

ADMINISTRATION POLICY AND GUIDELINES

PROCUREMENT OF
GOODS AND SERVICES

(Purchasing, Tenders and Contracts)

CIRCULAR NUMBER 5.1
(formerly Circulars No. 11 and 44)

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ADMINISTRATION POLICY AND GUIDELINES

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INTRODUCTION

This policy applies to:

- the procurement of goods and services, including contract labour;
- the letting of tenders and contracts for the purchase of plant and equipment and services;
- the engagement of consultants.

PURCHASING PRINCIPLES

Two of the Key Purchasing Principles in the procurement of goods and services for the Administration are:

"Value for Money" - Purchase price is only one factor when determining value for money. Value for money means the best available outcome when all relevant costs and benefits over the procurement life cycle are considered. Purchasing Officers must:

- verify competence, viability and capability of the prospective supplier to perform the contract;
- consider the balance between the price and the quality or performance of the goods;
- assess the competence of potential supplier to maintain quality and to offer warranties, delivery and service;

- ensure the avoidance of cost and reduction of other costs of all kinds wherever possible, for example through clarification and negotiation.
- Ensure that any legal agreements entered into are appropriate and protect the Administration's interests; and
- Consider whether benefits can be obtained by purchasing on the basis of "strategic common use arrangements" ie by a co-ordinated approach between Administration sections.

The Value for Money Test should be applied throughout a procurement contract. Supply arrangements should be monitored and reconsidered if they cease to offer the expected benefits. If concerns arise about contract performance such concerns should be taken to the Legal Services section as soon as possible.

"Open and Effective Competition" - All suppliers are to be given an equal opportunity to compete for the supply of goods and services. This principle requires that:

- The policy and guidelines should establish a framework of practices and procedures that is transparent and accountable.
- Effective competition should be encouraged through procurement methods suited to market circumstances.
- Adequate and timely information should be provided to prospective suppliers; and,
- Bias and favouritism should be eliminated.

While it is desirable that all suppliers are given an equal opportunity to compete for the supply of goods and services there may be circumstances in which competition is limited, for example:

- the existence of a local monopoly;
- the goods or services required are listed in the current stores list issued by a participating government supply service (listed in Appendix A)
- the need to have regard for the Administration's policy to standardise vehicles, plant and equipment to limit the type of spare parts required to be carried;
- the need for compatibility with existing equipment;
- genuine emergency situations;
- consultancy - engagement of 'expert' in a particular field for a particular purpose, within a particular time-frame.

Where conditions such as this limit competition, Purchasing Officers must document the circumstances, obtain the written support of their relevant Program Manager, and follow practices and procedures to ensure the value for money objective is achieved.

“Fairness and Equity in dealing” – Purchasing Officers should ensure that they:

- recognise and deal with conflicts of interest in accordance with current policy;
- deal with suppliers even-handedly;
- do not compromise the Administration’s standing through acceptance of gifts and hospitality; and
- are scrupulous in their use of public property.

PROCEDURE FOR PURCHASING GOODS AND SERVICES

Where offers are invited for the supply of goods and services, plant or equipment, contract labour or consultancy services, the following procedures are to be adopted.

Purchasing Officers must have regard for the requirements of the Public Moneys Act 1979.

PUBLIC MONEYS ACT 1979

The Public Moneys Act 1979 sets out the requirements to be met in the **procurement** of goods and services and the **disposal** of goods on behalf of the Administration.

- Sections 23 and 26 inclusive provide the legislative framework for the procurement of goods and services, and establish the basic processes in this regard.
- Sections 36 and 38(e) provide the specific powers in respect of the disposal of goods.

4.1 Petty Cash Advances

The following provisions apply to the control and custody of petty cash advances:

- 4.1.1 A petty cash register shall be kept by the Finance Manager detailing purchases, reimbursements, the signature of recipients of reimbursements, advances, the names and signatures of custodians of advances.
- 4.1.2 Advances for petty cash purposes are available upon approval by the Finance Manager.
- 4.1.3 Where an advance is approved, the custodian of the advanced money is to acknowledge receipt of the advance in the petty cash register held by the Finance Manager.
- 4.1.4 At all times the amount of the cash and docketts that have not been reimbursed should together total the amount of the advance.
- 4.1.5 Each purchase from the advance should be accompanied by a voucher showing details of the purchase, the date and amount, the expenditure head it is to be charged to and be signed by the person incurring the expense. A cash sale docket should be attached to the voucher.
- 4.1.6 Reimbursement of petty cash expenditure not subject to an advance can be obtained from the Finance Manager upon completion of a "General Expenses Voucher" obtainable from the Accounts Branch and accompanied by the individual vouchers and cash sale docketts.

4.2 *Purchasing Officer*

A Purchasing Officer is someone who has been appointed by the Executive Member, under section 26(1) of the Act, to be a purchasing officer. A Purchasing Officer may initiate the purchase of goods and services.

Purchasing Officers should ensure that they are familiar with the procedures set out in this policy and guideline and the requirements of the Public Moneys Act 1979.

