staging Drawings” inserted under “Information provided for convenience of tenderers” Guide note inserted for “Section 8.11 Other Information” re “Earthworks Plan”	Manager Contract Strategy	06.01.14
Ed 1/Rev 28	Clause 6.8, RFT2, RFT4, RFT6 Clause 2.1, 4.1, 5.3, 8.1, 8.7, 11.2, RFT2 2.7 9	Australian Government OHS Accreditation Scheme Replace Industrial Relations Management with Workplace Relations Management Environmental and WHS system requirements Financial Assessment	Manager Contract Strategy	21.07.14
Ed 1/Rev 29	Clause 5.5	NSW Government Policy on Aboriginal Participation in Construction	Manager Contract Strategy	17.04.15
Ed 1/Rev 30	8.1, 8.10, 11.2, Annex RFT2	Heavy Vehicle National Law – Chain of Responsibility	Manager Contract Strategy	22.09.15
Ed 1/Rev 31	4.1(d); 5.4; 8.1(g); 8.8; 11.2(k); Annexure RFT2(b) & RFT8 6.8(d); Annexure RFT2(a) & RFT4 6.10	Inserted requirements re “ <i>Skills and Training in the Construction Industry</i> ” Inserted requirement re FWBC letter of compliance Tender lodgement requirement modified	GM Commercial	20.06.16
Ed 1/Rev 31 (cont’d)	8.9; 11.2 and Annexure RFT2(b)	Revised to reflect mandatory implementation of the NSW Government Policy on Aboriginal Participation in Construction		

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 32	1.4; 2.1.1, 2.1.3; 5.3; 5.6; 6.8; 8.7; Annexure RFT2; Annexure RFT4; Annexure RFT6A and Annexure RFT6B 6.1 and Annexure RFT4 8.8 12.8, 12.9 & 12.10	Updated to contemplate the enactment of the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth) and the <i>Code for the Tendering and Performance of Building Work 2016</i> and minor edits to clauses 2.1.1 and 2.1.3 Amended lodgement requirement for eTender. Amended reporting requirements New clauses	GM Commercial	19.05.17
Ed 1/Rev 33	1.4; Annexures 6A, 6B & 7 11.2(p); Annexures 4 & 9	Amended to achieve consistency with C92 in terms of submission requirements for unincorporated JV Incorporated requirements re “Ability to Work Effectively With the NSW Government” evaluation criterion	Director, Commercial Services	04.08.17
Ed 1/Rev 34	Annexure 6B	Minor change re regulation 26(1)(f) requirement	Director, Commercial Services	16.08.17
Ed 1/Rev 35	6.8.1(b)(iv), 6.8.1(d)(i)(a) and RFT6A 6(a)(i), 6(b)(ii), 8(b) and Attachment A Item A1.3	Revised to reflect the introduction of the Work Health and Safety Regulation 2017, replacing the 2011 Regulation	Director, Commercial Services	29.09.17
Ed 1/Rev 36	5.1	Revised to remove the requirement for unincorporated joint ventures to be prequalified.	Director, Commercial Services	6.02.18
Ed 1/Rev 37	2.7 8.9, Annexure RFT2 and Annexure RFT4 9.1	Removal of Quality Management Systems Guidelines and Environmental Management System Guidelines are no longer applicable Updated to reflect the Aboriginal Participation in Construction Policy 2018 Revised financial information requirements for management accounts	Director, Commercial Services	03.06.19

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
	12.11	New clause for requirements of undertakings from overseas financial institutions		
Ed 1/ Rev 38	6.1 and Annexure RFT4	Reference to TfNSW instead of RMS Removed hardcopy lodgement requirements	Director Commercial Services	01.12.19



REQUEST FOR TENDERS MAJOR ROADWORKS AND BRIDGEWORKS

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VERSION FOR: DATE:

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TfNSW CONTRACT DOCUMENT C12
REQUEST FOR TENDERS
MAJOR ROADWORKS AND BRIDGEWORKS

1 INTRODUCTION

1.1 PROJECT

This request for tenders (RFT) by Transport for NSW (TfNSW) is for *[insert short title of Project]*.

1.2 ENQUIRIES

General enquiries may be directed to:

[insert name]

[insert telephone number]

By written application, a Tenderer may seek clarification of anything in the Information Documents.

Such application should be addressed to *[insert TfNSW contact person and address]*.

1.3 INFORMATION DOCUMENTS

The following documents comprise the Information Documents:

- (a) **Information for Tenderers** which includes:
 - (i) Preamble and Locality Plan;
 - (ii) this RFT;
 - (iii) Schedule of Estimated Quantities (for Bridgeworks).
- (b) **Tender Request Documents – Volume 1** which includes:
Tender Form including:
 - (i) Schedule to Tender Form;
 - (ii) Tender Price Summary Sheet;
 - (iii) Schedule of Rates (Roadworks) if applicable;
 - (iv) Schedule of Prices (Lump Sum Bridgeworks) if applicable.
- (c) **Tender Request Documents – Volume 2** which includes:
 - (i) General Conditions of Contract;
 - (ii) Specifications;
 - (iii) Schedule of Drawings.
- (d) **Drawings** as applicable
 - (i) Roadworks Drawings;

- (ii) Bridgeworks Drawings;
- (iii) Supplementary Drawings;
- (iv) Landscaping Drawings.

(e) **Information provided for convenience of Tenderers**

(Refer to sections 12.3 and 12.4 of Request for Tenders – this is information that does not form part of the Tender Documents and is provided only for the convenience of Tenderers. Each of the items below is bound separately.)

- (i) Geotechnical Information;
- (ii) Environmental Assessment Documents;
- (iii) Possible Traffic Staging Drawings.

[Add other documents provided only for the convenience of Tenderers, as appropriate]

These documents are available on two CDs which may be purchased by contacting the Contact Officer. The purchase price for the CD is *[insert price]* per set.

A hard copy of the Geotechnical Information is available for viewing at *[insert address]*.

A hard copy of the Environmental Assessment Document relevant to the Project is available for viewing at *[insert address]*.

1.4 DEFINITIONS

These definitions apply to the Information for Tenderers and the Tender Request Documents – Volume 1 referred to in section 1.3:

"ABC Commissioner" means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act.

"ABCC" means the body referred to in section 29 of the BCIIIP Act.

"BCIIP Act" means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

"Building Code" means the Building Code issued under subsection 34(1) of the BCIIIP Act, being the document titled *'Code for the Tendering and Performance of Building Work 2016'*, which is available at www.legislation.gov.au.

"Building Contractor" has the same meaning as in the BCIIIP Act.

"Building Industry Participant" has the same meaning as in the BCIIIP Act.

"Building Work" has the same meaning as in subsection 3(4) of the Building Code.

"Commonwealth Funded Building Work" means Building Work in items 1-8 of Schedule 1 of the Building Code.

"Contact Officer" means the person named in section 1.2.

"Contract" means the contract, if any, under which the Contractor is engaged by TfNSW to perform the Works.

"Contractor" means the successful Tenderer, if any, contracted by TfNSW to perform the Works.

"Designated Building Law" has the same meaning as in the BCIIIP Act.

"e-Tender" means a tender submitted electronically and in hard copy as set out in the relevant Conforming Tender Checklist.

"Exclusion Sanction" has the same meaning as in subsection 3(3) of the Building Code.

“**General Conditions of Contract**” means the GC21 – Edition 2 (TfNSW).

“**Imported Content**” means the full landed and duty paid cost in Australia, inclusive of all related charges.

“**Information Documents**” means the documents listed in section 1.3.

“**National Construction Code**” means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

“**NSW Guidelines**” means the document titled *Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction* (as published by the NSW Treasury in July 2013).

“**Participant**” means a Joint Venture Participant, where the Tenderer is an unincorporated joint venture comprising of two or more Joint Venture Participants.

“**Principal**” means TfNSW.

“**Project**” means the project briefly described in section 1.1.

“**Related Entity**” has the same meaning as in subsection 3(2) of the Building Code.

“**RMS or Roads and Maritime Services**” means TfNSW or Transport for NSW, and a reference to “RMS” in a document (including an RMS specification or other document) is to be read as a reference to TfNSW or Transport for NSW.

“**Subcontractors**” includes consultants and suppliers.

“**Tender Documents**” means:

- the Tender Form, the Schedule to Tender Form and the Tender Price Summary Sheet completed, signed and submitted by the Tenderer;
- the Schedule of Rates (if any) completed and submitted by the Tenderer;
- the Schedule of Prices (if any) completed and submitted by the Tenderer;
- the General Conditions of Contract;
- the Specifications;
- the Drawings;
- Addenda issued by TfNSW during the tender period.

“**Tender Price**” means:

- the Tenderer’s rates and lump sums set out in the Schedule of Rates, if any, forming part of the Tender Documents;
- the Tenderer’s lump sum price set out in the Schedule of Prices, if any, forming part of the Tender Documents

as adjusted in accordance with the Tender Documents.

“**Tender Request Documents**” means Volumes 1 and 2 of the Tender Request Documents referred to in section 1.3 and addenda issued by TfNSW during the tender period.

“**Tenderer**” means a person who is given access to the Tender Request Documents by TfNSW for the purpose of lodging a Tender.

“**TfNSW**” means Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW).

“**Workplace Relations Management Plan (Commonwealth)**” has the meaning given to ‘WRMP’ in subsection 3(1) of the Building Code.

“**Workplace Relations Management Plan (State)**” means the Workplace Relations Management Plan contemplated by the NSW Guidelines.

Words defined in the General Conditions of Contract have the same meanings where used in the other Information Documents.

2 POLICIES

2.1 ***NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT AND IMPLEMENTATION GUIDELINES***

2.1.1 **Terminology**

The *New South Wales Government Code of Practice for Procurement* (“*NSW Code*”) and the *NSW Guidelines* apply to the project the subject of this contract.

Terms used in this section 2.1 of this contract (under the heading *NSW Code* and *Implementation Guidelines*) have the same meaning as is attributed to them in the *NSW Guidelines*.

2.1.2 **Primary Obligation**

By submitting a response to this procurement process, the Tenderer acknowledges and agrees that it:

- (a) is aware that the *NSW Code* and *NSW Guidelines* apply to the contract;
- (b) is taken to have read and understood the *NSW Code* and *NSW Guidelines* and the obligations they impose;
- (c) will comply with the *NSW Code* and *NSW Guidelines* on this contract, which includes, but is not limited to giving access to authorised personnel to inspect any work, material, or machinery, inspect and copy any record relevant to the project, and interview any person;
- (d) will agree, if successful in this tender, to contractual terms that give effect to the *NSW Code* and *NSW Guidelines* and mechanisms to ensure their compliance and enforcement; and
- (e) will comply with, and ensure all of its related entities (as defined in the *NSW Guidelines*) comply with, the *NSW Code* and *NSW Guidelines* in respect of any of their building and construction work (including any subsequent privately funded work), on and from the date of submitting a response to this tender.

