



Australian Government

AusAID

2 May 2009

Request for Tender

**Australia Indonesia Partnership for Economic Governance
Facility (AIPEG Facility)**

REQUEST FOR TENDER

Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility)

AusAID is seeking proposals from organisations interested in providing services for the Australia Indonesia Partnership for Economic Governance (the “**Project**”). If your organisation chooses to lodge a proposal (the “**Tender**”) it must be submitted on the terms of this document and the attached Parts (together referred to as the “**Request for Tender**” or “**RFT**”). The required services (the “**Services**”) are described in detail in Part 3 - Scope of Services.

STRUCTURE OF THE RFT

The RFT is separated into two (2) Sections and several Parts. References in the RFT to Parts and Sections are to Parts and Sections of this RFT.

Section 1 details the Project Specific Tender Conditions (**Part 1**) and the Project Specific Contract Conditions (**Part 2**), the Scope of Services (**Part 3**), and the Basis of Payments (**Part 4**).

Section 2 details the Standard Tender Conditions (**Part 5**) and the Standard Contract Conditions (**Part 6**).

The two sections are designed to clearly identify standard clauses applicable to AusAID tenders and contracts and by extension to highlight particular requirements (either in tendering or the contract) that will apply for this particular Project.

The conditions (Tender and Contract) contained in this RFT apply to this stage of the procurement process and supersedes any earlier stage conducted by AusAID.

Tenderers are encouraged to fully inform themselves of the Contract Conditions (both Project Specific and Standard) when preparing their Tenders and to make any enquiries before the Tender enquiry closing time, referred to in **Clause 1, Part 1** and **Clause 2, Part 5**.

It is AusAID’s intention to contract on the basis of the Contract Conditions provided in this RFT.

AusAID Contracts Charter

AusAID has published a Contracts Charter describing AusAID’s approach to contracting aid activities, expectations of contractors and what contractors may expect from AusAID. Tenderers are encouraged to access and inform themselves of the Charter which is available on URL: <http://www.ausaid.gov.au/business/pdf/charter.pdf>

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time:

(Clauses 1.11 and 1.14, Part 5)

2.00 pm local time in Canberra

Australian Capital Territory, **Tuesday 16 June 2009**

Mode of submission:

(Clause 1.1, Part 5)

Either:

- Electronically, via AusTender at <https://tenders.gov.au> before the tender **Closing Time**;

or

- in hard copy, by depositing by hand in the Canberra Tender Box before the tender **Closing Time**.

Electronic Tender Lodgement

Address:

(Clause 1.11, Part 5)

Via AusTender at <https://tenders.gov.au>

Canberra Tender Box Address:

(Clause 1.14, Part 5)

Tender Box, Ground Floor, AusAID,
255 London Circuit, Canberra ACT 2601, AUSTRALIA.

Business Hours

for hard copy lodgement:

(Clause 1.15, Part 5)

Monday to Friday, 8.30 am to 5.00 pm

local time in Canberra, Australian Capital Territory

Excluding Public holidays.

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 5)

PDF (Portable Document Format).

Number of Copies of Tender:

(Clause 1.6, Part 5)

For electronic tender lodgement

Technical Proposal: One (1) electronic copy - with Schedule A, Schedule B, the Annexes and CV's combined into One (1) PDF file.

Financial Proposal: One (1) electronic copy in a separate file.

Financial Assessment material: One (1) electronic copy in a separate file.

For hard copy tender lodgement

Technical Proposal: One (1) printed Original and One (1) copy.

Financial Proposal: One (1) printed Original, in a separate, sealed envelope.

Financial Assessment material: One (1) printed Original copy in a separate sealed envelope; and

CD: One (1) containing the above three documents in three PDF files.

Endorsement of hard copy Tenders:

(Clause 1.16, Part 5)

“Tender for the Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility).”

Tender Validity Period:

(Clause 1.8, Part 5)

One hundred and eighty (180) days

Contact Person:

(Clause 2.1, Part 5)

Contact Person: Jodie Loveridge

Email address: aipectender@ausaid.gov.au

AusTender Help Desk:

Phone: 1300 651 698 (within Australia)

Phone: +61 2 6215 1558 (outside Australia)

Email address: tenders@finance.gov.au

Page limits:

(Clauses 7.15 and 7.17, Part 5)

Technical proposal - maximum ten (10) pages plus annexes.

CurriculumVitae - maximum four (4) pages each

Information:

The following documents are attached:

1. Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility) Program Design Document.

The Request for Tender and any associated documents are available from the AusTender website

<https://tenders.gov.au>

2. **PRE-TENDER BRIEFING**

2.1 AusAID intends to hold the pre-tender briefings at 10:00am on Thursday 14 May 2009 in Jakarta. Venue details will be provided closer to date.

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating:

- (a) The name of the organisation;
- (b) The name of each person planning to attend; and
- (c) Any known questions regarding this RFT to be responded to at the briefing.

to the tender contact person, by COB **Tuesday 12 May 2009**.

2.3 Following the pre-tender briefing, AusAID will publish an addendum to the RFT, responding to questions raised prior to and at the briefing.

3. **ALTERNATIVE TENDERS**

3.1 AusAID reserves the right to accept and consider alternative Tenders providing they:

- (a) are submitted with a conforming Tender;
- (b) clearly identify the differences and improvements offered in the alternative Tender;
- (c) are fully costed; and
- (d) are clearly marked with the name of the Project and the words “Alternative Tender”.

3.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.

3.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.

3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

4. **ELIGIBILITY TO TENDER**

4.1 There are no eligibility restrictions to tender for the RFT.

5. **SELECTION PROCESS**

5.1 Tenders will be verified for Tender conformity and will be assessed on both the Technical and Financial components of their Proposal. Tenderers must ensure that their Proposal exactly follows the outlined Schedules, Tables, Annexes and other requirements as listed in this Part 1 and that all components, including CV's are written in english.

Technical Assessment of Tenders

- 5.2 An initial assessment of the Technical Proposal (Tender Schedules A and B, Annexes and CVs) will be undertaken by the Tender Assessment Panel (TAP) who will determine which Tenderers may be invited to interview based on technical suitability. The Financial component (Tender Schedules C and D) for bids short listed and considered technically suitable by the TAP may be submitted for a separate Value for Money assessment (Refer to Clause 5.4 below).
- 5.3 The interviews for short-listed Tenderers are expected to be held in Jakarta, Indonesia during the week of 6 July 2009. Tenderers will be notified of their interview time and location at least seven (7) days prior to interview. The nominated Facility Director, Deputy Facility Director, and Activity Design and Management Mentor will be required to attend the interview. One Corporate representative may also attend the interview; and one Observer may also attend (but not participate) in the interview.

Value For Money Assessment of Tenders

- 5.4 AusAID may conduct a separate overarching Value for Money assessment of short listed Tenders, enabling AusAID to gain a comprehensive or holistic comparison/assessment of the value for money of Tender proposals considered by the TAP to be technically suitable. This will consider:
- (a) the Technical ranking of Tenders;
 - (b) the overall cost of the Tenderer's bid;
 - (c) the Tenderer's Financial Proposal, including an assessment of any risks associated with the structure of the Financial Proposal;
 - (d) the overall past performance of the Tenderer;
 - (e) the Tenderer's ability to undertake the work at the price tendered; and
 - (f) the Tenderer's financial capacity to meet its contractual obligations.
- 5.5 AusAID may subject all short listed Tenderer's Financial Proposals to independent examination by an appropriate expert, to ensure completeness and accuracy of costed proposals, and to identify any risks likely to impact costs over the life of the Activity.
- 5.6 Assessment of the Tenderer's financial capacity to meet its contractual obligations will be performed in accordance with Clause 11 (Tender Schedule D – Financial Assessment) of this Part, and will also consider other factors referred to in Clause 7, Part 5.
- 5.7 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet its contractual obligations referred to in Clause 11 of this Part and consideration of other factors referred to in Clause 7, Part 5, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

5.8 Following the final assessment and calculation of the final aggregate scores, confirmation of the Tenderer's financial capacity to meet the contractual obligations referred to in Clause 11 of this Part and consideration of other factors referred to in Clause 7.8, Part 5, a recommendation for further action will be made to the appropriate AusAID delegate. Tenderers should be aware that the delegate is not bound to accept the TAP recommendation and may direct that other action be taken in accordance with this RFT.

6. **TENDER SCHEDULE A – TECHNICAL PROPOSAL (RESPONSE TO SELECTION CRITERIA)**

6.1 Tender Schedule A of the Tender must contain all information required in the following format:

- (a) a technical proposal that substantively and individually addresses the selection criteria provided in Clause 6.2 of this Part taking into consideration "other factors" under Clause 7.8, Part 5;
- (b) the required annexes included in Clause 6.3 of this Part; and
- (c) lists the Tenderer's contact details including email address, on the front page of the technical proposal.

6.2 **Selection Criteria**

A. Management Capabilities

Weighting 25%

- (a) Proven experience in delivering flexible and responsive economic governance programs in developing countries;
- (b) Ability to recruit and retain high-quality staff over the life of the program;
- (c) Ability to develop appropriate management and administration support arrangements; and
- (d) Ability to effectively manage the program risk regarding recruitment.

B. Approach To Program

Weighting 35%

- (a) Response to Request for Tender and Program Design Documents
 - (i) Demonstrate understanding of the facility and sub-facilities objectives and recognise the critical constraints in the program; and
 - (ii) Demonstrate understanding of the strengths and challenges of the facility approach.
- (e) Methodology and Work Plan
 - (i) Practical and strategic approach to fulfilling the objectives within the timeframe and resources available for project implementation.

- (f) Relationships
 - (i) Ability to manage critical relationships with various stakeholders while balancing program priorities and resources.

C. Personnel

- (a) **Facility Director** **Weighting 25%**
 - (ii) Demonstrate relevant skills and an experience in accordance with the Position Description, including experience in working with Government of Indonesia;
 - (iii) An understanding of the Indonesian economic and political context and the reform challenges faced by the Government of Indonesia; and
 - (iv) Demonstrate the ability to manage critical relationships with various stakeholders.

- (g) **Other Key Team members** **Weighting 15%**
 - (i) Demonstrate the skills and experience in accordance with the relevant Position Description; and
 - (ii) Ability to manage critical relationships with various stakeholders.

6.3 **Annexes**

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project must be presented in the format outlined below.

This annex must not contain more than five (5) examples and details of each activity must not exceed one (1) A4 page per example. Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with Clauses 7.18 – 7.21, Part 5 of the RFT.

PAST EXPERIENCE FORM

Activity Name:	
Activity Value:	
Activity Location(s):	
Activity Duration	
Client/Donor:	
Year Completed:	
Brief description of the activity and the Organisation’s role:	
Brief description of activity outcomes:	

Statement of the similarities between this activity and the requirements of the activity currently being tendered and how this activity supports your statements addressing the Selection Criteria:			
Nominated Activity Referees:			
1. Name:		2. Name:	
Address:		Address:	
Email:		Email:	
Phone:		Phone:	

Annex 2 – Work Plan (first six months)

A detailed work plan for the first six months showing dependencies, eg. A Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are indicative only and may be varied by AusAID.

This annex must be presented on A3 paper and not exceed two (2) pages.

Annex 3 – Team Member Inputs Bar Chart

A bar chart showing the proposed inputs per team member for this project and indicating total person months or person days for the duration of the project (denoting a person as “part-time” is not acceptable).

This annex must be presented on A3 paper and not exceed two (2) pages.

Annex 4 – Risk Management Critique

A detailed Critique of the draft Risk Management Plan shown in the Program Design Document that must identify:

- (a) all risks that can be reasonably anticipated;
- (b) the level of probability of the risk eventuating;
- (c) the impact on the project if the risk eventuates along with possible options for ameliorating the risk;
- (d) the entity(s) responsible for managing the risk consistent with the PDD; and
- (e) the approach to be taken to mitigate any impact.

This annex must be presented on A4 paper and not exceed three (3) pages.

Annex 5 – Letters of Association and other details of other proposed sub-contractors

Clause 9.4, Part 5 requires that AusAID is provided with assurance of the Associate’s corporate commitment and involvement in the Project in the form of a single page Letter of Association.

Clauses 9.3, Part 5 also requires that details are provided for other work to be sub-contracted and proposed sub-contractors, where these are reasonably known at the time of tender and who have made known their willingness to be involved with the Project limited to a single page per organisation.

This annex must not contain more than five (5) letters and must not exceed one (1) A4 page per letter.

Annex 6 – Commonwealth Government Policies Compliance

Tenderers are required to disclose in this annex if they are non compliant and/or have (or have had) issues associated with policies named in Clause 17, Part 5.

This annex is at Tenderers discretion (if they are non compliant and/or have had issues) and if being completed must not exceed two (2) A4 pages.

7. TENDER SCHEDULE B – SPECIFIED PERSONNEL

7.1 Tender Schedule B must contain all information on proposed Specified Personnel in the following format:

- (a) a list of specified team members in the table (in landscape) format provided and in accordance with the instructions included in Clauses 7.2-7.3 below; and
- (b) a curriculum vitae for each proposed team member that conforms with the requirements outlined in Clauses 7.16 and 7.17, Part 5.

7.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with Clauses 7.18 - 7.21, Part 5, ensuring all referee contact details are up to date.