Purchasing Officers must satisfy themselves that there are funds available through the approved budget before committing the Administration to expenditure of money.

WARNING

PURCHASING OFFICERS SHOULD NOT EITHER BY WORDS OR CONDUCT REPRESENT THAT THEY HAVE THE AUTHORITY TO ENTER INTO A CONTRACT ON BEHALF OF THE ADMINISTRATION IF FUNDS HAVE NOT BEEN SPECIFICALLY ALLOCATED IN THE BUDGET.

SUCH A REPRESENTATION MAY BE AN OFFENCE UNDER THE PUBLIC MONEYS ACT 1979.

REQUISITIONS FOR SUPPLY

Purchasing Officers must ensure that an officer requiring supply of goods or services has completed a Requisition for Supply form which adequately describes the item required and which clearly identifies the source of funds.

Purchasing officers must obtain a purchase order number from the Finance Branch or Administration Store before ordering goods or services.

FINANCIAL THRESHOLDS - NEED TO OBTAIN QUOTATIONS

In considering the purchase of goods and/or services, and the need to obtain quotations, the following financial threshold limits shall apply:

- . **Petty Cash expenditure -**

- . **Up to and including \$2,000**
Goods and services with an estimated value of \$2,000 or below may be purchased without obtaining quotations, if all of the following criteria can be satisfied:
 - locally available
 - commercial, off-the-shelf item
 - firm price that can be checked readily (i.e. price does not vary from supplier to supplier)
 - normal commercial warranty/guarantee applies
 - installation, where required, is provided by supplier or capable of being installed by purchaser

. **From \$2,001 - \$5,000**

Two or more written quotations must be obtained for goods and services with an estimated value from \$2,001 to \$5,000.

When placing the order for goods and services within these threshold limits, a copy of the quotation should accompany the Requisition for Supply.

The Purchasing Officer shall be responsible for:

- ensuring that the correct number of quotes is received;
- selecting the appropriate supplier; and,
- retaining copies of all quotes and other documents obtained for audit purposes.

. **From \$5,000 - \$10,000**

Three written quotations must be sought for goods and services with an estimated value between \$5,000 and \$10,000.

Purchases within this threshold should be referred to the Corporate Management Group.

Upon receipt of written quotations, Purchasing Officers should follow the procedure relating to Tenders except that there is no necessity to call for public tenders.

. **\$10,001 and above**

Subject to clause 7 and 7.1, public tenders must be called for goods and services with an estimated value in excess of \$10,000.

Tenders for Period Contracts may be sought for products where there is ongoing bulk usage by the Administration (e.g. tyres).

Corporate Management Group

Where the estimated contract value is between \$10,001 and \$40,000, the Corporate Management Group shall be responsible for determining the tender (including the tender process, in accordance with these guidelines).

Tenders Committee

Where the estimated contract value is in excess of \$40,000, the Tenders Committee shall be responsible for determining the tender (including the tender process, in accordance with these guidelines).

TENDERS

Public tenders are to be called for any goods and services required by the Administration having an estimated value in excess of \$10,000 unless:

- the Corporate Management Group or the Tenders Committee, as the case requires, is satisfied that it is inexpedient or unnecessary to do so, or
- the goods or services required are listed in the most recent stores list issued by a participating government supply service – see clause 7.2.

Specifications must be prepared for each Tender before a call for tenders is gazetted. Information relating to specifications is at clause 12 of this Policy and Guideline.

Prior to advertising for tender, the Purchasing Officer is required to establish that funds are available for the relevant goods or service and to document the amount available in the Budget for the relevant goods or service.

7.1 Preliminary matters

Prior to commencing the tender process a Tender Evaluation Plan providing a pre-agreed process should be prepared to ensure that source selection is based on value for money and can withstand public scrutiny.

7.1.1 Tender Evaluation Plan

The complexity and duration of the evaluation reflects the level of complexity and value of the required contract, the number of tenders anticipated and the significance of the procurement. The tender evaluation plan must not deviate from the advertised tender process.

A Tender Evaluation Plan will include:

- The procedure for the evaluation (including procedures for dealing with conflicts of interest);
- Details of the evaluators;
- A full list of evaluation criteria, weightings and methodology to be used;
- The evaluation timeframe
- Guidelines for the evaluation report and a list of supporting documents to be appended to the report. See clause 8.5 for suggested format.

7.1.2 Expressions of Interest to Tender

There will be occasions when it is considered more appropriate to advertise for Expressions of Interest to Tender. In such cases the procedures applying to tenders where practicable shall apply. The advertisement for Expressions of Interest to Tender should stipulate the nature of goods or services sought and seek a statement of specifications. In order to proceed in this manner, Purchasing Officers must prepare a brief setting out the reasons for proceeding by way of Expressions of Interest and seek prior approval from the Corporate Management Group or the Tenders Committee as the case requires.

7.1.3 Limited Procurement Process

Purchasing Officers seeking to limit the tender procurement process by invitation only to known suppliers must prepare a brief setting out the reasons for limiting the call for tenders and seek prior approval from the Corporate Management Group or the Tenders Committee as the case requires.