2.1.3 **Cost, Efficiency, Productivity and Workplace Safety**

The Tenderer agrees that it must include in its tender:

- (a) where required in Annexure RFT2(b), a Workplace Relations Management Plan (State) and any other documents and information necessary to meet the requirements of section 6.1 of the *NSW Guidelines*;
- (b) a Work Health and Safety Management Plan or Site Specific Safety Management Plan and any other documents and information necessary to meet the requirements of section 9 of the *NSW Guidelines*; [noting that the Tenderer who adopts and complies with the “*Work Health and Safety Management Systems and Audit Guidelines, 5th Edition published September 2013*” and demonstrates that compliance in its Tender, will not be required to submit a separate “*Work Health and Safety Management Plan*” under section 9 of the *NSW Guidelines*, as given in “*Practice Direction 2013/2 – Workplace Safety*” issued by the *NSW Industrial Relations*]

and

- (c) the Schedule of Compliance that is attached to this Request for Tenders, properly executed by or on behalf of the Tenderer.

The Tenderer acknowledges that by submitting its tender it agrees to TfNSW and the Construction Compliance Unit (CCU) taking any steps to investigate claims, statements and assertions made by the Tenderer in any of the documents referred to above in section 2.1.3 before any contract is awarded.

The Tenderer acknowledges and agrees to cooperate with TfNSW and the CCU in respect of the investigation of compliance with the *NSW Guidelines* and further agrees that that compliance is a mandatory requirement of the tender.

The Tenderer will allow authorised personnel to:

- (i) access premises and sites controlled by the Tenderer or its related entities;
- (ii) inspect and copy relevant records and documents;
- (iii) inspect any work, material, machinery, appliance article or facility; and
- (iv) interview any person;

as is necessary to investigate the claims, statements and assertions made by the Tenderer in the response or to demonstrate the Tenderer's current or, where relevant, past compliance with the *NSW Code* and *NSW Guidelines* during the tender.

2.1.4 Disclosure of Information

Notwithstanding any other provision of the procurement process, the Tenderer agrees and consents to the disclosure of information concerning the Tenderer's, and the Tenderer's related entities', compliance with the *NSW Code* and *NSW Guidelines*, including the disclosure of details of past and present compliance to the *NSW Code* and *NSW Guidelines*, as varied from time to time, including whether or not sanctions have been imposed on a Tenderer or any of its related entities by the Commonwealth or any State or any government agency.

This consent is given to the State of New South Wales, including its agencies (including TfNSW), Ministers and the CCU (and its authorised personnel) for purposes including monitoring and investigating compliance and ensuring, facilitating and promoting compliance with the *NSW Code* and *NSW Guidelines*.

2.1.5 Subcontractors, etc

Where the Tenderer proposes to subcontract the Works, the Tenderer agrees that it will ensure, through contract, that each subcontractor or consultant agrees to:

- (a) the contractual promises in the Primary obligation clauses and Disclosure of information clauses in respect of the relevant subcontractor or consultant;
- (b) comply with the applicable plans and policies on the project referred to in the Cost, efficiency, productivity and workplace safety clauses; and
- (c) where a subcontractor or consultant is nominated in procurement process documents, that the nominated party cooperates with authorised personnel during the procurement process for the purposes outlined in the Cost, efficiency, productivity and workplace safety clauses.

2.2 CONTRACTOR PERFORMANCE REPORTING

During the course of the Contract, the Contractor's performance will be monitored.

2.3 SHARING OF INFORMATION BETWEEN GOVERNMENT AGENCIES

NSW Government agencies, Local Government authorities and members of Austroads Incorporated make available to each other information relating to projects including information relating to the

Tenderer's / Contractor's performance (for example, substantiated reports of unsatisfactory performance) or financial information.

This information may be taken into account by agencies and authorities in considering whether to offer the Tenderer opportunities for work (including for example the assessment of suitability for registration, prequalification, selective tender lists or the award of a contract).

2.4 DISCLOSURE OF CONTRACT INFORMATION

In accordance with NSW Government Policy to publicly disclose details of its contracts, TfNSW will publish the following information about the Contract:

- (a) Details of Contract (description of Project), commencement date of the Contract, the period of the Contract).
- (b) The full identity of the successful Tenderer including details of cross ownership of relevant companies.
- (c) The price payable by the agency and the basis for future changes in this price.
- (d) The significant assessment criteria used in tender assessment.
- (e) Provisions for re-negotiation (where applicable).

2.5 RETURN OF INFORMATION DOCUMENTS TO TfNSW

Any of the Information Documents may contain sensitive information which TfNSW may wish to protect by having those Information Documents returned to TfNSW.

Information Documents made available to a Tenderer and identified in Annexure RFT5, and all copies made of those documents, must be returned by the Tenderer to the Contact Officer within the time shown in Annexure RFT5 or other time as required by TfNSW.

2.6 PRINCIPAL'S STATEMENT OF BUSINESS ETHICS AND CUSTOMER CHARTER

Parties to the contract must comply with the Principal's Statement of Business Ethics. Copies of the statement are available from the TfNSW website:

<http://www.rms.nsw.gov.au/about/what-we-do/ethics/statement-business-ethics.html>

Your attention is drawn to the Principal's Customer Charter which is available from the TfNSW website <http://www.rms.nsw.gov.au/customercharter/index.html>

You should follow this charter in dealing with TfNSW customers under the contract.

2.7 SYSTEM REQUIREMENTS FOR CONTRACT AWARD

Prior to award of the contract, the Tenderer must be able to demonstrate that their management systems meet the following requirements:

(a) Work Health and Safety Management System

The Contractor's WHS system must comply with Edition 5 of the *NSW Government WHS Management Systems and Auditing Guidelines*.

(b) Environmental Management System

The contractor's Corporate Environmental Management System must comply with *ISO 14001:2015 Environmental Management System* or *AS/NZS 14001:2016*.

(c) Quality Management System

The Contractor's quality management system must meet the requirements of TfNSW Quality Management System Specification Q6.

3 PRE-TENDER

3.1 PRE-TENDER MEETING

A pre-tender meeting, including a site inspection, will be held on **[insert date]** at **[insert address]** commencing at **[insert time]**.

Attendance is mandatory – see section 4.1.

3.2 TEST CORES AND SITE INSPECTIONS

Tenderers may conduct additional test core and site investigations by arrangement with the Contact Officer.

The TfNSW test cores will be made available for viewing at **[insert address]** immediately after the pre-tender meeting referred to in section 3.1.

4 SUMMARY OF REQUIREMENTS FOR TENDER

4.1 ELIGIBILITY TO TENDER

To be eligible to tender, the Tenderer must:

- (a) be prequalified at the appropriate level (see section 5.1), and
- (b) attend the pre-tender meeting (if any) (see section 5.2);
- (c) attend the site inspection (if any) (see section 5.2);
- (d) comply with the obligations for Workplace Relations Management, Skills and Training in the Construction Industry, Aboriginal Participation in Construction, Industry and Building Code to the extent required (see sections 5.3, 5.4, 5.5 and 5.6).

To lodge a conforming tender, the Tenderer must comply with section 6 and do all the things set out in the relevant Conforming Tender Checklist attached to this document.

4.2 LODGING AN ALTERNATIVE TENDER

To lodge an alternative tender, the Tenderer must also lodge a conforming tender and must provide the details set out in section 7.

4.3 POST-TENDER SUPPORTING INFORMATION

To ensure that the tender remains conforming, the Tenderer must provide supporting information within 5 working days of a request (see section 8).

4.4 POST-TENDER FINANCIAL INFORMATION

To ensure that the tender remains conforming, the Tenderer must provide financial information within 5 working days of a request (see section 9).

5 ELIGIBILITY TO TENDER

5.1 PREQUALIFICATION

The Tenderer must be prequalified with TfNSW under the National Prequalification System for Civil (Road and Bridge) Construction Contracts, at the prequalification class (or higher) – [*state actual requirements*].

Unincorporated joint ventures are not required to be prequalified to be eligible to tender. However, Contractors tendering for a contract as part of an unincorporated joint venture must each be prequalified for roadworks and/or bridgeworks prior to close of tenders. The contractors in the joint venture must jointly meet the prequalification requirements specified in the request for tender. For example, a contract requiring tenderers to have prequalification at R3 and B2 would require at least one of the contractors in the joint venture to have prequalification to R3 level, and one to have prequalification to B2. All contractors in the unincorporated joint venture must satisfy the prequalification financial level required for the contract.

5.2 PRE-TENDER MEETING AND SITE INSPECTION

If a pre-tender meeting or site inspection is held, the Tenderer or its representative must attend.

5.3 WORKPLACE RELATIONS MANAGEMENT

Without limiting the Tenderer's obligations under section 5.6 (if any), to the extent required by the Contract the Tenderer must demonstrate its commitment and capacity to plan and manage workplace relations and implement effective workplace relations management plans in accordance with the NSW Guidelines.

5.4 SKILLS AND TRAINING DEVELOPMENT

To the extent required by the Contract the Tenderer must demonstrate its commitment and capacity to plan and manage training in accordance with the NSW Government Procurement Guideline *Skills and Training in the Construction Industry*.

5.5 ABORIGINAL PARTICIPATION IN CONSTRUCTION

To the extent required by the Contract the Tenderer must demonstrate its commitment and capacity to plan and facilitate Aboriginal participation in employment, training and development of Aboriginal enterprises in accordance with the *NSW Government Policy on Aboriginal Participation in Construction*.

5.6 BUILDING CODE

To the extent required by the contract it is a condition for participation that Tenderers comply with the Building Code.

It is also a condition for participation in this Tender that, at the time of lodgement of the tender, the Tenderer must not be precluded from tendering for Australian Government funded building and construction work.

6 LODGING A CONFORMING TENDER

6.1 TENDER FORM

All pages of the Tender Form must be initialled and both the Schedule to Tender Form and the Tender Price Summary Sheet properly completed and signed by or on behalf of the Tenderer as a binding legal offer to TfNSW. A scanned copy of the signed/initialled Tender Form is acceptable for the purpose of lodging an e-Tender.

6.2 GOODS AND SERVICES TAX

The tendered individual rates and prices must be exclusive of Goods and Services Tax (GST) but the total amount of GST, if it is payable, must be included as required in the Tender Form, Schedule of Rates and Schedule of Prices.

6.3 SCHEDULE OF RATES

The Schedule of Rates provided by TfNSW (if applicable) must be completed with all items listed being priced and with no new items added.

6.4 SCHEDULE OF PRICES

The Schedule of Prices (if applicable) must be prepared so as to meet the following requirements. The Schedule of Prices must:

- (a) include all items for which TfNSW has suggested a provisional quantity;
- (b) use the provisional quantities (if any) suggested by TfNSW;
- (c) only include items which form part of the Works described in the Tender Documents;
- (d) be fully priced; and
- (e) when all the prices and items are extended, equal the lump sum component of the Tender Price.

If the Schedule of Prices submitted by a Tenderer includes an item which is not acceptable to TfNSW or is not part of the Works described in the Tender Documents, TfNSW may insist on the item being deleted. If that occurs, the Schedule of Prices will be adjusted by agreement between TfNSW and the Tenderer to ensure that the total of the prices as extended of all remaining items continues to equal the lump sum component of the Tender Price.

