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**CALL TENDER DATE: 14/11/2024**

**CLOSING DATE: 12/12/2024**

**CLOSING TIME: 2:00PM CANBERRA**

**LS-CN241025  
ORIGINAL  
URBAN DEVELOPMENT**

**GINNINDERRY FRONT LANDSCAPING**

**REQUEST FOR TENDER**



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# NOTICE TO TENDERS

This 'Notice to Tenderers' is a guide only and does not and is not intended to form part of any Contract between the Principal and any person, firm or corporation.

## NT 01 DESCRIPTION OF THE WORKS

Riverview Projects (Principal) is looking to establish a panel of landscapers to undertake the front garden landscape works as detailed below. The project comprises the construction of the remaining front garden landscaping to Ginninderry Neighbourhood One (Strathnairn) & Neighbourhood Two (Macnamara) EDP1. These are neighbourhoods of the broader urban development, which will eventually contain 11,500 dwellings spanning across ACT and NSW.

This tender will have allowance of approximately 427 front garden packages. This will provide 2-3 years of front landscaping packages to be undertaken. *The total number of front gardens will be split between the successful contractors depending on the contractor's availability, performance, and other commitments.*

Blocks will be organised in 4 main typologies; Corner Block, Open Space Corner Block, Rear Loaded Block & Standard Block. Please see attached concept designs showing the average proposed front garden.

Tenderers will need to price concept gardens according to the front garden concept designs which will be provided in the tender documents. All quantities and plant sizes are clearly specified in these concept drawings which ensures consistent pricing between tenderers.

These concept gardens will be consistent with what is going to be installed for the front gardens in Strathnairn & Macnamara.

The works are described and specified in the drawings and include but not limited to preliminaries, garden design with purchaser, site preparation, edging supply and install, steppingstone or gravel entry path supply and install, plant supply and install, turf supply and install, tree supply and install, mulch supply and install, supply and install of drip irrigation for garden beds, supply of hose and tap timer and two weeks maintenance per garden.

### Description of Services

The services and process to be provided by the Landscapers are as set out below.

The process to be followed prior to commencement of the landscape construction works on site will be as follows:

- Purchaser will apply for front landscaping via the Front Landscaping Application Form available on the Ginninderry website when they are 12 weeks from completion. This application will be sent to Riverview Projects (RP).
- RP will review the application and the Purchasers requirements. Based on this will allocate the Landscaper for the works. Part of the criteria will be current capacity and performance.
- RP will contact the nominated Landscaper with the details of the homeowner, address and desired front landscape concept to be followed.
- Landscaper to contact the homeowner and arrange to visit the home to finalize front garden design.
- Landscaper will prepare a concept plan, scope of works and quote to complete the front garden landscape works and issue to RP. *Landscaper to supply 2 quotes, one for RP, the other for the resident. Resident copy to have all pricing removed except for optional extras such as verge turfing.*
- RP will review against budget and request changes if required. Landscape Contractor amend as requested and re-issue to RP.

- RP advise homeowner of concept and scope, homeowner to request changes as desired and plans to be amended and re-issued accordingly.
- RP to gain approval to commence from homeowner as per the concept and scope.
- RP advise Landscaper of approval to proceed and issues purchase order to Landscaper to complete the works.
- Landscaper to send through signed purchase order to RP.
- Landscaper programme in works and advise RP and homeowner of planned start date.
- Landscaper will undertake landscape construction works in accordance with the agreed scope and plan.
- Landscaper liaise with owner prior to, during and post construction to ensure home-owner satisfaction.
- Landscaper perform 2 weeks maintenance post construction as part of the front garden package.
- Landscaper will invoice RP for the landscape works in accordance with the agreed scope and quote at the completion of all works.

*As the delivery of the front landscape is via an application process the total number of blocks to be landscaped at any one time will be variable and therefore there is no guarantee that the Landscapers will always have jobs available to them.*

In respect of the landscape construction services referred to above, RP will be engaging the Service Provider as the 'Nominated Landscape Provider'. The services will generally be provided in line with the Landscaper's standard process, with terms and conditions to be entered into directly between the Landscaper and RP. Specifically, noted the following documents that are currently available to homeowners with respect to the front garden package at Ginninderry:

- Ginninderry Housing Development Requirements which contains example front gardens; and
- Front Landscaping Application Form & Checklist.

Specifically in relation to the contract to be entered between RP and the Landscaper it is noted that the Landscaper will complete all front garden landscape works in accordance with the agreed scope of works and manage each front garden from start to finish, remove all waste materials generated from their works and leave each site clean and tidy. This service will be provided at no cost to the homeowner.

The scope of services excludes demolition, removal of builder or household waste, additional works requested by the homeowner, rework required due to other contractors and the front verge turf work. If these works are requested by the homeowner any additional cost is to be borne by the homeowner.

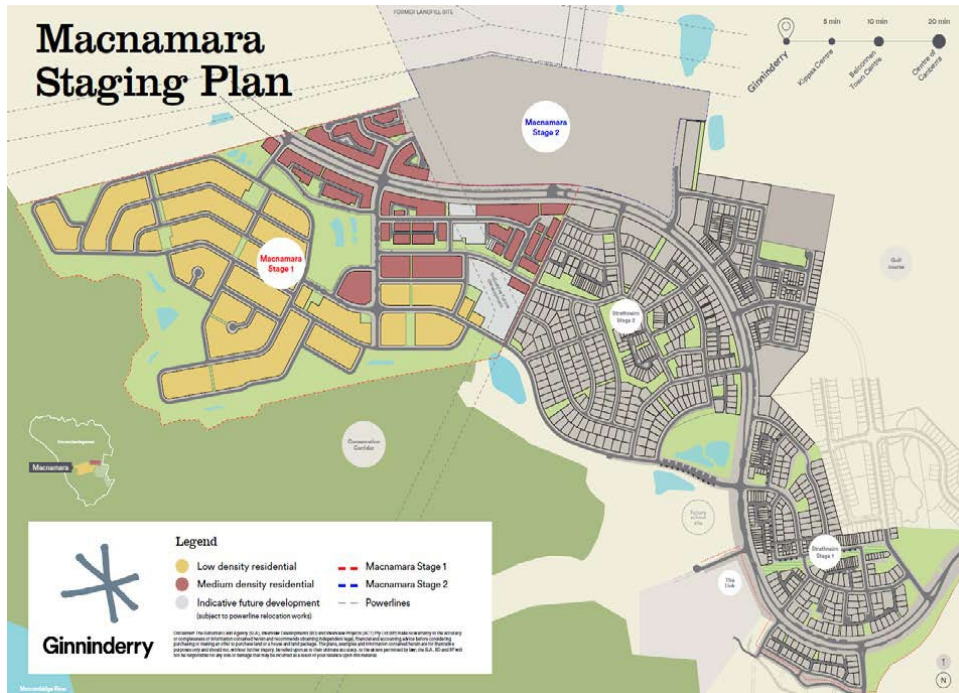
Each contractor will need to provide a CV of a minimum of 1 fully suitably qualified team member who will be working on the front gardens. In addition at least one member to have a current Spray Certificate. Each contractor will be fully responsible for all insurances, consumables, and other business-related costs.

*All team members working on the front gardens will need to have: White Card, Asbestos Awareness Certificate and Silica Awareness Certificate.*

## NT 02 DESCRIPTION OF THE SITE

The site is a greenfield development located to the west of Holt and Macgregor in Belconnen. The civil works for the first suburb of Strathnairn (Neighbourhood One) is complete, with the majority of residential dwellings built, and residents moved in. Macnamara (Neighbourhood Two) the civil works are 50% complete with a small number of residents moved in.

The overall development is anticipated to ultimately consist of 11,500 dwellings in total spanning across the ACT and NSW being delivered over a 30-40-year period.



## NT 03 SITE VISIT

Unauthorised access to the Site is not permitted. A Tenderer must arrange to visit the Site with the Contact Officer nominated in Section CT 1.4.

## NT 04 DOCUMENTS FOR INFORMATION ONLY

The documents listed below are furnished for the convenience of the Tenderer and will be sent out with the rest of the tender files.

- Front Landscaping Concepts
- Front Landscape Application Form - Strathnairn & Macnamara

The information in the documents is not guaranteed and any tender submitted must be based on the Tenderer's own investigations and determinations. The site will be made available upon request to the Tenderer to make their own investigations and inspections. The documents, which are incorporated within the information that forms part of this RFT, do not, nor are they intended to, create any legal obligation or form part of any contract.

Additional information documents relating to the Ginninderry development can be found on the project website refer link below.

- <https://ginninderry.com/planning-and-community/reports-library/>
- [https://ginninderry.com/wp-content/uploads/2022/07/Ginninderry-Design-Guidelines\\_July-2022.pdf](https://ginninderry.com/wp-content/uploads/2022/07/Ginninderry-Design-Guidelines_July-2022.pdf)
- [https://ginninderry.com/wp-content/uploads/2023/12/GIN\\_62119\\_Macnamara\\_Design\\_Requirements\\_Oct\\_01.pdf](https://ginninderry.com/wp-content/uploads/2023/12/GIN_62119_Macnamara_Design_Requirements_Oct_01.pdf)



The Tenderer is encouraged to review these documents to assist in familiarising themselves with the development.

## **NT 05            CONDITIONS OF TENDER**

If you lodge a tender for the Works, your tender must comply with all the requirements expressed in or necessarily implied in the RFT Documents. The Principal may elect, however, at its sole discretion, to accept your tender or, if allowed by the Conditions of Tender, any part of your tender, without further reference to you, whether or not your tender complies with the requirements expressed or necessarily implied in the RFT Documents. The Principal will not be bound to and, at its sole discretion, may not accept the lowest priced tender or any tender.

If you submit a tender you must do so using the Form of Tender provided in these RFT Documents. The tender must comply with the Conditions of Tender for the tender to be a conforming tender.

By submitting a tender the Tenderer agrees to comply with the Conditions of Tender.

## **NT 06            GENERAL CONDITIONS OF CONTRACT**

Riverview Front Landscape contract will apply which is called *Standing Offer – Front Landscaping Services*.

The RFT Documents include a copy of this contract that will apply to this project. The Tenderer should read and familiarise themselves with this document.

As per the contract a purchase order will be generated for each front landscape package.

## **NT 07            STATUTORY HOLIDAYS AND CHRISTMAS BREAKS**

The Tenderer's attention is drawn to the statutory holidays, Christmas breaks and industry holidays and shutdowns that may fall in the contract period. The Tenderer is reminded that due allowance must be made for such events in the tender price and the construction program. No extensions of time will be granted in respect of the occurrence of such events during the original contract period.

For the avoidance of any doubt the following time periods for the Christmas Breaks should be allowed for;

- Christmas Holiday Shutdown
  - 2024 COB Tuesday 20 December 2024 to Thursday 2 January 2025
  - 2025 COB Friday 19 December 2025 to Monday 5 January 2026
  - 2026 COB Friday 18<sup>th</sup> December 2026 to Monday 4 January 2027

## **NT 08            CODE OF TENDERING**

The code of tendering applying to this RFT is AS2124-1992 *Code of Tendering*.

## **NT 09            ETHICAL BEHAVIOUR**

The Developer is committed to ensuring that suppliers and their subcontractors meet all their employee and industrial obligations in the performance of any contract for works or services that will require the exertion of labour by employees.

# CONDITIONS OF TENDER

## CT1. GENERAL

These Conditions of Tender take precedence over the conditions of tender specified in AS2124-1992 *Code of Tendering*.

These Conditions of Tender do not, nor are they intended to, create any legal obligation between the Principal and any Tenderer.

In submitting a Tender, the Tenderer acknowledges that it:

- a. has examined the RFT, Brief and any other information, including all addenda and forum clarifications issued;
- b. has examined all information relevant to the risks, contingencies, and other circumstances having an effect on the Tender;
- c. has made and relied upon its own enquiries as it considers appropriate to address the Assessment Criteria;
- d. has assessed the risks which it will assume under the Contract;
- e. is satisfied as to the correctness and sufficiency of the Tender, including the price or rates specified and has ensured the price or rates specified contain allowances to protect against risks;
- f. expect to the extent expressly set out in any alternative Tender, accepts (without departure, qualification, amendment, limitation or exclusion) the Contract; and
- g. has examined the Site and its surroundings to its satisfaction following receipt of any necessary authorisation.

Tenders must remain open for at least 120 days from the date and time of closing of Tenders to enable the evaluation of Tenders by Riverview.

## CT1.01 DEFINITIONS

The following definitions apply in these Conditions of Tender, unless the context otherwise requires.

“**Contact Officer**” means the person specified in CT1.04.

“**Form of Tender**” means any one of the proforma documents contained in the RFT Documents entitled ‘Form of Tender’.

“**RFT Documents**” means:

- a. Notice to Tenderers;
- b. Conditions of Tender;
- c. Conditions of Contract including:
  - The General Conditions of Contract comprising of AS2124–1992 General Conditions of Contract;
  - Annexure to the General Conditions of Contract;
  - Special Conditions of Contract;
- d. Formal Instrument of Agreement;
- e. Specifications;
- f. Drawings;
- g. Form of Tender;
- h. Tender Schedule;
- i. Bill(s) of Quantities, Schedule of Prices and/or Schedule of Rates and Preamble to the extent specified to be included in the Tender or Contract; and
- j. Addenda issued pursuant to Section CT 2.13.

“**Site**” means the site for the Works identified in the RFT Documents.

“**Superintendent**” means the superintendent nominated by the Principal to superintend the Works.

“**Tender**” means the written tender response by the Tenderer to execute the Works in accordance with the RFT

Documents.

“**Tenderer**” means the party submitting the Tender.