7.2 Participating Government Supply Services

If goods or services are listed in the current stores list issued by participating Government Supply Services, it shall not be necessary to call public tenders for the procurement of such goods and services, provided that:

- (a) a written quotation is obtained from the list supplier;
- (b) written quotations are obtained from available on-Island suppliers of the Goods or Services required; and
- (c) the Corporate Management Group or Tenders Committee, as the case requires, is provided with full details and comparisons to facilitate a decision the matter – see clause 8.5.

7.3 *Gazettal of Tender*

Purchasing Officers must arrange for advertisements to be placed in the Norfolk Island Government Gazette calling for tenders. The Gazette Notice should clearly state:

- what the tender is about;
- a closing date for receipt of tenders;
- where tender can be lodged;
- that tenders can be lodged between 8:00 a.m. and 4:30 p.m. during week days;
- how the tender should be lodged "in sealed enveloped endorsed 'Tender for ' or 'by facsimile or e-mail addressed to";
- a contact person from whom specifications and further details may be obtained and who will be responsible for receipt of facsimiled or e-mailed tenders;
- clearly advise that the Administration is not bound to accept the lowest tender or indeed any tender.

A call for tenders shall be open for 14 days and be Gazetted at least twice to enable sufficient time for potential tenderers to prepare their submissions. Failure to meet this requirement will not in itself prevent the tender from proceeding.

7.4 *Tender Receipt Arrangements*

7.4.1 *Tender Box*

The Chief Executive Officer shall ensure that a Tender Box, suitable for the lodgement of tenders, is located in the public area of the Records Section of the Administration Offices, New Military Barracks, Kingston.

The Tender Box shall be fitted with a suitable lock and shall be kept locked at all times except when it is opened in accordance with the following procedure.

The key to the Tender Box, when not required for opening the box, shall be kept by the OIC-Records, in a locked safe.

7.4.2 *Tender by Facsimile or Email*

A facility for receipt of tenders by facsimile or email shall be provided. Receipt will be deemed to have occurred at the date and time marked on receiving equipment. The legible and complete transmission of tender documents shall be the sole responsibility of the tenderer. All tenders received by facsimile or email shall be printed, placed in an

envelope and placed in the Tender Box by the nominated contact person.

7.5 *Opening Tenders*

Immediately after the closing date for tenders, the OIC-Records, in the company of another authorised officer shall open the tender box and record all tenders received in a "Tender Register".

7.6 *Tender Register*

The OIC-Records shall record in the Tender Register the:

- tender heading (e.g. Forklift);
- date the documents were removed from the tender box;
- name of person or company tendering; and
- the price tendered.

Late tenders will not be accepted.

7.7 *Tender Documents to Purchasing Officer*

After details have been recorded in the Tender Register the OIC-Records shall forward all tender documents to the appropriate Purchasing Officer in a sealed envelope.

The Purchasing Officer shall, as soon as possible after receipt of the tender documents, arrange for the tenders to be evaluated and a recommendation made to the Corporate Management Group or Tenders Committee as the case requires.

7.8 *Processing Tenders*

Tenders should be treated as commercial-in- confidence. Procedures should be in place for the proper receipt, storage, opening, registration, handling and filing of tenders.

Intellectual property submitted as part of the tender should not be disclosed or be made use of without written permission of the owners.

EVALUATION OF TENDERS

8.1 *Tender Evaluation Group*

The Tender Evaluation Group shall consist of the Purchasing Officer and two other persons having knowledge of:

- the purpose of the procured good or service;
- the manner in which the procured good or service is to be applied.

The Tender Evaluation Group shall examine each tender or quotation to ensure that the tenderer has responded to all relevant sections of the tender specifications.

8.1.1 *'Normalising' bids*

Tenderers may submit bids under very different basis and conditions. It may be necessary to 'normalise' bids so that there is a common basis for comparison. Adjustments may be needed for:

- Firm price offers compared to variable price offers
- Different schedule of payments offered
- Different financial provisions eg discounts for early payment, quantity ordered
- Different price provisions
- Different exclusions and inclusions.

8.1.2 *Tender comparison*

The Tender Evaluation Group shall have regard for the following features of each tender when making a tender comparison:

- a) degree of compliance with tender and draft contract
- b) the price tendered and pricing structure;
- c) previous experience of tenderer, if relevant;
- d) reliability of tenderer/supplier;
- e) the quality of the product;
- f) Life cycle costs of the bid
- g) after sales service;
- h) availability of spare parts;

- i) Financial viability of the tenderer and warranties and guarantees offered
- j) on costs for freight, lighterage, insurance, customs duty; and
- k) past performance of the tenderer, if known.
- l) Satisfaction of industry development standards
- m) Risk and tenderer's ability to manage risk
- n) Criteria specific to the individual acquisition.