6.5 TENDER PROGRAM

The Tender Program must be in the form of a bar-chart drawn to a weekly time scale and must:

- (a) detail the Tenderer's proposals to complete the Works by the Contractual Completion Date;
- (b) detail the Tenderer's proposals to complete Milestones by the Contractual Completion Date for those Milestones (if applicable);
- (c) show the date on which the Tenderer anticipates reaching Completion for the Works and for each Milestone;
- (d) show the order and duration allowed for significant activities;
- (e) show inter-relationships between activities which are critical to the program logic;
- (f) show the highlighted critical path for each Milestone and for the Works;
- (g) include comments by the Tenderer as necessary to clarify, for tender evaluation purposes, the logic on which the Tender Price relies.

6.6 STATUTORY DECLARATION

The statutory declaration must be:

- (a) in the form set out in Annexure RFT1;
- (b) made by the Tenderer or, if the Tenderer is a corporation, by an officer of the Tenderer who is in a position to know the facts attested to in the statutory declaration; and
- (c) signed by the declarant in the presence of a Justice of the Peace or a solicitor of the Supreme Court of New South Wales or another person authorised to administer an oath under the *Oaths Act 1900 (NSW)* or where the declaration is sworn outside the state of New South Wales, any person having authority to administer an oath in that place.

6.7 STATEMENT OF RECENT PROJECTS

The Statement of Recent Projects must list the 10 most recent projects undertaken by the Tenderer which are similar to the proposed Works.

6.8 FEDERAL GOVERNMENT REQUIREMENTS

6.8.1 BUILDING CODE

The provisions of this section 6.8.1 apply to the Works the subject of this RFT where Annexure RFT2 specifies that the Building Code applies (because the Commonwealth funding above the minimum thresholds specified in Schedule 1 of the Building Code has been received for the Project).

- (a) The Tenderer agrees that it must include in its tender:
 - (i) a signed "Declaration of Compliance" in the form of Annexure RFT6A ("**Declaration of Compliance**");
 - (ii) the further information outlined in Attachment A to the Declaration of Compliance; and
 - (iii) where required by Annexure RFT2(b), a Workplace Relations Management Plan (Commonwealth) for approval by the ABCC in accordance with Part 6 of the Building Code,

to demonstrate the Tenderer's compliance with the Building Code.

- (b) To be eligible to tender for the Works the subject of this RFT, Tenderers must, on and from the date on which the Tenderers submits their response to this RFT, at all times meet the following eligibility requirements:

- (i) neither the Tenderer nor any of the Tenderer's Related Entities may be subject to an Exclusion Sanction;
 - (ii) the Tenderer and each of the Tenderer's Related Entities must comply with the Building Code when performing:
 - a. the Works the subject of this RFT (if the Tenderer is the successful tenderer); and
 - b. all other Building Work (including privately funded projects) on and from the date on which the Tenderer submits their response to this RFT (even if the Tenderer is not the successful tenderer);
 - (iii) the Tenderer must be eligible to perform Commonwealth Funded Building Work;
 - (iv) subject to the exceptions set out in subsection 26(5) of the Building Code, the Tenderer must not have had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIP Act, a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or competition and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)) and failed to comply with the decision, direction or order;
 - (v) the Tenderer must, if it is the successful tenderer, undertake to only use products in relation to the Works the subject of this RFT that, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); and
 - (vi) the Tenderer must demonstrate a positive commitment to the provision of appropriate training and skill development for their workforce.
- (c) Where Annexure RFT2(b) specifies that a Workplace Relations Management Plan (Commonwealth) is required (because the Commonwealth funding above the minimum thresholds specified in Schedule 2 of the Building Code has been received for the Project), it is a precondition to TfNSW entering into a contract with the Tenderer to perform the Works the subject of this RFT, that the ABCC has approved the Tenderer's Workplace Relations Management Plan (Commonwealth).
- (d) It is a precondition to TfNSW entering into a contract with the Tenderer to perform the Works the subject of this RFT that:
- (i) the Tenderer confirms whether, within the three years preceding the date of this RFT, the Tenderer has:
 - a. had an adverse decision, direction or order made by a court or tribunal for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or the *Migration Act 1958* (Cth); or
 - b. been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments (including, but not limited to, the *Building and Construction Industry Security of Payment Act 1999* (NSW)), that are due to persons in respect of Building Work); or
 - c. owed any unsatisfied judgement debts (including by any Related Entity) to a Building Contractor or a Building Industry Participant; and
 - (ii) the Tenderer must at no time be excluded from performing Building Work funded by a state or territory government (unless approval to engage the Tenderer has been obtained from the ABC Commissioner).

- (e) The Tenderer is required to provide the following information to TfNSW, which may be used in determining whether to award the Works the subject of this RFT to the Tenderer:
- (i) the extent to which domestically sourced and manufactured building materials will be used to undertake the Building Work;
 - (ii) the Tenderer's assessment of the whole-of-life costs of the project to which the Building Work relates;
 - (iii) the impact on jobs of the project to which the Building Work relates; and
 - (iv) whether the project to which the Building Work relates will contribute to skills growth.

6.8.2 AUSTRALIAN GOVERNMENT WORK HEALTH AND SAFETY ACCREDITATION SCHEME

Where Annexure RFT2 specifies that the Australian Government Work Health and Safety Accreditation Scheme applies (because the Commonwealth funding above the minimum thresholds specified in regulation 26(1)(c) and/or 26(1)(d) of the *Fair Work (Building Industry - Accreditation Scheme) Regulations 2016* (Cth) has been received for the Project):

- (a) Tenderers must, as part of their response, submit a signed "Confirmation of Accreditation Status" in the form of Annexure RFT6B; and
- (b) the successful Tenderer:
 - (i) must be accredited under the Work Health and Safety Accreditation Scheme ("**the Scheme**") established by section 43 the BCIIIP Act while carrying out 'building work' (as that term is defined in the BCIIIP Act); and
 - (ii) comply with all conditions of accreditation under the Scheme.

Where the Tenderer satisfies one of the exemptions to the requirement to be accredited under the Scheme specified in regulation 26 of the *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016* (Cth), the Tenderer will not be required to be accredited for the purposes of this RFT.

Tenderers' attention is drawn to Section 26(1)(f) of the *Fair Work (Building Industry – Accreditation Scheme) Regulation 2016* (Cth), which outlines provisions applying to joint ventures that include accredited and unaccredited participants.

6.9 E-TENDERS

If the documents electronically submitted as part of an e-Tender do not include all of the required documents then the tender will be regarded as non-conforming.

The hard copy of each document submitted to the Principal must contain identical information as the same document that was lodged electronically. If there are any differences, the document lodged electronically will take precedence.

6.10 NOT USED

7 LODGING AN ALTERNATIVE TENDER

7.1 TENDERER MUST ALSO LODGE CONFORMING TENDER

The Tenderer may lodge an alternative tender as long as it also lodges a conforming tender.

A separate Tender Form, including Schedule to Tender Form and Tender Price Summary Sheet, must be submitted for each alternative tender with accompanying Schedule of Rates and Schedule of Prices, as appropriate.

Alternative tenders that are lodged electronically must be lodged as a separate e-Tender on the website referred to in the Conforming Tender Checklist (refer to Annexure RFT4).

7.2 DETAILS REQUIRED FOR ALTERNATIVE TENDER

If an alternative tender is submitted, the Tenderer must:

- (a) show how it differs from the Tender Request Documents;
- (b) show that the alternative tender satisfies the design and performance criteria on which the Tender Documents rely;
- (c) detail and quantify the advantages which the alternative tender offers to TfNSW;
- (d) identify the effects of the alternative tender on the Tender Price and the Tender Program;
- (e) propose milestones for the submission of further drawings and specifications.

7.3 CONSIDERATION OF ALTERNATIVE TENDER

TfNSW may consider the Tenderer's alternative tender even though the Tenderer's conforming tender is not the lowest in price.

7.4 CONDITIONS APPLICABLE TO ALTERNATIVE TENDERS

TfNSW may impose conditions on the acceptance of an alternative tender in addition to the conditions set out in the Tender Documents. This does not limit the right of TfNSW to accept any tender conditionally.

8 POST-TENDER SUPPORTING INFORMATION

8.1 SUPPORTING INFORMATION TO BE SUPPLIED ON REQUEST

The Tenderer must submit the following supporting information within 5 working days of a request by TfNSW:

- (a) Quality Management System details (QA contracts only) (see section 8.2);
- (b) organisation details (see section 8.3);
- (c) subcontracting proposal (see section 8.4);
- (d) WHS details (see section 8.5);
- (e) Environmental Management details (see section 8.6);

- (f) Workplace Relations Management details (see section 8.7);
- (g) Skills and Training Development details (see section 8.8);
- (h) Aboriginal Participation in Construction details (see section 8.9);
- (i) Chain of Responsibility details (see section 8.10);
- (j) Related Corporate Body particulars (see section 8.11);
- (k) other information (see section 8.12).

8.2 QUALITY MANAGEMENT SYSTEM DETAILS

Quality Management System submitted must include:

- (a) details of significant changes (if any) made to the Quality Management System documentation since it was last provided to TfNSW for the purposes of prequalification;
- (b) the Tenderer's most recent internal or external quality management system audit report.

If the Tenderer is unsuccessful, the documents provided under this clause will be returned to the Tenderer as soon as practicable.

8.3 ORGANISATION DETAILS

Organisation details submitted must include:

- (a) organisation chart clearly showing:
 - (i) proposed supervisory staff including all site staff from foreman/supervisor level and above;
 - (ii) chain of command from site to senior company management;
 - (iii) work functions and responsibilities of all site staff.
- (b) curricula vitae for all proposed site staff shown on the organisation chart.

The work functions shown in the organisation chart must relate to the work functions described in the Tender Program.

8.4 SUBCONTRACTING PROPOSAL

The subcontracting proposal submitted must set out the nature and extent of work proposed to be subcontracted, and include the names of proposed subcontractors for subcontracts with an estimated value greater than \$100,000.

The subcontracting proposal must set out the monitoring arrangements that the Contractor intends to use for effective management of all subcontractors. This must include the level of surveillance, who will conduct the surveillance and the WHS, environmental and quality management systems the subcontractors will work under.

8.5 WHS DETAILS

WHS details submitted must include:

- (a) Preliminary Site Specific WHS Management System;

- (b) initial project WHS risk assessment identifying project-specific risks, relevant company policies and procedures relevant to identified risks and where relevant how the design process will address health and safety risks during construction and maintenance;
- (c) evidence of WHS system implementation and operation, demonstrating the Tenderer's commitment at all levels e.g. audits, inspections, training and safety awareness of staff and employees.

8.6 ENVIRONMENTAL MANAGEMENT DETAILS

Environmental management details submitted must include:

- (a) Preliminary Site Environmental Management Plan addressing the environmental requirements of the Tender Documents;
- (b) evidence of environmental management implementation and operation, demonstrating the Tenderer's commitment at all levels e.g. identification of major environmental risks, audits, inspections, response to pollution incidents and environmental management issues, training and environmental awareness of staff and employees.