“**Tender Price**” means the lump sum and/or rates in Australian Dollars submitted by the Tenderer in its Tender on the Form of Tender.

“**Works**” means the works to be executed as set out in the RFT Documents.

With the exception of the above terms, all other defined terms used in these Conditions of Tender have the same meaning as those in AS2124-1992 *General Conditions of Contract* or in the Formal Instrument of Agreement.

## **CT1.02 SUBMISSION OF TENDER**

The Tenderer must submit its Tender on the Form of Tender. Also provide all other associated labour, plant and materials rate.

## **CT1.03 SECURITY OF DOCUMENTS**

- 1.03.1 All RFT Documents, samples, models, patterns and other information clearly identified as confidential must be kept confidential by Tenderers. Tenderers, their agents or anyone else must not make copies of the RFT Documents except for tendering purposes. The Tenderer must return all such documents, samples, models, patterns and other information and copies to the Contact Officer on receiving notification that the Tender was unsuccessful.

## **CT1.04 CONTACT OFFICER**

- 2.05.1 The Contact Officer for this RFT is Bede Roche (Estate Manager). The Contact Officer may be contacted by telephone on 1800 316 900, or e-mail at [bede@ginninderry.com](mailto:bede@ginninderry.com).
- 2.05.2 All requests for information and advice must be referred to the Contact Officer.
- 2.05.3 The Principal is not liable for any verbal advice or information from the Contact Officer.
- 2.05.4 At the discretion of the Contact Officer, the Contact Officer may provide written answers to requests for information of a technical or contractual nature. All written answers to requests for information will be disseminated to all Tenderers without disclosing the source of the request for information or revealing a Tenderer’s confidential information.
- 2.05.5 Tenderers must not contact or attempt to contact any other officer of the Principal other than the Contact Officer. Authorisation in writing is required from the Contact Officer for the Tenderer, or employees or agents of the Tenderer, to make contact with officers other than the Contact Officer of the Principal.
- 2.05.6 The Principal may at its sole discretion deem the Tenderer’s Tender to be nonconforming if unauthorised contact is made or attempted.

## **CT1.05 RFI DUE DATE**

The Tenderer shall provide any RFI by **COB Friday 6<sup>th</sup> December 2024**. Any RFI after this date will **NOT** be responded by the Principal.

## **CT2. PREPARATION OF TENDERS**

### **CT2.01 TENDERER TO ACQUIRE INFORMATION**

- The Tenderer must obtain all information relevant to a Tender so that it may conform with the RFT Documents.
- The Tenderer should:
  - a. Inspect the Site (including any subsurface investigations) and its surroundings (after obtaining any necessary authorisation), examine the RFT Documents and any other information made available in writing by the Principal or the Contact Officer to the Tenderer for the purpose of tendering;
  - b. examine all information relevant to the risks, contingencies, and other circumstances having an effect on its Tender and which is obtainable by the making of reasonable enquiries; and
  - c. satisfy itself as to the correctness and sufficiency of its Tender and that its Tender Price covers the cost of complying with all the obligations provided for or implied in the RFT Documents and of all matters and things necessary for the due and proper performance and completion of the Works.
- If the Tenderer finds any discrepancy, error or omission in the RFT Documents, the Tenderer must notify the Contact Officer immediately in writing giving details of the ambiguity, discrepancy, error or omission in accordance with CT 1.04.
- 

### **CT2.02 PREQUALIFICATION**

Not applicable to this tender.

### **CT2.03 MANAGEMENT SYSTEMS**

- 2.12.1 The Principal's supplier prequalification policy requires that the Tenderer's management systems satisfy the requirements of both the relevant Australian Standards and the Principal's prequalification requirements. Current management system requirements are for quality, Occupational Health Safety and Rehabilitation and Environmental Management.
- 2.12.2 For the purpose of tender assessment, short-listed Tenderers may be required to submit:
- a copy of the company's controlled procedure for establishing a project quality plan; and
  - a sample or draft project quality plan prepared in accordance with the above procedure.
- Refer to CT3.01
- 2.12.3 Assessment of Tenders may take into account the Tenderer's past performance with respect to the development and implementation of project quality plans including inspection and test plans, the competency and skills of the Tenderers' employees and their ability to work within the Tenderer's Quality System. It may also be necessary for the Principal or an approved agent of the Principal to conduct an assessment of the Tenderer's Quality System.

## **CT2.04 QUALIFICATIONS, TRAINING AND KNOWLEDGE**

- 2.04.1 The preferred Tenderer will be required to ensure that all employees are adequately supervised to ensure that all Works are delivered in accordance with the requirements of the Contract, and any relevant legislation and Australian Standards.

## **CT2.05 COLLUSIVE ARRANGEMENTS**

- 2.05.1 The National Code of Practice for the Construction Industry, under the heading “Relationships”, requires that the Tenderer acts honestly. Consequently, in addition to the submission of a form of undertaking identical to Schedule 1, the Tenderer confirms that:

- a. the Tenderer has no knowledge of the Tender price, including rates, of any other Tenderer for the Works;
- b. except as disclosed in the Tender, the Tenderer has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other Tenderer in relation to this Tender or any contract which may be entered into consequently, nor paid or allowed any money on that account;
- c. the Tenderer has not paid or allowed or entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to or on behalf of any other Tenderer nor received any money or allowance from or on behalf of any other Tenderer in relation to this Tender or any contract which may be entered into consequently nor will pay or allow or receive any such money;
- d. if the Tenderer receives any money or allowance from or on behalf of another Tenderer in relation to this Tender, such money or the value of any allowance will be held in trust for and will become immediately payable to the Principal; and
- e. if the Tenderer pays a trade or industry association or another Tenderer any money in breach of these conditions, the Tenderer must immediately give the Principal written notice of such an event and the Principal will be entitled to withhold from any payment due to the Tenderer on any account an equivalent sum as liquidated damages.

- 2.05.2 At the sole discretion of the Principal, failure by a Tenderer to comply with this Section CT2.05 may result in its Tender being deemed as nonconforming.

- 2.05.3 If requested by the Principal, the Tenderer must attest to the above matters in a statutory declaration.

## **CT2.06 CONFLICT OF INTEREST**

A Tenderer with a conflict of interest must immediately disclose the conflict of interest to the Principal through the Contact Officer. If a conflict of interest or a risk of a conflict of interest arises after lodgement of the Tender and prior to the completion of the Tender process, the Tenderer must immediately disclose that conflict of interest to the Principal.

## CT2.07 FUTURE INFORMATION, CLARIFICATION AND ENQUIRIES

The Tenderer must, if the Principal requires, submit additional information to allow full consideration of the Tender. There is no obligation on the part of the Principal to seek clarifying or any other information.

2.07.2 By tendering, the Tenderer:

(a) authorises the Principal to:

- i. obtain information about and enquire into the Tenderer's financial status and viability;
  - ii. obtain from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body) and take into account in its evaluation, information, including information about the Tenderer's performance and/or compliance during any previous or current contracts for services or works similar to those sought in the Tender (whether or not those contracts were with the Territory, State or Commonwealth or another entity and whether or not those contracts were nominated by the Tenderer in its Tender);
  - iii. obtain and take into account in its evaluation, information from referees or other reputable sources on prior or current projects in which the Tenderer was involved (whether or not nominated by the Tenderer in its Tender);
  - iv. use any information obtained from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body), referee or other reputable source for any government purposes including, without limitation, assessment of suitability for: registration; pre-qualification; selective tender lists or the award of contract; and
  - v. provide to any Territory, State or Commonwealth government agency any information about the Tenderer obtained during any previous or current contracts with the Principal or any agency of the Principal,
- (b) acknowledges that the provision and receipt of information by the Principal to any other Territory, State or Commonwealth government agency for the purpose stated in section (a)(ii), (iv) or (v) above is a communication in circumstances of qualified privilege and the Tenderer shall have no claim against the Principal, in defamation or otherwise, in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the Tenderer arising out of the communication; and
- (c) releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by this clause or anything done by a recipient of information.

2.07.3 The Tenderer acknowledges that during the course of any contract, that it may enter into as a result of this tender process, its performance will be monitored and assessed by the Principal. Performance assessment reports may be taken into account by any agencies of the Principal and may result in future opportunities for contracts or work with the Principal or any of its agencies being restricted or lost.

## CT2.08 DOCUMENTS ISSUED FOR TENDER

The following drawings, documents and supportive digital information is issued with this RFT to assist in formulating the Tenderers response.

- Ginninderry Front Landscaping Request for Tender Package
- Ginninderry Front Landscape Concepts
- Riverview Front Landscape Contract (*Standing Offer – Front Landscaping Services*)

## CT2.09 PROPRIETARY NAMES

When proprietary names, brands, catalogue or reference numbers are specified in the RFT Documents, they are intended to set a minimum standard and preference for any particular material or equipment is not intended. The Tenderer may offer, and must disclose the nature of the difference in, material or equipment of similar characteristics, type, quality, appearance, finish, method of construction and performance.

## **CT2.10 ALTERNATIVE TENDER**

- 2.09.1 The Tenderer must submit a Tender strictly in accordance with the RFT Documents. If an alternative Tender is also submitted, the Tenderer must include a fully detailed description of the alternative offered and must state clearly how the alternative Tender differs from the requirements of the RFT Documents. Offers of technical alternatives must be accompanied by all information necessary for the complete evaluation of the offer, including design calculations, technical Specifications, breakdown of prices, proposed construction methodology and any other relevant details.

## **CT2.11 CUSTOMS, DUTIES AND TAXES**

The Tender Price must include customs duty applicable to all imported materials, plant and equipment required for the Works and all taxes levied by any authority or government in respect of or related to the Contract or the Works.

For clarity the tender offer should be exclusive of any allowance for Goods and Services Tax (GST). GST is to be treated separately and paid in accordance with the conditions of the contract.

## **CT2.12 CONSTRUCTION PROGRAM**

Landscape contractors will be asked from time to time to provide a program and it must be provided within 7 days.

## **CT2.13 ADDENDA**

- 2.12.1 Addenda to the RFT Documents may be issued by the Principal prior to the closing of Tenders. If the Tenderer is in doubt as to the true meaning of any part of the RFT Documents, the Tenderer should immediately notify the Contact Officer and obtain clarification of the RFT Documents. The Principal will not be responsible for any other clarification or interpretation.
- 2.12.2 Any clarification of a technical or contractual nature will be made only by formal addendum to the RFT Documents. Each addendum, together with any documentary information, issued to a Tenderer will be distributed to each person or organisation that has obtained a set of RFT Documents from the Contact Officer.
- 2.12.3 The Tenderer must in completing the Form of Tender acknowledge the addenda received by the Tenderer and that the Tender includes due allowance for the addenda. Any Tender submitted which does not acknowledge all addenda issued by the Principal on the Form of Tender may be deemed to be a nonconforming Tender. All addenda issued will become part of the RFT Documents and will form part of the contract.
- 2.12.4 The Principal may extend the Tender period when an addendum is issued.

## **CT2.14 OWNERSHIP OF TENDERS**

All Tenders will become the property of the Principal subject to this Section CT2.14. Tenderers retain the intellectual property rights in their Tenders. The Tenderer, by its submission of a Tender, authorises the Principal to copy, reproduce, use or supply intellectual property of the Tenderer for any purpose in respect of the assessment of the Tender.

The Tenderer will ensure that no third party intellectual property rights are infringed by the Principals use of the Tender.

## **CT2.15 CONFIDENTIALITY AND DISCLOSURE**

Tenderers are requested to specify in writing any information they believe is confidential in relation to their Tender or which they may wish to be treated as confidential in any contract. In particular, Tenderers must ensure that any personal information contained in a Tender does not infringe any individual's (including employees and other personnel) privacy rights. Tenderers should seek their own legal advice as to the implication of the Government Procurement Act (GPA).

In accordance with the disclosure requirements of the GPA, successful Tenderers must provide details identifying the Tenderer in full. If full and accurate details are not provided to the Principal within 2 working days after being requested by the Principal to do so, the Principal may deem the Tender as nonconforming.

## **CT2.16 COSTS OF TENDERING**

The Principal will make no payment to a Tenderer:

- (a) for any costs, losses or expenses incurred by a Tenderer in preparing its Tender or any alternative Tender;
- (b) in respect of any discussions, negotiations, enquiries or requests for details or information made by or on behalf of the Principal after the submission of Tenders; or
- (c) for any work undertaken by any Tenderer after its Tender is submitted including work requested by the Principal in accordance with any provision of the RFT Documents.

## **CT2.17 RISE AND FALL**

There will be no adjustment for rise and fall for the contract period other than the condition below.

*Labour costs will be reviewed annually with the successful landscape contractors in line with indexation. Any increase to supply or labour costs will be reviewed across the panel of landscape contractors to ensure 'value for money' is maintained.*

## **CT2.18 WORKING HOURS AND WORKING DAYS**

In the comparison of Tenders, the Principal may take into account the working hours and days proposed by the Tenderer and to the costs to the Principal attributable to supervision of work under the proposed contract outside the prescribed working hours and/or on other than the prescribed working days.

The Tenderer is expected to work hour's standard for the Landscape Construction industry. Subject to any restrictions that may be imposed on the site by the relevant authorities the following hours may potentially be worked by the Tenderer:

- The working days are Monday to Friday inclusive but excluding public holidays and one day every 4 weeks, usually a Monday, which is a building industry rostered day off.
- The working hours are up to 9 hours per day worked between 7:00 am and 5:00 pm or as required by a relevant Award, enterprise agreement or other industrial instrument.