8.2 Clarification of Issues

An evaluation process must adhere to the highest standards of ethics and probity to maintain confidence in the result. Therefore, any follow up communications between the Tender Evaluation Group and the tenderer must only be for clarification of issues that would assist the evaluation process. To maintain an audit trail, clarification should be sought and recorded in writing. Clarifications should not be used as a means for tenderers or the Administration to revise, modify the scope, or change an offer. If additional information impacting on the requirement emerges in the course of clarification, that information should be communicated to all tenderers.

In requesting clarification it should be made clear to the tenderer that such a request is not an admission of preference nor is it an award of contract. A reasonable timeframe should be stipulated in any request for the supply of additional information.

There shall be no major change to the tender documents and no variation to the price.

8.3 Initial screening and Non-complying Tenders

The Tender Evaluation Group may choose to initially screen or short list tenders. The purpose of such initial screening is to:

- Eliminate tenders that do not comply with mandatory/essential criteria or clearly do not represent value for money
- Reduce costs of tendering for both the evaluator and tenderers.

The basis for short-listing or screening should be included in the Tender Evaluation Plan.

Non-complying Tenders are:

- late tenders;

- tenders which do not include the information specified;
- tenders which omit a cost price; or
- tenders which do not include the name of the tenderer.

8.4 Tenders Not Received

In circumstances where there has been no formal tender received it is open to the Purchasing Officer to either re-invite public tenders or to seek tenders/quotations from known reliable suppliers. A brief shall be provided to the Corporate Management Group or Tenders Committee as the case requires, for approval to proceed in such a manner.

8.5 Evaluation Report

The Tender Evaluation Group shall prepare an Evaluation Report for presentation to the Corporate Management Group or Tenders Committee, as the case requires.

The following is the required minimum format for Evaluation Reports:

- A. Executive Summary
An overview of the evaluation, findings reached and recommendations
- B. Body of Evaluation Report
details of evaluation process and methodologies used, results of assessments against criteria, ranking of offers, implications of the preferred option and final recommendation on preferred tender.
- C. Individual tender evaluations
the detailed evaluations against the criteria, including specialist reports (eg. financial and technical reports)
- D. Additional documents
Clarification questions records, identified areas for negotiation, a value for money target, evaluation plan, cost models, graphical representations, spreadsheets of Tender Evaluation Group.

All tenders received and the Tender Evaluation Group Evaluation Report shall then be forwarded to the Corporate Management Group or the Tenders Committee as the case requires through the Chief Executive Officer.

TENDERS COMMITTEE

The Tenders Committee shall comprise all Executive Members and the Chief Administrative Officer. The Secretary to the Tenders Committee shall be the Research Assistant to Government.

Assessment by the Corporate Management Group or Tenders Committee

The Corporate Management Group or the Tenders Committee, as the case requires, when assessing the tenders shall have regard to the Evaluation Report and recommendation contained therein and in addition, it shall:

- have regard for the economy of Norfolk Island;
- give preference to local suppliers where prices, quality and specifications are equal to or within 10% of any tenders received from off-Island;
- consider whether the Administration is capable of producing the goods and services from within its own resources at an economical price.

AWARDING TENDERS

Tenders may only be awarded by the Corporate Management Group or Tenders Committee, as the case requires.

The Corporate Management Group, or the Tenders Committee may recommend that negotiations be entered into by the Purchasing Officer or other nominated party prior to the Award of Tender. Areas that may be negotiated include: additional specifications, warranty, intellectual property, insurance and other contractual terms. Any significant variation to tender specifications including but not limited to price, will require notification to all tenderers.

The Chief Executive Officer shall return the original tender documents, and details of the award decision to the appropriate Purchasing Officer.

The Purchasing Officer shall:

- first seek a purchase order from the Finance Branch;
- notify the successful tenderer;
- notify the unsuccessful tenderers;
- if contract documents are to be amended, details of the tender

including amendments are to be sent by the Purchasing Officer to the Administration's Legal Services Unit.

All contracts must be cleared by the Legal Services Unit prior to signature.

11.1 Notification to Successful Tenderer

Acceptance of tender will be by the issue of an approved purchase order, the signing of a contract, or a letter acknowledging acceptance signed by the Purchasing Officer.

Purchasing Officers should take every care to ensure that the acceptance of the tender is identical with the conditions of the tender. It may, in certain circumstances, simply be an exchange of letters advising that the tender has been accepted and incorporating the specifications.

11.2 Contracts

A Contract enables both the purchaser and the supplier to know what rights are conferred and obligations imposed.

All Contracts for the purchase of goods and services shall be prepared by the Administration's Legal Services Unit.

Contracts for goods and services up to \$40,000 shall be prepared in or to the effect of the model Minor Works Contract at Attachment "B". Contracts in excess of \$40,000 shall be separately prepared. All contracts should be prepared in draft form prior to the call for quotation or tender so that a copy can be distributed along with other required tender documents (see clause 12).

Where the awarding of a tender requires the issue of a contract or an exchange of contracts, it is necessary that both parties hold identical contracts.

Contracts are to be signed by the Chief Executive Officer. All pages of the contracts are to be initialled by both parties (including ALL attachments).