8.7 WORKPLACE RELATIONS MANAGEMENT DETAILS

Workplace relations management details submitted must include:

- (a) names of the Commonwealth (Federal) and NSW awards to which the Tenderer is bound;
- (b) copies of enterprise or workplace agreements to which the Tenderer is bound;
- (c) appropriate information to verify compliance with awards, enterprise or workplace agreements and other legal obligations relating to employment;

and where required in Annexure RFT2(b):

- (d) a Workplace Relations Management Plan (State) complying with the *NSW Government Implementation Guidelines to the NSW Code of Practice for Procurement*; and
- (e) a Workplace Relations Management Plan (Commonwealth) complying with the Building Code.

8.8 SKILLS AND TRAINING DEVELOPMENT DETAILS

The Tenderer's attention is drawn to the requirements of the NSW Government Procurement Guideline *Skills and Training in the Construction Industry*. The Guideline is attached to NSW Procurement Board Direction PBD 2016-02 - *Construction apprenticeships*, which is available for download from: <http://arp.nsw.gov.au/pbd-2016-02-construction-apprenticeships>

The Contractor will be required to meet the commitments made in the accepted tender.

Where required in Annexure RFT2, skills and training development details submitted must include all details as required by "**Schedule of Skills Development and Training**" included in Annexure RFT8.

The Contractor will be required to provide quarterly reports to the Principal (at the end of March, June, September and December), giving details of the apprentices and trainees engaged on work under the Contract and demonstrating that the Contractor is meeting (or will meet at Completion) the commitments made in the contract.

8.9 ABORIGINAL PARTICIPATION IN CONSTRUCTION

The Tenderer's attention is drawn to the requirements of the NSW Government *Policy on Aboriginal Participation in Construction*. The Policy is available at: <https://www.procurepoint.nsw.gov.au/policy-and-reform/nsw-procurement-reform/construction/policy-framework-construction>.

The Contractor will be required to comply with [*insert Category*] requirements of the Policy. The mandatory Minimum Aboriginal Participation Spend for the [*insert project Name*] project is 1.5% of the Contract award value (excl GST) less allowable exclusions, in line with the Policy goals.

TfNSW will determine the value of the Minimum Aboriginal Participation Spend before the Contract is awarded and this value will be included in the awarded Contract. The Minimum Aboriginal Participation Spend will remain fixed for the Contract period.

Where Annexure RFT2 states that an Aboriginal Participation Plan is required, the Aboriginal Participation in Construction details submitted by the Tenderer must include:

- (a) an Aboriginal Participation Plan in the format prescribed by the NSW Procurement Board (the template is available at <https://procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy>);
- (b) evidence of its ability to meet the obligations under the Policy on the Contract;
- (c) details of its Aboriginal participation in construction performance outcomes on other TfNSW or NSW Government contracts;
- (d) an undertaking that, in the event that it becomes the Contractor, it will:
 - (i) provide Aboriginal Participation Reports at the times specified in the Contract and in the format prescribed by the NSW Procurement Board;
 - (ii) fully allocate the Minimum Aboriginal Participation Spend to eligible spend types from the date of contract award up to the date of completion, and that if unable to achieve this, will distribute the remaining amount to the Policy's list of approved bodies; and
 - (iii) engage with local Aboriginal communities, Aboriginal organisations or Aboriginal industry bodies to support achievement of Aboriginal participation requirements,

and where required in Annexure RFT2:

- (e) proposed exclusions for determining the Minimum Aboriginal Participation Spend value.

8.10 HEAVY VEHICLE NATIONAL LAW – CHAIN OF RESPONSIBILITY

The Tenderer's attention is drawn to the chain of responsibility provisions of the *Heavy Vehicle National Law 2015 (NSW)*. Under the *Heavy Vehicle National Law*, the successful Tenderer may be a party to the chain of responsibility.

The chain of responsibility provisions are directed at ensuring that road transport operations involving heavy vehicles are conducted safely for all road users, and without causing damage to assets or infrastructure or having significant adverse effects on the environment or community amenity.

Where required in Annexure RFT2, the chain of responsibility (CoR) details submitted must include a Preliminary CoR Management Plan addressing:

- (a) CoR issues of the Tender Documents;
- (b) initial project CoR risk assessment identifying project specific risks, relevant company policies and procedures relevant to identified risks and, where relevant, how the design process and project delivery approach will address chain of responsibility risks during construction.

8.11 CONTRACT DISCLOSURE AND RELATED BODY CORPORATE

The Principal will disclose the contract information required by *Government Information (Public Access) Act 2009 (NSW)* (“GIPA Act”).

To allow the Principal to comply, the contractor must submit particulars of any related body corporate within the meaning of the *Corporations Act 2001 (Cth)* in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the Contractor’s obligations under the contract or will receive a benefit under the Contract.

8.12 OTHER INFORMATION

The Tenderer must submit other information as listed in Annexure RFT2.

9 FINANCIAL ASSESSMENT

By tendering for this Contract, the Tenderer agrees that TfNSW may engage a financial assessor to obtain financial information and undertake a financial assessment of the Tenderer.

In addition, TfNSW may require financial assessments to be undertaken of the Contractor during the course of the contract.

The Tenderer must submit the information specified in sections 9.1 to 9.14 within 5 working days of a request by TfNSW.

TfNSW will treat all financial information in the strictest confidence. A copy of all information provided will be retained by TfNSW for record purposes.

9.1 FINANCIAL INFORMATION

Financial information provided must include:

- (a) Financial statements for the past three financial years, which should preferably be prepared in accordance with Australian Accounting Standards, and should contain a Balance Sheet, Profit and Loss Statement, Statement of Cash Flows, Notes to the Accounts, Compilation Report (if externally prepared), Director’s / Trustee Report (if prepared), and Auditor’s Report (if required to be audited).
- (b) Most recent half-yearly or management accounts (preferably no more than 3 months old).
- (c) Forecast Balance Sheet and Profit & Loss to the end of the current financial year.
- (d) Forecast Cash Flow Statements to the end of the current financial year.

9.2 CONTRACTING ENTITY

The Tenderer must ensure that the financial information provided relates to the contracting entity itself.

9.3 BUSINESS DETAILS

Provide a brief description of business and company history.

9.4 OWNERSHIP AND STRUCTURE

Provide the following:

- (a) Details of directors and executive managers including their background and experience and contingency plans for risk management.
- (b) Organisational chart showing internal management structure and key positions.

9.5 WIDER CORPORATE TREE

Provide the following:

- (a) Diagram of corporate relationships and list of related parties.
- (b) List of all related party loans.

9.6 KEY CUSTOMERS

For 20 largest clients, prepare information including client name, number of jobs completed in last 12 months and percentage of total revenue in last 12 months.

9.7 WORKING CAPITAL MANAGEMENT

Provide the following:

- (a) Ageing analysis of all trade debtors and trade creditors i.e. 1-30 days, 31-60 days, 61-90 days, over 90 days.
- (b) Individual ageing debtor analysis of top 50 trade debtors by total amount owed.
- (c) Individual ageing creditor analysis of top 50 trade creditors by total amount owing.

9.8 SUPPLIER CONCENTRATION

Provide a list of critical suppliers and value of spend in past 12 months.

9.9 PROJECTS

Provide the following:

- (a) List of current tender's submitted and potential value.
- (b) List of all contract works and services currently being undertaken by the Tenderer for a client including details of TfNSW or client for each contract, the contract value, the percentage completed and payments received to date.
- (c) Summary of forecast revenue in the current financial year end based on work remaining from secured work.

9.10 CLAIMS

Provide a summary of any significant claims against the applicant or by the applicant that could affect financial capacity.

9.11 REGULATORY ENVIRONMENT

Provide a list of major regulatory requirements governing the operation of the business.

9.12 FINANCING FACILITIES

Provide the following:

- (a) List of all banking facilities such as overdraft, loan facilities and bank guarantee facilities including facility limit, amount drawn and amount remaining. Details of any refinancing required and covenants that exist between the company and financial.
- (b) Recent letter from a bank or financier confirming the banking facility details is required.

9.13 TRADE SURVEY INFORMATION

Nominate at least 10 suppliers and 10 subcontractors with fax and email contact details for assessors to conduct trade surveys.

9.14 ADDITIONAL INFORMATION ON REQUEST

When requested, Tenderers must submit a detailed monthly cashflow forecast for the 12 months from the last financial year end to the current financial year end together with information regarding assumptions relating to the forecasts, or other relevant information requested by the financial assessor.

10 TENDER PRICING CONSIDERATIONS**10.1 COMMERCIAL PRODUCTS NOMINATED BY TFNSW**

If a commercial product is referred to by catalogue number or brand name in the Tender Documents, the Tenderer must base its Tender on the named product even if the Tender Documents allow the successful Tenderer to nominate an equivalent or approved equivalent product.

If the Tenderer wishes to nominate alternative products at the time of tender, the nomination must be done as part of an alternative tender.

10.2 CUSTOMS DUTY

If applicable, the Tenderer must submit with the Tender Form a statement setting out the amount of customs duty included in the tender price in respect of material which will form part of the Works.

Customs duty is payable on all material, plant and equipment imported into Australia unless exemption from payment of the duty is granted by the Commonwealth Government.

11 ASSESSMENT OF TENDERS

11.1 LATE TENDERS

TfNSW will not consider a late tender unless the Tenderer establishes to TfNSW's satisfaction that the integrity and competitiveness of the tendering process has not been compromised.

e-Tenders lodged after the closing date and time for e-Tender lodgement will be considered to be late, regardless of the actual time of electronic submission or posting.

11.2 BEST VALUE FOR MONEY ASSESSMENT

Tenders will be assessed on the basis of best value for money. This includes consideration of the following criteria:

- (a) the tender price and the integrity of its structure (after application of applicable Government Purchasing Policies);
- (b) individual rates and prices and the integrity of their structure;
- (c) the details and logic of the Tender Program;
- (d) previous contractor performance, current financial position and commitments on other contracts;
- (e) the Tenderer's Quality System documentation and experience and performance in the carrying out of Quality Assurance contracts (QA contracts only);
- (f) the Tenderer's WHS performance, experience and suitability of proposed WHS Site Scheme;
- (g) the Tenderer's Chain of Responsibility (CoR) management performance, experience and suitability of proposed CoR management plan;
- (h) the Tenderer's environmental management performance, experience and suitability of proposed environmental management plan;
- (i) suitability of proposed personnel, plant, equipment and subcontractors;
- (j) proposals (where requested in the Tender Request Documents) and previous performance, concerning safety, workplace relations, environmental protection and community relations;
- (k) demonstrated capacity to meet the obligations of the NSW Government Procurement Guideline *Skills and Training in the Construction Industry*, including evidence of previous performance;
- (l) demonstrated capacity to meet the obligations of the NSW Government *Policy on Aboriginal Participation in Construction*, including evidence of previous performance;
- (m) claims history;
- (n) record of compliance or otherwise with NSW Government Code of Practice for Procurement;
- (o) records of performance, claims and compliance with Codes provided by other NSW Government agencies or departments;
- (p) demonstrated capacity to work effectively with the NSW Government (where required in Annexure RFT9);
- (q) the Tenderer's Aboriginal Participation in Construction details and performance (where required in Annexure RFT2);
- (r) other criteria listed in Annexure RFT3.

12 GENERAL

12.1 TENDER VALIDITY PERIOD

Tenders are valid for 60 days after the closing date for tenders.

12.2 ACCEPTANCE OF TENDER

TfNSW is not bound to accept the lowest or any tender.