7.3 The Commitments column in the Specified Personnel table must include details of proposed team members’ commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project, Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.

7.4 Tenderers are reminded of the requirements of Clause 8, Part 6 particularly in relation to the availability of specified personnel. AusAID will consider as materially inaccurate, and will therefore reject, any Tender which does not disclose the fact that a proposed team member has an existing and continuing commitment to another AusAID project.

7.5 AusAID’s strong preference is that individuals with conflicting commitments are not included in Tenders. Where team members with conflicting commitments are nominated,

AusAID will assess on a case-by-case basis the impacts of the personnel changes and may require further information from the Tenderer in relation to managing the transition.

7.6 Tenderers are reminded of the requirements of Clause 19.2, Part 5 particularly in relation to providing police clearance certificates for all Project Personnel nominated in the Specified Personnel table for positions specified as working with children.

- (a) Tenderers must request the required criminal record checks in sufficient time to ensure that police clearance certificates can be provided in accordance with Clause 19.2, Part 5.
- (b) Tenderers should note that in Australia, national criminal record checks are available through the Australian Federal Police and take around twenty working days. The type of employment should be specified as ‘overseas employment.’ Overseas, different checking procedures apply in each country and may take six weeks or longer. Individuals need to give their consent to a criminal record check and should be informed of the purpose for which it will be used, including sighting by AusAID.

Table 1: Specified Personnel (as per Clause 7.2 of Part 3)

Position	Working With Children	Name	Total Inputs in person months		Leave entitlements	Referee Contact Details		Commitments
			Home Base	Overseas		<i>(including email and phone)</i>		
						#1	#2	
Facility Director	No							
Deputy Facility Director	No							
Activity Design and Management Mentor	No							

8. TENDER SCHEDULE C - FINANCIAL PROPOSAL

8.1 Tender Schedule C - the financial proposal must contain the information required and in the format detailed in this clause.

8.2 It must:

- (a) be a fully costed fixed price based on the outputs and/or inputs as specified in the Scope of Services, including:

- (i) escalation and any allowance for foreign exchange rate variations;
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
 - (b) be expressed in Australian dollars; and
 - (c) include detailed information on assumptions used in preparing the pricing.
- 8.3 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed as a single escalator factor. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.
- 8.4 Information provided in the tables will be used:
- (a) To enable AusAID to assess the value for money of the Tenders;
 - (b) In the Basis of Payment in the Contract between AusAID and the successful Tenderer;
 - (c) For the purposes of verifying the accuracy of financial information provided by the Tenderer (and provided to the independent financial assessor appointed by AusAID); and
 - (d) To provide the financial assessor with a basis for making any enquiries required about any other aspects of the Financial Proposal.

Summary of the payment regime

- 8.5 The Contractor will be paid in accordance with the draft Basis of Payment at Part 4. Payments will comprise as follows:
- (a) Fixed Management Fees;
 - (b) Reimbursable Long Term Personnel Costs;
 - (c) Reimbursable Short Term Personnel Costs;
 - (d) Reimbursable Procurement and Operational Costs; and
 - (e) Imprest Account.

Fixed Management Fees

- 8.6 The Fixed Management Fees apply to the delivery of the program activities as detailed in Part 3 (draft Scope of Services) of this RFT.
- 8.7 The Fixed Management Fees are set for the term of the Contract and paid on the basis of 60% as Quarterly Payments; and 40% as Milestone Payments.

- 8.8 Note that the details of the breakdown of the Fixed Management Fees are included in Clause 7 of Part 4 (draft Basis of Payment) of this RFT. Tenderers should note that these do not represent an exhaustive list of cost items which could be included in the calculation of the Fixed Management Fees and should be careful to outline any additional costs they deem necessary specifically as part of the required cost breakdown.
- 8.9 Tenderers must complete the required Fixed Management Fees values in the Table 2A and Table 2B below:

Table 2A – Fixed Management Fees (AUD)

Total Fixed Fees	Escalator	Year 1	Year 2	Year 3	Total (AUD)
Per Annum to include a single fixed escalator	x% (please specify)				(Value A for Table 5A)
<i>For example: Fixed Fees Per Annum inclusive of escalation factor</i>	2%	1,000	1,000 (x 1.02) = 1,020	1,020 (x 1.02) = 1,040	3,060

Table 2B – Fixed Management Fees for the Option to Extend *(AUD)

Total Fixed Fees	Escalator	Year 4	Year 5	Year 6	Total (AUD)
Per Annum to include a single fixed escalator	x% (please specify)				(Value A for Table 5B)
<i>For example: Fixed Fees Per Annum inclusive of escalation factor</i>	2%	1,000	1,000 (x 1.02) = 1,020	1,020 (x 1.02) = 1,040	3,060

*Note to Tenderers: Years 4 to 6 applies only in the event that AusAID exercises its Option to Extend under Clause 2 of Part 2 to this RFT.

- 8.10 Tenderers must also provide a comprehensive and detailed cost breakdown of the Fixed Management Fees as specified in Table 2A and Table 2B above, including any potential costs relating to the Unconditional Financial Undertaking (Clause 14 of Part 2) and the Performance Guarantee (Clause 15 of Part 2).

Reimbursable Long and Short Term Personnel Costs

- 8.11 Tenderers must detail in Table 1: Specified Personnel, the leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed two trips or a total of four weeks per twelve month period, a justification must also be provided along with a

narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.

8.12 Reimbursable Costs will be paid quarterly in arrears and be inclusive of Long and Short Term Personnel costs and Procurement and Operational costs.

8.13 Tenderers must detail in the following tables the costs of all required Personnel in the format provided. These costs must include consideration of all factors of pay, including leave entitlement, as outlined in Clauses 4 and 5 of Part 4 (draft Basis of Payment).

Table 3A: Reimbursable Long Term Personnel

Position	Inputs Months	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Mobilisation and Demobilisation Costs	Maximum Amount Payable (AUD)
Facility Director						
Facility Deputy Director						
Activity Design and Management Mentor						
<i>Tenderer to specify position names as per Annex 3 of Part 1 as required under Clause 6.3 (Team member inputs bar chart)</i>						
<i>Gender Coordinator</i>						
<i>Program Coordinator</i>						
<i>Management Information</i>						

<i>System (MIS) Coordinator</i>						
<i>Finance Officer</i>						
<i>Facility Administrator (1 or 2)</i>						
<i>Driver</i>						
Total						(Value B for Table 5A)

Table 3B: Reimbursable Long Term Personnel for the Option to Extend (should AusAID, at its sole discretion, decide to extend the contract)

Position	Inputs Months	Monthly Rate Year 4	Monthly Rate Year 5	Monthly Rate Year 6	Maximum Amount Payable (AUD)
Facility Director					
Facility Deputy Director					
Activity Design and Management Mentor					
<i>Tenderer to specify position names as per Annex 3 of Part 1 as required under Clause 6.3 (Team member inputs bar chart)</i>					
<i>Gender Coordinator</i>					
<i>Program Coordinator</i>					

<i>Management Information System (MIS) Coordinator</i>					
<i>Finance Officer</i>					
<i>Facility Administrator (1 or 2)</i>					
<i>Driver</i>					
Total					(Value B for Table 5B)

Table 4A: Reimbursable Short Term Personnel

Position	Input days	Daily Rate Year 1	Daily Rate Year 2	Daily Rate Year 3	Maximum Amount Payable (AUD)
Economic Governance/Public sector reform specialist					
First M&E Specialist					
Second M&E Specialist					
Program Reviewer					
<i>Tenderer to specify position names as per Annex 3 of Part 1 as required under Clause 6.3 (Team member inputs bar chart)</i>					
Total					(Value C for Table 5A)

Table 4B: Reimbursable Short Term Personnel for the Option to Extend (should AusAID, at its sole discretion, decide to extend the contract).

Position	Input days	Daily Rate Year 3	Daily Rate Year 4	Daily Rate Year 5	Maximum Amount Payable (AUD)
Economic Governance/Public sector reform specialist					
First M&E Specialist					
Second M&E Specialist					
Program Reviewer					
<i>Tenderer to specify position names as per Annex 3 of Part 1 as required under Clause 6.3 (Team member inputs bar chart)</i>					
Total					(Value C for Table 5B)

Reimbursable Procurement and Operational Costs

8.14 AusAID shall reimburse all reasonable costs actually incurred by the Contractor for Reimbursable Procurement and Operational Costs as shown in Annex 3, up to a maximum of **AUD2,620,750**.

8.15 Reimbursable Procurement and Operational Costs means goods and services such as office furniture, computers, transport hire, internal economy airfares for Facility related in Indonesia travel, associated accommodation and per diems, vehicle purchase, office supplies/stationary, recurrent office costs (phone, fax, printers, papers, photocopier and software), communications, utilities and office rent required by the Contractor for the day-to-day administration of the Facility.

9. FINANCIAL PROPOSAL SUMMARY

9.1 Tenderers must complete the Summary Table below inserting Values A, B and C from Tables 2, 3 and 4 above respectively.

Table 5A: Financial Proposal Summary

Item	Maximum Amount Payable (AUD)
Fixed Management Fees	(Value A from Table 2A)
Long Term Personnel Costs	(Value B from Table 3A)
Short Term Personnel Costs	(Value C from Table 4A)
Total	(A)+(B)+(C)

Table 5B: Financial Proposal Summary – Option to Extend

Item	Maximum Amount Payable (AUD)
Fixed Management Fees	(Value A from Table 2B)
Long Term Personnel Costs	(Value B from Table 3B)
Short Term Personnel Costs	(Value C from Table 4B)
Total	(A)+(B)+(C)

10. INSURANCES

- 10.1 The Tenderer is also required to separately disclose (**as an attachment to Tender Schedule C**) the type and cost of the required Program and personnel related insurances (which are to be included in the Reimbursable Personnel Costs).
- 10.2 AusAID acknowledges that Tenderers may encounter difficulties in obtaining insurance to cover any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value (Property Insurance). AusAID expects Tenderers to use their best endeavours to obtain appropriate cover. In the event that a Tenderer is unable to obtain appropriate Property Insurance it must:
- (a) Submit evidence of its attempts to obtain appropriate Property Insurance; and
 - (b) Submit a risk management strategy which addresses how the Tenderer will mitigate the potential risks to the Program property detailed above, where insurance is not available.
- 10.3 Tenderers who are able to obtain Property Insurance must include the costs of this cover as a separate line item in the **Insurance attachment to Tender Schedule C**.
- 10.4 In the event that the preferred Tenderer is unable to obtain the appropriate Property Insurance, an additional clause will be included in the final contract.

11. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

- 11.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the obligations specified under the Contract.
- 11.2 For this RFT, AusAID is trialling an alternative approach to financial assessment, and has appointed an independent financial assessor to evaluate Tenderers' financial capacity.
- 11.3 The Tenderer should be prepared to provide the financial assessor with details of relevant financial data and other relevant information concerning the Tenderer, if so requested by the financial assessor. Financial data and other information requested may include, but not be limited to:
- (a) complete annual financial statements for the last three financial years, with all supporting notes;
 - (b) descriptions of any recent changes of substance in the Tenderer's financial position that are not reflected in the most recent financial information provided under clause 11.3(a) above;
 - (c) details of any other tendering opportunities currently being pursued by the tendering entity or related entities within the group; and
 - (d) details of any significant events, matters or circumstances that may significantly affect the Tenderer's capacity to perform the Services.
- 11.4 To facilitate the financial assessment process, Tenderers must provide the following details in Tender Schedule D:
- (a) The name, telephone number and email address of the tendering entity's nominated contact point for the financial assessment.
- 11.5 The financial assessor's report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.
- 11.6 The financial information of Tenderers will be treated confidentially.
- 11.7 Failure by a Tenderer to provide financial information when requested by the financial assessor may result in the tender not being assessed further.

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: Although these Project Specific Contract Conditions are presented as Part 2 of this RFT, in the consolidated Contract Conditions they will appear as Part A.

In addition to the Standard Conditions detailed in Part B the following Project Specific Contract Conditions apply.

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"Changed Tax" means a new tax imposed or a change in an existing Commonwealth, State or Territory Government or Partner Country tax after the commencement of this Contract described in Clause 2 (Project Commencement) below.

"Independent Auditor" means an auditing firm that does not have any affiliations with, and is not currently engaged by, the Contractor in any manner.

"Long Term Adviser" or **"LTA"** means an adviser working continuously for six months or longer on the Project.

"Partner Country" means the country/countries in which the services are to be delivered in, as specified in Schedule 1.

"Payment Milestone" means a milestone identified in Annexes 1A/1B to Schedule 2 (Milestone Payments) and for which the Contractor is entitled to receive a payment in accordance with the Contract.

"Project Design Document" or **"PDD"** means the project design document prepared by the Contractor in the Design Phase.

"Related Corporation" has the meaning set out in section 50 of the Corporations Act 2001.

"Schedule of Rates" means the Annexes 2A/2B in Schedule 2 or Clauses 4 and 5 of Schedule 2.

"Short Term Advisers" or **"STA"** means advisers working on the Project for less than six months continuously.

"Stakeholders" means any body, institution, organization or governmental authority in the Partner Country or non-government organization having any interest in the Project.

"Third Party Issues" means any issues or events which may affect the Services and which are clearly within the control of a party other than AusAID, the Australian Diplomatic Mission in or having responsibility for the Partner Country or the Contractor.