## **CT2.18 ETHICAL SUPPLIERS DECLARATION**

The Tenderer must fully complete the Ethical Suppliers Declaration (in the form set out in Schedule 2). Tenders not accompanied by this declaration will be regarded as non-conforming. Failure to supply information in full in a Declaration may render the Tender non-conforming. If any section of the Declaration is not applicable, then 'Not Applicable' is to be written in that section. Tenderers must check that the 'I' and 'ABN' accurately correlate with the name of the Tenderer.

## **CT2.19 SUPERVISORY AND ADMINISTRATIVE PERSONNEL**

Each Tenderer must submit with and as part of the Tender details (in the form of a brief CV) of supervisory and administrative personnel proposed in connection with the execution of the Works. Such details must cover all personnel with the responsibility and authority of foreman and above must indicate title of personnel and whether they will be located on site or at the Tenderer's principal office.



## CT3. SUBMISSION OF TENDERS

### 3.01.1 LODGEMENT OF TENDERS

3.01.2 Tenders must be hand delivered by **2pm on Thursday 5 DECEMBER 2024** to:

**Name: Bede Roche**

**Delivery: Delivery Address: The Link, 1 McClymont Way, Strathnairn ACT 2615 Telephone: 1300 316 900**

Tenders lodged after the advertised tender closing time or at such other time as may be notified to the Tenderer in writing by the Principal will be considered late and not further assessed except in accordance with clause 6.3 of AS4120-1994 *Code of Tendering*.

All liaison with Riverview is to be through the Estate Manager above or the nominated representative.

Below is a list of actions and/or information that Tenders should review prior to submitting their Tender.

- Tender submitted on time
- Form of Tender and Tender Declaration
- Ethical Suppliers Declaration
- Work Health and Safety Statutory Declaration
- All assessment Criteria addressed including all associated supporting documentation noted in CT4.01 and Section 14.
- WHS Management Plan
- Signed copy of any issued Addenda to this Tender
- Original (Hardcopy x 1) and electronic file on a USB (1 copies of USB's) of full Tender Submission

### ADDITIONAL INFORMATION

To assist in the evaluation process, a Tenderer may be requested to submit additional information during the Tender evaluation period. For example:

- a. with regard to the Tenderer's quality assurance system:
  - a copy of the Tenderer's controlled procedure for establishing a project quality plan; and
  - a sample or draft project quality plan prepared in accordance with the above procedure; and
- b. with regard to the Tenderer's financial capability, written confirmation from proposed suppliers and/or subcontractors that the Tenderer has the necessary credit facilities with the supplier or subcontractor to provide materials and /or services during the Contract period.

3.01.3 Details of the required environmental authorisation or environmental protection agreement may be obtained by contacting the Department of the Environment, Climate Change Energy and Water, Environment Protection Authority on telephone (02) 13 22 81.

3.01.4 The Tenderer must:

- if a person, state his or her name in full and address, and sign the Form of Tender;
- if it is a partnership, state the name of the partnership and the name in full and address of the partner signing the Form of Tender on behalf of the partnership; or

- if it is a corporation, state its ACN, its name and registered address and the Form of Tender must be executed under the company's company seal and/or by the company's authorised officers.

**3.01.5** The Tender must be for the whole of the Works unless the RFT Documents otherwise provide. The Tenderer must not alter or add to any RFT Document except as required or permitted by these Conditions of Tender.

### **OCCUPATIONAL HEALTH SAFETY SYSTEM**

**3.01.6** As part of the Tender, the Tenderer must submit documentation to demonstrate to the Principal that the Tenderer has an appropriate WHS management system operating within the Tenderer's business. The Tenderer must provide a draft or sample WHS plan.

**3.01.7** The tenderers philosophy, policy and procedures with regard to WHS will be considered in the evaluation of the tender.

### **ETHICAL SUPPLIERS DECLARATION**

The Principal is committed to ensuring that suppliers and their subcontractors meet all their employee and industrial obligations in the performance of any contract for works or services that will require the exertion of labour by employees.

The Tenderer must fully complete the Ethical Suppliers Statutory Declaration and attach it with the submitted tender. Tenders not accompanied by this declaration will be regarded as non-conforming. Failure to supply information in full in a Declaration may render the Tender non-conforming. If any section of the Declaration is not applicable, then 'Not Applicable' is to be written in that section. Tenderers must check that the 'ACN' and 'ABN' accurately correlate with the name of the Tenderer.

## **CT3.02 TENDER VALIDITY PERIOD**

The Tender must remain valid and open for acceptance for a period of 120 days from the time and date for the closing of Tenders. The Tenderer may withdraw its Tender after the expiration of this period. The Tender will not lapse by reason of any discussions or correspondence between the Principal and the Tenderer which occur during this period.

## CT4.01 ASSESSMENT

- **Evaluation Methodology**

In evaluating Tenders, Riverview has as its objective the attainment of best value for money and not necessarily the lowest tendered price for each proposal.

Apart from the conformity with the requirements of this RFT, Riverview will evaluate Tenders in accordance with the criteria outlined below.

- **Threshold Assessment Criteria**

In the Request for Tender, tenderers are requested to provide all information to enable assessment of all evaluation criteria.

The Evaluation Team will assess the tenders against the Threshold Criteria. Tenders not complying with Threshold Criteria may be deemed non-conforming and may not be considered for further assessment against remaining Assessment Criteria.

| TC  | THRESHOLD CRITERIA  | YES/NO |
|-----|---|--------|
| TC1 | <p><b>Industrial Relations and Employment Obligations</b></p> <p><u>Part A</u><br/>The Tenderer must hold a Secure Local Jobs Certificate as at the date of close of Tenders.<br/><br/>A copy of the Certificate will be required to be supplied to verify certification status.</p> <p><u>Part B</u> Ethical Suppliers Declaration - Tenderers are to complete and submit an Ethical Suppliers Declaration. The contents of the Declaration and, without limitation to any other part of the Tender, any other information made available to Riverview referable to the work health and safety and employment and industrial relations performance and record of the Tenderer and any Associated Entity of the Tenderer (as defined in the Declaration) may be considered by Riverview as part of its assessment of Tenders.</p> |        |
| TC2 | <p><b>Work Health and Safety Statutory Declaration (WHS Declaration)</b></p> <p>Tenders must submit with their tender a Work Health and Safety Statutory Declaration This WHS Declaration must signed by an authorised person as described in Point 2 within the WHS Declaration.</p>   |        |

- **Weighted Assessment Criteria**

Following the assessment of the Threshold Criteria, all conforming tenders will be assessed against the Weighted Criteria and assigned a rating score.

The Evaluation Team will assess the financial offers as described in the below tables.

Tenders will be awarded an overall weighted score and ranked based on the highest combined weighted score.

| NO. | WEIGHTED ASSESSMENT CRITERIA   | WEIGHTING |
|-----|--|-----------|
| WC1 | <p><b>Past Performance in similar construction in relation to:</b></p> <ul style="list-style-type: none"> <li>• Time performance, cost performance and quality of workmanship – provide evidence of time, cost and quality performance on completed similar projects in the past 5 years and contact details of referees.</li> <li>• Provide information on the amount of any liquidated damages deducted for late time performance, awards and letter of commendation;</li> <li>• Environmental management, probity; and</li> <li>• Record of claims history and/or current litigation/arbitration with the Principal on any other contracts.</li> </ul> <p>The Evaluation Team may also consider records of past and current performance, claims, and compliance with ACT Government requirements provided by other ACT Government Agencies (including directorates), contractors or consultants engaged by the ACT Government to determine the tenderers past performance on similar type projects.</p> <p><b>Technical and Managerial Skills</b></p> <p>Provide / describe the following:</p> <ul style="list-style-type: none"> <li>• Management structure, systems and personnel including CV of key personnel that will be used on this project, including communication links, roles and responsibilities Professional / technical capacity and capability to meet the requirements of this project.</li> <li>• Provide statement on the availability of all key personnel to be allocated on this project.</li> <li>• Qualifications, skills and experience on similar projects and/or in a similar role are to be stated.</li> <li>• Proposed subcontractors – tenderer to list any proposed subcontractors to be used.</li> </ul> | 30%       |

| NO.            | WEIGHTED ASSESSMENT CRITERIA  | WEIGHTING      |                |                |  |        |        |  |     |     |     |
|----------------|---|----------------|----------------|----------------|--|--------|--------|--|-----|-----|-----|
| WC2            | <p><b>Resource Capacity</b></p> <ul style="list-style-type: none"> <li>• Tenderers to provide a statement with regard to:               <ul style="list-style-type: none"> <li>- the resource availability</li> <li>- capacity / current commitment of the company of projects</li> <li>- proposed staff, including a clear statement of resources to be allocated to the proposed project plant and equipment and their availability.</li> <li>- availability of key personnel.</li> </ul> </li> </ul>   | 15%            |                |                |  |        |        |  |     |     |     |
| WC3            | <p><b>Demonstrated Work Health and Safety system to complete the project</b></p> <p>Provide and describe the following:</p> <ul style="list-style-type: none"> <li>• Sample WHS site management Plan (from a similar project) suitable for implementation on this project, that demonstrates that the Tenderer is capable of proactively managing Work Health and Safety and Rehabilitation (WHS&amp;R) requirements;               <ul style="list-style-type: none"> <li>- Management;</li> <li>- Planning;</li> <li>- Risk &amp; Hazard Management;</li> <li>- Training, competency and supervision;</li> <li>- High risk construction work;</li> <li>- Consultation; and</li> <li>- Reporting.</li> </ul> </li> <li>• Preliminary WHS Risk Register identifying major WHS risks related to this project;</li> <li>• Evidence that personnel have demonstrated ability to manage WHS requirements.</li> <li>• Provide information on any adverse action in a past project during the last three years.</li> </ul> <p><i>Information provided in the Threshold Criteria WHS Declaration will also be considered in the assessment of this criterion.</i></p>  | 20%            |                |                |  |        |        |  |     |     |     |
| WC4            | <p><b>Financial Offer</b></p> <ul style="list-style-type: none"> <li>• The Tender Price assessment will be based on an assessment of how the offer meets the requirement for “value for money” against the risks associated with the price in accordance with the <i>Scoring Regime</i> after first determining a comparative ranking by assessing the tendered price using the following formula below.</li> </ul> <table border="1" data-bbox="434 1335 1032 1532"> <tr> <td data-bbox="256 1368 360 1397"><b>Formula</b></td> <td data-bbox="434 1335 734 1397">P = 31 - 25T/M</td> <td data-bbox="734 1335 1032 1397">P = 50 – 45T/M</td> </tr> <tr> <td></td> <td data-bbox="434 1397 734 1464">Domain</td> <td data-bbox="734 1397 1032 1464">Domain</td> </tr> <tr> <td></td> <td data-bbox="434 1464 734 1532">T&lt;M</td> <td data-bbox="734 1464 1032 1532">T≥M</td> </tr> </table> <p>Where:<br/> P = initial comparative price score (rounded whole number) prior to assessing risk.<br/> M = a median value of all Compliant tenderers.<br/> T = the submitted tender price of a tenderer or Notional Tender Price as applicable.</p> <p>Tender price risks may include special terms and conditions suggested by the tenderer. Risks associated with the tender price will be considered in determining the final comparative price score.</p> <p>Where even numbers of proposals are tendered the median will be deemed to be the mean of the two middle bids.</p> <p>Tenderers will receive a score between a maximum of ten (10) and a minimum of zero (0).</p> <p><i>In assessing the tender price, and to provide a score the Evaluation Team will take into account the result from the formula above, risks associated with the works and any other significant items deemed appropriate, such as innovations and any time saving offered in the tender.</i></p> | <b>Formula</b> | P = 31 - 25T/M | P = 50 – 45T/M |  | Domain | Domain |  | T<M | T≥M | 35% |
| <b>Formula</b> | P = 31 - 25T/M  | P = 50 – 45T/M |                |                |  |        |        |  |     |     |     |
|                | Domain  | Domain         |                |                |  |        |        |  |     |     |     |
|                | T<M   | T≥M            |                |                |  |        |        |  |     |     |     |

| NO. | WEIGHTED ASSESSMENT CRITERIA | WEIGHTING |
|-----|------------------------------|-----------|
|     |                              |           |
|     | Total                        | 100%      |

### Scoring Regime

| RATING         | DESCRIPTION   | SCORE |
|----------------|---|-------|
| Superior       | Exceeds requirements in all ways, with very little or no risk   | 10    |
| Outstanding    | Exceeds requirements in most ways, with very little or no risk  | 9     |
| Excellent      | Meets requirements in all ways, exceeds it in some, little risk involved  | 8     |
| Very Good      | Meets the requirement, little risk involved   | 7     |
| Good           | Meets the requirement and is workable, acceptable risk  | 6     |
| Adequate       | Meets the requirement, may require work in some areas, some element of risk   | 5     |
| Reservations   | Meets the requirement, workable but may be deficient or limited in some areas, element of risk                          | 4     |
| Poor           | Nearly meets requirement, deficient or limited in most areas, high element of risk                                      | 3     |
| Very Poor      | Information provided does not meet the requirement, is not workable and is deficient, high element of risk              | 2     |
| Inadequate     | Information provided does not meet the requirement, is not workable and is deficient, higher element of risk            | 1     |
| Not Acceptable | Tenderer has either stated non-compliance, demonstrated non-compliance, or there is insufficient information to assess. | 0     |

## **CT4.03 NONCONFORMING TENDERS**

A Tender that is:

- a. at variance with or does not respond to or does not fully comply with any requirement of this RFT; or
  - b. contains erasures or is illegible,
- may be deemed to be nonconforming.

The Principal may, in respect of a Tender that is nonconforming, or which has been deemed by the Principal as nonconforming:

- c. reject and not further consider the Tender;
- d. ignore any non-conformance in the Tender; or
- e. if it is possible to correct the non-conformance without damaging the probity of the tender process, permit the Tenderer to do so.