TENDER DOCUMENTS TO BE PROVIDED TO ALL TENDERERS

This section describes the types of documents that must be given to all tenderers upon request to tender.

12.1 Conditions of Tender document

The Conditions of Tender document specifies all requirements for complying tenders. An example is annexed and marked "c".

12.2 Specifications

Specifications for the purchase of goods and services shall be prepared prior to the call for quotations or tenders. **Specifications are required for all goods and services regardless of the value of such goods or services.**

A specification is a written document which:

- is an accurate statement/description of objectives/needs;
- is a means of communicating a requirement to potential suppliers in a way that they can readily understand and respond to;
- is a description of a particular manufacturer's make or model ("or equivalent");
- contains enough information to enable potential suppliers to determine the nature, scope and cost of the goods or services required;
- may include plans and drawings;
- is the framework for evaluating and comparing the quotations and tenders received.

12.2.1 Basic requirements of Specifications

A specification should not be ambiguous and open to misinterpretation. Specifications should in simple terms:

- . be a statement of what is required;
- . define what the purchaser wishes to buy and consequently what the supplier is expected to provide.

12.2.2 Plans and Drawings

If plans and drawings form part of the tender specification it is imperative that the text of the specification conforms with the plan or drawing. All plans or drawings prepared as part of the specifications by the Administration are indicative only.

12.3 Draft contract

For the procurement of all goods and services where value exceeds \$10, 000, a draft contract shall be provided to tenderers.

CONSULTANTS

Engaging consultants is a procurement activity and therefore it is no different in principle from the procurement of other goods and services.

All requests for the services of outside consultancies are to be treated in the same manner as for calling for tenders.

Each consultancy task should be carefully defined and specified in specifications and in the draft contract.

EVALUATION OF CONSULTANCY PROPOSALS

Consultancy proposals should be evaluated in the same manner as tenders.

In addition to general evaluation guidelines, each proposal should be evaluated against the specifications in the brief and in particular Purchasing Officers should consider:

- the merits of the proposal
- the fees and the charges (overall costs)
- the capabilities and professional standing of the consultant including previous work done
- the existence of professional indemnity insurance
- financial stability of the company and/or the principals

In assessing the capability of a consultant the following should be considered:

- the extent to which the consultant has shown a clear understanding of the task
- the consultants understanding of any relevant organisational and cultural issues
- the methodology to be used
- the consultants resources
- experience, skills and qualifications of personnel
- previous performance on comparable assignments

AWARDING CONSULTANCIES

The procedures set down for awarding tenders are to be followed when seeking to engage a Consultant.

Consultancies may only be awarded by the Corporate Management Group or Tenders Committee, as the case requires.

ADDITIONAL PUBLIC ACCOUNTABILITY REQUIREMENTS

- 16.1 Within two weeks of accepting a tender for goods or services a notice shall be placed in the Gazette notifying of the award of such tender.
- 16.2 Each six months, the executive member responsible for finance shall table in the Assembly a report which outlines a brief description of tenders that have been accepted in the preceding 6 months including the goods and services tendered, the name of the successful tenderer, and the value of the successful tender.

Appendix A - Participating Government Supply Services

NSW Supply Service

Appendix B

MINOR WORKS CONTRACT

THIS AGREEMENT is made on the day of 20

BETWEEN **THE ADMINISTRATION OF NORFOLK ISLAND** a body politic constituted by the Norfolk Island Act 1979 (hereinafter called "the Administration") of the one part

AND **XXXXXXXXXXXXXXXXXX** of Norfolk Island (hereinafter called "the Contractor") of the other part

WHEREAS A. The Administration desires to have executed and completed certain works, (hereinafter referred to as "the works") namely:

XX
XX

B. The Contractor agrees to carry out the works.

NOW IT IS HEREBY AGREED:

1. The following documents (hereinafter called "the contract documents") annexed to this Agreement shall be deemed to form and be read and construed as part of this Agreement:
 - (a) Conditions of Contract.....marked "A"
 - (b) Tender documents/correspondence.....marked "B"
 - (c) Specificationmarked "C"
 - (d) Plans/Drawingsmarked "D"

2. For the consideration hereinafter mentioned the Contractor will carry out the works in conformity in all respects with the contract documents.

3. The Administration will pay to the Contractor within a reasonable time after the completion of the works the sum of XXXXXXXXXXXXXX dollars (\$XX,XXX.00) on a lump sum, firm price basis.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first before written.

<u>SIGNED</u> for and on behalf)
of the Administration by)
E.R. Mitchell)
Chief Administrative Officer,).....
in the presence of-)
.....)