2. **PROJECT COMMENCEMENT**

- 2.1 The Contractor must commence the Services no later than **** August 2009** (actual date to be confirmed) , which date will be referred to as the Project Start Date.
- 2.2 The term of this Contract is deemed to have begun on the Project Start Date and continues until the final payment is made or earlier notice of termination under the Contract.
- 2.3 AusAID may in accordance with the terms of this Contract and at its sole discretion, exercise an option to extend the Services for a period of up to three (3) years in accordance with Clause 6.3 of Schedule 1.
- 2.4 The Contractor must ensure that the Services commence in the Partner Country no later than the above date.

3. **ACCOUNTS AND RECORDS**

- 3.1 The statement of Project expenditure referred to in Clause 15.1(e), Part B must be provided on a three (3) monthly basis and must indicate:
- (a) total expenditure of the Project to date;
 - (b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;
 - (c) total expenditure for the period of three months; and
 - (d) forward expenditure and expenses by category for the period of three months.

4. **NOTICES**

- 4.1 For the purposes of Clause 40, Part B, the address of a Party is the address set out below or another address of which that Party may from time to time give notice in writing to each other Party:

AusAID

To: AusAID, C/O Australian Embassy Jakarta

Attention: AIPEG Facility Activity Manager

Postal Address: Jl. H.R. Rasuna Said Kav. C15-16
Jakarta 12940
Indonesia

Street Address: As Above

Facsimile: +62 21 392 4373

Contractor:

To: Contractor's Name
Attention: Contact Person
Postal Address: Contractor's Postal Address
Street Address: Contractor's Head Office Street Address
Facsimile: Contractor's Fax

5. MANAGEMENT SERVICES

5.1 The Contractor must provide all Management Services necessary for the provision of the Services. In addition to the other requirements specified by the Contract, at a minimum the Contractor must provide the following Management Services:

- (a) provide pre-mobilisation briefings to Contractor Personnel eg: security, medical/health situation, cultural environment, detail on project objectives and relevant contract obligations.
- (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
- (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
- (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project;
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID;

6. AIPEG FACILITY MONITORING REVIEW GROUP (MRG)

6.1 AusAID may establish an AIPEG Facility Monitoring Review Group (the "MRG") whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.

6.2 The Contractor must:

- (a) attend and participate in those MRG meetings which AusAID directs it in writing to attend;
- (b) when required by AusAID, consult with the MRG on matters related to the Project including:
 - (i) progress and performance of the Services;

- (ii) any matters, circumstances or events which may be affecting or impacting upon the Contractor's relationship with the Partner Country, Stakeholders, AusAID or the MRG and suggest actions to avoid or counteract any adverse effects on the relationships;
 - (iii) any matters, circumstances or events which may affect the Project and if there are anticipated or contingent problems or difficulties, suggestions to avoid or counteract those problems or difficulties; and
 - (iv) any issues or concerns which the Contractor may want to raise with AusAID.
- (c) co-operate with and assist in any way requested by the MRG in the performance of its monitoring and review;
 - (d) co-operate with and assist the MRG by providing all necessary information and Contractor Personnel and ensuring its Contractor Personnel are available and willing to assist in answering inquiries or requests for information in respect of the performance of the Services; and
 - (e) provide to the MRG copies of all reports, notices, information or other Project material which the MRG reasonably requires to fully and efficiently perform its monitoring and review as soon as practicable after such material is produced or received by the Contractor.

7. SIX MONTHLY FACILITY REVIEW AND IMPLEMENTATION PLAN (FRIP)

- 7.1 The Contractor must provide to AusAID, a six-monthly Facility Review and Implementation Plans (FRIP) to be submitted in March and September each year, the latter one including a broad twelve month plan as per Clause 8.1(c) of Part 3 of the RFT.
- 7.2 The Contractor must make amendments to the FRIP as reasonably requested by AusAID.
- 7.3 Within thirty (30) days of receipt of the FRIP in accordance with Clause 7.1 above AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the FRIP. If such FRIP has not been approved or rejected within the stated period of thirty (30) days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.
- 7.4 Acceptance by AusAID of an FRIP does not represent a change to the Contract. The Contract may only be varied in accordance with Clause 12 (Contract Amendments and Variation) of Part B.

8. SUB-CONTRACTING

- 8.1 In addition to Clause 11 (Sub-Contracting) of Part B the following conditions apply to sub-contracts entered into by the Contractor:
 - (a) the Contractor must obtain the prior written approval of AusAID to sub-contracts with any party, except Specified Personnel, to the value of AUD100,000 or more. In

granting its approval AusAID may impose such conditions, in AusAID's opinion are appropriate, in relation to a proposed sub-contract; and

- (b) if AusAID objects to the Contractor's recommended sub-contractor, or AusAID nominates a particular sub-contractor, the Contractor must enter into an agreement with such other sub-contractor as directed by AusAID on the basis of remuneration approved by AusAID and provide AusAID with a copy of the executed sub-contract.

8.2 Clauses 11.1 d and e of Part B (with respect to Deeds of Novation and Substitution) will only apply to sub-contracts valued at AUD100,000 or more.

8.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

9. MEETINGS

9.1 The Contractor must attend meetings in Jakarta or Canberra at times determined by AusAID, to review or discuss the Contract including the following matters:

- (a) the general progress of the Project;
- (b) matters arising from the Contractors reports to AusAID;
- (c) any issues arising as a result of communication by either Party with Stakeholders;
- (d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in (c) above;
- (e) any variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;
- (f) Contract performance matters;
- (g) the accuracy of invoices; and
- (h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.

9.2 AusAID may require an implementation briefing in Jakarta prior to mobilisation. The Specified Personnel must attend this meeting.

9.3 The Contractor acknowledges and agrees that the costs of any meetings under this clause are included in the Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately eight hours (excluding meal breaks).

10. GOVERNMENT TAXES, DUTIES AND CHARGES

10.1 Except to the extent referred to in this Clause and Clause 21 (Goods and Services Tax) of Part B, each Party must bear and is responsible for its own costs in connection with the preparation, execution, and carrying into effect of the Contract.

- 10.2 Except where the Contract, the Treaty between Australia and the Partner Country or the MOU provides otherwise, all taxes:
- (a) imposed or levied in Australia or overseas during the term of the Contract in connection with the performance of the Contract; and
 - (b) which are not already included in the Fees payable by AusAID under the Contract, must be paid by the Contractor.
- 10.3 The Contractor must bear and is responsible for all stamp duty and other fees, whether levied in Australia or in the Partner Country, on or in respect of:
- (a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;
 - (b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;
 - (c) the obtaining of any approvals, consents or authorisations in respect of the Project; and
 - (d) any instrument or transaction contemplated by or necessary to give effect to the Contract.
- 10.4 Subject to Clause 10.8 below if any new or existing government tax, duty or charge (“Changed Tax”) levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:
- (a) written notice of the increase, decrease or removal;
 - (b) written notice of the net effect of the Changed Tax on the cost of supplying the Services; and
 - (c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Fees,
- as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.
- 10.5 An increase in the Fees under Clause 10.4 above shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:
- (a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and
 - (b) the net change in the Changed Tax has affected the Fees for supplying the Services,

and the increase shall take effect from the date on which the Changed Tax became effective.

- 10.6 A decrease in Fees under Clause 10.4 above shall take effect from the date on which the change in the Changed Tax becomes effective.
- 10.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 10.8 Clause 10.4 above does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

11. **INSURANCES**

- 11.1 In addition to the Contractor's obligations regarding insurance detailed in Clause 34 (Insurance) of Part B, the Contractor must ensure that:
- (a) AusAID is notified immediately the Contractor becomes aware of any actual, threatened or likely claims under all of the insurances required by this Contract or any act or omission by the Contractor which could materially reduce the available limit of indemnity;
 - (b) AusAID is notified in writing whenever the insurer gives the Contractor a notice of cancellation of project-related insurances;
 - (c) in respect of public liability insurance and property insurance that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering, AusAID, the Contractor and sub-contractors; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (d) where AusAID is a joint insured under an insurance policy, the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against AusAID; and
 - (e) all premiums are promptly paid.
- 11.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.
- 11.3 In respect of the public liability insurance, Clause 34.1a of Part B is amended as follows: the Contractor must ensure that the limit for each and every claim is AUD20,000,000 (twenty million).

12. **IN COUNTRY MANAGEMENT**

- 12.1 The Contractor acknowledges that this Contract will be managed from inception by AusAID Jakarta, Indonesia.

12.2 The Contractor acknowledges and agrees that any costs incurred by the Contractor arising out of the above transfer are included in the Fees.

13. **IMPREST ACCOUNT**

13.1 The Contractor shall establish an Imprest Account in accordance with this Clause 13.

13.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate Imprest Account.

13.3 The Imprest Account will be titled **AIPEG Facility Imprest Account**. In correspondence with AusAID the Imprest Account will be referred to by title.

13.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.

13.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Project activities. No money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account shall be intermingled with the Contractor's other money.

13.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.

13.7 The Contractor must produce and submit to AusAID for approval within One (1) month of the Project Start Date a Manual of Operations which details the management arrangements and operational procedures for the Imprest Account. Where appropriate the Manual of Operations must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.

13.8 The Contractor in consultation with the Partner Government, where appropriate, will appoint two personnel from one or both of their respective organisations as principal signatories to the Imprest Account. In the case of the Contractor, the personnel shall be Specified Personnel. Both are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Project, a third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Manual of Operations for the Imprest Account and approved by AusAID.

13.9 The funds held in the Imprest Account shall be used solely for the purpose of funding the approved activities under the AIPEG Facility Work Plan.

13.10 Bank charges relating to the Imprest Account shall be paid with monies from the Imprest Account and acquitted in the same way other expenditure is acquitted.

13.11 Interest earned on the Imprest Account shall remain in the Imprest Account and shall be used for Project purposes and acquitted to AusAID as such.

13.12 The Contractor must provide AusAID prior to the deposit by AusAID of monies into the Imprest Account, financial security in accordance with Clause 14 (Unconditional Financial Undertaking) of this Part.

- 13.13 Subject to Clause 13.13 and 13.15 below, monies for the Imprest Account will be paid by AusAID to the Contractor on a specify quarterly basis.
- 13.14 The first payment is payable following AusAID approval of the Manual of Operations and each subsequent payment is payable following AusAID approval of the Contractor's:
- (b) acquittal of the previous payment; and
 - (c) cash flow projection of funds required for each subsequent payment, over the next twelve month period.
- 13.15 Amounts payable in accordance with Clause 13.13 above, will be paid within ten (10) days of notification received by AusAID's Finance Section.
- 13.16 The balance of the Imprest Account must be reported as at 30 March, 30 June, 30 September and 31 December each year, within ten (10) days of the end of each period, to the AusAID officer specified for the purposes of Clause 40 (Notices) of Part B, with a copy of the balance provided to AusAID's Chief Finance Officer by:

Email (Preferably): accountsprocessing@ausaid.gov.au

Post: AusAID

Attention: Chief Finance Officer

GPO Box 887

Canberra ACT 2601

Australia

- 13.17 On every anniversary of the Commencement Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within twenty eight (28) days of each anniversary of the Commencement Date and three copies of each audit report sent to AusAID within seven (7) days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Clause 40 (Notices) of Part B, one copy must be sent to the Director, Audit and the third copy sent to the Chief Finance Officer at the following address:

AusAID

Attention: Director, Audit / Chief Finance Officer (delete as appropriate)

GPO Box 887

Canberra ACT 2601

Australia

- 13.18 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Project Completion Report for the period since the last independent audit provided in accordance with Clause 13.17 above.

- 13.19 The cost of an audit conducted in accordance with Clauses 13.17 and 13.18 is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 13.20 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 13.21 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 13.22 In the event that AusAID becomes aware that any money cannot be accounted for by the Contractor in the Imprest Account including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Imprest Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth or by calling in the Unconditional Financial Undertaking referred to in Clause 14 of this Part, whichever AusAID in its absolute discretion considers appropriate.
- 13.23 This clause shall survive expiration or termination of this Contract.

14. UNCONDITIONAL FINANCIAL UNDERTAKING

Note to Tenderers: This Clause may be required following completion of the financial assessment and should be costed as part of Tender Schedule C.

- 14.1 The Contractor must, on or before the Project Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 14.2 The performance security provided must be in the form appearing in Schedule 6 and must be provided at the Contractor's cost, for the maximum aggregate sum of **AUD2,000,000** and be available for the term of the Contract.
- 14.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with Clause 14.1 above.
- 14.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

15. PERFORMANCE GUARANTEE

Note to Tenderers: This Clause may be required following completion of the financial assessment and should be costed as part of Tender Schedule C.

- 15.1 The Contractor must, at its expense, provide to AusAID; within ten (10) Business Days of the Project Start Date, a performance guarantee executed by a guarantor delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in Schedule 7.

PART 3 – DRAFT SCOPE OF SERVICES

Note to Tenderers: The draft Scope of Services presented here as Part 3 of this RFT will appear as Schedule 1 in the consolidated Contract.