A tender is accepted only when notice in writing of acceptance is issued to the successful Tenderer by the TfNSW's authorised delegate.

12.3 INFORMATION PROVIDED FOR CONVENIENCE ONLY

Information provided by TfNSW which does not form part of the Tender Documents is provided only for the convenience of Tenderers. That information will not form part of a contract awarded as a result of this tender process.

12.4 INFORMATION NOT EXHAUSTIVE

Information provided by TfNSW which does not form part of the Tender Documents and which describes the site or conditions which may be encountered during the course of work under the Contract is not to be taken as an exhaustive statement of conditions which may be encountered during the course of the work under the Contract.

12.5 ESTIMATED QUANTITIES

The quantities shown in the Schedule of Estimated Quantities issued by TfNSW are estimated quantities only and are not guaranteed to be the actual or correct quantities of work to be carried out.

12.6 SUBCONTRACTORS NOT APPROVED

Acceptance of a tender by TfNSW does not constitute an approval of a proposed subcontractor or subcontracted work or a waiver of objection under clause 32 of the General Conditions of Contract.

12.7 NO IMPLIED TERMS

All of the warranties and conditions applicable to the tender process are set out in this RFT. No other warranties or conditions are to be implied.

12.8 COSTS OF TENDERING

No payment will be made by TfNSW to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing its tender or in respect of any discussions, negotiations, enquiries or site inspections or any work undertaken by the Tenderer. This clause applies whether or not TfNSW accepts a tender or rejects all tenders.

12.9 TRANSPORT FOR NSW'S DISCRETIONS AND RIGHTS

TfNSW may conduct the process for the evaluation of tenders, the selection of a Recommended Tenderer or engagement of the Contractor or any other matter or process contemplated in this Request for Tenders in such manner as it thinks fit and, without limitation, may at its absolute discretion (without any obligation to do so):

- (a) cancel or abandon the Request for Tender process at any time;
- (b) provide to all Tenderers any further information provided to a particular Tenderer, including in response to queries regarding this Request for Tenders (in which case, TfNSW may provide to all Tenderers that have obtained the Information Documents from TfNSW any further information provided to a particular Tenderer);
- (c) provide to any further information to a Tenderer;
- (d) consider or refuse to consider any tender which:
 - (i) is lodged by any means other than in accordance with this Request for Tenders;
 - (ii) is lodged after the Closing Date and Time; or
 - (iii) has been lodged by a Tenderer who has not complied with this Request for Tenders;
- (e) decide at any time to:
 - (i) use information held by TfNSW about any Tenderer, not provided by the Tenderer, for the purposes of evaluation;
 - (ii) not proceed with all or any part of the Project for any reason;
 - (iii) vary funding for the Project;
 - (iv) have any other person or persons (whether or not a Tenderer who has submitted a tender) carry out all or any part of the Project;
 - (v) extend or change the Closing Date and Time for the lodgement of tenders or otherwise vary the timing of any part of the procurement process; or
 - (vi) reject any tender lodged by any Tenderer who has breached the NSW Code or NSW Guidelines, or the Building Code, or engaged in any collusive tendering, anti-competitive conduct or any similar conduct with any other tenderer or any other person in relation to the preparation or lodgement of their tender;
- (f) at any time, re-invite tenders for the Project from all or any of the Tenderers who have submitted a tender, or from any other person (whether or not they submitted a tender);
- (g) at any time, pre-qualify, short-list or enter into negotiations with any one or more persons;
- (h) at any time, accept a substitution of, withdrawal of, or addition to any of the parties comprising a tenderer (including successful tenderer);
- (i) at any time, vary the tender process (including the evaluation process) or its requirements (including the contractual structure proposed for the carrying out of the Project), by notice in writing to the Tenderers;
- (j) without limiting any requirements of this Request for Tenders, at any time:
 - (i) request any Tenderer to submit additional information or clarifications (and the Tenderer in question must promptly respond, in writing, to any such requests);
 - (ii) request any Tenderer to attend one or more meetings to discuss the Contract, the Tenderer's tender, the Project or to discuss issues associated with the selection process or any other aspect of the tender process (and the Tenderer in question must attend any such meetings as requested); and/or

- (iii) otherwise communicate with any Tenderer to discuss the Tenderer's tender or to discuss issues associated with the selection process or any other aspect of the tender process or the Project (and the Tenderer in question must participate in any such communications as requested).

Where Tenderers do not comply with the requirements of the three preceding paragraphs within the timeframe nominated by TfNSW, TfNSW may continue the evaluation processes on the basis of the available information and:

- (a) decide whether or not to continue consideration of Tenderers' tenders or enter into the Contract or any other contract with any Tenderer or other person in connection with the Project; or
- (b) in addition to any right under this clause 12.9, discontinue the Request for Tenders process at any time.

12.10 PARENT COMPANY GUARANTEE

Tenderers' attention is drawn to the provisions of GC21 Conditions of Contract which allow TfNSW to, acting reasonably and at any time before awarding the Contract or before the Contract's Completion, notify the Tenderer or the Contractor, as the case may be, that one or more PCG(s) in the form of Schedule 15 to GC21 Conditions of Contract is required. Where such notice is issued by TfNSW, the Tenderer or the Contractor is required, within the time specified in the notice, to give the PCG(s) to TfNSW, duly executed by the relevant Parent Company Guarantor.

12.11 UNDERTAKINGS

Tenderers' attention is drawn to the provisions of GC21 Conditions of Contract which requires the Contractor to provide unconditional Undertakings to the Principal. The Undertakings are required to be in the form of Schedule 2 to GC21 Conditions of Contract and from a financial institution acceptable to the Principal. When considering the acceptability of the financial institution, that issued the Undertakings, the Principal's preference is for financial institutions that are:

- (a) regulated by the Australian Prudential Regulatory Authority (APRA); and
- (b) incorporated in Australia.

If the financial institution does not meet the above criteria then the Principal may request further information or assurances, at the successful Contractor's cost, which may include one or more of the following:

- (c) for an overseas financial institutions where the Undertakings are signed by power of attorney:
 - (i) a copy of the power of attorney for the signatory to the unconditional Undertakings; and
 - (ii) on terms satisfactory to TfNSW, an opinion from a law firm, qualified to advise on the relevant law and addressed to TfNSW confirming that the power of attorney from the parent company is valid, the Undertakings have been validly executed and that the Undertakings are enforceable by TfNSW in New South Wales.

ANNEXURE RFT1 – STATUTORY DECLARATION

I *[insert name]* of
 *[insert address]* do
 solemnly and sincerely declare and affirm, in respect of the tender for
 (“Tender”) or any
 contract arising from the Tender, that:

1. I hold the position of and am duly authorised by
 (“Tenderer”) to make this declaration on its behalf.
2. * To the best of my knowledge, neither the Tenderer nor any of its employees or agents have entered into a contract, arrangement or understanding to pay moneys to a trade association, apart from the normal amount (annual subscription, turnover or contract fee) imposed by that trade association.

* The Tenderer has agreed to pay a special fee to a trade association of \$..... if it is successful in the Tender.

[* *Delete whichever is not applicable*]

3. To the best of my knowledge, neither the Tenderer nor any of its employees or agents had knowledge of the price of another Tenderer prior to submitting the Tender.
4. To the best of my knowledge, neither the Tenderer nor any of its employees or agents has disclosed the Tenderer’s tender price to a rival Tenderer.
5. The Tenderer submitted the Tender in good faith and has not deliberately set its tender price above the level of rival Tenderers.
6. As at the date of this declaration, the Tenderer intends to do the work the subject of the Tender.
7. To the best of my knowledge, neither the Tenderer nor any of its employees or agents has entered into a contract, arrangement or understanding having the result that the Tenderer or another person will pay money to an unsuccessful Tenderer if the Tenderer is successful in the Tender (other than for work or services done or materials supplied under a bona fide contract).
8. The Tenderer has allowed in its Tender for all workers who may be at any time employed on the work under the Contract to be paid no less than the wages, allowances and other money payable to them pursuant to all relevant legislation, awards, determinations, judgments and agreements in respect of their employment on the work under the Contract.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1900*.

Subscribed and declared at *[insert city or town]* on *[insert date]*
 before me:

 Justice of the Peace/Solicitor

 Declarant

signed by the declarant in the presence of a Justice of the Peace or a solicitor of the Supreme Court of New South Wales or another person authorised to administer an oath under the *Oaths Act 1900 (NSW)* or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place

Authorised Witness' Certificate
Section 34 (1) (c) of Oaths Act 1900

I _____ **[insert name of authorised witness]** being a Justice of the Peace* / Solicitor* / Notary Public* / Commissioner of Oaths*, certify the following matters concerning the making of this statutory declaration by the person who made it:

- 1 (a) * I saw the face of the person
or
(b) * I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.
- 2 (a) * I have known the person for at least 12 months
or
(b) * I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was _____ **[describe document]**
[* delete whichever is not applicable]

Signature: _____

DATE: _____

NOTE the following identification is acceptable

- a current driver photo licence
- a current NSW Photo Card or similar photo identification issued by another Australian jurisdiction
- a passport (in English or with an English translation) that has not expired more than 2 years ago
- a current national identity photo card in English or with an English translation
- a current Medicare card, pensioner concession card, Department of Veterans' Affairs entitlement card
- a current credit card
- a statement of account from a bank, building society or credit union that is not more than 1 year old
- an electoral enrolment card or other evidence of enrolment as an elector that is not more than 2 years old
- a student identity card, or a certificate or statement of enrolment, from an educational institution that is not more than 2 years old.

ANNEXURE RFT2 – OTHER INFORMATION TO BE SUBMITTED

- (a) The Tenderer must submit the following with the tender
- | | |
|--|---|
| Section 2.1 NSW Government Code of Procurement and NSW Guidelines | Applies |
| A signed schedule of compliance in the form of Annexure RFT7 | Required |
| Section 6.8.1 Building Code | Applies / Doesn't apply |
| Written confirmation as to whether on or after 2 December 2016, the Tenderer or a Related Entity of the Tenderer submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by TfNSW or whether or not the Tenderer or the Tenderer's Related Entity were successful) | Required [<i>even if "Doesn't apply" is selected for Building Code</i>] |
| A signed Building Code declaration of compliance in the form of Annexure RFT6A (including all information outlined in Attachment A to the declaration of compliance) | * Required / Not required |
| Section 6.8.2 Australian Government Work Health and Safety Accreditation Scheme | * Applies / Doesn't apply |
| A signed Australian Government Work Health and Safety Accreditation Scheme confirmation of accreditation status in the form of Annexure RFT6B | * Required / Not required |
- (b) The Tenderer must also submit the following additional supporting information within 5 working days of a request by TfNSW:
- | | |
|---|---------------------------|
| Section 8.7 Workplace Relations Management Plan (WRMP) | |
| WRMP (State) complying with the requirements of clause 6.1 of the <i>Implementation Guidelines to the NSW Code of Practice for procurement</i> | * Required / Not required |
| WRMP (Commonwealth) which complies with the requirements of the Building Code | * Required / Not required |
| Section 8.8 Skills and Training Development | |
| A completed schedule of the Tenderer's commitment for training and apprenticeship targets in Annexure RFT8 | * Required / Not required |
| Section 8.9 Aboriginal Participation in Construction | |
| Tenderer's proposed exclusions for determining the Minimum Aboriginal Participation Spend (as defined in clause 8.9 of this RFT). | * Required / Not required |
| Tenderer's proposed Aboriginal Participation Plan. | * Required / Not required |

Section 8.10 Heavy Vehicle National Law – Chain of Responsibility

A CoR Management Plan to ensure compliance with chain of responsibility duties.