Witness

SIGNED by the contractor
in the presence of-

).....
)

.....
Witness

ANNEXURE "A" TO MINOR WORKS CONTRACT

CONDITIONS OF CONTRACT

1. The Contractor shall take upon themselves the whole risk of executing the works in accordance with these conditions, the plans and specifications and shall be solely liable for loss or damage to the works from any cause whatsoever (except loss or damage caused by the negligence, omission or default of the Administration, its servants or agents) until the XXXXXXXXXXXXXXXXXXXX of the Administration (hereinafter called "the Supervisor") has certified that the whole of the works have been satisfactorily completed by the Contractor.
2. The Contractor shall observe and comply with the provisions of all relevant Acts, Ordinances, regulations, bylaws, orders and rules and all requirements of the Administration as shall be in force and as may relate to the works to be executed. However, the Contractor is not required to submit building plans for approval.
3. The Contractor shall be liable for and keep the Administration indemnified against the legal liability, loss, claim or proceedings for personal injury to or death of any person or for injury or damage to property arising from the carrying out of the works, other than that which may arise from the negligence, omission or default of the Administration, its servants or agents.
4. The Contractor shall indemnify the Administration at all times against any compensation paid or any action, claim, demand or expense arising from or incurred by reason of the existence of any patent, design, trademark or copyright or other protected right in respect of any machine, plant, work material or thing, system or method of using, fixing, working or arrangement used or fixed or supplied by the Contractor in connection with the carrying out of this contract.
5. All materials and workmanship shall be of the respective kinds described in the plans/drawings and specification or if not fully described shall be in accordance with good trade practice. Any building construction work shall comply with the requirements of Australian Standard 1684 (Timber Framing Code) or New Zealand Standard 3604 (Code of Practice of Light Timber Frame Buildings). All materials shall be new. If the Supervisor is of the opinion that any materials or work, whether fixed or not, are not satisfactory or if he detects any defects during the defects liability period, he may direct removal or correction at the Contractor's own expense.

6. The Supervisor will have the full power to increase or decrease the extent of the work specified or to require the substitution of alternative materials or classes of work from those specified. The necessary adjustment (if any) to be made to the contract price as a result of any such variation shall be determined by mutual agreement between the Supervisor and the Contractor. In default of agreement between the Supervisor and the Contractor, the adjustment to the contract price shall be determined by the Chief Administrative Officer of the Administration.
7. The defects liability period shall be twelve months and shall commence on the date that the Supervisor certifies that the whole of the works have been satisfactorily completed by the Contractor. If during the defects liability period any defects become apparent under normal use of the works, the Contractor shall at his own cost remedy the defects to the satisfaction of the Supervisor.
- 7A(1) The Contractor shall commence the works on or before XXXXXXXXXXXXXXXX.
- 7A(2) The Contractor shall complete the works on or before XXXXXXXXXXXXXXXX.
- OR
- 7A. The Contractor shall commence the works within XXXXX (X) days of written notice being given to the Contractor by the Supervisor.
8. If the Contractor fails to commence the works within the period specified or fails to carry out the works at a rate of progress satisfactory to the Supervisor, or neglects or omits to carry out any instruction of the Supervisor in respect of the work, or fails to complete the whole of the works within the period specified for completion in accordance with these conditions, plans or specification or such extended time as the Supervisor may approve, or intimates that they are unwilling or unable to complete the works, the Supervisor may, by notice in writing either
- (a) cancel the contract whereupon all sums of money which remain in the hands of the Administration, together with all materials on or about the site which are the property of the Contractor and have been provided by him for the purpose of carrying out the works, may be forfeited to the Administration and on being so forfeited shall become vested in or become payable to the Administration; or
 - (b) take the works wholly or partly out of the control of the Contractor, or any other person in whose control or possession the works or part of them may be, and complete the same by any other means he so decides.
9. Should the Supervisor take action pursuant to subclause 8(b) then all losses, costs, charges and expenses incurred or sustained by the Administration in completing the works will be deemed to be a debt due to the Administration by the Contractor and will be deducted from any monies that may then or may thereafter become due to the Contractor and if the monies then or thereafter becoming due to the Contractor be less than the amount so deductible the amount of the deficiency shall be a debt due by the Contractor to the Administration.
10. The Contractor shall not assign the contract, or assign, mortgage, charge or encumber any of the monies payable under the contract or any other benefit whatsoever arising under the contract. Should the Contractor desire to sublet any part or parts of the works he shall submit to the Supervisor the names of his proposed subcontractors, the nature of the work which it is intended they undertake and receive the written approval of the Supervisor in respect of them. No subcontractor shall be employed in connection with the works unless such approval is first obtained.

11. The Contractor shall make good at his own cost all fencing, roads, footpaths and surfaces generally, which may be disturbed by cartage or other operations of the Contractor. He must leave the site of the works and areas adjacent thereto in as good a state of repair as they were in when he commenced the works, and, as directed by the Supervisor, from time to time during the currency of the contract, remove from the site all rubbish, debris and waste resulting from his activities on the site.
 12. Any direction, requirement, decision, determination or opinion given by the Supervisor pursuant to these conditions shall be final and binding upon the Contractor.
 13. The Contractor shall be deemed to have informed himself completely and thoroughly of the site conditions and of every circumstances connected with the works and to have provided in his tender for all incidental work and materials necessary to complete the said works and for every contingency that may arise during the execution of the works.
 14. The Contractor shall, prior to commencing work pursuant to this contract, take out a Public Liability Policy of Insurance for an amount of XXXXX million dollars (\$X,XXX,XXX.00) in the joint names of the Administration and the Contractor to cover the Administration's and the Contractor's liability to third parties in respect of personal injury, death and property damage resulting from or as a consequence of, the execution of the works.
- OR
14. The Contractor shall, prior to commencing work pursuant to this contract, provide evidence of the Contractor holding a current Public Liability Policy of Insurance for an amount of XXXXX million dollars (\$X,XXX,XXX.00) to cover the Contractor's liability to third parties in respect of personal injury, death and property damage resulting from or as a consequence of, the execution of the works.