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

“**EC**” means the AIPEG Facility Executive Committee;

“**FET**” means the Contractor’s Facility Evaluation Team; a three-person team engaged by the Contractor to undertake regular evaluations and report to the Advisory Board;

“**FRIP**” means the Facility Review and Implementation Plan;

“**GoI**” means the Government of Indonesia;

“**M&E**” means monitoring and evaluation;

“**MST**” means the Contractor’s Management Support Team ie. Contractor personnel;

“**PA&E**” means Performance Assessment and Evaluation reports;

“**TAMF III**” means Technical Assistance Management Facility for Economic Governance Phase 3; and

“**TSP**” means Technical Support Pool.

2. BACKGROUND

2.1 The Governments of Australia and Indonesia have worked collaboratively in the area of economic governance since the major financial crisis of the late 1990s. The rationale for this focus is the clear link between sound macro-economic management and stability and poverty reduction. Over a decade of cooperation, a great deal has been learned and achieved and there is now a mutual commitment to continue this collaboration for another six years. To this end, Australia and Indonesia have collaborated on the design of a new program called the Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility). Support is currently provided through the Technical Assistance Management Facility for Economic Governance Phase 3 (TAMF III), and a critical issue is the need for a smooth transition from management of TAMF III to the new Facility.

2.2 Compared with when TAMF was first designed, Indonesia’s national economic governance institutions are now in a more stable context and are more confident about the selection and development of policies. In recent years, GoI priorities have shifted towards efforts to increase organisational capacity, initially in the form of staff training but increasingly towards broader elements of organisational effectiveness such as: strategic and corporate planning; organisational structure; internal systems, including finance, IT, human resource development and management; leadership; and performance monitoring.

- 2.3 The AIPEG Facility will operate from 2009 to 2015 and will build on the highly successful work undertaken through TAMF III. The work of the AIPEG Facility will respond to a clear direction from agencies in the Government of Indonesia (GoI) that wish to improve the capacity of their organisations to implement required economic governance policies and programs. Capacity includes technical aspects of work, such as economic and financial policy, and this will continue to be a key element of Australia's cooperation. It will also encompass a range of ongoing activities and responses to emerging issues, such as challenges arising from the 2008 global financial crisis. Therefore the AIPEG Facility's work will extend beyond technical assistance to broader institutional strengthening.
- 2.4 Given the complexity of working on institutional strengthening across agencies at a time of significant global economic uncertainty and also change in approaches to development cooperation (exemplified in the principles in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action) the next phase of Australian collaboration with Indonesia on economic governance will require high quality management. In particular, support for a range of capacity development approaches and tools, sensitivity to issues such as gender, sovereignty, potential changes in political leadership, as well as flexibility to respond to emerging priorities and lessons learned will all be required. The complex context requires high quality relationship management, communications, planning and monitoring and the ability to integrate a wide variety of influences and factors, within a manageable program.

3. **GOAL, OBJECTIVE AND FOCUS AREAS**

Goal

- 3.1 The goal for the AIPEG Facility is: To improve the quality of the Government of Indonesia's economic management and through this contribute to broad based growth and poverty reduction.

Objective

- 3.2 The objective of the AIPEG Facility is: To strengthen governmental capability for policy formulation, coordination and implementation in areas affecting the national budget and macroeconomic performance.
- 3.3 The AIPEG Facility will operate through a series of sub-facilities providing support in TAMF selected areas of economic management. Each sub-facility will have its own goal and objective, and will contribute to the facility wide objective through the provision of high quality analytical and strategic advice that is useful to Government of Indonesia (GoI) policy makers. Particular attention will be given to harmonize and work strategically with other sources of assistance and advice, including the Government Partnerships Fund and other programs under the Australia Indonesia Partnership. The sub-facilities will be expected to engage with key agencies to impact positively on budget and macroeconomic policy settings and, where appropriate, deliver effective support to build domestic capacity for policy formulation, coordination and implementation in areas of strategic importance.

Focus areas

- 3.4 The AIPEG Facility will undertake collaborative activities in institutional strengthening and policy advice in the following six areas:
- (a) Tax administration reform;

- (b) Debt management;
- (c) Financial system stability;
- (d) International trade policy;
- (e) Economic policy coordination (e.g. in climate change, food security, energy and agriculture); and
- (f) Public financial management (e.g. in budget, decentralisation/fiscal transfers and Public Private Partnerships).

Sub-facilities

3.5 The AIPEG Facility will be managed through between four and seven sub-facilities and these sub-facilities will have the following goals and objectives:

Table 1: Sub-facilities

Sub-Facility	Goal	Objective
Tax administration reform*	A tax authority that collects significantly more public revenues, facilitates compliance and is more accountable to its stakeholders	To improve governance in tax administration
Debt management*	Less risky and burdensome Indonesian Government debt	To assist Indonesia's debt management to make substantial advances towards international standards and best practice
Financial system stability*	Improved prudential regulation and supervision of the financial sector and stronger corporate governance requirements	To support priority reforms in Indonesia's financial sector
International trade policy*	Lower barriers to and more efficient regulation of Indonesia's international trade in goods and services	To strengthen policy development capabilities and negotiation skills in Indonesian agencies responsible for regulation of international trade in services
Economic policy coordination (for example in areas such as climate change, food security,	Greater coherence and effectiveness of new economic policies	To improve coordination of formulation and implementation of policy across key government agencies dealing

energy and agriculture		with critical emerging economic management issues
Public financial management (e.g. in budget, audit, decentralisation/fiscal transfers, public private partnerships and procurement)	Increased efficiency in public financial planning, expenditure management and service delivery	To extend the benefits of improved public financial management to the sub-national level
Immediate and emerging issues		To enable effective responses to immediate, new or important economic governance priorities that may emerge over the next 3 years

* Initial sub-facilities

3.6 The above goals and objectives were selected after consultations during the design process and given the dynamic economic context, may be amended by the Contractor following further consultations and agreement by the GoI and analysis during Year One of implementation. Furthermore, sub-facilities will be subject to regular reviews and governance arrangements as set out below, it may be decided to transition support from a “mature” sub-facility to a new area which is deemed to be a higher priority.

Approaches to Facility support

3.7 Consistent with contemporary learning about capacity development, activities with GoI partner agencies will be supported under the AIPEG Facility within each sub-facility. The range may include:

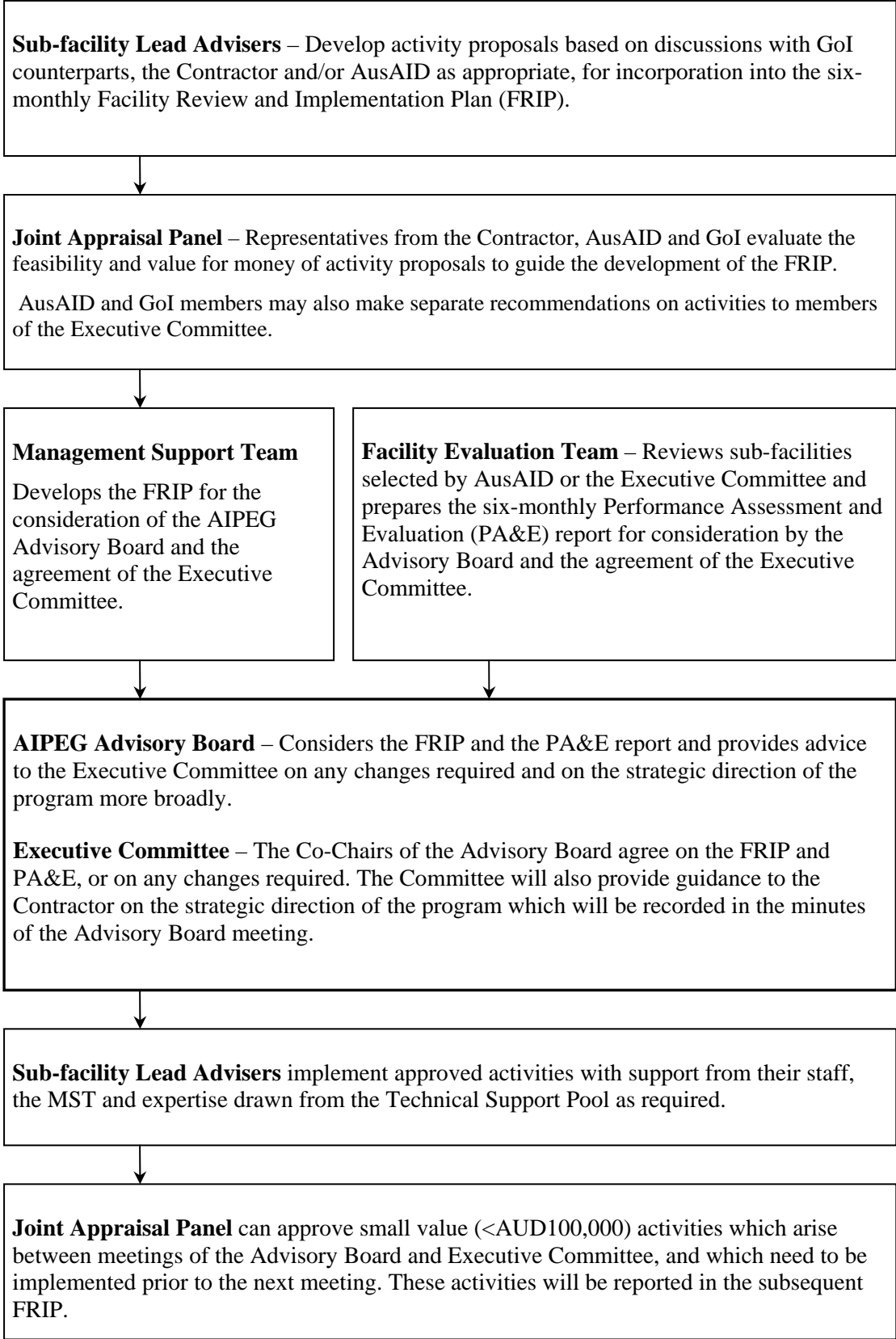
- (a) the placement of short and long term international and Indonesian specialists to work alongside officials in partner agencies on specific tasks;
- (b) exchanges;
- (c) tours;
- (d) a variety of in-house and external professional development programs;
- (e) joint research; and/or
- (f) development and piloting of new systems.

In year one of the AIPEG Facility, the practice of placing Lead Advisers to work within each partner GoI agency will continue, but in future years, will be subject to negotiated agreement between the Contractor and the Advisory Board.

4. THE GOVERNANCE AND ACTIVITY CYCLE

4.1 The AIPEG Facility Governance and Activity Cycle, based on the sub-facility Lead Adviser model of support, is shown below in the diagram / Table 2. This illustrates how the key partners described above work together to design and implement programs of support.

Table 2: AIPEG Facility Governance and Activity Cycle



5. ROLES AND RESPONSIBILITIES OF KEY STAKEHOLDERS

Contractor

- 5.1 The Contractor will continue the partnerships established under TAMF III within the four initial sub-facilities in selected Directorates General of the GoI's Ministry of Finance (MoF) and Ministry of Trade (MoT). Within the MoF, the AIPEG Facility will focus on: Bapepam LK (financial system stability); Directorate General Taxation; and Directorate General Debt Management. Within the Ministry of Trade the AIPEG Facility will for Year One continue in Ministry-wide institutional development and policy advice related to trade in services.
- 5.2 The Contractor will play a role in identifying the scope, nature and partnerships associated with the three additional sub-facilities, under direction from the AIPEG Advisory Board and AusAID. Overall, the Contractor will be responsible for ensuring multiple partnerships are resourced, supported and maintained within the maximum of seven sub-facilities (four at the commencement and a gradual increase to seven as the new GoI Cabinet priorities become clear in 2010).

Management Support Team

- 5.3 The Contractor will provide all the management services necessary for the effective and efficient operation of the AIPEG Facility through a Management Support Team (MST) in Jakarta, led by the Facility Director.

Advisory Board

- 5.4 It is anticipated that the TAMF III Advisory Board will transition to become the AIPEG Facility Advisory Board.
- 5.5 AIPEG Facility Advisory Board will be comprised of five Indonesian specialists (one of whom is the co-chair) and two senior representatives from the Government of Australia (one of whom is the other co-chair). The two co-chairs also form the Executive Committee (EC), which has the executive authority over the AIPEG Facility.
- 5.6 The Advisory Board:
- (a) Provides high level advice to the Contractor on the strategic direction of the Facility;
 - (b) Connects the AIPEG Facility to other arms of government and a broader economic governance constituency in both Indonesia and Australia;
 - (c) Considers the Facility Review and Implementation Plan (FRIP), the Performance Assessment and Evaluation (PA&E) reports and any supplementary briefings provided by the Contractor and the Facility Evaluation Team (see below);
 - (d) Makes recommendations to the EC on the appropriateness of the program of assistance proposed for each of the six core policy areas;
 - (e) Provides observations and advice to the EC on issues which may influence the direction of future assistance both in relation to existing sub-facilities and possible

political, institutional and social changes which may require a corresponding change in program mix;

- (f) Gives broad direction-setting regarding potential areas of focus for unallocated funds available to support emerging issues; and
- (g) Engages with external reviewers of the AIPEG Facility, as required.