* Required / Not required

Section 8.11 Related Corporate Body particulars

Required

Section 8.12 Other Information

[e.g. preliminary Earthworks Plan and staging strategy – refer Specification TfNSW R44 Clause 1.5]

* Required / Not required

[* Delete whichever is not applicable]

ANNEXURE RFT3 – OTHER ASSESSMENT CRITERIA

The following additional criteria must also be considered in the assessment of Tenders:

ANNEXURE RFT4 – CONFORMING TENDER CHECKLIST

CONFORMING TENDER CHECKLIST COMBINED LUMP SUM / SCHEDULE OF RATES TENDER

Tenders must be lodged e-Tender.

Part A e-Tender Lodgement

The tender is fully lodged electronically except that the originals of all signed documents identified below are also submitted in hard copy. The Tenderer must do all of the following things to make sure its tender is conforming when lodged as an e-Tender:

- not include conditions, assumptions or qualifications in respect of anything contained in the Tender Request Documents
- always include GST as a total item (see section 6.2)
- complete and submit electronically on the following website: <https://tenders.nsw.gov.au/rms/>, by the Closing Date and Time for e-Tender lodgement, all documents listed below under 1 to 15, as relevant (a scanned copy of the originally signed documents is to be submitted electronically)
- make sure that e-Tender documents are in MS Office 2010, PDF, MS Project 2010 or Primavera P6 format, as relevant. File names must include the Tenderer's name (or abbreviated name, if the Tenderer's full name is too long);
- submit a hard copy of the originally signed/initialled documents listed below under 1, 2, 3, 5, 8, 10 and 11, to the Contact Officer no later than the close of **[insert number of days: either 2 or 3]** business days after the closing date for e-Tender lodgement
- prepare, complete, sign/initial (as required) the following documents, in accordance with this Request for Tender:
 - 1) Tender Form, including each of the Schedule to Tender Form and the Tender Price Summary Sheet. Sign the hard copies of the Schedule to Tender Form and the Tender Price Summary Sheet in the place provided (or make sure they are signed by a person with authority to sign on the Tenderer's behalf). Initial all pages of the hard copy of the Tender Form (see section 6.1)
 - 2) **Schedule of Rates provided by TfNSW (see section 6.3). Initial all pages of the hard copies of the completed Schedule of Rates.**
 - 3) Schedule of Prices (see section 6.4). Initial all pages of the hard copies of the Schedule of Prices
 - 4) Tender Program (see section 6.5)
 - 5) Statutory Declaration (see section 6.6 and Annexure RFT1)
 - 6) Statement of recent projects (see section 6.7)
 - 7) Statement as to whether on or after 2 December 2016, the Tenderer or a Related Entity of the Tenderer submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by TfNSW or whether or not the Tenderer or the Tenderer's Related Entity were successful) (see Annexure RFT2(a))
 - 8) Where required by Annexure RFT2, Declaration of Compliance with the Building Code (see Section 6.8.1 and Annexure RFT6A)
 - 9) Where Declaration of Compliance with the Building Code is required, details required by the Attachment A to the "Declaration of Compliance" (see Annexure RFT6A)

- 10) Where required by Annexure RFT2, a Confirmation of Accreditation Status under the Scheme (see section 6.8.2 and Annexure RFT6B)
- 11) Schedule of Compliance with *NSW Government Implementation Guidelines to the NSW Code of Practice for Procurement* (see section 2.1 and Annexure RFT7)
- 12) Customs Duty statement, if applicable (see section 10.2)
- 13) Where required by Annexure RFT9, all details set out in Appendix 1 to Annexure RFT9

CONFORMING TENDER CHECKLIST LUMP SUM TENDER

Tenders must be lodged by e-Tender

Part A e-Tender Lodgement

The tender is fully lodged electronically except that the originals of all signed documents identified below are also submitted in hard copy. The Tenderer must do all of the following things to make sure its tender is conforming when lodged as an e-Tender:

- not include conditions, assumptions or qualifications in respect of anything contained in the Tender Request Documents
- always include GST as a total item (see section 6.2)
- complete and submit electronically on the following website: <https://tenders.nsw.gov.au/rms/>, by the Closing Date and Time for e-Tender lodgement, all documents listed below under 1 to 14, as relevant (a scanned copy of the originally signed documents is to be submitted electronically)
- make sure that e-Tender documents are in MS Office 2010, PDF, MS Project 2010 or Primavera P6 format, as relevant. File names must include the Tenderer's name (or abbreviated name, if the Tenderer's full name is too long);
- submit a hard copy of the originally signed/initialled documents listed below under 1, 2, 4, 7, 9 and 10, to the Contact Officer no later than the close of [*insert number of days: either 2 or 3*] business days after the closing date for e-Tender lodgement
- prepare, complete, sign/initial (as required) the following documents, in accordance with this Request for Tender:
 - 1) Tender Form. Sign the hard copy of the Schedule to Tender Form in the place provided (or make sure it is signed by a person with authority to sign on the Tenderer's behalf). Initial all pages of the hard copy of the Tender Form (see section 6.1)
 - 2) Schedule of Prices (see section 6.4). Initial all pages of the hard copies of the Schedule of Prices
 - 3) Tender Program (see section 6.5)
 - 4) Statutory Declaration (see section 6.6 and Annexure RFT1)
 - 5) Statement of recent projects (see section 6.7)
 - 6) Statement as to whether on or after 2 December 2016, the Tenderer or a Related Entity of the Tenderer submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by TfNSW or whether or not the Tenderer or the Tenderer's Related Entity were successful) (see Annexure RFT2(a))
 - 7) Where required by Annexure RFT2, Declaration of Compliance with the Building Code (see Section 6.8.1 and Annexure RFT6A)
 - 8) Where Declaration of Compliance with the Building Code is required, details required by the Attachment A to the "Declaration of Compliance" (see Annexure RFT6A)
 - 9) Where required by Annexure RFT2, a Confirmation of Accreditation Status under the Scheme (see section 6.8.2 and Annexure RFT6B)
 - 10) Schedule of Compliance with *NSW Government Implementation Guidelines to the NSW Code of Practice for Procurement* (see section 2.1 and Annexure RFT7)
 - 11) Customs Duty statement, if applicable (see section 10.2)

12) Where required by Annexure RFT9, all details set out in Appendix 1 to Annexure RFT9

CONFORMING TENDER CHECKLIST SCHEDULE OF RATES TENDER

Tenders must be lodged by e-Tender.

Part A e-Tender Lodgement

The tender is fully lodged electronically except that the originals of all signed documents identified below are also submitted in hard copy. The Tenderer must do all of the following things to make sure its tender is conforming when lodged as an e-Tender:

- not include conditions, assumptions or qualifications in respect of anything contained in the Tender Request Documents
- always include GST as a total item (see section 6.2)
- complete and submit electronically on the following website: <https://tenders.nsw.gov.au/rms/>, by the Closing Date and Time for e-Tender lodgement, all documents listed below under 1 to 14, as relevant (a scanned copy of the originally signed documents is to be submitted electronically)
- make sure that e-Tender documents are in MS Office 2010, PDF, MS Project 2010 or Primavera P6 format, as relevant. File names must include the Tenderer's name (or abbreviated name, if the Tenderer's full name is too long);
- submit a hard copy of the originally signed/initialled documents listed below under 1, 2, 4, 7, 9 and 10, to the Contact Officer no later than the close of [*insert number of days: either 2 or 3*] business days after the closing date for e-Tender lodgement
- prepare, complete, sign/initial (as required) the following documents, in accordance with this Request for Tender:
 - 1) Tender Form. Sign the hard copy of the Schedule to Tender Form in the place provided (or make sure it signed by a person with authority to sign on the Tenderer's behalf). Initial all pages of the hard copy of the Tender Form (see section 6.1)
 - 2) Schedule of Rates provided by TfNSW (see section 6.3). Initial all pages of the hard copies of the completed Schedule of Rates.
 - 3) Tender Program (see section 6.5)
 - 4) Statutory Declaration (see section 6.6 and Annexure RFT1)
 - 5) Statement of recent projects (see section 6.7)
 - 6) Statement as to whether on or after 2 December 2016, the Tenderer or a Related Entity of the Tenderer submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by TfNSW or whether or not the Tenderer or the Tenderer's Related Entity were successful) (see Annexure RFT2(a))
 - 7) Where required by Annexure RFT2, Declaration of Compliance with the Building Code (see Section 6.8.1 and Annexure RFT6A)
 - 8) Where Declaration of Compliance with the Building Code is required, details required by the Attachment A to the "Declaration of Compliance" (see Annexure RFT6A)
 - 9) Where required by Annexure RFT2, a Confirmation of Accreditation Status under the Scheme (see section 6.8.2 and Annexure RFT6B)
 - 10) Schedule of Compliance with *NSW Government Implementation Guidelines to the NSW Code of Practice for Procurement* (see section 2.1 and Annexure RFT7)

- 11) Customs Duty statement, if applicable (see section 10.2)
- 12) Where required by Annexure RFT9, all details set out in Appendix 1 to Annexure RFT9

ANNEXURE RFT5 – SENSITIVE INFORMATION DOCUMENTS

The following Information Documents are sensitive documents and must be returned to TfNSW.

The time for returning the documents is [*insert number of days; default is 60 days*] days after the lodgement date for tender.

ANNEXURE RFT6A – DECLARATION OF COMPLIANCE WITH THE BUILDING CODE

[If required as per Annexure RFT2]

This Declaration of Compliance must be completed by the Tenderer and lodged with its Tender. Any Tender in which this Declaration is not completed may be regarded as non-conforming.

Where the Tenderer is an unincorporated Joint Venture, each Participant in the Tenderer that is or will be a “building contractor” or a “building industry participant” (as defined in section 5 of the BCIIIP Act) must complete, sign and lodge the Declaration of Compliance.

DECLARATION OF COMPLIANCE WITH THE CODE FOR THE TENDERING AND PERFORMANCE OF BUILDING WORK 2016

Name of Project: _____

Name of Tenderer/Participant, ABN and ACN: _____

1. In this Declaration of Compliance:

ABCC	means the body referred to in section 29 of the BCIIIP Act.
ABC Commissioner	means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act.
BCIIIP Act	means the <i>Building and Construction Industry (Improving Productivity) Act 2016</i> (Cth).
Building Code	means the Building Code issued under subsection 34(1) of the BCIIIP Act, being the document titled ' <i>Code for the Tendering and Performance of Building Work 2016</i> ', which is available at www.legislation.gov.au .
Building Contractor	has the same meaning as in the BCIIIP Act.
Building Industry Participant	has the same meaning as in the BCIIIP Act.
Building Work	has the same meaning as in subsection 3(4) of the Building Code.
Commonwealth Funded Building Work	means Building Work in items 1-8 of Schedule 1 of the Building Code.
Designated Building Law	has the same meaning as in the BCIIIP Act.
Exclusion Sanction	has the same meaning as in subsection 3(3) of the Building Code.