Appendix C

**ADMINISTRATION OF NORFOLK
ISLAND**

Project Name

TENDER DOCUMENTS

Volume 1 – Conditions of Tender

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1. Introduction

1.1 Description of tender

The Administration of Norfolk Island (Principal) invites selected persons to tender for the Works described in the Tender Documents.

1.2 Definitions

Tender Documents means the Conditions of Tender, Tender Specifications, and General Conditions of Contract with all attachments and annexures.

2. Summary of requirements for tender

2.1 Eligibility to tender

To be eligible to tender, the tenderer must have been invited by the Administration to submit a Tender.

2.2 Lodging a conforming tender

To lodge a conforming tender the tenderer must do all things set out in the Conforming Tender Checklist attached to this document at Annexure CT2.

2.3 Lodging an alternative tender

No alternative tenders will be considered.

2.4 Post-tender supporting information

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

3 Lodging a conforming tender

3.1 Tender Document

The Tender Document must be properly completed and signed or initialled by or on behalf of the tenderer as a binding legal document.

3.2 Schedule of rates

The Schedule of Rates must be completed with all items listed being priced and with no new items added.

3.3 Tender Programme

The Tender Programme must:

- detail the tenderer's proposals to complete the Works by the Practical Date of Completion; and,
- detail the tenderer's proposals for compliance with the timetable provided in Clause 11 of Tender Documents (Volume 2 – Tender Specifications).

3.4 Supporting Details

The tenderer must submit with their tender the following supporting information:

- Organisation details (see Clause 4.2);
- Sub-contracting proposal if any (see Clause 4.3); and,
- Schedule of Plant and Equipment (giving details of age, condition, and current market value in \$AU).

3.5 Statutory Declaration

The statutory declaration must be:

- In the form set out in Annexure CT1;
- Made by the tenderer or, if the tenderer is a corporation, by a representative of the tenderer who is in a position to know the facts attested to in the Statutory Declaration; and,
- Signed by the declarant in the presence of a Justice of Peace or in accordance with the legislative requirements applying in the place where the declaration is made.

3.6 Statement of recent projects

The Statement of Recent Projects must list the projects undertaken over the last 5 years by the tenderer which are similar to the proposed Works, if any.

Principal's right to accept any tender conditionally.

4. Supporting information

4.1 Further supporting information to be supplied

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

- Make-up of tenderer's prices (see Clause 4.4); and,
- Other information (see Clause 4.5).

4.2 Organisation details

Organisation details must include:

- An organisation chart clearly showing:
 - Proposed supervisory staff including all site staff from supervisor level and above;
 - The chain of command from site to senior company management; and,
 - Work functions and responsibilities of all site staff; and,
- Curricula vitae for all proposed site staff shown on the organisational chart.

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

4.3 Sub contracting proposal

The sub-contracting proposal must set out the nature and extent of the work proposed to be sub-contracted. The proposal is to include the names of the proposed sub-contractors.

4.4 Make-up of Tenderer's prices

The makeup of tenderer's prices must show how the rates and prices in the Schedule of Rates are made up.

The make-up need not state the amount of the tenderer's profit but, in the case of each rate or price, must indicate the proportionate amounts (inclusive of profit) expressed as percentages of the total rate or price.

These shall be attributable respectively to:

- Preliminaries;
- Labour;
- Goods or materials;

- Plant;
- Sub-contractors; and,
- Overheads expenditure (if any).

4.5 Other Information

If required, the tenderer must also identify the number and type of plant, labour, materials or goods or other expenditure allowed for in sufficient overall detail for pricing purposes, drawing attention to unusual or important items.

The Principal may also request that further information and particulars relating to the make-up of prices be supplied by the tenderer to assist the Principal in considering the Tender.

The Principal may seek clarification in relation to any ambiguity or uncertainty from any or all of the tenderers.

4.6 Addenda

The Principal may issue an addendum or addenda changing the Tender Documents during the tender period.