Executive Committee

5.7 The two co-chairs of the Advisory Board from the Executive Committee (EC) and the role of the EC is to:

- (a) Ensure that the provisions of the AIPEG Facility Subsidiary Agreement are being met;
- (b) Co-chair Advisory Board meetings and consider the recommendations of both the Advisory Board and the Joint Appraisal Panel and regarding activities in the forward program;
- (c) Approve the FRIP and the PA&E reports;
- (d) Provide advice and make decisions on the strategic direction of the Facility;
- (e) Decide which sub-facilities and/or activities will be reviewed by the Facility Evaluation Team as part of the six-monthly PA&E exercises; and
- (f) Exercise the decision-making responsibility for plans, allocations and individual activities, on advice from the Advisory Board, AusAID, the Contractor, sub-facility lead advisers and senior Indonesian and Australian officials and academics.

AusAID

5.8 Engagement and management oversight of the Contractor will rest with AusAID Jakarta.

5.9 AusAID is responsible for the following:

- (a) Co-chairing the AIPEG Facility Advisory Board and participating on the Executive Committee (it is expected that AusAID's Minister Counsellor would undertake this function);
- (b) Annual budgeting, financial planning, the provision of funds, monitoring of expenditure and review of annual audits of the Imprest account;
- (c) Approval of the appointment of sub-facility Lead Advisers, as nominated by the Contractor through Clause 7.4;
- (d) Chairing the Joint Appraisal Panel (refer to Clause 5.14 below);
- (e) Ensuring the Joint Appraisal Panel approves small proposals (under AUD100,000) efficiently and quickly;

- (f) Monitoring and managing program quality and coherence, and Contractor performance;
- (g) Monitoring implementation progress;
- (h) Reviewing Facility Evaluation Team's reports and engaging with the issues therein;
- (i) Fostering a proactive approach to management;
- (j) Consideration and approval of the Contractor reports and milestones;
- (k) Coordination with other Australian Government Departments and Agencies;
- (l) Commissioning and jointly conducting with the Facility Evaluation Team, the two periodic reviews at the end of Year 2 and Year 3;
- (m) Commissioning and management of an Independent Completion Report; and
- (n) Coordination with other donors.

AusAID's Role in the Transition

- 5.10 Both AusAID and the GoI consider that consistency in programs of support to GoI is of critical importance in the transition from TAMF III to the AIPEG Facility. Accordingly, AusAID will facilitate discussions around the transition between the Contractor and the TAMF III MST and will provide direction if necessary.
- 5.11 To this end, the TAMF III Advisory Board has tasked the TAMF III MST to develop a program of activities that can be implemented by the AIPEG Facility; and to identify a range of new activities which could be implemented in the remainder of 2009. There is significant scope for the Contractor to negotiate these programs with AusAID, the EC and partner agencies.

Facility Evaluation Team

- 5.12 The Facility Evaluation Team (FET) is a three-person team engaged by the Contractor to undertake regular evaluations and report to the Advisory Board. It will include one Indonesian member nominated by the GoI and two international experts nominated by AusAID and have expertise in monitoring and evaluation (M&E), economic governance and the Indonesian policy context. FET meetings will be conducted six-monthly and are timed to precede FRIP development and Advisory Board meetings.
- 5.13 The FET will:
- (a) Revise the draft AIPEG M&E Framework referred to in the PDD as necessary and in consultation with the Contractor, GoI and AusAID;
 - (b) Undertake six-monthly performance assessment and evaluations as directed by the EC;
 - (c) Participate in the sub-facility reviews which will inform the transitioning four sub-facilities from 'mature' sub-facilities to new areas of support;

- (d) With AusAID, conduct Facility-wide reviews at the end of Years 2 and 3;
- (e) Report in writing to the Advisory Board and the Contractor on findings and recommendations; and
- (f) Provide M&E leadership to all AIPEG stakeholders, including conducting training workshops as required.

Joint Appraisal Panel

- 5.14 The Joint Appraisal Panel (JAP) ensures GoI and AusAID engagement in the development of the FRIP, and provides advice to the Contractor. The panel will include one representative each from AusAID (as Chair), the GoI and the Contractor. The JAP will meet six-monthly, prior to the Advisory Board meeting, and appraise all activity proposals in terms of feasibility of design and value for money prior to their incorporation into the FRIP.
- 5.15 The JAP will also be given delegation to approve small activities (under AUD100,000) outside the FRIP to avoid delay if the activities are considered to be both beneficial and low risk. Approval can be made through a formal meeting of the panel or by written correspondence between the three parties.

Sub-contractors including the Technical Support Pool

- 5.16 Sub-contractors will develop and implement sub-facility activities, and activities which are Facility wide. In cases where the sub-facility lead adviser model is employed, these advisers may manage staff, such as activity support officers or research assistants, to assist with the delivery of programs. There are various models for the management of sub-facility and facility activities and the type of model used for each activity will be determined by the Advisory Board.
- 5.17 The Technical Support Pool (TSP) is a pool of pre-qualified international or local specialists who can be tasked to provide short-term technical advice as a stand alone activity or as part of a broader activity. The Contractor will pre-qualify specialists through a process to be determined following discussion with AusAID.
- 5.18 The Technical Support Pool will include:
 - (a) Human Resources (HR) Adviser;
 - (b) Gender Adviser;
 - (c) Capacity Development Adviser;
 - (d) Organisational Development Adviser;
 - (e) Economic Policy Adviser; and
 - (f) Management Information Systems (MIS) Adviser.
- 5.19 Other positions, such as activity support officers or research assistants, may be funded through the TSP if agreed by the Advisory Board.

- 5.20 The focus for all Advisers is on capacity development in their specific field of expertise. While there is a Gender Adviser, it is expected that all Advisers will promote gender sensitive work practices and advice.

GoI Partner Agencies

- 5.21 GoI Partner agencies will host sub-facilities and must have full ownership of activities.
- 5.22 Partner agencies will have the following responsibilities in the implementation of facility and sub-facility activities:
- (a) With support from the Contractor, contribute to the design and implementation of activities and be responsible for the activity outcomes.
 - (b) Provide timely counterpart support as committed in the activity design, such as staff, facilities, and local costs.
 - (c) For any training activity (courses, work attachments, study tours) undertake selection of participants in line with the agreed selection criteria in the activity design, ensuring equitable participation of men and women.
 - (d) At the end of the activity participate in an activity evaluation process, expressing the level of satisfaction with the activity and assessing the activity achievements against the stated outputs/outcomes.
 - (e) Where appropriate according to the approved design, together with the sub-contractor arrange workshops/roundtables to disseminate outcomes of the activity.
 - (f) Cooperate with the Contractor and/or the FET in providing feedback for M&E.

6. COMMENCEMENT, COMPLETION OF SERVICES AND LOCATION

- 6.1 The AIPEG Facility been designed as a six year program but the term of this Contract is for the first three years only.
- 6.2 The Contractor must commence the Services **August 2009 (actual date to be confirmed) and complete the Services no later than ** August 2012.
- 6.3 The Contractor grants AusAID an option to extend the term of the Contract for a period of up to three (3) years. This Option is exercisable at AusAID's sole discretion and pending a review of the program in 2011/12. The option to extend the Contract, as described in Clause 2.3 of Part A, will depend on, but may not be limited to, the following considerations:
- (a) The program's continuing relevance to AusAID's Program objectives for Indonesia;
 - (b) Confirmation of the relevant partner Government's ongoing commitment to the activity; and
 - (c) The ongoing performance, efficacy and value for money of the Contractor.

- 6.4 AusAID will notify the Contractor in writing of its decision in relation to the option to extend at least ninety (90) days before the end of the Contract. Prior to being advised of AusAID's decision, the Contractor is to reflect the possible extended contract period in planning but should not commit funds into any years beyond the end date of ** August 2012. If the option to extend is exercised by AusAID the contract will be amended to cover future years.
- 6.5 The AIPEG Facility office is to be located in Jakarta, however the Contractor will be expected to travel to regional locations if and when required.

7. SERVICES

- 7.1 The Contractor shall perform the following Services in accordance with the terms and conditions of this Contract:

Staffing

- 7.2 The Contractor will recruit individuals to fill the three Specified Personnel positions (refer to Table 1 of Part 1 of the RFT) and as described in the Position Descriptions, shown as Annex A to this Schedule:
- (a) Facility Director – three years full time;
 - (b) Deputy Facility Director – three years full time; and
 - (c) Activity Design and Management Mentor – two years full time.
- 7.3 The Contractor may elect to also recruit individuals to carry out the positions below (described in the Position Description shown as Annex B of this Schedule) and if electing to do so, these are to be included in Annex 3 required under Clause 6.3 of Part 1:
- (a) Gender Coordinator;
 - (b) Program Coordinator;
 - (c) Management Information System Coordinator;
 - (d) Finance Officer;
 - (e) Facility Administrator (1 or 2); and
 - (f) a driver.

Recruitment

- 7.4 Where new or replacement staff are required, the Contractor must:
- (a) undertake a rigorous, value-for-money selection exercise in accordance with the principles of the Commonwealth Procurement Guidelines. For Sub-Facility Advisers, this includes undertaking at least two (2) of the following:
 - (i) Targeted print advertising in relevant national and local press, technical publications, and other major periodicals;

- (ii) Advertising on websites and other web-based means as relevant to the position; and
- (iii) Word of mouth advertising through local, national and/or international networks.

Transition Phase: Six weeks from Contract Start Date

7.5 The Contractor will:

- (a) Liaise with AusAID to plan for the transition process;
- (b) Liaise with TAMF III personnel and advisers;
- (c) Engage and mobilise the Facility Management Support Team, including briefing and performance managing;
- (d) Establish the needs of the partner agencies;
- (e) Brief staff on AIPEG Facility responsibilities, approaches, processes, plans, policies, and partners;
- (f) Establish management systems including financial systems;
- (g) Prepare the AIPEG Facility Operations Manual including a Financial Operations Manual;
- (h) Engage and pre-qualify members the Technical Support Pool and/or other sub-contractors as agreed by the Advisory Board and as per Clause 5.17 of this Part;
- (i) Formalise appointment of AIPEG Facility Advisory Board including introducing AIPEG Facility personnel to the AIPEG Facility Advisory Board;
- (j) Prepare for sub-facility Inception Meetings to be held between the Contractor, GoI and AusAID at times to be determined between the parties;
- (k) Source and engage the Facility Evaluation Team (FET), in consultation with AusAID and GoI who will nominate the three FET members;
- (l) Prepare a selection process for sub-facility Advisers as per Clause 7.4 of this Part; and
- (m) Undertake scoping exercises of the initial four sub-facilities.

7.6 The Contractor will, in association with the TAMF III Contractor:

- (a) Liaise with partner agencies to ensure smooth continuity of any existing, continuing programs and relationships;
- (b) Discuss the preferred strategy for managing the continuity or otherwise of TAMF III Advisory Board members and transitioning to AIPEG Facility Advisory Board;
- (c) Discuss the handover or cessation of TAMF III systems; and

- (d) Develop with the TAMF III contractor and AusAID, an agreed plan for the transition to AIPEG Facility in order to maximise continuity and quality of services for Indonesian partners and minimise disruption for Facility supported personnel;
- (e) Review the proposed activity schedule for August to December 2009; and
- (f) Following consultation and agreement by GoI, amend the sub-facility goals and objectives as needed during year one of implementation.

Implementation Phase: following on from the Transition Phase

7.7 The Contractor will provide:

- (a) Day-to-day management support tasks and coordination across multiple partners in a variety of sub-facilities;
- (b) Specialist input and support in areas including:
 - (i) capacity development approaches for institutions;
 - (ii) gender analysis and programming; and
 - (iii) monitoring and evaluation and support for a considered shift to increasing use of GoI systems for procurement, recruitment and monitoring.
- (c) A range of services to partner GoI agencies and advisers to support appropriate capacity development processes, supported activity cycle management, timely and good quality planning and monitoring, and appropriate reporting;
- (d) A Management Support Team (MST) comprised of the Specified Personnel and based in Jakarta. Other positions to be considered to work as part of the Contractors MST include: a Gender Coordinator; Program Coordinator; Management Information System Coordinator; Finance Officer; Facility Administrator/s; and a driver.

7.8 The Contractor will:

- (a) Undertake activities as per the Implementation Schedule (Annex C);
- (b) Provide Secretariat services to the Advisory Board and the Executive Committee, including briefing the Advisory Board, organising meetings, travel by delegates, the agenda and preparation and distribution of minutes etc;
- (c) Establish an Imprest account for the sole purpose of implementing agreed programs of support;
- (d) Participate on the Joint Appraisal Panel;
- (e) In conjunction with GoI partner agencies and AusAID, develop agency-specific plans for the first year through a series of workshops and meetings;
- (f) Draft the above agency specific annual plans into a Facility Review and Implementation Plan to be submitted to the Advisory Board for advice and

comment, and then to the Executive Committee for approval. Individual activities included within each plan are to be designed using a simple project design process, and appraisals will be undertaken by the Joint Appraisal Panel.