Related Entity	has the same meaning as in subsection 3(2) of the Building Code.
Workplace Relations Management Plan (Commonwealth)	has the meaning given to 'WRMP' in subsection 3(1) of the Building Code.
Works	means the Commonwealth Funded Building Work that is the subject of this RFT.

2. The Tenderer confirms that it has complied with the Building Code in preparing its tender.
3. Should it be the successful Tenderer, the Tenderer acknowledges that it and its Related Entities must comply with the Building Code in relation to all Building Work described in Schedule 1 of the Building Code on or after the date that the Building Code commenced, being 2 December 2016, and, should it be the successful Tenderer, in relation to the Works.
4. The Tenderer undertakes to ensure that it and its subcontractors that it subcontracts any of the Works to, should it be the successful Tenderer, comply with the Building Code.
5. The Tenderer acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIP Act and the Building Code and undertakes to ensure that it and its subcontractors will comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIP Act, requests to interview any person under section 74 of the BCIP Act, requests to produce records or documents under sections 74 and 77 of the of the BCIP Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
6. The Tenderer declares that where it proposes to subcontract any of the Works, should it be the successful Tenderer, it will:
 - a. require each subcontractor to whom it proposes to subcontract any of the Works to confirm, prior to entering into the subcontract and every six months during the term of the relevant subcontract, that it has not, within the preceding three year period:
 - i. had an adverse decision, direction or order made by a court or tribunal for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or the *Migration Act 1958* (Cth); or
 - ii. been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments (including, but not limited to the *Building and Construction Industry Security of Payment Act 1999* (NSW)) that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any Related Entity) to a Building Contractor or Building Industry Participant;
 - b. not enter into a subcontract with a subcontractor who:
 - i. is subject to an Exclusion Sanction or is excluded from performing Building Work funded by a state or territory government (unless prior approval to engage that subcontractor is obtained from the ABC Commissioner); and
 - ii. in the three years prior to the date on which the Tenderer submits their response to this RFT, has had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIP Act, a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or competition

and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)) and failed to comply with the decision, direction or order;

- c. only enter into a subcontract:
 - i. pursuant to which the subcontractor undertakes to:
 - A. comply with the Building Code in performing the Works;
 - B. comply with the version of the Tenderer's Workplace Relations Management Plan (Commonwealth) approved by the ABCC for the performance of the Works; and
 - C. only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690);
 - ii. where the subcontractor has submitted a declaration of compliance, including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code issued by the ABCC from time to time; and
 - iii. where the subcontract with the subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code issued by the ABCC from time to time.
7. The Tenderer declares that it has provided all of the further information required by Attachment A to this Declaration of Compliance.
8. The Tenderer declares that:
- a. it is not subject to an Exclusion Sanction;
 - b. it has not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIIIP Act, a Designated Building Law, work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW)) or competition and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)) and failed to comply with the decision, direction or order;
 - c. it will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690), should it be the successful Tenderer; and
 - d. within 5 working days of a request by TfNSW, it will provide as part of its tender a Workplace Relations Management Plan (Commonwealth) for approval by the ABCC in accordance with Part 6 of the Building Code.

Signed for the Tenderer/Participant by:

Name (in block letters): (Authorised Officer)

In the Office Bearer capacity of:

Date:

**ATTACHMENT A – INFORMATION REGARDING
COMPLIANCE WITH THE CODE FOR THE TENDERING
AND PERFORMANCE OF BUILDING WORK 2016**

Tenderers must provide the following information as part of their Declaration of Compliance. This information can either be set out in this table or in an annexure to this Attachment and the Declaration of Compliance.

Where the Tenderer is an unincorporated Joint Venture, each Participant that is or will be a “building contractor” or a “building industry participant” (as defined in section 5 of the BCIP Act) must provide all details requested in part A1 below, with its Declaration of Compliance.

Where the Tenderer comprises of only one Participant or the Tenderer is an incorporated joint venture, the Tenderer must provide all details requested in part A1 below, with its Declaration of Compliance.

Details requested in part A2 below (as well as the Workplace Relations Management Plan (Commonwealth)), are not required to be provided by each Participant but are required to be prepared and submitted on behalf of the Tenderer, as project specific information.

PART A1 OF THE ATTACHMENT A		
Item	Requirement	Compliance
A1.1	Is the Participant/Tenderer excluded from performing Building Work funded by a state or territory government? If so, the Commonwealth reserves the right to exclude the Tenderer from further consideration.	Yes/No
		Details:
A1.2	Does the Participant/Tenderer positively commit to the provision of appropriate training and skills development for their workforce, and, if so, what evidence can the Participant/Tenderer supply in relation to this (for example, evidence of its compliance with any state or territory government building training policies and evidence of its support in the delivery of nationally endorsed building and construction competencies)?	Yes/No
		Details:
A1.3	Has the Participant/Tenderer within	Yes / No

PART A1 OF THE ATTACHMENT A		
Item	Requirement	Compliance
	the preceding 3 years had an adverse decision, direction or order of a court or tribunal made against it for a breach of a Designated Building Law, work health and safety law (including, but not limited to, the <i>Work Health and Safety Act 2011</i> (NSW) and the Work Health and Safety Regulation 2017 (NSW)) or the <i>Migration Act 1958</i> (Cth)?	Details:
A1.4	Has the Participant/Tenderer or its Related Entities within the preceding 3 years been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments (including, but not limited to the <i>Building and Construction Industry Security of Payment Act 1999</i> (NSW)) that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant?	Yes / No Details:
A1.5	Has the Participant/Tenderer or its Related Entities within the preceding 3 years owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant?	Yes / No

PART A2 OF THE ATTACHMENT A		
Item	Requirement	Compliance
A2.1	How many current apprentice and trainee employees are engaged or intended to be engaged by the Tenderer to undertake the Works?	Details:
A2.2	How many and what classes of persons that hold visas under the <i>Migration Act 1958</i> (Cth) are engaged or intended to be engaged by the Tenderer to undertake the Works?	Details:
A2.3	To what extent does the Tenderer intend to use domestically sourced and manufactured building materials to undertake the Works?	Details:
A2.4	What is the Tenderer's assessment of the whole-of-life costs of the project to which the Works relate?	Details:
A2.5	What does the Tenderer consider the impact on jobs will be of the project to which the Works relate?	Details:
A2.6	Does the Tenderer consider that the project to which the Works relate will contribute to skills growth?	Yes/No

ANNEXURE RFT6B – CONFIRMATION OF ACCREDITATION STATUS UNDER THE AUSTRALIAN GOVERNMENT WORK HEALTH AND SAFETY ACCREDITATION SCHEME

[If required as per Annexure RFT2]

This “Confirmation of WHS Accreditation Status” must be completed by the Tenderer and lodged with its Tender. Any Tender in which this Confirmation of WHS Accreditation Status is not completed may be regarded as non-conforming.

Where the Tenderer is an unincorporated Joint Venture, each Participant in the Tenderer that will carry out ‘building work’ (as defined in the BCIP Act) for the Project must complete, sign and lodge with the Tender this “Confirmation of Accreditation Status”.

CONFIRMATION OF ACCREDITATION STATUS UNDER THE AUSTRALIAN GOVERNMENT WORK HEALTH AND SAFETY ACCREDITATION SCHEME

Name of Project: _____

Name of Tenderer/Participant, ABN and ACN: _____

Insert details of accreditation status under the Australian Government Work Health and Safety Accreditation Scheme (the *Scheme*), including the expiry date of accreditation or provide evidence that accreditation is being sought under the Scheme.

Regulation 26(1)(f) of the *Fair Work (Building Industry – Accreditation Scheme) Regulations 2016* (Cth) outlines provisions applying to joint venture arrangements that include accredited and unaccredited members. Where the Tenderer is a Joint Venture that includes an unaccredited member, the Joint Venture must provide evidence that the project specific exemption has been obtained or is being sought under regulation 26(1)(f).

Signed for the Tenderer/Participant by:

Name (in block letters): (Authorised Officer)

In the Office Bearer capacity of:

Date:

ANNEXURE RFT7 – SCHEDULE OF COMPLIANCE WITH NSW GOVERNMENT IMPLEMENTATION GUIDELINES TO THE NSW CODE OF PRACTICE FOR PROCUREMENT

[Submit with Tender Form]

This Schedule must be completed by the Tenderer and lodged with its Tender. Any Tender in which this Schedule is not completed may be regarded as non-conforming.

Where the Tenderer is an unincorporated Joint Venture, each Participant in the Tenderer must complete, sign and lodge with the Tender this Schedule of Compliance.

Refer to section 2.1 – *NSW Government Code of Practice for Procurement and Implementation Guidelines*.

SCHEDULE OF COMPLIANCE WITH THE NSW GOVERNMENT’S IMPLEMENTATION GUIDELINES TO THE NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT: BUILDING AND CONSTRUCTION

Name of Project: _____

Name of Tenderer/Participant, ABN and ACN: _____

Primary Acknowledgments and Undertakings

1. By completing this Compliance Schedule and submitting an expression of interest or tender response, the Tenderer:
 - (a) acknowledges that the *NSW Government Code of Practice for Procurement* (“*NSW Code*”) and the *NSW Government Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction* (“*NSW Guidelines*”) apply to the project the subject of this tender;
 - (b) undertakes that it, and its related entities, comply with the *NSW Code* and *NSW Guidelines* on:
 - (i) the project the subject of this tender;
 - (ii) privately and publicly funded building and construction work to which the *NSW Guidelines* apply, on and from the date of submitting this expression of interest or response (if not already required to comply on such privately and publicly funded projects);
 - (c) confirms that it and its related entities have complied with:
 - (iii) the *NSW Code* and *NSW Guidelines* on all its other projects to which the *NSW Guidelines* apply or have applied;
 - (iv) all applicable legislation, court and tribunal orders, directions and decisions, and industrial instruments;

- (d) confirms that neither it, nor any of its related entities, are subject to a sanction or other circumstance that would preclude the Tenderer from submitting an expression of interest or tender response, or, if successful, being awarded a contract.

Sanctions for Non-compliance

2. The NSW Treasury, through the Construction Compliance Unit (CCU), has responsibility for enforcing, and ensuring compliance with, the *NSW Code* and *NSW Guidelines*.
3. The Tenderer acknowledges that where it, or a related entity, fails to comply with the *NSW Code* or *NSW Guidelines*, a sanction may be imposed on the Tenderer or its related entity or both. The sanctions that can be imposed include, but are not limited to, one or more of the following:
 - (a) a formal warning that a further breach will lead to severe sanctions;
 - (b) referral of a complaint to the relevant industry organisation for assessment against its own professional code of conduct and appropriate action;
 - (c) reduction in tendering opportunities at either agency or government-wide level, for example, by exclusion of the breaching party from tendering for government work above a certain value, or for a specified period;
 - (d) reporting the breach to an appropriate statutory body; and
 - (e) publicising the breach and identity of the party.