5. Post-tender financial information

The tenderer must submit the following information within five (5) working days of a request from the Principal:

- (a) A statement from a reputable financial institution setting out the following details relating to the tenderer:
 - Bank account name and location of account;
 - Overdraft facilities including current balance and total facility;
 - Bank guarantee facilities including current balance and total facility; and,
 - Other funding facilities available of tenderer including current balance and total facility.
- (b) Copies of the tenderer's audited financial statements (including notes) for the preceding two (2) financial years including:
 - Trading Account;
 - Profit and Loss Account;
 - Balance Sheet;
 - Statement of cash flows;
 - Signed Auditor's report; and,
 - Signed Director's report (if Tenderer is a Corporation).
- (c) Copies of the tenderer's latest management accounts (Trading Account, Profit and Loss Account, and Balance Sheet) if financial statements provided are more than 6 months old.
- (d) The tenderer's current year forecast cash flow statements and details of assumptions made in preparing the statements.
- (e) Details of the ageing of debtors receivable and creditors payable of the tenderer for:
 - 30 days and under;

- 31 – 90 days; and,
- over 90 days.

- (f) Details of assignments of assets and any charges over the tenderer's assets.
- (g) A list of all contract works and services currently being undertaken by the tenderer for a client including details of the Principal or client for each contract, the contract value, the percentage completed and payments received to date.

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

6. Tender pricing considerations

6.1 Customs duty

Customs duty is payable on all material, plant and equipment imported into Norfolk Island unless exemption from payment of duty is granted.

If requested, the tenderer must submit within five (5) working days a statement setting out the amount of customs duty included in the tender price in respect of plant, equipment and material which has been included in the Tender Prices.

7. Assessment of Tenders

7.1 Late tenders

The Principal will not consider a late tender unless the late tenderer establishes to the Principal's satisfaction that:

- (a) The cause of the lateness was beyond the tenderer's control; and,
- (b) Consideration of the late tender could not possibly compromise the integrity of the tendering process.

7.2 Best value for money assessment

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

- The tender price and the integrity of its structure;
- Individual rates and prices and the integrity of their structure;
- The details and logic of the Tender Programme;
- Previous Contractor performances, current financial position and commitments on other contracts;
- Suitability of proposed personnel, plant, equipment and sub-contractors; and,
- Previous performance, claims history, concerning safety, industrial relations, environmental protection and community relations.

7.3 Local Involvement

Tenders will be assessed on the involvement of local employment and equipment but subject to sub-clause 7.2.

8. General

8.1 *Tender validity period*

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

8.2 *Acceptance of tender*

The submission of a tender will not create any contract between the tenderer and the Principal. The invitation to tender is not an offer. It is merely an invitation to treat. The Principal does not promise to comply with any conditions of tendering or any tendering code.

The Principal is not bound to accept the lowest or any tender.

A tender is only accepted when notice in writing of acceptance is issued to the tenderer by the Principal's Executive Member with responsibility for the Project.

8.3 *Information provided for convenience only*

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

8.4 *Information not exhaustive*

Information provided by the Principal which does not form part of the Tender Documents and which describes the Site or conditions which may be encountered during the course of work under the Contract is not to be taken as an exhaustive statement of conditions which may be encountered during the course of work under the Contract. The tenderer is required to satisfy itself as to all relevant technical information.

8.5 *Subcontractors not approved*

Acceptance of a Tender by the Principal does not constitute an approval of a proposed sub-contractor or sub-contracted work under clause of the Tender Documents (Volume 3 - General Conditions of Contract).

Annexure CT1
Statutory Declaration

I (insert name) of
.....(insert address) do solemnly and
sincerely declare and affirm, in respect of the tender for.....
.....('Tender') or any contract
arising from the Tender, that:

1. I hold the position of and am duly
authorised by.....('Tenderer') to make this
declaration on its behalf.
2. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents have knowledge of the price of another tenderer prior to submitting the
Tender.
3. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents has disclosed the Tenderer's price to a rival tenderer.
4. The Tenderer submitted the tender in good faith and has not deliberately set its
tender price above the level of rival tenderers.
5. As at the date of this declaration, the Tenderer intends to do the work the subject
of the Tender.
6. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents has entered into a contract, arrangement or understanding having the result
that the Tenderer or another person will pay money to an unsuccessful tenderer if
the Tenderer is successful in the Tender (other than for work or services done or
materials supplied under a bona fide contract).
7. The Tenderer has allowed in its Tender for all workers who may be at anytime
employed on the work under the Contract to be paid, and promises to pay all such
workers in the event that the Tender is accepted, no less than the wages,
allowances and other money payable to them pursuant to all relevant legislation,
awards, determinations, judgements and agreements in respect of their
employment on the work under the Contract.

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

Subscribed and declared at (city or town) on.....(date)
Before me:

Justice of Peace

Declarant

Annexure CT 2
Conforming Tender Checklist

The Tenderer must do all of the following things to make sure that its Tender is conforming when lodged in accordance with the Specifications:

- Prepare the Tender
- Initial all pages of the Tender
- Lodge all completed documents described below by the closing date and time:
 - Tender
 - Schedule of Plant and Equipment
 - detailed plans and elevations of intended layout/setup
 - Schedule of Rates
 - Tender Programme
 - Environment Management Plan
 - Risk Management Plan
 - Statement of Recent Projects
 - Organisational details
 - Statutory Declaration
 - Sub-contracting proposal