## **CT4.04 ADDITIONAL INFORMATION TO BE PROVIDED**

Despite any other requirements of the RFT Documents, a Tenderer must, if requested by the Principal, submit additional information to allow further consideration of the Tender, or the Tenderer's ability to perform the Works.

If the Tenderer fails to submit any of the information so requested by the date and time stipulated by the Principal, the Tender may be treated as nonconforming.

It is expected that a tender interview will be conducted with short listed tenderers to discuss their Tender and any required information or requested changes from either party.

## **CT4.05 COMPLAINTS DURING THE TENDER PERIOD**

If the Tenderer wishes to lodge a complaint concerning any aspect of the Tender process, the Tenderer must submit full details of the complaint in writing to the Estate Manager before the Tender closing time. The Estate Manager may respond in writing to the Tenderer dealing with the details raised in the complaint. Information concerning the substance of the complaint and response may be sent to all Tenderers by the Principal, without disclosing the source of the complaint or revealing the complainant's confidential information. In response or in partial response to the complaint the Principal may issue addenda to the RFT Documents and may extend the final time for the lodgement of the Tender.

## **CT4.06 SELECTION OF PREFERRED TENDERER**

On conclusion of the evaluation process, the Principal may:

- a. accept a Tender for the whole of the Works, or if the Works are specified in sections, for a section of the Works;
- b. accept none of the Tenders;
- c. commence contract negotiations with the preferred Tenderer(s); or
- d. negotiate with other Tenderers if contract negotiations with the preferred Tenderer(s) are not successfully concluded.

At any time the Principal may:

- e. cease negotiations with any Tenderer; or
- f. vary or discontinue the procurement process on giving written notice to the Tenderers.

No legal obligations arise until the Principal has accepted a Tender in accordance with CT4.07.

The Principal may offer unsuccessful Tenderers the opportunity of a debriefing.

## **CT4.07 ACCEPTANCE OF TENDER**

A Tender can only be accepted by the Principal by written notice to the successful Tenderer.

On written acceptance by the Principal of the successful Tender, a deed of agreement (“Contract”) between the Principal and the successful Tenderer will be created. That deed will be constituted by the RFT Documents (excluding the Notice to Tenderers), the successful Tender (or if a Tender is accepted for sections of the Works, the relevant part of the Tender) and the written notice of acceptance.

For the purposes of the Contract, “Contract Sum” will mean the Tender Price accepted by the Principal in accordance with this CT4.07.

The successful Tenderer must confirm the Contract by executing and returning to the Principal a Formal Instrument of Agreement within 14 days of receipt by the successful Tenderer of the Formal Instrument of Agreement from the Principal.



# SPECIAL CONDITIONS OF CONTRACT

## SECTION 1 GENERAL

### 1.01 WORKPLACE HEALTH AND SAFETY – GENERAL

The Contractor is to ensure that all work under this contract is performed in accordance with the Work Health & Safety Act 2011 and Regulations 2011. The Contractor must also ensure the work is performed in accordance with the approved Codes of Practice issued by ACT Worksafe.

Before any portion of the work under this contract is performed outside these Codes of Practice the Principal Contractor must document the variation and be able to demonstrate that the level of safety will not be reduced as a result of following an alternate process.

***During the construction stages, Riverview Projects will conduct an initial audit on the Principal Contractors WHSMP three weeks after site establishment and then a minimum every 6 months or as determined by the Project Operations Director until the scope of works is completed and delivered.***

The audits will be 2 hours and the Contractor must as a minimum have a Project Manager and/or Foreman present during the audit.

The audits will report on the effectiveness of the Principal Contractors WHS Management Plan, compliance with planned arrangements, and the implementation of the WHSMP by management.

Corrective actions resulting from audits and inspections will be raised using the Corrective Action Request (CAR). This will be completed by the Auditor and issued to the Principal Contractor, with reasonable timeframes for action in accordance with the judgment of a competent person. If deemed by the Principal serious non-conformances have been identified those site works in those operations may be required to be shut down until the Contractor has satisfactorily rectified the non-conformance.

All corrective actions must receive formal acceptance and sign-off from the Principal Contractor representative, and the Auditor before being closed out.

The Principal Contractor is to conduct schedule inspections of its activities to ensure that any worker engaged by them, or its agents or subcontractors are complying with its safe systems of work.

Toolbox talks will be required to be conducted minimum on a fortnightly basis and once a month senior management staff from the Contractor must be in attendance.

**The Contractors attention is drawn to Section 4 & Clause 14.08 of the General Conditions of Contract outlining the WHS obligations of the Contractor under this Contract.**

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## **SECTION 2 DOCUMENTS**

N/A

## **SECTION 3 QUALITY ASSURANCE**

### **3.01 QUALITY SYSTEM REQUIREMENTS**

The Contractor shall:

- i) Ensure works are completed to a high standard, there will be a 2 week defect/maintenance period to ensure everything establishes successfully.
- ii) Facilitate inspections of front landscape works with Riverview to ensure works are being completed to a high standard.

## **SECTION 4 WORK HEALTH AND SAFETY**

### **4.01**

### **4.02 WORK HEALTH AND SAFETY**

- 4.02.1 The obligations set out in this Contract do not detract from the Contractor's obligations under the WHS Legislation. If there is an inconsistency between this Contract and the WHS Legislation, the Contractor must comply with the WHS Legislation and inform the Principal of the inconsistency.
- 4.02.2 The Contractor must comply with the WHS Legislation and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk.
- 4.02.3 The Contractor must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- 4.02.4 The Contractor must institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform work on the Site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.
- 4.02.5 The Contractor must provide the written assurances obtained under special condition 4.02.4, together with written assurances from the Contractor about the Contractor's ongoing compliance with WHS Legislation, to the Principal.
- 4.02.6 The Contractor must provide the Principal, with a written report on all work health and safety matters, or any other relevant matters including a summary of the Contractor's compliance with WHS Legislation, at least once per month, and at other times as requested.
- 4.02.7 The Contractor must exercise a duty of utmost good faith to the Principal in carrying out the work under the Contract to enable the Principal to discharge the Principal's duties under the WHS Legislation.
- 4.02.8 The Contractor must ensure that if any law requires that a person:
- (a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
  - (b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.
- 4.02.9 The Contractor must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.
- 4.02.10 The Contractor must not direct or allow a person to carry out work or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and special conditions 4.02.8 and 4.02.9 are met.

### **4.03 INCIDENT REPORTING**

- 4.03.1 In this special condition, "regulator" and "notifiable incident" have the same meaning as in the *Work Health and Safety Act 2011* (ACT).
- 4.03.2 In addition to any obligations under WHS Legislation, the Contractor must:
- (a) notify the Principal of any notifiable incident immediately after it notifies the regulator; and
  - (b) provide the Principal with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.

- 4.03.3 In addition to the obligations under special condition 4.03.2, the Contractor must promptly notify the occurrence and furnish a written report to the Principal of:
- (a) incidents resulting in damage to property;
  - (b) incidents resulting in significant delays to the Works;
  - © incidents resulting in injury or illness other than a notifiable incident; and
  - (d) incidents that may have resulted in or may result in any incident set out in paragraphs (a), (b) or (c) above or a notifiable incident.

#### **4.04 AFFIRMATIVE ACTION**

The Contractor:

- (a) must comply with its obligations, if any, under the “*Workplace Gender Equality Act 2012 (Cth)* (“Gender Act”); and
- (b) must not enter into a subcontract under this Contract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the Gender Act.

### **PART 4A WORK HEALTH AND SAFETY**

#### **4A.01 APPLICATION OF PART 4A**

This Part 4A applies.

#### **4A.02 ENGAGEMENT AS PRINCIPAL CONTRACTOR**

Unless the Conditions of Contract states otherwise, the Principal:

- (a) engages the Contractor as principal contractor;
- (b) authorises the Contractor to have management or control of the Site; and
- © engages the Contractor to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011 (ACT)*.

## **SECTION 5 ENVIRONMENTAL MANAGEMENT SYSTEMS**

### **5.01 ENVIRONMENTAL MANAGEMENT PLAN**

The Contractor must:

- (a) prepare and supply to the Principal for direction as to its suitability an environmental management plan.

### **5.02 EXISTING FLORA**

The Contractor must protect from damage all trees and other plants that:

- (a) are shown or specified to be retained;
- (b) are beyond the limits allowed to the Contractor; or
- (c) which need not be removed or damaged for construction operations.

If trees, shrubs, lawns or gardens (“flora”) are affected by the Works, the Contractor must:

- give 14 days written notice (prior to commencing the Works) to the Estate Manager; and
- comply with any request or direction by the Estate Manager in relation to the flora.

### **5.03 DUST AND NOISE**

The Contractor must:

- restrict dust caused by the Works to a minimum; and
- take all practicable steps to minimise noise resulting from the Works.

## SECTION 6 EMPLOYEES

### 6.01 SECURE LOCAL JOBS

6.01.1 In this Contract the following terms are defined:

**“Adverse Ruling”** means a ruling by any court, tribunal, board, commission or other entity (including but not limited to the Fair Work Commission) with jurisdiction to determine employee and industrial relations matters to the effect that the Contractor or one of its Associated Entities has contravened an Industrial Law;

**“Applicable Subcontractor Work”** means works or services that would, if provided to a Territory Entity, be Territory-funded work.

**“Approved Auditor”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Associated Entity”** has the meaning given by section 50AAA of the *Corporations Act 2001* (Cth);

**“Code”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Full Details”** means:

- (a) the nature of the Adverse Ruling;
- (b) any conviction recorded or adverse finding made in respect of the Adverse Ruling;
- (c) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the Adverse Ruling and the maximum penalty that could have been imposed under the relevant Industrial Law;
- (d) the name of the court, tribunal, board, commission or other entity, the jurisdiction in which the proceeding or prosecution was brought, the date on which the proceeding or prosecution commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity;
- (e) the name of the entity against which the Adverse Ruling was made; and
- (f) any other relevant information that Contractor may rely on as grounds for not terminating this Contract as a result of the Adverse Ruling;

**“Industrial Law”** means any Commonwealth, State or Territory legislation that deals with matters relating to industrial relations and includes employment and workplace safety obligations;

**“Labour Relations, Training and Workplace Equity Plan”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Registrar”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Secure Local Jobs Code Certificate”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Territory Entity”** has the meaning as set out in the *Government Procurement Act 2001*;

**“Territory-Funded Work”** has the meaning as set out in the *Government Procurement Act 2001*.

6.01.2 This clause 6.01 applies to the extent that the Contract provides for the performance of Territory-Funded Work. *(if nothing selected, this clause 6.01 applies)*

6.01.3 The Contractor must comply with all its obligations under the Code.

6.01.4 The Contractor must maintain a valid Secure Local Jobs Code Certificate during the term of the Contract.

6.01.5 Failure of the Contractor to maintain a valid Secure Local Jobs Code Certificate will constitute a breach of an essential term of this Contract entitling the Principal to terminate the Contract on written notice to the Contractor.

6.01.6 If at any time during the term of the Contract an Adverse Ruling is made, the Contractor must, within 7 working days of the making of the Adverse Ruling, provide a statutory declaration by an authorised representative setting out the Full Details of the Adverse Ruling and (if applicable) any existing or planned remedial measures taken or to be taken to prevent a contravention, breach or offence similar to the contravention, breach or offence on which the Adverse Ruling is based from recurring.

- 6.01.7 The Contractor must ensure terms are included in all agreements with subcontractors engaged to perform Applicable Subcontractor Work:
- (a) requiring the subcontractor to comply with the Code; and
  - (b) imposing obligations on the subcontractor in the same form as those set out in this clause 6.01 and imposed on the Contractor (subject to any necessary variation to reflect the different parties).
- 6.01.8 The Contractor must ensure:
- (a) all subcontractors engaged to perform Applicable Subcontractor Work:
    - (i) hold a Secure Local Jobs Code Certificate; and
    - (ii) maintain a Secure Local Jobs Code Certificate during the term of their agreement; and
  - (b) the obligations in clause 6.01.8(a) are included in the relevant agreement with the subcontractor.
- 6.01.9 The Contractor must provide the Principal with a statutory declaration in a form approved by the Principal regarding its compliance with the Code:
- (a) within 5 working days of a written request from the Principal; and
  - (b) if requested in writing by the Principal, at the time the Contractor provides a Payment Claim.
- 6.01.10 Failure of the Contractor to provide a statutory declaration in accordance with clause 6.01.9 or the making of a false statement in a statutory declaration by the Contractor or the Contractor's representative will constitute a breach of this Contract.
- 6.01.11 If the Contractor fails to provide a statutory declaration in accordance with clause 6.01.9(b) the Principal may withhold payment of monies otherwise due to the Contractor in respect of the relevant payment claim until the statutory declaration is received.
- 6.01.12 The Principal may by written notice request the Contractor obtain a statutory declaration from a subcontractor regarding its compliance with the Code and provide it to the Principal within 15 working days of the date of the written notice. The Contractor must use your reasonable endeavours to ensure the subcontractor supplies the declaration to enable the Contractor to comply with this paragraph.
- 6.01.13 The Principal may require that the Contractor conduct face-to-face induction sessions with employees at the commencement of Territory-Funded Work or commencement of employment in relation to Territory-Funded Work.
- 6.01.14 The Principal may require a union workplace delegate or employee representative to attend staff induction sessions held by the Contractor except in circumstances where attendance would result in a conflict with Commonwealth laws.
- 6.01.15 The Contractor must, at all reasonable times, allow the Principal, Registrar or person nominated by the Principal or Registrar to enter your worksite where the Territory-Funded Work is being performed in order to undertake education and awareness raising activities in relation to the Code. A person may not be nominated by the Principal or Registrar under this paragraph in circumstances where entry would result in a conflict with Commonwealth laws.
- 6.01.16 Without limiting the powers of the Territory's Auditor-General under the *Auditor-General Act 1996 (ACT)*, the Principal (or nominated representative) and Approved Auditors may, at the Principal's cost, access records kept by the Contractor or subcontractors and conduct audits and other reviews and checks, to monitor the delivery of the Works and compliance with this Contract and the Code, except in circumstances where a nomination would result in a conflict with Commonwealth laws.