Disclosure of Information

4. The Tenderer agrees and gives its consent (or reaffirms its consent), and confirms that its related entities agree and give their consent (or reaffirm their consent), to the disclosure of information concerning the Tenderer's, and the Tenderer's related entities', compliance with the *NSW Code* and the *NSW Guidelines*, including disclosure of details of past conduct relating to the *NSW Code* and *NSW Guidelines* and whether or not sanctions have been imposed on a Tenderer or its related entities.
5. The Tenderer confirms that it has obtained, or will obtain, the consent of each subcontractor or consultant it proposes to use on the project, or that it will use if successful in the tender, to the disclosure of information concerning the subcontractor's and consultant's compliance with the *NSW Code* and the *NSW Guidelines*, including disclosure of details of past conduct relating to the *NSW Code* and *NSW Guidelines* and whether or not sanctions have been imposed on the subcontractor or consultant or its related entities.
6. The consent (or reaffirmation of consent) by the Tenderer, its related entities and any proposed or subsequent subcontractors, is given to the State of New South Wales, its agencies (including TfNSW), Ministers and the CCU (and its authorised personnel) for purposes including:
 - (a) the exercise of their statutory or portfolio responsibilities;
 - (b) investigating and checking, claims and assertions made by the Tenderer in any documents provided as part of its expression of interest or tender response (including, but not limited to, any Workplace Relations Management Plan (State) or Health and Safety Management Plans);
 - (c) monitoring, investigating and enforcing the *NSW Code* and *NSW Guidelines*; and
 - (d) ensuring, facilitating and promoting compliance with the *NSW Code* and *NSW Guidelines*.

7. The Tenderer acknowledges that this consent is not limited to this tender, or this project, as parties are expected to comply with the *NSW Code* and *NSW Guidelines* on future projects to which they apply.

Positive Obligations

8. Without limiting the obligations and requirements in the *NSW Guidelines*, the Tenderer acknowledges and undertakes to comply with its positive obligations under the *NSW Code* and *NSW Guidelines*, including to:
- (a) comply with the Workplace Relations Management Plan (State), where such Plan is required for the Project, and any Health and Safety Management Plan;
 - (b) allow NSW Government authorised personnel to:
 - (i) access the project site and other premises;
 - (ii) monitor and investigate compliance with the *NSW Code* and *NSW Guidelines*;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the project; and
 - (v) interview any person;as is necessary to demonstrate compliance with the *NSW Code* and *NSW Guidelines*;
 - (c) notify the CCU (or nominee) and the Client Agency of any alleged breaches of the *NSW Code* and *NSW Guidelines* and of voluntary remedial action taken, within 24 hours of becoming aware of the alleged breach;
 - (d) (for principal contractors only) report any grievance or dispute relating to workplace relations or work, health and safety matters that may impact on project costs, related contracts or timelines to the CCU (or nominee) and TfNSW within 24 hours of becoming aware of the grievance or dispute and to provide regular updates on the grievance or dispute;
 - (e) report any threatened or actual industrial action that may impact the project, project costs, related contracts or timelines to the CCU (or nominee) and TfNSW within 24 hours and provide regular updates about the steps being taken to resolve the threatened or actual industrial action;
 - (f) take all steps reasonably available to prevent, or resolve, industrial action which adversely affects, or has the potential to adversely affect, the delivery of the project or other related contracts on time and within budget; and
 - (g) take all reasonably available steps to prevent, or bring to an end, unprotected industrial action occurring on, or affecting the project, including by pursuing legal action where possible. Any such legal action must be conducted (and where appropriate, concluded) in a manner consistent with the guiding principles and objectives of the *NSW Guidelines*, namely supporting outcomes of compliance with the law, productivity in delivering the project on time and within budget, maintaining a high standard of safety and protecting freedom of association.
9. Without limiting the obligations and requirements of the *NSW Code* and *NSW Guidelines*, the Tenderer acknowledges its obligation to ensure, through contract, that subcontractors and consultants similarly do, or allow for, each of these applicable positive obligations.

Privately Funded Work

10. The Tenderer acknowledges and agrees that in respect of its privately funded building and construction work (to which the *NSW Guidelines* apply) it, and its related entities, will:

- (a) comply with the *NSW Code* and *NSW Guidelines*;
- (b) maintain adequate records of compliance with the *NSW Code* and *NSW Guidelines* (including by contractors);
- (c) allow NSW Government authorised personnel to:
 - (i) access the sites and premises;
 - (ii) monitor and investigate compliance with the *NSW Code* and *NSW Guidelines*;
 - (iii) inspect any work, material, machinery, appliance, article, or facility;
 - (iv) inspect and copy any record relevant to the project; and
 - (v) interview any person;
 as is necessary to demonstrate compliance with the *NSW Code* and *NSW Guidelines*; and
- (d) ensure contractors and consultants similarly do, or allow, for each of these obligations.

Declaration by Tenderer and Authorised Representative

11. By signing this declaration on behalf of the Tenderer, the authorised representative declares that they have full authority to execute it and have obtained any necessary consents and approvals to do so.

Signed for the Tenderer/Participant by:

Name (in block letters): (Authorised Officer)

In the Office Bearer capacity of:

Date:

ANNEXURE RFT8 – SCHEDULE OF SKILLS DEVELOPMENT AND TRAINING

1. Refer to Clause 8.8 Skills Development and Training.
2. The Tenderer is to complete the tables below by inserting the Tenderer's commitments to the engagement of apprentices and trainees to carry out the work under the Contract.
3. Tenderers are required to nominate minimum targets for Trainees hours and commit to the targets. These targets will be evaluated against the guidelines and agreed by TfNSW for incorporation in the contract

Requirement	Minimum targets for the Contract as a whole	Tenderer's Commitment
Apprentice hours as a percentage of hours worked by qualified trades.	» 20 % of hours worked %
Trainee hours as a percentage of hours worked by occupations with recognised traineeships	[Tenderer to insert] %

Requirement	Minimum target (as a percentage of work done by trade)	Tenderer's Commitment
Apprentice hours as a percentage of hours worked by the following trades:	»20 % of hours worked %
<ul style="list-style-type: none"> • » [Tenderer to insert] • » [Tenderer to insert] 	»20 % of hours worked %
Trainee hours as a percentage of hours worked by the following occupations:	[Tenderer to insert] %
<ul style="list-style-type: none"> • » [Tenderer to insert] • » [Tenderer to insert] 	[Tenderer to insert] %

4. Complete the table below to identify three recent contracts where apprentices and trainees were engaged, including the percentage in relation to overall contracts.

Client	Name & location of contract <i>Eg. Concord Hospital Carpark; Dubbo Water Treatment Plant;</i>	Contract Price	Start Date/ Completion Date	Number of apprentices / trainees engaged	Apprentice/ trainee hours <i>(as a percentage of total hours worked)</i>
...../...../.....%

Client	Name & location of contract <i>Eg. Concord Hospital Carpark; Dubbo Water Treatment Plant;</i>	Contract Price	Start Date/ Completion Date	Number of apprentices / trainees engaged	Apprentice/ trainee hours <i>(as a percentage of total hours worked)</i>
.....//%
.....//%
Percentage of overall contracts where apprentices and trainees were engaged over the past twelve months				%
Overall apprentice/trainee hours as a percentage of total hours worked over the past twelve months				%

ANNEXURE RFT9 – TENDERER’S ABILITY TO WORK EFFECTIVELY WITH THE NSW GOVERNMENT

NOTES TO TENDER DOCUMENTER: *(Delete this boxed text after customising Annexure RFT9)*
Refer to section 2.2.4.3 of the Engineering Contracts Manual for guidance on when this evaluation criterion is to be specified as applicable to the project.
If the Registration of Interest (ROI) phase was undertaken for the project and this evaluation criterion was included and evaluated in the ROI phase, it does not need to be evaluated again at the Request for Tender (RFT) phase. It is required to be included and evaluated at the RFT phase for relevant projects only where the multi-staged tendering is not undertaken.

RFT Clause	Description	Project Requirement	Tenderer to Provide
11.2(p)	Is “Demonstrated capacity for successful collaboration with the NSW Government” applicable to evaluation of tenders?	Yes / No	Appendix 1 to Annexure RFT9

Referees

The Tenderer must provide the details of two appropriate referees for each Participant to demonstrate its and its Participants’ capacity for successful collaboration with the NSW Government, as set out in Appendix 1 to this Annexure RFT9.

The referees will be asked to verify past performance of the Tenderer and its Participants by:

- A. confirming that the Tenderer and its Participants have the ability to achieve outcomes;
- B. advising the extent of any legal and contract disputes with the Tenderer and its Participants; and
- C. confirming the Tenderer’s and its Participants’ demonstrated commitment to working constructively with the NSW Government to resolve commercial issues.

Where the Tenderer and/or its Participants have contracted with Transport for NSW in the past five years and intend to nominate Transport for NSW as the referee, they should not provide a specific name of a Transport for NSW employee; it is sufficient to nominate Transport for NSW as one referee.

The Tenderer and its Participants who nominate Transport for NSW as the referee must nominate another referee, from another organisation, preferably Government. If the second referee is from Government, then the referee must be at the level equivalent to the General Manager or higher. Otherwise, the referee must be at the level of a chief executive officer or executive director.

Regardless of the Tenderer’s and/or its Participants’ nomination of referees, where the Tenderer and/or its Participants have contracted with Transport for NSW in the past five years, the Assessment Committee will obtain the performance data held by Transport for NSW on the Tenderer’s and/or its Participants’ collaboration with the NSW Government from relevant Transport for NSW personnel, including TfNSW Infrastructure and Place Division.

In the event that the Tenderer and its Participants have not previously worked for the NSW Government, the Tenderer must provide the details of two referees for each Participant from organisations that the Tenderer and its Participants have contracted with within the past five years, preferably for works greater than \$100 million. The referees must be at the level of a chief executive officer or executive director, with the ability to comment on the Tenderer's and its Participants' history of legal and contract disputes, and their ability to work constructively to resolve commercial issues.

Appendix 1 to Annexure RFT9

Where the Tenderer comprises of more the one Participant, the Tenderer is to provide separate schedule for each Participant.

Each Participant in the Tenderer is to answer the following question:

Has the Tenderer/Participant previously worked for the NSW Government?	Yes / No
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If the answer to the above question is “**Yes**”, each Participant in the Tenderer must provide details of two referees from the NSW Government agencies it has contracted with within the past five years, as set out below, who could comment on the Participant’s past performance and verify details set out in Annexure RFT9.

Name of Referee*	Name of NSW Government Agency	Referee’s Position Title*	Referee’s Contact Details (telephone number & email)*

** Where the Tenderer and/or its Participants have contracted with Transport for NSW in the past five years and intend to nominate Transport for NSW as the referee, they should not provide a specific name of a Transport for NSW employee; it is sufficient to nominate Transport for NSW as one referee.*

If the answer to the above question is “**No**”, each Participant in the Tenderer must provide details of two referees from the organisations it has contracted with within the past five years, preferably for works greater than \$100 million. The referees must be at the level of a chief executive officer or executive director, with the ability to comment on the Participant’s past performance and verify details set out in Annexure RFT9.

Name of Referee	Name of Organisation	Referee’s Position Title	Referee’s Contact Details (telephone number & email)