- (g) Ensure that the above decision-making processes run smoothly and that GoI partner agencies and AusAID are appropriately resourced with information, documentation, advice and professional support;
- (h) Manage a rolling annual activity plan and budget summarized in the FRIPs framed to allow the Advisory Board and EC to make informed decisions to support AusAID's Quality at Implementation (QAI) reporting;
- (i) Oversee of a portfolio of activities implemented by sub-facilities following appraisal by the Joint Appraisal Panel and approval by the EC;
- (j) Support for GoI agencies to select and sub-contract inputs to activities in a transparent documented manner, if required;
- (k) Develop and operate financial, planning and management information systems to support data collection and management, monitoring, performance assessment, review and evaluation;
- (l) Document systems in the AIPEG Facility Operations Manual, and regular updating and distribution of the Manual in electronic format as required;
- (m) Prepare the six monthly FRIP based on inputs from sub-facilities;
- (n) Develop and run an in-house training program that will ensure that relevant staff and stakeholders (including the Contractor, TSP, FET, sub-facility Partners, GoI and AusAID) understand and can use the AIPEG Facility Operations Manual;
- (o) Research, under direction from the Advisory Board, potential for new sub-facilities, partnerships and activities;
- (p) Cooperate with the GoI partner agencies and the FET in providing feedback for M&E as per Levels 1 and 2 of the M&E Framework (Annex D and E) and quality assurance and monitoring;
- (q) Ensure that gender equality considerations underpin AIPEG Facility planning and implementation;
- (r) Risk management and mitigation, including annual update of risk management plan;
- (s) Regular liaison and timely reporting which aligns with the needs of AusAID's Quality Reporting System and GoI's monitoring systems;
- (t) With AusAID, contribute to donor coordination on economic governance;
- (u) Liaise with AusAID and GoI to coordinate with other AIP initiatives as appropriate, particularly the Australian Development Scholarships (ADS) program;

- (v) Work collaboratively with the Facility Evaluation Team such as joint planning of evaluation activities, organising meetings for FET visits, collaboration on preparation of reports to the Advisory Board, discussion on ways of integrating FET recommendations as appropriate and promotion of M&E thinking and practices within AIPEG Facility funded activities and partners;
- (w) Coordinate stakeholders and establishing collegiate productive relationships;
- (x) Liaise with AusAID Jakarta on all cross-facility planning, monitoring and financial issues and recognising AusAID will also maintain direct relationships with AIPEG's GoI.
- (y) Support AusAID reviews including the periodic review late in Year 2; and
- (z) Receive high level advice from:
 - (i) Advisory Board on the strategic direction of the Facility; and
 - (ii) Facility Evaluation team.

7.9 The Contractor will be responsible for ensuring:

- (a) High quality relationships at the cross-facility level, particularly ensuring relationships between officials and Advisers within each partner Ministry or Directorate General are sound (in terms of contemporary development practice, cross-cultural sensitivity, professionalism etc.);
- (b) Promotion of agreed Facility principles and approaches, including consideration of gender integration across all Facility activities;
- (c) Support for Ministries and Directorates General, with their Advisers, to produce high quality activity designs and to implement activities through the activity cycle, to agreed standards;
- (d) Over the term of the Contract and subject to ongoing negotiations and discussion (backed up by monitoring and joint research), placing greater emphasis on using existing GoI systems for prioritising, planning, approving, implementing and monitoring activities which are to be supported by AIPEG funding and thereby increasing programme sustainability.

Examples in the area of training could include:

- (i) Providing AIPEG Facility funding towards strengthening the capacity of existing training units within Ministries or Directorates General, or promoting the use of Indonesian trainers or technical specialists to deliver training on an ongoing basis (rather than delivery of one-off training courses);
- (ii) Arranging joint Indonesian-external facilitation of training;
- (iii) Providing all training by Indonesian nationals, with varied levels of support from Advisers.

- (iv) Using adult learning principles which suit the preferred learning styles in the Indonesian cultural context.
- (e) Support and assisting the transition from Contractor management to GoI management of various processes (recruitment, procurement, monitoring, planning etc.) in a considered and professional manner and subject to strategic advice and decision-making by AusAID and Indonesia Government officials.
 - (i) This support will include the provision of information, advice and additional resources in relation to:
 - (A) methods for collaborative planning and design of programs of activities;
 - (B) cross-cultural communications;
 - (C) activity cycle management, particularly in relation to design;
 - (D) complying with Indonesia's commitment to gender mainstreaming;
 - (E) technical issues related to organisational development and economic policies; and
 - (F) recruitment of specialist personnel.
 - (f) Consideration of a range of methods to work with GoI agencies including quarterly workshops dedicated to one topic, to promote networking and information sharing between sub-facilities.

8. REPORTING REQUIREMENTS

8.1 The Contractor must provide the following reports by the date indicated, in electronic format:

- (a) An **Inception Report** to be submitted within three months of the Contract Start Date, to report on the early establishment phase and to cover the period till the first FRIP is due and is to be based on interaction with all Facility stakeholders;
- (b) A **Financial Operations Manual** for approval within three months of commencement;
- (c) Six-monthly **Facility Review and Implementation Plans (FRIP)** to be submitted in March and September each year, the latter one including a broad twelve month plan:
 - (i) compiled with inputs from each sub-facility with information on plans, activity concepts, activity designs, progress and completion reports and other sources;
 - (ii) financial statements including expenditure to date and over the previous six-month period, and projected expenditure and Imprest Account draw-downs for the following period;

- (d) Quarterly **financial statements** to be submitted each year;
- (e) Six-monthly **Performance Assessment and Evaluation reports**, based on drafts submitted to the Contractor by the Facility Evaluation Team (FET) on the basis of detailed assessments of individual sub-facilities and/or the whole Facility, selection of which is jointly agreed by AusAID and Contractor; and
- (f) Annual **Gender Strategy Review** drafted by the Gender Adviser and Gender Coordinator;

8.2 All reports must:

- (a) be provided in accordance with the specification under Standard Condition clause headed "Reports";
- (b) be accurate and not misleading in any respect;
- (c) be prepared in accordance with directions provided by AusAID;
- (d) allow AusAID to properly assess progress under the Contract;
- (e) be provided in the format, number and on the media approved or requested by AusAID;
- (f) not incorporate either AusAID or the Contractor's logo; be provided at the time specified in this Schedule;
- (g) incorporate sufficient information to allow AusAID to monitor and assess the success of the Services in achieving the objectives of AusAID's policy framework.

9. **QUALITY ASSURANCE**

9.1 The Contractor is expected to work in ways consistent with the principles, lessons learned, approaches and systems identified throughout this Contract and consistent with current AusAID policies on development practice.

9.2 The Contractor should download the following AusAID policy documents including:

- (a) Performance Assessment and Evaluation Policy;
- (b) Gender equality in Australia's aid program – why and how;
- (c) Development for all – towards a disability-inclusive Australian aid program 2009-2014; and
- (d) Child Protection Policy.

In the event that the above documents cannot be obtained from the AusAID internet site the Contractor must advise the AusAID contact person who will provide the Contractor with the documents.

9.3 The principles for monitoring and evaluation for the AIPEG Facility (Annex D) should also be followed during programme implementation to ensure quality monitoring processes are applied.

9.4 Quality management of the AIPEG Facility should also be consistent with this contract, the Manual of Operations, and the Contractor’s own quality assurance approach detailed in its tender documents.

10. CONTRACTOR PERFORMANCE ASSESSMENT

10.1 The Contractor will be assessed by AusAID at times to be determined between both parties using the form below at Table 3.

Table 3: Contractor Performance Assessment Form

<u>Contractor Details</u>	
Name:	
Activity:	Agreement No:
Country:	Activity Manager (AM):
Date of this Performance Review Discussion: / /	
File Number:.....	
Date of Next Discussion / /	
Related Documents:	
Assessment Period:	
From / / To / /	
<u>Managing Contractor Performance</u>	
<p>The contractor performance assessment matrix affixed is a guide to assess and record contractor performance discussion outcomes. The matrix outlines AusAID’s generic critical performance factors during contract management and provides indicators as a tool to a fair and transparent assessment of contractor performance against these factors.</p> <p>When required, rows may be added to the matrix for more specific performance factors. Additionally, the indicators provided may be tailored where deemed necessary.</p>	

It is essential that performance factors and indicators are discussed and agreed with the contractor at the commencement of the assessment period.

The performance of the contractor is to be determined using the tabled scoring structure below:

Performance Scoring	
1	Weak
2	Marginally Satisfactory
3	Satisfactory
4	Highly Satisfactory
5	Best Practice

***** A RECORD OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR PROCUREMENT POLICY GROUP. A COPY WILL BE PLACED ON THE CONTRACTOR'S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS *****

Critical Performance factors	Indicators	AusAID score	Contractor score
GENERIC CRITERIA			
Organisation			
In-Australia management and administrative support	<ul style="list-style-type: none"> ▪ Ability to plan and administer the activity in accordance with the contract ▪ Support services provided to the in-country team ▪ Regular monitoring of and engagement with in-country team 		
In-country management and administrative support	<ul style="list-style-type: none"> ▪ Management responsiveness particularly to change and appropriately the development context ▪ Appropriate planning and monitoring of activities 		

	<ul style="list-style-type: none"> ▪ Quality of advice to AusAID Activity Manager 		
Relationship with AusAID	<ul style="list-style-type: none"> ▪ Co-operation in all matters relating to the contract ▪ Open and honest in addressing problems ▪ Regular communication and updates 		
Quality of activity financial management, including budget management, estimates of expenditure, acquittal and invoicing processes	<ul style="list-style-type: none"> ▪ Responsiveness to AusAID's requests for financial information – timely, concise & informative ▪ Ability to deliver activities within budget ▪ Accuracy of financial information including invoices, estimates of forward expenditure etc. 		
Approach			
Pro-activeness in identifying and responding to activity risks, issues and problems	<ul style="list-style-type: none"> ▪ Promptly identifying and informing AusAID of substantive issues likely to adversely affect the timing, cost or quality of the activity ▪ Provide recommendations for actions to manage the issues 		
Quality of communication and relationship with activity stakeholders	<ul style="list-style-type: none"> ▪ Feedback received from partner government on satisfaction with consultation ▪ Time and effort invested in developing a partnership with counterparts 		
Efforts to engage in continuous improvement	<ul style="list-style-type: none"> ▪ Proactively identifies areas for improvements 		
Quality of key planning documentation eg. Annual Plans	<ul style="list-style-type: none"> ▪ Timely submission of documentation which meets AusAID's and counterparts requirements ▪ Documentation does not require multiple re-writes 		
Attention to AusAID's policies eg. gender and development, environment and child protection	<ul style="list-style-type: none"> ▪ Evidence of plans, monitoring and results which show progress towards these aid policy commitments 		
Personnel			
Performance of team leader	<ul style="list-style-type: none"> ▪ Effective communication and leadership ▪ Achieves results against 		

	<ul style="list-style-type: none"> TOR/Duty Statement ▪ Relationship with stakeholders ▪ Management of team 		
Performance of other key activity personnel	<ul style="list-style-type: none"> ▪ Achieve results against TOR/Duty Statement ▪ Relationships with stakeholders 		
Ability to maintain quality project personnel	<ul style="list-style-type: none"> ▪ Suitability of staff ▪ Staff turnover levels 		
Timeliness in replacing activity personnel	<ul style="list-style-type: none"> ▪ Minimal disruption ▪ Proactively informing AusAID of staff changes ▪ Satisfactory recruitment process ▪ Quality of replacement staff 		
Management of unsatisfactory personnel performance, where appropriate	<ul style="list-style-type: none"> ▪ Management control of personnel performance ▪ Timely identification of issues with personnel and proactively proposing solutions ▪ Willingness to replace personnel where necessary 		
Project Management			
Quality and timeliness of activity milestones and deliverables	<ul style="list-style-type: none"> ▪ Ability to achieve milestones and deliverables within the set timeframe ▪ Strategies for management of delays ▪ Milestones and deliverables do not require substantial reworking by AusAID and meet quality standards 		
Effective measurement of activity progress, including quality of monitoring information	<ul style="list-style-type: none"> ▪ M&E framework has clearly defined and measurable objectives ▪ M&E framework has effective quantitative and qualitative indicators ▪ Where appropriate, demonstrated strengthening of partner government systems 		
Appropriately addressing sustainability, with due account of partner government systems, stakeholder ownership and phase out	<ul style="list-style-type: none"> ▪ Understanding of key factors promoting or inhibiting sustainability and strategy to promote sustainability ▪ Appropriately preparing for transition following the 		

	completion of the activity		
Responsiveness to AusAID requests and instructions	<ul style="list-style-type: none"> ▪ Timely response to AusAID requests ▪ Ability to respond to unexpected requests ▪ Acceptance of AusAID decisions 		
SPECIFIC CRITERIA			

*** THIS SECTION IS COMPLETED BY THE AM AT EACH PERFORMANCE MEETING ***

1. Factors Affecting Performance

AM to record any special events or considerations affecting performance. This may include changes to work priorities and key tasks during the review period, and significant events (eg. Cyclone).