6.01.17 If the Contractor was required to submit a Labour Relations, Training and Workplace Equity Plan (if any) submitted as part of its Tender for the Works:

- (a) the Contractor must implement its commitments set out in its Labour Relations, Training and Workplace Equity Plan;
- (b) the Contractor must report to the Principal on its compliance with paragraph (a) quarterly during the term of this Contract;
- (c) the Contractor must attend any meetings scheduled by the Principal to review its progress in implementing its commitments set out in the Labour Relations, Training and Workplace Equity Plan; and
- (d) without limiting the rights and powers of the Principal whether under this Contractor or at law, failure to comply, in whole or in part, with the commitments contained in any Labour Relations, Training and Workplace Equity Plan may be taken into account in the award of future contracts for Territory Entities and/or the granting of future Secure Local Jobs Code Certificates by the Registrar.

## **6.02 SCREENING OF CONTRACTOR AND EMPLOYEES**

6.02.1 If the requested by the Principal you must ensure that all persons employed in carrying out the Works, whether they are your employees, subcontractors or subcontractor's employees, undergo a National Police Check conducted by the Australian Federal Police and you must, within 7 days of the date of a written request by the Principal, provide it with the result of the National Police Check in respect of all (or nominated) employees, subcontractors and employees of the subcontractors.

6.02.2 The Principal may, at its absolute discretion and by written notice, withhold or withdraw approval for any person to have access to the Site. The Principal will not be liable for any detriment caused by the withholding or withdrawal of approval. If the Principal withholds or withdraws approval for any person under this clause, you must not permit that person to have access to the site under this Contract.

6.02.3 If requested by the Principal in writing to do so, the Contractor and its employees must provide all information and do any other act or thing for the purpose of assessing the suitability and fitness of that person to be engaged to carry out any part of the Works, including but not limited to, giving finger prints to any police force.



## **SECTION 7 CONTRACTING**

### **7.02 COLLUSIVE ARRANGEMENTS**

- 7.02.1 It is a condition precedent to this Contract that the Contractor has not entered into any collusive arrangement as specified in CT2.05 of the Conditions of Tender for the Works.
- 7.02.2 If, in the reasonable opinion of the Principal, the Contractor has entered into a collusive arrangement in respect of the Works, then without limitation, to any other right or remedy the Principal may have:
- (a) the Principal may by notice in writing terminate this Contract;
  - (b) if the Contractor has received any money or allowance from or on behalf of another tenderer in relation to the Works, that money or the value of the allowance will be held in trust for and will become immediately payable to the Principal; and/or
  - (c) if the Contractor pays a trade or industry association or another tenderer for the Works any money in breach of this Clause, the Contractor must immediately give the Principal written notice of that event and the Principal will be entitled to withhold from any monies due to the Contractor under this Contract an equivalent sum as liquidated damages.

### **7.03 CONTRACTOR'S REPRESENTATIVE**

The Contractor's representative shall have sufficient command of the English language and of Australian construction and technical terminology to be able to read, converse and receive instructions in English.

### **7.04 MEASUREMENT OF WORK**

For the purposes of the Contract and unless otherwise specified in the Contract, work shall be measured as follows:

- Building Work:  
In accordance with the Australian Standard Method of Measurement of Building Works.

### **7.05 NO "PAID IF PAID" CLAUSES IN SUBCONTRACTS**

The Contractor shall ensure that there is no term in the contract between the Contractor and any subcontractor which is to the effect that the Contractor shall pay the subcontractor only if the Contractor is paid (for the work carried out by the subcontractor) by the Principal.

### **7.06 SUBCONTRACTOR APPROVAL**

Acceptance of a Tender by the Principal does not constitute an approval of a proposed subcontractor or subcontracted work. The Principal will reserve the right to not allow a particular subcontractor to work on this project at their discretion. It is a Contractor's responsibility to obtain Principal approval for all nominated subcontractors.

## **SECTION 8 ADMINISTRATION**

### **8.01 SITE MEETINGS**

- 8.01.1 The Contractor must ensure that site meetings attended by the Contractor, appropriate Subcontractors and the Principal are held throughout the duration of the Contract at a minimum frequency of 2 weeks.
- 8.01.4 Expectation that the site meetings are well represented by the Contractor.

### **8.02 SEPARABLE PORTIONS**

Each individual front landscape project will be viewed as a separable portion and will be invoiced upon completion as such. A purchase order will be completed for each separable portion and each separable portion will be completed as per the steps outlined in NT 01.

The Contractor and Resident shall arrange and undertake a joint defects inspection at the end of the defects liability period (2 weeks). The Contractor must rectify all agreed defects within 2 weeks, in the event of disagreement the Principal will decide if a defect is valid or not.

### **8.03 LUMP SUM AND PROVISIONAL QUANTITIES**

The Principal notes that each Front Garden Contract will be a Lump Sum Contract. All items will be clearly identified in the client copy quotation.

Personnel and Plant Hourly Rates Schedule will be used in the valuation of variation work.

Refer to Schedule 5 in this RFT.

### **8.04 PROGRESS CLAIMS**

At the commencement of the Contract, the Contractor shall supply a schedule of the anticipated monthly progress claims which will be made throughout the Contract. The Contractor shall supply a revised schedule with each month's progress claim.

### **8.05 FIRST PROGRESS PAYMENT**

Notwithstanding any other provision of this Contract, the Principal retains the option not to pay any moneys pursuant to this Contract until after the Contractor has signed the copies of this Contract forwarded to it by the Principal and returned the signed copies to the Principal.

## **SECTION 9 SITE**

### **9.01 SITE OFFICE**

If the contractor chooses to have an office on site the contractor must:

- (a) provide and erect on the Site, approved temporary facilities for the use of the contractor's employees and subcontractors.
- (b) provide site facilities that comply with minimum award and WHS requirements;
- (c) maintain the office in good order and clean condition with suitable furniture;
- (d) all weather site compound facilities; and
- (e) after obtaining permission from the Principal, remove the facilities on completion of the Works.

### **9.03 ACCESS FOR VISITORS**

The Contractor must provide safe access to such premises for the Principal and authorized persons notified to the Contractor by the Principal.

The Contractor must take responsibility for the suitability of all workers and subcontractors on the Site, set reasonable standards of conduct, investigate complaints about their behaviour and take appropriate action including removal from Site if so warranted.

### **9.04 ASBESTOS**

The Contractor shall immediately report all asbestos found on the Site to the Principal. The Contractor shall employ a suitably qualified person to dispose of the asbestos in accordance with safety regulations.

### **9.05 OCCUPIED PREMISES**

If the Contract provides that the Principal or persons authorised by the Principal will continue in possession and occupancy of parts of the Site and/or existing buildings during the course of the Works, the Contractor must:

- (a) provide safe access to occupied premises for the Principal and such authorised persons as may be notified to the Contractor;
- (b) minimise nuisance to the occupants and ensure that the Works do not adversely affect their safety; and
- (c) protect the occupants against weather, dust, dirt, water or other nuisance arising from the Works by means of temporary screens or similar structures.

This Section is relevant for adjacent Contractors that could be working on Macnamara at the same time.

### **9.06 ADJOINING PROPERTY**

If any damage occurs to adjoining property via the activities of front landscaping the contractor will be responsible to rectify at their expense.

## **SECTION 10 COMPLETION**

### **10.01 RESERVED**

### **10.02 FINAL CLEANING UP**

On completion work at the Site, the Contractor shall leave all gutters and equipment in a thoroughly clean and efficient operating condition. The Contractor shall ensure that all ground areas are finished to an even grade, free of rubbish and that all temporary fences and structures are removed. All areas shall be left in a condition similar to that which existed before work commenced.

### **10.03 MAINTENANCE DURING POST-COMPLETION PERIOD**

The Contractor must ensure that during the Post Completion Period (During Defects Liability Period) such planned and unplanned maintenance is carried out as is necessary to ensure that the Works are, throughout and at the end of the Post-Completion Period in a condition fit for their intended purpose.

## **SECTION 11 MATERIALS AND WORKMANSHIP**

### **11.01 MANUFACTURERS' RECOMMENDATIONS**

The Contractor shall use manufactured items in the work only in accordance with the current published recommendations of the manufacturer relevant to such use.

## **SECTION 14 ADDITIONS**

### **14.01 EXISTING SERVICES**

It is the Contractor's responsibility to establish the exact alignment of all existing services within the limits of works prior to commencement of works. Clearances shall be obtained from the relevant service authority.

Damages or consequential damages and delay due to the failure to establish the alignment of all existing services are the Contractor's responsibility. No payment will be made for additional work or damages where the Contractor has not complied with this requirement.

### **14.02 PARKING OF CONTRACTOR'S PLANT**

Any parking of plant must not create any traffic or safety hazard or obstruction to motorists using the roadway or vehicular accesses to properties or to pedestrians or cyclists using footpaths, verges or the roadway.

### **14.03 MAIN SITE COMPOUND**

The main site compound, if the contractor wished to have a compound based in the development shall be established near the Belconnen Farmhouse Precinct. An alternative location to the main site compound may be considered on the provision that it is within the confines of the site and is at no additional cost to the Principal.

The compound is to be fenced using standard 1.8m high security chain wire fencing including lockable gates as necessary. The compound and its fencing is to be located suitably clear of overhead powerlines to approval of the Electrical Authority.

The Contractor is to carry out full restoration of the compound on completion of the Contract. This work includes grading, scarifying, topsoiling, seeding and mulching of the entire compound area.

The site compound shall be relocated once works are completed. The full costs associated with this relocation are the responsibility of the contractor.

### **14.04 SEDIMENT AND EROSION CONTROL**

The contractor shall ensure that adequate sediment and erosion control measures are in place ensuring there is no runoff leaving the site or compound areas.

Managing Urban Stormwater (NSW Government publication) – Soils and Construction Vol 1, 4<sup>th</sup> Edition March 2004 (The Blue Book) **is recommended as a suitable reference for the Contractor in determining an appropriate standard** (higher than currently undertaken in the ACT)

### **14.05 SPOIL AND TOPSOIL STOCKPILING**

It is the Contractor's responsibility to ensure that all excess spoil and topsoil is removed and disposed of appropriately. Surplus topsoil may be placed in nominated stockpile locations temporarily. Sediment and erosion control measures are required to be in place prior to stockpiling commencing.

### **14.06 SMOKE FREE WORKPLACE**

The internal areas of existing buildings which comprise the Site are smoke free workplaces. The Contractor must ensure that employees and subcontractors comply with this condition.



# FORM OF TENDER (LUMP SUM)

(Page 1 of 2)

The Tender Box  
Riverview Group (ACT)  
The Link  
1 McClymont Way  
STRATHNARIN ACT 2602

I/we \_\_\_\_\_ ACN/ABN \_\_\_\_\_  
(legal entity in block letters)

accept the tender and contract conditions in this RFT and tender to perform the Works for the

\_\_\_\_\_  
\_\_\_\_\_  
(Project No)\_\_\_\_\_

for the GST inclusive sum of \$\_\_\_\_\_ (“Tender Price”) This figure is to include pricing for all 4 typologies.

I/we understand that by signing this Form of Tender, a deed of agreement will be created if this Tender is accepted in writing by the Principal.

I/we, therefore, warrant that all information provided by me/us in this Tender is complete and accurate.

## Contact and Notice Details

Address of Registered Office of Tenderer \_\_\_\_\_

\_\_\_\_\_  
Address for Service of Notices \_\_\_\_\_

\_\_\_\_\_  
Contact Person and Position within the Tendering Organisation \_\_\_\_\_

Telephone Number \_\_\_\_\_ Facsimile Number \_\_\_\_\_

E-mail address \_\_\_\_\_





# TENDER SCHEDULE

Please include pricing for the below block typologies in line with the front landscape concepts, pricing to include supply and install of all items listed in the chart below for each concept EXCEPT for verge – Turf to verge is **NOT** to be included in pricing.

Quantities and areas of each item included in each typology included in the concept drawings. Assume blocks are flat and have NOT been dug out/prepared for landscaping.

Contractor is to include a price breakdown of each typology stating a price for each line item, this is to be provided in the contractors typical format.

| Typology  | Pricing (Inclusive of GST) |
|---|----------------------------|
| Corner Block                                    |                            |
| Open Space Corner Block                         |                            |
| Rear Loaded Block                               |                            |
| Standard Block                                  |                            |
|   |                            |
| <b>Total Pricing for all 4 block typologies</b> | <b>\$</b>                  |

Identify and state the value of any GST Free or Input Taxed Supplies.