2. Summary of Post/Partner Government/TAG/TRMG/Adviser Comments

3. AusAID Comments against Critical Performance Factors

****AGREED ACTIONS TO BE TAKEN TO IMPROVE PERFORMANCE:**

Contractor Signature

Activity Manager Signature

Contractor Comments against Critical Performance Factors:

Attachments	Yes/No
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***** A RECORD OF THE DISCUSSION MUST BE SENT TO THE RELEVANT CONTRACTOR AND TO THE DIRECTOR PROCUREMENT POLICY GROUP. A COPY WILL BE PLACED ON THE CONTRACTOR'S PERFORMANCE FILE AND MAY BE USED BY AUSAID AS PART OF ANY FUTURE CONTRACTOR SELECTION PROCESS *****

ANNEX A: Position descriptions for Specified Personnel

1. Facility Director;
2. Deputy Facility Director; and
3. Activity Design and Management Mentor

Facility Director

Duration: Three years, plus option to extend in exercised

Reports to: through the Contractor to AusAID Jakarta

Key responsibilities and tasks:

1. Key AIPEG Facility interface with AusAID Activity Manager;
2. Strategic leadership of AIPEG Facility including oversight of planning, budgeting, implementation and monitoring of the Facility as a whole and its component activities;
3. Leadership of AIPEG Facility team including directing, coaching, mentoring and performance assessment;
4. Relationship management with Facility stakeholders including the Advisory Board, GPF Core Group, GOI and GOA agencies, AusAID, Sub-facilities, the Technical Support Team, the Technical Review Group and the Managing Contractor to ensure that the Facility is based on relationships of trust and that it contributes to the bilateral partnership;
5. Lead risk management, quality assurance and adherence to AIP Country Strategy's themes of partnerships, anti-corruption, gender equality and performance orientation;
6. Lead inception workshops with GOI Ministries/Directorates General on shaping of Sub-facility strategic direction and work plans including development of Terms of Reference for each Sub-facility Adviser;
7. Provide leadership in the preparation of briefing and recommendations for the Advisory Board on both exit strategies for established activities and commencement of new activities through either new Sub-facilities or drawdown of funds for Immediate and Emerging Issues;
8. In conjunction with the Corporate Representative, ensure contractual obligations are met.

Qualifications and Experience:

1. Proven ability to undertake high level strategic dialogue with government officials, preferably in a public sector reform context;
2. Proven track record of leading international multi-disciplinary teams for large-scale programs;
3. Excellent communication skills and high level motivational skills for engaging both team and GOI colleagues;
4. Demonstrated effectiveness in cross-cultural workplaces;

5. Excellent understanding of, and preferably experience in implementing, public sector reform;
6. Familiarity with international donor systems and requirements;
7. Higher degree in social sciences (eg. organisational development, capacity development, economic policy, international development);
8. Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
9. Fluency in speaking, reading and writing in English;
10. Fluency in speaking and reading in Bahasa Indonesia.

Deputy Facility Director

Duration: Three years, plus option to extend in exercised

Reports to: Facility Director

Key responsibilities and tasks:

1. Support the Facility Director and deputise in his/her absence;
2. Lead operation of the Contractor's MST including physical establishment and maintenance of the office, design of the facility management system and manual, recruitment of locally engaged staff, oversight of procurement and expenditure;
3. Lead the design and implementation of an appropriate selection process for Sub-facility Advisers, in accordance with Commonwealth Procurement Guidelines, following Sub-facility inception workshops;
4. Oversight the development and management of the Management Information System (MIS) to ensure it meets the data needs for both management and M&E;
5. Engage with Sub-facility Advisers and support development of their work programs including quality assurance of activity designs and performance assessment of personnel;
6. Engage with the Gender Coordinator and support development of their work program; in conjunction with the Gender Adviser, ensure that obligations in regards to gender integration are met;
7. Coordinate development of cross-Facility activities interacting with Sub-facility Advisers and advisers from the Technical Support Team; and
8. In conjunction with the Facility Director, ensure contractual obligations are met.

Qualifications and Experience:

1. Excellent communication skills and high level motivational skills for engaging both team and GOI colleagues;
2. Demonstrated effectiveness in a leadership role in cross-cultural workplaces;
3. Demonstrated experience in the design and management of international donor activities, preferably capacity development activities in an institutional context;
4. Good understanding of program effectiveness and monitoring and evaluation (M&E);
5. Good working knowledge of the Commonwealth Procurement Guidelines and AusAID's anti-corruption policies;

6. Degree in social sciences (eg. organisational development, program management, international development, economic policy);
7. Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
8. Good understanding of public sector economic reform, and preferably the Indonesian context;
9. Fluency in speaking, reading and writing in English;
10. Ability to speak Bahasa Indonesia preferred.

Activity Design and Management Mentor

Duration and inputs: Two years, plus option to extend if exercised

Reports to: Facility Director

Key responsibilities and tasks:

1. Support transition of quality assurance of activity design and management processes to GoI sub-Facility partner agencies;
11. Conduct training workshops for Sub-facility staff including international AIPEG Facility advisers in effective project design, implementation, monitoring and evaluation;
12. Coach and mentor Indonesian officials in targeted partner agencies in designing activities to be proposed through the FRIPs for Facility funding;
13. Coach and mentor Indonesian officials in targeted partner agencies in activity implementation including procurement processes, contracting, monitoring and reporting;
14. Support the Deputy Facility Director to coordinate development of cross-Facility activities interacting with Sub-facility Advisers and advisers from the Technical Support Team; and
15. Support the Contractor's MST in designing and running quarterly AIPEG Facility seminars.

Qualifications and Experience:

1. Excellent communication skills and high level motivational skills for engaging with both team and GOI colleagues;
2. Demonstrated effectiveness in a capacity development role in cross-cultural workplaces;
3. Demonstrated experience in the design and management of international donor activities;
4. Excellent understanding of program effectiveness and monitoring and evaluation (M&E);
5. Good working knowledge of the Commonwealth Procurement Guidelines and AusAID's anti-corruption policies;
6. Degree in social sciences (eg. program management, international development);
7. Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
8. Understanding of public sector economic reform desirable;
9. Fluency in speaking, reading and writing in English; and
10. Ability to speak Bahasa Indonesia preferred.

ANNEX B: Position descriptions for future positions, if and when required

1. Gender Coordinator;
2. Program Coordinator;
3. Management Information System Coordinator;
4. Finance Officer; and
5. Facility Administrator/s.

Gender Coordinator

Reports to: Deputy Facility Director

Key responsibilities and tasks:

1. Establish a network of relevant contacts in gender empowerment in the AIPEG Sub-facility agencies and the Ministry of Women's Empowerment;
2. Support the Gender Adviser to design a Gender Strategy for the AIPEG Facility to promote gender integration in work plans and activities in accordance with both GOI policies and AusAID's Gender Equality Policy;
3. Support the Gender Adviser to write guidelines on implementation of the Gender Strategy for inclusion in the operations manual and briefing of Facility personnel;
4. Conduct training in gender awareness to AIPEG Facility stakeholders;
5. Support Advisers and GoI staff of sub-facilities in integrating gender into activity designs;
6. Along with the Gender Adviser, support the Facility Evaluation Team to audit progress in gender integration across the Sub-facilities, and prepare an annual report on implementation of the Gender Strategy for the Advisory Board as part of the FRIP process;
7. Promote gender equality in AIPEG Sub-facilities and the Management Support Team, including through provision of information on successful practical examples within AIPEG Facility; and
8. Support the Facility Evaluation Team in integrating gender into evaluative research of AIPEG Facility processes and outcomes.

Qualifications and Experience:

1. Recruited locally and fluent in both Bahasa Indonesia and English;
2. Degree in social sciences (eg. Gender studies, human resource management, capacity development, international development),
3. Experience in gender analysis and its application to international development projects in Indonesia;
4. Knowledge of AusAID's Gender Equality Policy;
5. High level computer skills in word processing and PowerPoint applications;
6. Excellent communication skills including experience working cross-culturally;
7. Ability to work under pressure and meet deadlines;

8. Ability to work effectively as a member of a multi-disciplinary team.
9. A knowledge of the Indonesian civil service and/or the broad gender implications of economic policy in Indonesia would be desirable.

Program Coordinator

Reports to: Deputy Facility Director / works closely with the Activity Design and Management Mentor

Key responsibilities and tasks:

1. To be determined as needed.

Qualifications and Experience:

- Recruited locally and fluent in both Bahasa Indonesia and English;
- Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
- High level computer skills in word processing, Excel spreadsheet and PowerPoint applications;
- Excellent communication skills including experience working cross-culturally;

Management Information System (MIS) Adviser

Reports to: Deputy Facility Director

Key responsibilities and tasks:

1. In consultation with the Facility Director and Deputy Facility Director, design and establish the MIS for the AIPEG Facility to be located within the Management Support Team Office. This MIS will, at a minimum, include a database of all Sub-facility funded activities, personnel, milestones, Advisory Board and Facility Coordinating Committee Meetings.
2. Provide ongoing specialist advice on Management Information Systems matters to AIPEG Sub-facilities and the Management Support Team; and
3. Provide specialist inputs on other Management Information Systems matters as per specific Terms of Reference (to be developed by the relevant Sub-facility, or by the Contractor if specifically supporting the MST).

Qualifications and Experience:

1. Relevant tertiary qualifications in management and information technology;
2. Proven experience in creating Management Information Systems for international projects;
3. Demonstrated effectiveness in an advisory role in cross-cultural workplaces;
4. Excellent communication skills and high level motivational skills for engaging with relevant AIPEG Facility stakeholders;
5. Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
6. Experience in Indonesia or another South East Asian country highly regarded.

Other qualifications and experience as determined by the Deputy Facility Director etc.

Finance Officer

Reports to: Deputy Facility Director

Key responsibilities and tasks:

1. Establish accounts with utility and ICT service providers;
2. Establish financial systems and standard forms;
3. Prepare accounts and report monthly to Managing Contractor head office;
4. Reconcile the Facility bank account monthly, organise cash withdrawals, manage the petty cash float and do banking for the office;
5. Pay accounts and maintain audit trail including all receipts and vouchers;
6. Organise the payroll for local staff;
7. Coordinate staff medical cover, jamsostek and tax payments;
8. Establish and maintain the Assets Register;
9. Organise vehicle insurance and oversee maintenance; and
10. Organise other relevant insurance.

Qualifications and Experience:

1. Recruited locally and fluent in both Bahasa Indonesia and English;
2. Relevant tertiary qualifications in accounting or finance;
3. Demonstrated skills and experience in an accounting or finance role in a multi-disciplinary team;
4. High level skills in Excel and relevant accounting packages;
5. Experience supporting international donor projects highly regarded; and
6. Understands Commonwealth Procurement Guidelines, or prepared to attend training on CPG.

Facility Administrator

Reports to: Deputy Facility Director

Key responsibilities and tasks:

1. Support the Deputy Facility Director in establishment of the office, procurement and commissioning of office furniture and equipment;
2. Establish and maintain electronic and paper filing systems;
3. Organise supply of office consumables;
4. Maintain registers of staff movements;
5. Coordinate travel bookings for the Contractor's MST, Evaluation Team and Technical Support Pool personnel;
6. Organise logistics for visiting Managing Contractor personnel and short-term advisers;
7. Organise the driver's daily schedule and check the driver's log book; and
8. Other duties as required.

Qualifications and Experience:

1. Recruited locally and fluent in both Bahasa Indonesia and English;
2. Relevant tertiary qualification;
3. High level computer skills in word processing, Excel spreadsheet and PowerPoint applications;
4. Excellent communication skills including experience working cross-culturally;
5. Understands gender equality and the implications for Facility implementation, or prepared to attend gender awareness training;
6. Ability to work under pressure and meet deadlines;
7. Experience supporting international donor projects highly regarded; and
8. Understands Commonwealth Procurement Guidelines, or prepared to attend training on CPG.

Annex C: Draft AIPEG Facility Implementation Schedule (August 2009 to February 2010)

2009-2010	Q1										Q2															
	Aug 09		Sept 09				Oct 09				Nov 09		Dec 09				Jan 10				Feb 10					
	wk1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
1 Facility Establishment at Home Office																										
AusAID contract signed																										
Contracting of Contractor's MST international staff																										
Logistics for MST team mobilisation including visa applications																										
Establishing management/financial systems																										
Start preparing AIPEG Facility Operations Manual																										
Liaise with TAMF Managing Contractor																										
Contractor's MST team pre-departure briefing																										
2 Facility Establishment in Jakarta																										
Contractor's MST FD and DFD meet with AusAID Activity Manager																										
Meet with TAMF MST																										
Select, rent and equip office																										
Develop relationships with GOI agencies																										
Selection and contracting of Contractor's MST locally engaged staff																										
Open Bank Account in Jakarta																										
Establish Trust Fund and governance arrangements																										
Appointment of Advisory Board and Executive Committee																										

2009-2010

Activity	Q1										Q2															
	Aug 09		Sept 09				Oct 09				Nov 09			Dec 09			Jan 10			Feb 10						
	wk1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Contracting and mobilising of FET to attend Inception Workshop																										
Selection and contracting of TSP																										
Liaison and handover by TAMF MST																										
Operations Manual - continue development																										
Prepare selection process for Sub-facility Advisers																										
Establish Management Information System																										
Handover of relevant TAMF assets, staff contracts, systems, records																										
3 Inception Meetings and Follow Up Actions																										
MST teambuilding workshop																										
First Advisory Board Meeting																										
Prepare Gender awareness session for all Inception Workshops																										
Preparations for Inception Workshop																										
AIPEG Facility Inception Workshop																										
Prepare and distribute AB Meeting minutes																										
Prepare Inception Workshop Summary Record																										
Prepare Position Descriptions for each Sub-Facility Adviser																										
Recruit long-term international Sub-facility Advisers																										
Mobilise and brief Sub-facility Advisers including handover by Interim Advisers																										