---

Signature of Tenderer \_\_\_\_\_ Date \_\_\_\_\_

(To be signed by person signing Form of Tender)

Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_

# SCHEDULE 1

## TENDERER DECLARATION

.....[Name of Tenderer],

.....[ACN (if any)]

.....[RFT No]

1. The following meanings apply in this Tenderer Declaration:
  - (a) **Principal** has the same meaning as in the RFT.
  - (b) **RFT** means the RFT referred to above.
  - (c) **Tender** means the Tenderer's tender response to the RFT.
  - (d) **Tenderer** means the entity named above.
2. I, the undersigned, am authorised on behalf of the Tenderer to provide the information and the authorisations and make the declarations set out in this Tenderer Declaration.
3. I, on behalf of the Tenderer, authorise the Principal to:
  - (a) obtain information about and enquire into the Tenderer's financial status and viability;
  - (b) obtain from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body) and take into account in its evaluation, information, including information about the Tenderer's performance and/or compliance during any previous or current contracts for services or works similar to those sought in the Tender (whether or not those contracts were with the Territory, State or Commonwealth or another entity and whether or not those contracts were nominated by the Tenderer in its Tender);
  - (c) obtain and take into account in its evaluation, information from referees or other reputable sources on prior or current projects in which the Tenderer was involved (whether or not nominated by the Tenderer in its Tender);
  - (d) use any information obtained from any Territory, State or Commonwealth government agency (including for the avoidance of doubt, any regulatory or law enforcement body), referee or other reputable source for any government purposes including, without limitation, assessment of suitability for: registration; pre-qualification; selective tender lists or the award of contract;
  - (e) provide information about the Tenderer to any Territory, State or Commonwealth government agency including information provided by the Tenderer and information related to the Tenderer's performance at any time and for any reason ; and
  - (f) provide this Tenderer Declaration to any Territory, State or Commonwealth government agency (including any regulatory or law enforcement body, which includes, without limitation WorkSafe ACT) as evidence of the Tenderer's consent to allow that agency to release information as requested by the Principal to the Principal.
4. I have sighted all addenda to this RFT.
5. I agree that the Tender is open for acceptance by the Territory for a period of 120 days or such other time as specified in the RFT.
6. I warrant that in preparing the Tender I/We did not communicate or have any arrangement or arrive at any understanding with any of the other Tenderers to assist me or another tenderer prepare a tender, including that I did not engage in any discussion or correspondence concerning the prices included in my Tender, or engage in

any collusive tendering with any of the other Tenderers, or any other conduct which in any way reduced or could have the effect of reducing the competitiveness of the tender process for the Works.

I warrant that as at the closing date of Tenders, the Tenderer, its officers, employees, agents, subcontractors, consultants and advisers do not have any actual, potential or perceived conflicts of interest between the interests of the Territory and the Tenderer other than as specifically disclosed in the Tender and I undertake to immediately notify the Territory's Contact Officer of any actual, potential or perceived conflicts of interest that arise before the completion of this procurement process

|   |           |   |               |
|---|-----------|---|---------------|
| <hr/>   |           | <hr/>   |               |
| Full Name and / or Name of Company                    | AND       | Trading Name ( <i>Business Name</i> ) (if different)                      |               |
| <hr/>   |           | <hr/>   |               |
| ACN (Australian Companies Number)                     | AND       | ABN (Australian Business Number)  |               |
| <hr/>   |           | <hr/>   |               |
| Registered Business Address                           |           | Postal Address  |               |
| <hr/>   |           | <hr/>   |               |
| State   | P/Code    | State   | P/Code        |
| <hr/>   |           | <hr/>   |               |
| Telephone No  | Mobile No | Facsimile No  | Email address |
| <hr/>   |           | <hr/>   |               |
| Name of ACT Professional Standards Scheme (if any)    |           | Upper Limit of capped Professional Indemnity Liability Insurance (if any) |               |
| <hr/>   |           | <hr/>   |               |
| Tenderer's Representative                             |           | (include telephone number)  |               |
| <hr/>   |           | <hr/>   |               |
| Position Held by Tenderer's Representative            |           |   |               |
| <hr/>   |           |   |               |
| Signature of Director if corporation else Tenderer    |           | Printed Name  |               |
| <hr/>   |           | <hr/>   |               |
| Date  |           |   |               |
| <hr/>   |           | <hr/>   |               |
| Signature of 2nd Director if corporation else Witness |           | Printed Name  |               |
| <hr/>   |           | <hr/>   |               |

## SCHEDULE 2

### ETHICAL SUPPLIERS DECLARATION

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
  - a. **“Adverse Ruling”** means a ruling by any court, tribunal, board, commission or other entity with jurisdiction to determine employee and industrial relations matters to the effect that the Tenderer has breached its Employee and Industrial Relations Obligations.
  - b. **“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Tenderer with his or her labour.
  - c. **“Employee and Industrial Relations Obligations”** means compliance with:
    - (i) Prescribed Legislation;
    - (ii) the orders, directions or decisions of any court, tribunal, board, commission or other entity with jurisdiction to consider the interpretation, breach or any other matter concerning any Prescribed Legislation;
    - (iii) Industrial Instruments; and
    - (iv) the IRE Strategy.’
  - d. **“Full Details”** means the details of:
    - (i) the nature of the breach or offence or alleged breach or offence;
    - (ii) any conviction recorded or adverse finding made in respect of the breach or offence;
    - (iii) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the breach or offence and the maximum penalty that could have been imposed under the Prescribed Legislation.
    - (iv) the name of the court, tribunal, board, commission or other entity; the State or Territory in which the proceeding or prosecution is brought; the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity; and
    - (v) the name of the person or other legal entity against which the finding or conviction was made or the proceeding or prosecution was initiated.
  - e. **“Industrial Instruments”** means an award or agreement, however designated, that:
    - (i) is made under or recognised by an industrial law; or
    - (ii) concerns the relationship of an employer and the employer’s employees.
  - f. **“IRE Certificate”** has the same meaning as in the ACT Government’s IRE Strategy;
  - g. **“IRE Strategy”** means the ACT Government’s *Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects*, as amended from time to time,
  - h. **“Prescribed Legislation”** means each of the following:
    - (a) Industrial Instruments applicable to the Tenderer;
    - (b) *Long Service Leave Act 1976* (ACT);
    - (c) *Work Safety Act 2008* (ACT);

- (d) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
  - (e) *Workers' Compensation Act 1951* (ACT);
  - (f) *Workplace Relations Act (1996)* (Cth);
  - (g) *Fair Work Act 2009* (Cth);
  - (h) *Superannuation Guarantee (Administration) Act 1992* (Cth);
  - (i) *Building and Construction industry Improvement Act 2005* (Cth);
  - (j) *Workplace Gender Equality Act 2012* (Cth);
  - (k) *Paid Parental Leave Act 2010* (Cth);
  - (l) *Payroll Tax Act 1987* (ACT);
  - (m) *Work Health and Safety Act 2011* (ACT);
  - (n) any Regulations made under the above Acts;
  - (o) any laws of the Commonwealth or the Australian Capital Territory which vary or replace the above Acts or Regulations, or any part of them; and
  - (p) any other Acts or Regulations of the Commonwealth or the Australian Capital Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations.
- i. **"Prescribed Works or Services"** means works or services that require the exertion of labour by Employees.
  - j. **"Project"** means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah]; and
  - k. **"Tenderer"** means [insert full legal name of Tenderer including the ACN/ABN as per that identified on the Tender].

2. I am authorised on behalf of the Tenderer to make this declaration.

3. The Tenderer holds a current IRE Certificate.

4. The Tenderer has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation

True (delete 4A and initial)  Not true (answer 4A)

4A. The Tenderer has not complied with the following Prescribed Legislation.

**[Insert Full Details of the failure to comply with Prescribed Legislation]**

5. The Tenderer has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 5A and initial)  Not true (answer 5A)

5A. The Tenderer has not recognised the rights of Employees to union membership and representation in the following respects.

**[Insert Full Details of how the Tenderer has not recognised the rights of Employees to union membership and representation]**

6. The Tenderer has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 6A and initial)  Not true (answer 6A)

6A. The Tenderer has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

**[Insert Full Details of how the Tenderer has failed to comply with all amendments to wages and conditions of employment]**

7. In the preceding 24 months of the date of this declaration there have been no findings against the Tenderer by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation, including a finding of a breach in a non-confidential consent order.

True (delete 7A and initial)  Not true (answer 7A)

7A. There have been the following findings (Full Details of which are provided) against the Tenderer by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation:

**[Set out Full Details of findings]**

8. In the preceding 24 months of the date of this declaration there have been no convictions under the Prescribed Legislation against the Tenderer.

True (delete 8A and initial)  Not true (answer 8A)

8A. There have been the following convictions under the Prescribed Legislation against the Tenderer:

**[Set out Full Details of convictions]**

9. There are currently no proceedings or prosecutions against the Tenderer in respect of a breach of any Prescribed Legislation.

True (delete 9A and initial)  Not true (answer 9A)

9A. There are currently the following proceedings or prosecutions against the Tenderer in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

10. The Tenderer has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 10A and initial)  Not true (answer 10A)

10A. The Tenderer has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
[Signature of person making the declaration]

\_\_\_\_\_  
[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

\_\_\_\_\_  
[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

(1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

|                      |                      |                    |
|----------------------|----------------------|--------------------|
| Chiropractor         | Dentist              | Legal practitioner |
| Medical practitioner | Nurse                | Optometrist        |
| Patent attorney      | Pharmacist           | Physiotherapist    |
| Psychologist         | Trade marks attorney | Veterinary surgeon |

(2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)

Bailiff

Bank officer with 5 or more continuous years of service

Building society officer with 5 or more years of continuous service

Chief executive officer of a Commonwealth court

Clerk of a court

Commissioner for Affidavits

Commissioner for Declarations

Credit union officer with 5 or more years of continuous service

Employee of the Australian Trade Commission who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Employee of the Commonwealth who is:

- (a) in a country or place outside Australia; and
- (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
- (c) exercising his or her function in that place

Fellow of the National Tax Accountants' Association

Finance company officer with 5 or more years of continuous service

Holder of a statutory office not specified in another item in this list

Judge of a court

Justice of the Peace

Magistrate

Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961

Master of a court

Member of Chartered Secretaries Australia

Member of Engineers Australia, other than at the grade of student

Member of the Association of Taxation and Management Accountants

Member of the Australasian Institute of Mining and Metallurgy

Member of the Australian Defence Force who is:

- (a) an officer; or
- (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
- (c) a warrant officer within the meaning of that Act

Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants

Member of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) a Territory legislature; or
- (d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority; or
- (c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution



# SCHEDULE 3

## PROFORMA SUBCONTRACT CONDITIONS

### PART 1 WORK HEALTH AND SAFETY

#### 1.01 WHS LEGISLATION

In this Subcontract,

**“WHS Legislation”** means:

- (a) the Work Health and Safety Act 2011 (ACT);
- (b) the Work Health and Safety Regulation 2011 (ACT);
- (c) all instruments issued under the Work Health and Safety Act 2011 or the Work Health and Safety Regulation 2011;
- (d) all laws that replace the above laws; and
- (e) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

**“Work Health and Safety Management Plan”** means the work health and safety management plan prepared by the principal contractor appointed in accordance with the WHS Legislation (or the person appointed by the Principal to have control of the Site if no principal contractor is appointed) in respect of the Works.

#### 1.02 WORK HEALTH AND SAFETY

- 1.02.1 The obligations set out in this Subcontract do not detract from the Subcontractor’s obligations under the WHS Legislation. If there is an inconsistency between this Subcontract and the WHS Legislation, the Subcontractor must comply with the WHS Legislation and inform the Main Contractor and the Superintendent of the inconsistency.
- 1.02.2 The Subcontractor must comply with the WHS Legislation and ensure all work is carried out safely and in a manner that does not put the health and safety of persons at risk.
- 1.02.3 The Subcontractor must comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter.
- 1.02.4 The Subcontractor must institute and maintain systems to obtain regular written assurances from all secondary subcontractors engaged to perform work on the Site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation.
- 1.02.5 The Subcontractor must provide the written assurances obtained under special condition 1.02.4, together with written assurances from the Subcontractor about the Subcontractor’s ongoing compliance with WHS Legislation, to the Main Contractor, and, if requested, to the Superintendent.
- 1.02.6 The Subcontractor must provide the Main Contractor with a written report on all work health and safety matters, or any other relevant matters including a summary of the Subcontractor’s compliance with WHS Legislation, at least once per month, and at other times as requested.
- 1.02.7 The Subcontractor must exercise a duty of utmost good faith to the Principal and Main Contractor in carrying out the work under the Subcontract to enable the Principal and the Main Contractor to discharge their duties under the WHS Legislation.
- 1.02.8 The Subcontractor must ensure that if any law requires that a person:
  - (a) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or

- (b) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised.
- 1.02.9 The Subcontractor must ensure that if any law requires that a workplace, plant or substance, design, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed.
  - 1.02.10 The Subcontractor must not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and special conditions 1.02.8 and 1.02.9 are met.
  - 1.02.11 If requested by the Superintendent or the Main Contractor's Representative or required by WHS Legislation, the Subcontractor must produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Superintendent or the Main Contractor's Representative before the Subcontractor or any secondary subcontractor commences such work.
  - 1.02.12 If the Superintendent or the Main Contractor's Representative reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from the activities of the Subcontractor (or any secondary subcontractor) the Superintendent may direct the Subcontractor (or the relevant secondary subcontractor) to change its manner of working or cease working and the Subcontractor or Secondary Subcontractor must comply.
  - 1.02.13 The Main Contractor may take any action necessary to protect the Works and other property or to prevent or minimise risk to health and safety of persons, which the Subcontractor must take but does not and the Main Contractor may recover any costs associated with such action from the Subcontractor.
  - 1.02.14 The Subcontractor must systematically manage its work health and management processes in accordance with the systems, plans, standards and codes specified in the Subcontract and the WHS Legislation.
  - 1.02.15 The Subcontractor must demonstrate to the Superintendent and Main Contractor, whenever requested, that the Subcontractor has met and is meeting at all times, its obligations under this special condition but such demonstration does not relieve the Subcontractor of its primary obligation to perform work safely.
  - 1.02.16 The Subcontractor must take all reasonable actions and comply with all reasonable requests of the Principal, the Main Contractor, the Superintendent or their respective authorised persons regarding any safety audits in respect of the Site
  - 1.02.17 Without limiting special condition 1.02.16 the Subcontractor must, at all reasonable times, allow the Principal or any person authorised by the Principal:
    - (a) to enter upon the Site to conduct a safety audit;
    - (b) to enter upon the Site or any premises occupied by the Subcontractor to inspect and copy any records relevant to a safety audit; and
    - (c) to enter upon the Site or any premises occupied by the Subcontractor to interview any person as part of a safety audit.
  - 1.02.18 In this special condition "improvement notice", "infringement notice", "non-disturbance notice", "notice of entry", "prohibition notice" and "provisional improvement notice" all have the same meanings as in the Work Health and Safety Act 2011 (ACT).
  - 1.02.19 The Subcontractor must immediately notify the Superintendent and the Main Contractor upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to the Site or the Subcontract Works and provide the Superintendent and the Main Contractor with a copy of the relevant notice if the Subcontractor has the same.
  - 1.02.20 The Subcontractor must promptly notify the Superintendent and the Main Contractor upon becoming aware of the issue of any provisional improvement notice referable to the Site or the

Subcontract Works and provide the Superintendent and the Main Contractor with a copy of the notice if the Subcontractor has the same.

- 1.02.21 The Subcontractor must provide reports on work health and safety matters to the Superintendent and the Main Contractor in such form and at such times as reasonably required by the Main Contractor and advised to the Subcontractor.

### 1.03 INCIDENT REPORTING

1.03.1 In this special condition, “regulator” and “notifiable incident” have the same meaning as in the *Work Health and Safety Act 2011* (ACT).

1.03.2 In addition to any obligations under WHS Legislation, the Subcontractor must:

- (a) notify the Superintendent and the Main Contractor of any notifiable incident immediately after it notifies the regulator; and
- (b) provide the Superintendent and the Main contractor with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.

1.03.3 In addition to the obligations under special condition 1.03.2, the Subcontractor must promptly notify the occurrence and furnish a written report to the Superintendent and the Main Contractor of:

- (a) incidents resulting in damage to property;
- (b) incidents resulting in significant delays to the Works;
- (c) incidents resulting in injury or illness other than a notifiable incident; and
- (d) incidents that may have resulted in or may result in any incident set out in paragraphs (a), (b) or (c) above or a notifiable incident.

### 1.04 OBLIGATIONS IF NOT PRINCIPAL CONTRACTOR

1.04.1 The Subcontractor must ensure all its employees and secondary Subcontractors comply with:

- (a) the WHS Management Plan; and
- (b) directions, notices and any other notifications issued for or on behalf of the principal contractor (or the person appointed by the Principal to have control of the Site if no principal contractor is appointed) referable to work health and safety matters.

## **PART 2 EMPLOYEES**

### 2.01 COMPLIANCE WITH EMPLOYEE AND INDUSTRIAL RELATIONS OBLIGATIONS

2.01.2 In this Subcontract the following terms are defined:

**“Adverse Ruling”** means a ruling by any court, tribunal, board, commission or other entity with jurisdiction to determine employee and industrial relations matters to the effect that the Subcontractor or secondary Subcontractor breached its Employee and Industrial Relations Obligations.

**“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Subcontractor or a secondary subcontractor with his or her labour.

**“Employee and Industrial Relations Obligations”** mean compliance with:

- (a) Prescribed Legislation;
- (b) the orders, directions or decisions of any court, tribunal, board, commission or other entity with jurisdiction to consider the interpretation, breach or any other matter concerning any Prescribed Legislation;

- (c) Industrial Instruments; and
- (d) the IRE Strategy.

*Note: Examples of Employee and Industrial Relations Obligations may include payment of remuneration; training; annual holidays; long service leave entitlements; work health and safety requirements; workers' compensation; injury management, (including rehabilitation); legal age of employment; discrimination; freedom of association and superannuation. This list is non exhaustive.*

**“Ethical Suppliers Declaration”** means a statutory declaration in the form set out in this Subcontract at special condition 2.07.3 (or such other modified form of statutory declaration as approved by the Main Contractor or Principal and advised to the Subcontractor from time to time).

**“Full Details”** means the details of:

- (a) the nature of the breach or offence or alleged breach or offence;
- (b) any conviction recorded or adverse finding made in respect of the breach or offence;
- (c) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the breach or offence and the maximum penalty that could have been imposed under the Prescribed Legislation.
- (d) the name of the court, tribunal, board, commission or other entity; the State or Territory in which the proceeding or prosecution is brought; the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity; and
- (e) the name of the person or other legal entity against which the finding or conviction was made or the proceeding or prosecution was initiated.

**“Industrial Instruments” means an award or agreement, however designated, that:**

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer's employees.

**“IRE Certificate”** has the same meaning as set out in the IRE Strategy.

**“IRE Strategy”** means the Principal's *“Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects”* from time to time, or such substituted policy or strategy of the Principal.

**“Prescribed Legislation”** means:

- (a) Industrial Instruments applicable to the Subcontractor, a supplier or Sub-subcontractor;
- (b) *Long Service Leave Act 1976* (ACT);
- (c) *Work Safety Act 2008* (ACT);
- (d) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
- (e) *Workers' Compensation Act 1951* (ACT);
- (f) *Workplace Relations Act 1996* (Cth);
- (g) *Fair Work Act 2009* (Cth);
- (h) *Superannuation Guarantee (Administration) Act 1992* (Cth);
- (i) *Building and Construction industry Improvement Act 2005* (Cth);
- (j) *Workplace Gender Equality Act 2012* (Cth);
- (k) *Paid Parental Leave Act 2010* (Cth);
- (l) *Payroll Tax Act 1987* (ACT);
- (m) *Work Health and Safety Act 2011* (ACT);
- (n) any Regulations made under the above Acts;

- (o) any laws of the Commonwealth or the Australian Capital Territory which vary or replace the above Acts or Regulations, or any part of them; and
- (p) any other Acts or Regulations of the Commonwealth or the Australian Capital Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations.

“**Prescribed Works or Services**” means works or services that require the exertion of labour by Employees.

“**Project Compliance Audit**” has the same meaning as in the IRE Strategy.

- 2.01.3 This special condition applies to the extent that the Subcontract provides for the performance of Prescribed Works or Services.

## **2.02 PROVISION OF ETHICAL SUPPLIERS DECLARATION**

- 2.02.1 The Subcontractor must provide the Main Contractor with an Ethical Suppliers Declaration:
  - (a) If requested by the Main Contractor, at the time the Subcontractor enters into this Subcontract; and
  - (b) If requested in writing by the Main Contractor, at the time the Subcontractor provides a Payment Claim; and
  - (c) Within 7 days of the date of a written request from the Main Contractor to the Subcontractor to provide the same.
- 2.02.2 The failure of the Subcontractor to provide the Ethical Suppliers Declaration in accordance with special condition or the making of a false statement in a statutory declaration by the Subcontractor or its representative making the declaration will constitute a substantial breach for the purpose of clause 47.2
- 2.02.3 If the Subcontractor fails to provide the Ethical Suppliers Declaration in accordance with special condition, the Main Contractor may withhold payment of monies due to the Subcontractor until the statutory declaration is received.
- 2.02.4 The Main Contractor may by written notice request the Subcontractor obtain a statutory declaration from a secondary subcontractor in substantially the same form as the Ethical Suppliers Declaration (subject to necessary modifications to note the changed parties, for example references to “Subcontractor” will be varied to read “secondary subcontractor”) and provide the same to the Main Contractor within 21 days of the date of the written notice. The Subcontractor must use its reasonable endeavours to ensure the secondary subcontractor supplies the declaration to enable the Subcontractor to comply with this special condition.
- 2.02.5 The Subcontractor must ensure terms are included in all agreements with secondary subcontractors requiring secondary subcontractors to provide statutory declarations to the Subcontractor to enable it to satisfy this special condition.

## **2.03 COMPLIANCE WITH EMPLOYEE AND INDUSTRIAL RELATIONS OBLIGATIONS**

- 2.03.1 The Subcontractor (and all secondary subcontractors) must comply with all Employee and Industrial Relations Obligations.
- 2.03.2 Without limiting special condition 2.03.1, Employees must be paid wages at rates and employed under conditions of employment not less favourable than those required by any Prescribed Legislation which applies to the Subcontractor (or secondary subcontractor, as applicable).
- 2.03.3 The Subcontractor and all secondary subcontractors must keep proper records and documents evidencing:
  - (e) the wages paid to Employees
  - (f) so far as practicable, the time worked by Employees;
  - (g) payments made to third parties on behalf of Employees; and
  - (h) compliance with all Employee and Industrial Relations Obligations.
- 2.03.4 The Subcontractor must, at all reasonable times allow, and must require its secondary subcontractors to allow, the Main Contractor or any person authorised by the Main Contractor (including any person conducting a Project Compliance Audit):

- (a) to enter upon the Site to inspect the conditions in which Employees are employed;
  - (b) to enter upon the Site or any premises occupied by the Subcontractor or secondary subcontractor, to inspect and copy, as applicable, their:
    - (i) wage books;
    - (ii) time sheets;
    - (iii) records evidencing payment of superannuation entitlements;
    - (iv) records evidencing payment of long service leave entitlements;
- and
- (v) other records relevant to establishing compliance with the Employee and Industrial Relations Obligations;
  - (c) to enter upon the Site or any premises occupied by the Subcontractor or secondary subcontractor, to interview any persons as necessary to demonstrate the compliance or otherwise of the Subcontractor and any secondary subcontractors with their Employee and Industrial Relations Obligations.

2.03.5 The Subcontractor must, take all reasonable actions and comply with all reasonable requests of the Principal, the Main Contractor or their respective authorised persons, and must require its secondary subcontractors to take all reasonable actions and comply with all reasonable requests to ensure compliance with this special condition (or the equivalent condition in any agreement with a secondary subcontractor). The Subcontractor (and any secondary subcontractor) will have no claim against the Principal, the Main Contractor or their respective authorised persons for costs incurred by it in responding to any requests of the Principal, the Main Contractor or their respective authorised persons made in accordance with or under this special condition.

## **2.04 DISCLOSURE REGARDING EMPLOYEE AND INDUSTRIAL RELATIONS OBLIGATIONS**

2.04.1 If at any time during the term of the Subcontract, an Adverse Ruling is made regarding the Subcontractor, the Subcontractor must within 7 days of the making of the Adverse Ruling provide a statutory declaration by an authorised representative of the Subcontractor setting out:

- (e) the Full Details of the Adverse Ruling;
- (f) If applicable, any additional information which in the opinion of the Subcontractor is relevant to the Adverse Ruling, including the Subcontractor's grounds for any objection to the Adverse Ruling being relied upon as a ground for termination of this Subcontract;
- (g) If applicable, details of any information on which the Adverse Ruling is based which in the opinion of the Subcontractor is incorrect, incomplete or otherwise unfairly prejudicial to the Subcontractor for purposes of its dealings with the Main Contractor under this Subcontract; and
- (h) If applicable, any existing or planned remedial measures which the Subcontractor has taken or will be taking to prevent a breach or offence similar to the non-compliance, breach or offence on which the Adverse Ruling is based from recurring.

2.04.2 The failure of the Subcontractor to provide the statutory declaration in accordance with special condition or the making of a false statement in a statutory declaration by the Subcontractor or its representative making the declaration will constitute a substantial breach for the purpose of clause 47.2.

2.04.3 Following the receipt of the statutory declaration or expiration of the period specified in special condition, whichever comes first, the Main Contractor may give the Subcontractor a written notice to show cause.

- 2.04.4 In addition to any other rights set out in this Subcontract the Principal may take such action against the Subcontractor as provided for in the IRE Strategy in the event of an Adverse Ruling being made against the Subcontractor.
- 2.04.5 The remedies under this special condition are in addition to and do not limit any other rights or remedies of the Main Contractor under this Subcontract or otherwise at law.

## **2.05 AGREEMENTS WITH SECONDARY SUBCONTRACTORS**

- 2.05.1 The Subcontractor must ensure all agreements with secondary subcontractors contain provisions:
- (a) requiring secondary subcontractors to comply with all Employee and Industrial Relations Obligations applicable to the secondary subcontractor and its employees; and
  - (b) imposing obligations on the secondary subcontractor in the same form as those set out in this special condition and imposed on the Subcontractor (subject to any necessary variation to reflect the different parties).

## **2.06 IRE STRATEGY**

- 2.06.1 The Subcontractor must ensure all Secondary Subcontractors engaged to perform Prescribed Works or Services under an agreement entered into:
- (d) hold a current IRE Certificate;
  - (e) maintain a current IRE Certificate during the term of their agreement; and
  - (f) that these obligations are included in the relevant agreement with the secondary subcontractor.

## **2.07 IRE CERTIFICATE**

- 2.07.1 The Subcontractor must hold an IRE Certificate and must maintain a current IRE Certificate during the term of the Subcontract.

### **Status of clause 43**

- 2.07.2 The provisions of this special condition are in addition to and are not intended to replace clause 43 of the General conditions of contract (AS2545-1993).

### **Form of Ethical suppliers Declaration**

- 2.07.3 The form of the Ethical Suppliers Declaration will be as follows:

## STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cth)

I, **[Name, address and occupation of person making declaration]** make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
  - (a) a. "Subcontract" means an agreement which has or will shortly be entered into between the Main Contractor and the Subcontractor for the provision of works in respect of the Project.
  - (b) "Main Contractor" means [insert full legal name of Main Contractor including the ACN/ABN as per that identified on the Subcontract];
  - (c) "Subcontractor" means [insert full legal name of Subcontractor including the ACN/ABN as per that identified on the Subcontract];
  - (d) "Project" means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];
  - (e) the words or terms "Adverse Ruling", "Employee", "Employee and Industrial Relations Obligations", "Industrial Instruments", "IRE Certificate", "Prescribed Legislation", "Prescribed Works or Services" and "Subcontractors" have the same meaning as defined in the Subcontract; and
  - (f) all other capitalised words or terms have the same meaning as defined in the Subcontract.
2. I am authorised on behalf of the Subcontractor to make this declaration.
3. All Employees of the Subcontractor who have at any time been employed by the Subcontractor in respect of the Project have, at the date of this declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Subcontract.
4. The Subcontractor has, at the date of this declaration paid all amounts it is required to pay to third parties on behalf of Employees as required by Prescribed Legislation.
5. All secondary subcontractors have been paid all moneys due and payable to them in respect of work under the Subcontract.
6. The Subcontractor holds a current IRE Certificate.
7. The Subcontractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation
  - True (delete 7A and initial)  Not true (answer 7A)
- 7A. The Subcontractor has not complied with the following Prescribed Legislation.

**[Insert Full Details of the failure to comply with Prescribed Legislation]**
8. The Subcontractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.
  - True (delete 8A and initial)  Not true (answer 8A)
- 8A. The Subcontractor has not recognised the rights of Employees to union membership and representation in the following respects.

**[Insert Full Details of how the Subcontractor has not recognised the rights of Employees to union membership and representation]**



9. The Subcontractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 9A and initial)  Not true (answer 9A)

9A. The Subcontractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

**[Insert Full Details of how the Subcontractor has failed to comply with all amendments to wages and conditions of employment]**

10. In the preceding 24 months of the date of this declaration there have been no findings against the Subcontractor by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation, including a finding of a breach in a non-confidential consent order.

True (delete 10A and initial)  Not true (answer 10A)

10A. There have been the following findings (Full Details of which are provided) against the Subcontractor by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation:

**[Set out Full Details of findings]**

11. In the preceding 24 months of the date of this declaration there have been no convictions under the Prescribed Legislation against the Subcontractor.

True (delete 11A and initial)  Not true (answer 11A)

11A. There have been the following convictions under the Prescribed Legislation against the Subcontractor:

**[Set out Full Details of convictions]**

12. There are currently no proceedings or prosecutions against the Subcontractor in respect of a breach of any Prescribed Legislation.

True (delete 12A and initial)  Not true (answer 12A)

12A. There are currently the following proceedings or prosecutions against the Subcontractor in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

13. The Subcontractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 13A and initial)  Not true (answer 13A)

13A. The Subcontractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]

[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

\_\_\_\_\_  
[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

|                      |                      |                    |
|----------------------|----------------------|--------------------|
| Chiropractor         | Dentist              | Legal practitioner |
| Medical practitioner | Nurse                | Optometrist        |
| Patent attorney      | Pharmacist           | Physiotherapist    |
| Psychologist         | Trade marks attorney | Veterinary surgeon |
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
  - Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
  - Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
  - Bailiff
  - Bank officer with 5 or more continuous years of service
  - Building society officer with 5 or more years of continuous service
  - Chief executive officer of a Commonwealth court
  - Clerk of a court
  - Commissioner for Affidavits
  - Commissioner for Declarations
  - Credit union officer with 5 or more years of continuous service
  - Employee of the Australian Trade Commission who is:
    - (a) in a country or place outside Australia; and
    - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
    - (c) exercising his or her function in that place
  - Employee of the Commonwealth who is:
    - (a) in a country or place outside Australia; and
    - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
    - (c) exercising his or her function in that place
  - Fellow of the National Tax Accountants' Association
  - Finance company officer with 5 or more years of continuous service
  - Holder of a statutory office not specified in another item in this list
  - Judge of a court
  - Justice of the Peace
  - Magistrate
  - Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961
  - Master of a court
  - Member of Chartered Secretaries Australia
  - Member of Engineers Australia, other than at the grade of student
  - Member of the Association of Taxation and Management Accountants
  - Member of the Australasian Institute of Mining and Metallurgy
  - Member of the Australian Defence Force who is:
    - (a) an officer; or
    - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
    - (c) a warrant officer within the meaning of that Act
  - Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
  - Member of:

- (a) the Parliament of the Commonwealth; or
- (b) the Parliament of a State; or
- (c) a Territory legislature; or
- (d) a local government authority of a State or Territory

Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961

Notary public

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public

Permanent employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority; or
- (c) a local government authority;

with 5 or more years of continuous service who is not specified in another item in this list

Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made

Police officer

Registrar, or Deputy Registrar, of a court

Senior Executive Service employee of:

- (a) the Commonwealth or a Commonwealth authority; or
- (b) a State or Territory or a State or Territory authority

Sheriff

Sheriff's officer

Teacher employed on a full-time basis at a school or tertiary education institution

## **PART 3 NOVATION**

### **3.01 NOVATION ON TERMINATION**

3.01.1 If the Main Contract is terminated for whatever reason:

- (a) the Subcontractor must accept a novation of this Subcontract to the Principal or its nominee, if required by the Principal; and
- (b) the Subcontractor must do everything and sign all documents necessary to give effect to this special condition and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.

# SCHEDULE 4 WHS STATUTORY DECLARATION

[Instructional note – delete this note from final declaration– persons preparing/making this declaration should complete the following prior to signature:

- a. Details of person making declaration as set out in the first line;
- b. the full tenderer details at paragraph 1e;
- c. Item 3 (by crossing or ticking the appropriate box); and
- d. Item 3A if applicable (having regard to the instructional note)

Any other amendments made to the form of the declaration may result in the provision of a declaration which renders the Tender non conforming.]

## STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cth)

I, **[Name, address and occupation of person making declaration]** make the following declaration under the Statutory Declarations Act 1959 (Cth),

9. In this declaration a reference to:

- a. **“Adverse Action”** means any ruling, order, notice (including, without limitation any improvement notice or prohibition notice), conviction or finding made or issued by any Authorised Entity.
- b. **“Associated Entity”** is any associated entity of the Tenderer (the principal) as determined or defined in section 50AAA of the *Corporations Act 2001* (Cth).
- c. **“Authorised Entity”** means any court, tribunal, board, commission, regulatory agency (including, without limitation, the director-general, commissioner, regulator or any inspector referred to in WHS Legislation) or other entity with jurisdiction to determine whether an entity (which includes a person)) has complied with, or is complying with WHS Legislation.
- d. **“Full Details”** means the details of:
  - (a) the nature of the Adverse Action;
  - (b) The name of the relevant Authorised Entity;
  - (c) The date of the Adverse Action;
  - (d) The entity against which the Adverse Action was made or issued;
  - (e) any document setting out the Adverse Action (including provision of a copy of the same);
  - (f) any penalty, fine or order imposed by an Authorised Entity in respect of the Adverse Action and the maximum penalty, fine or order that could have been imposed under the WHS Legislation;
  - (g) any remedial measures or other actions proposed or recommended in the Adverse Action and details of steps taken by the Tenderer (or the Related Entity, if applicable) to comply with those remedial measures or other actions; and

(h) the status of the Adverse Action as at the date of the declaration.

e. “Tenderer” means [insert full legal name of Tenderer including the ACN/ABN as per that identified on the Tender].

f. “WHS Legislation” means each of the following:

(a) *Work Safety Act 2008* (ACT);

(b) *Work Health and Safety Act 2011* (ACT);

(c) any Regulations and instruments made or issued under the above Acts;

(d) any laws which vary or replace the above laws, or any part of them; and

(e) all other laws applicable in the Australian Capital Territory which deal with matters relating to work health and safety.

10. I am authorised on behalf of the Tenderer and each Associated Entity to make this declaration.

11. No Adverse Action has been made or issued against the Tenderer or any Associated Entity of the Tenderer in the preceding 36 months of the date of this declaration.

True(delete 3A and initial)       Not true      (answer 3A)

3A. Full Details of all Adverse Action made or issued in the preceding 36 months of the date of this declaration against the Tenderer and each Associated Entity of the Tenderer (as applicable) are as follows.

**[Instructional note - read carefully and delete from final document prepared for signature as required having regard to contents of note.**

**Insert Full Details of all Adverse Action – refer definition of “Full Details” for information which will be required to be provided.**

**If there is insufficient space to insert the Full Detail of all Adverse Action in this clause 3A of the declaration you may include the Full Detail in an attachment to this declaration which should be marked “Attachment A to statutory declaration of [insert name of person making declaration]”. The first page of Attachment A should be signed by both the person making the declaration and the witness to the declaration with a note as follows – “This and the following xxx [insert number of pages at Attachment A] pages are Attachment A to the statutory declaration of [insert name of person making declaration]”. The person making the declaration and their witness should also initial each page of Attachment A. If this process is to be adopted the person preparing this declaration should delete this instructional note and insert the following wording (in addition to retaining the existing wording in clause 3A) as part of ensuring a complying declaration is submitted with the Tender:**

**“The Full Detail of all Adverse Action are set out in Attachment A to this statutory declaration and the contents of that Attachment A form part of this declaration and are true and correct in every respect.”]**

12. Below is a complete list of all projects (both completed and current) in the Australian Capital Territory where the Tenderer has had management or control of the project site and on which an audit into any aspect of work health and safety performance or compliance has been conducted in the 3 years prior to the date of this declaration.

• **[Instructional note - Insert full list of relevant projects]**

13. I acknowledge that the Tenderer has fully considered all material provided in and with the RFT relating to any work health and safety requirements for the works and confirm that the tender price has been calculated:

a. having regard to those requirements; and

- b. to provide for compliance with those requirements.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
[Signature of person making the declaration]]

\_\_\_\_\_  
[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

\_\_\_\_\_  
[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before–**

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:
- |                      |                      |                    |
|----------------------|----------------------|--------------------|
| Chiropractor         | Dentist              | Legal practitioner |
| Medical practitioner | Nurse                | Optometrist        |
| Patent attorney      | Pharmacist           | Physiotherapist    |
| Psychologist         | Trade marks attorney | Veterinary surgeon |
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)  
Bailliff  
Bank officer with 5 or more continuous years of service  
Building society officer with 5 or more years of continuous service  
Chief executive officer of a Commonwealth court  
Clerk of a court  
Commissioner for Affidavits  
Commissioner for Declarations  
Credit union officer with 5 or more years of continuous service  
Employee of the Australian Trade Commission who is:
- (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that place
- Employee of the Commonwealth who is:
- (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that place
- Fellow of the National Tax Accountants' Association  
Finance company officer with 5 or more years of continuous service  
Holder of a statutory office not specified in another item in this list  
Judge of a court  
Justice of the Peace  
Magistrate  
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961  
Master of a court  
Member of Chartered Secretaries Australia  
Member of Engineers Australia, other than at the grade of student  
Member of the Association of Taxation and Management Accountants  
Member of the Australasian Institute of Mining and Metallurgy  
Member of the Australian Defence Force who is:
- (a) an officer; or
  - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
  - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
Member of:
- (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) a Territory legislature; or
  - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961  
Notary public  
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
Permanent employee of:
- (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority; or
  - (c) a local government authority;
- with 5 or more years of continuous service who is not specified in another item in this list  
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
Police officer  
Registrar, or Deputy Registrar, of a court  
Senior Executive Service employee of:
- (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority
- Sheriff  
Sheriff's officer  
Teacher employed on a full-time basis at a school or tertiary education institution

## SCHEDULE 5 PERSONNEL AND PLANT HOURLY RATES

**Instruction to Tenderers:** This schedule must be completed and lodged with the Tender. Any tender in which the schedule is not completed may be regarded as non-conforming

The rates tendered in this schedule shall be as follows:

- (1) For items 1 to 5 the rates shall be the hourly rate equivalent of the actual amount of wages and allowances paid or payable to employees in the designated categories.
- (2) For items 6-12 the rates shall be
  - (a) in the case of plant owned by the Tenderer the actual hourly operating costs of the plant, exclusive of the wages of the operator
  - (b) in the case of plant not owned by the Contractor the actual cost of hiring the said plant.

For items of plant owned by the Contractor it is not necessary to tender a rate for the cost of hiring the said plant. For not applicable please put N/A.

The rates tendered in this schedule shall be exclusive of any allowance for overheads, administration, site supervision, site establishment, attendance and profit.

The rates tendered in the schedule must be capable of substantiation by tenderers during Tender assessment if required. These rates may be negotiated and varied with the Principal prior to acceptance of a tender.

The rates tendered in this schedule shall be subject to a mark-up for overheads, administration, site supervision, site establishment, attendance and profit as stated below.

|   |     |
|---|-----|
| The percentage for profit and overhead. | 10% |
|---|-----|

| Labour | DESCRIPTION      | UNIT | RATE<br>(Excl GST) |
|--------|------------------|------|--------------------|
| 1.     | Site Foreman     | Hr   |                    |
| 2.     | Site Supervisor  | Hr   |                    |
| 3.     | Plant operator   | Hr   |                    |
| 4.     | General labourer | Hr   |                    |
| 5.     | Concreter        | Hr   |                    |



| <b>Plant</b> | <b>DESCRIPTION</b>            | <b>UNIT</b> | <b>Rate (Excl GST)</b> |
|--------------|-------------------------------|-------------|------------------------|
| 6.           | Utility Vehicle               | Day         |                        |
| 7.           | Truck and Trailer             | Day         |                        |
| 8.           | Dingo                         | Day         |                        |
| 9.           | Bobcat                        | Hr          |                        |
| 10.          | Bobcat (extra over for broom) | Hr          |                        |
| 11.          | Excavator (Under 2 tonne)     | Hr          |                        |
| 12.          | Excavator (5 tonne)           | Hr          |                        |

**Tenderers Name:** .....