2009-2010

Activity	Q1										Q2															
	Aug 09		Sept 09				Oct 09				Nov 09			Dec 09			Jan 10			Feb 10						
	wk1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
Prepare Inception Report																										
4 Prepare Facility Review and Implementation Plan																										
Prepare for FRIP workshops																										
FRIP Preparation Workshop for DG Tax																										
FRIP Preparation Workshop for DG Debt Management																										
FRIP Preparation Workshop - BAPEPAM-LK																										
FRIP Preparation Workshop - Ministry of Trade																										
Prepare Summary Records of each workshop																										
Prepare lists of priority activities for each Sub-facility																										
Prepare AIPEG Facility Gender Strategy																										
Prepare first FRIP for submission to AB																										
Design priority activities for first FRIP																										
Appoint Joint Appraisal Panel and prepare for JAP Meeting																										
5 Implementation of Interim Activities																										
Contractor and Interim Lead Advisers deliver activities planned under TAMF for interim period																										
Contractor and AIPEG Sub-Facility Advisers deliver interim activities																										
Prepare report on interim activities for FRIP																										
Lebaran Holidays																										

Annex D: Monitoring and Evaluation Matrix

Level of monitoring	Key Performance Questions	Suggested sub-questions adapted to suit each partner/activity	Key Responsibility	Suggested Methods or Tools	Comments
1. Quality of activity processes and progress in terms of the delivery of outputs and achievement of objectives	<ol style="list-style-type: none"> 1. To what extent is each activity achieving its planned outputs? 2. What are the results of this activity? 3. Is the activity delivered efficiently? 4. What are the lessons learned for future activities? 	<ol style="list-style-type: none"> 1. To what extent has each activity identified where and how it can contribute to gender equality? 2. Have results benefited women and men differently and why? 3. Have activities been implemented in a cost efficient manner? 4. What lessons have been learned in relation to gender analysis and gender equality? 	<ol style="list-style-type: none"> 1. Activity implementers (e.g. GoI agencies, contractors, sub-contractors, advisers) 2. Random triangulation by the Contractor 	<p>Internal monitoring systems using indicators for each activity output and objective. Select appropriate tools from following list:</p> <ul style="list-style-type: none"> • questionnaires • surveys • focus group meetings • trainers' reports • peer assessment • self-assessment • supervisor reports • etc. 	This level of monitoring includes accountability for expenditure by Ministries and DGs and their Advisers, as well as contractors, sub-contractors and other activity implementers
2. Quality of relationships and achievement of objectives within partner agencies/Sub-facilities	What progress has been made towards Sub-facility objectives?	<ol style="list-style-type: none"> 1. Are relationships between Australian and Indonesian partners contributing to good quality capacity development processes 2. What lessons have been learned about working in this partner agency? 	Facility Evaluation Team, focusing on one or two partners/Sub-Facilities each 6-9 months (as negotiated within AIPEG Facility)	<p>The following tools may be useful:</p> <ul style="list-style-type: none"> • focus group discussions • joint seminars and workshops • key informant interviews • joint expert analysis) 	Representatives from other donor-funded programs in the sector could be included
3. Coherence between Facility-supported activities	Is there value in ongoing collaboration between Australia and Indonesia in each area, or demand for	What synergies can be obtained through collaborative work across Sub-facilities (e.g. joint	Contractor providing advice in FRIPs to AB	Six-monthly analysis by AIPEG Facility governance and management stakeholders,	This is more of interest to AusAID than other stakeholders, but GoI

Level of monitoring	Key Performance Questions	Suggested sub-questions adapted to suit each partner/activity	Key Responsibility	Suggested Methods or Tools	Comments
	consideration of new areas?	sessions on capacity development, gender analysis, M&E etc.) 3.		including AB, Contractor and AusAID, taking advice from FET where appropriate	participation in analysis and decision-making is crucial to contribute to leadership and ownership
4. Achievement of Facility-wide objectives (which may be adjusted over time)	What changes have occurred in economic governance capacity within partner GoI agencies over time?	What other changes have occurred which may have been contributed to by the existence or work of the AIPEG Facility	Facility Evaluation Team (both Indonesian and international specialists) Contractor to prepare annual Landscape Review	Variety of research and evaluation methodologies relevant to assessing and analysing changes in organisational capacity at a national level (methods are emerging from a variety of international studies in 2008)	Specialists from other donor-funded programs in the economic governance sector in evaluations, could be included where appropriate
5. Extent of achievement of and contribution to Facility outcomes	What is the nature and extent of the contribution by Facility-funded activities to the any changes?	What have been the other key contributors to improvements in economic governance in Indonesia and why have these contributions been successful?	Facility Evaluation Team (both Indonesian and international specialists)	Elements of contribution analysis and other evaluation methods that maximise participation by Indonesian stakeholders, will be appropriate to answer evaluation questions 1-3 and made recommendations about future engagement.	Specialists from other donor-funded programs in the economic governance sector in evaluations, could be included where appropriate

Annex E: Supplementary information about the Monitoring and Evaluation Matrix (Annex D) – Suggested Tools and Methods column

Results Level

At the results level, elements of contribution analysis (John Mayne 2001 “Addressing attribution through contribution analysis: using performance measures sensibly” in *The Canadian Journal of Program Evaluation*, vol 16, no. 1) and other evaluation methods that maximise participation by Indonesian stakeholders, will be appropriate to answer evaluation questions 1-3 and made recommendations about future engagement. Consideration should be given to including specialists from other donor-funded programs in the economic governance sector in evaluations, where appropriate

As AIPEG is a Facility with multiple partners, the focus of M&E should be on methods which assess the quality of decision-making, the quality of management processes and the quality of relationships. This will require periodic and shared reflection by members of the AB about their role and contribution i.e. by inclusion of an agenda item once per year; use of AusAID’s regular contractor performance system to assess the Contractor ensuring GoI participation in the process; and periodic surveys by the FET of GoI partner agencies’ perspective of the quality of the AIPEG Facility management. While analysis of relationships is notoriously difficult, efforts need to be made to monitor this element of the AIPEG Facility, given the centrality of relationships to success.

Sub-facility Level

At the Sub-facility level, focus group discussions, joint workshops, key informant interviews and joint expert analysis, perhaps including representatives from other donor-funded programs in the sector and other related tools will provide opportunities to answer monitoring questions 1- 4 (the mix and selection will need to be negotiated by the Contractor with each partner during the inception workshops and annual planning process)

Activity Level

At the activity level, a wide variety of tools will be selected to suit the nature of the activity and the kind of information required. As each activity will be designed using a simplified project approach (a single objective and a clear and small number of outputs, with indicators which include elements of quality, quantity and time), it will be appropriate for them to include indicators as the basis for monitoring. For each activity, different indicators will be appropriate and different methods of gathering information required. For example, assessment of a new approach to graduate recruitment (where the indicator is “Ministry-wide graduate recruitment system, meeting MenPAN [Ministry of State Apparatus Reforms] guidelines, established by October 2009”) could be undertaken using focus group discussions with new recruits, the DG’s HR officials and MenPAN officials. In another example, say related to a study tour (where the indicator is “increased skills in method X among # officials from Y Section”), assessment could be undertaken through interviews by Advisers and senior staff of participants and their supervisors, three to six months after their return. As noted in Section 8.2, “the success of M&E systems depends on the way they are applied, and whether they can be used in a cost-effective and credible manner”.

PART 4: DRAFT BASIS OF PAYMENT

Note to Tenderers: The draft Basis of Payment presented here as Part 4 of this RFT will appear as Schedule 2 in the consolidated Contract.

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **AUDXXXX** plus GST, if any to a maximum of **AUDXXXX**. AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.2 The total amount payable is summarised in Table 1 below.

Table 1: Total Amount Payable

Item	Maximum Payable (AUD)
Fixed Management Fees	
Reimbursable Long Term Personnel Costs	
Reimbursable Short Term Personnel Costs	
Procurement and Operational Costs	2,620,750
Imprest Account	Up to 20,000,000
Total	

- 1.3 The Term of this Contract is for three (3) years however should AusAID chose to extend the Contract as per Clause 6.3 of Schedule 1, the costs and fees specified for years 4 to 6 in the Annexes to this Schedule 2 will apply.

2. FIXED MANAGEMENT FEES

- 2.1 AusAID shall pay the Contractor a Fixed Management Fees of **AUDXXXX**, plus GST, if any, to a maximum of **AUDXXXX**.
- 2.2 The Fixed Management Fees include but is not limited to the following:
- (a) contribution to head office overheads: including costs of complying with the Contractor's reporting obligations under the Contract;
 - (b) head office personnel: including program support staff wherever located;
 - (c) Airfares for Contractor representative and head office staff reimbursed at economy class for flight legs under four hours and business class for flight legs over four hours. Any travel undertaken at cheaper rates (eg. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
 - (d) any allowance for risk and contingencies;

- (e) all profit margins; and
- (f) all other costs not listed as reimbursable items.

2.3 The Fixed Management Fees shall be paid as follows:

- (a) 60% of the Fixed Management Fees (**AUDXXXX**) will be payable as a Quarterly Payments to the Contractor quarterly and within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- (b) 40% of the Fixed Management Fees (**AUDXXXX**) shall be payable as Milestone Payments, on the completion of payment milestones, as per Clause 3.1 and Annexes 1A and 1B.

3. FIXED MANAGEMENT FEES – MILESTONE PAYMENTS

- 3.1 Forty percent (40%) (**AUDXXXX**) of the Fixed Management Fees payable to the Contractor will be paid progressively upon satisfactory completion of the identified outputs in Annexes 1A/1B, and within thirty (30) days of AusAID's acceptance of a correctly rendered invoice. It is expected that AusAID will seek the views of key partner government agencies as appropriate prior to acceptance of the Milestones.
- 3.2 Where a Milestone Payment is to follow acceptance of a report, AusAID shall not be obliged to make payment until all of the outputs to be achieved by the Contractor in the period covered by the report have been achieved.
- 3.3 While payment will take place following AusAID's initial acceptance of the achievement of milestones, this acceptance may be subject to an assessment of the Contractor's achievement of outputs by independent technical advice.
- 3.4 If AusAID determines that a Payment Milestone in respect of which the Commonwealth has made a payment does not meet the specifications of the Contract, without limiting Clause 20.10 of Part 6 Standard Contract Conditions, AusAID may, at its absolute discretion, require the Contractor to repay the amount paid for that Payment Milestone. At AusAID's absolute discretion, the amount to be repaid may be deducted from future Fixed Management Fees payments.
- 3.5 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within thirty (30) days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 3.6 The Contractor must advise the Commonwealth in writing if and when the Contractor determines or becomes aware a Milestone will not be, or cannot be reasonably expected to be completed in accordance with Annexes 1A/1B.

4. REIMBURSABLE LONG TERM PERSONNEL COSTS

- 4.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXXXX** for the following Long Term Personnel specified in Annexes 2A/2B of this Schedule 2.
- 4.2 For each Long Term Personnel specified in Annexes 2A/2B, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, an all-inclusive Monthly

Professional Fee. The actual costs paid by the Contractor to or on behalf of Long Term Personnel shall be reimbursed by AusAID up to the limit specified in Annex 1 and paid within thirty (30) days of AusAID's receipt of a correctly rendered invoice.

4.3 The all-inclusive Monthly Professional Fee shall be:

- (a) **Inclusive** of all personnel-related taxes, levies and insurances incurred in Indonesia and Australia, with the exception of GST for Services performed in Australia [refer to Clause 21 (Goods and Services Tax) of Part 6];
- (b) **Inclusive** of superannuation levy, if any, as appropriate;
- (c) **Inclusive** of paid annual leave allowances of up to four (4) weeks per annum (see Clause 4.5 below), to accrue on a pro rata basis per twelve months' continuous engagement on the Facility (noting that leave allowances cannot be carried over from one twelve month period to another and must be taken in the twelve month period in which they fall due), including all leave costs such as airfares to and from Indonesia;
- (d) **Inclusive** of public holidays per annum as designated by AusAID Jakarta;
- (e) **Inclusive** of housing accommodation, utilities and private transport costs;
- (f) **Inclusive** of all escalators for the full period of the Program;
- (g) **Inclusive** of any language training costs for international personnel;
- (h) **Inclusive** of all other costs not listed as reimbursable items; BUT
- (i) **Exclusive** of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

4.4 In addition to the items listed under Clause 4.3 above, AusAID shall reimburse the Contractor for any mobilisation and demobilisation costs applicable to Long Term Personnel (including airfares) at cost (subject to reasonableness) and in arrears, up to the maximum amounts specified in Annexes 2A/2B, on a one-off basis, if applicable.

4.5 Where Contractor leave entitlements for Personnel exceed one trip or a total of four weeks per twelve month period, a satisfactory justification must be provided to AusAID of how the Contractor will ensure, during Specified Personnel absences, the continued quality of the Services. AusAID will not reimburse leave costs in excess of those specified at Clause 4.3 (c) and (d) of this Schedule.

4.6 If a Long Term Personnel member is absent for any period, aside for the periods of leave permitted in Clause 4.3 (c) and (d) of this Schedule 2, the Monthly Rate Payable will be adjusted in accordance with the following formula:

Adjustable Monthly Rate =

$$\frac{(\text{Number of Days Worked} + \text{AusAID Jakarta Public Holidays}) \times \text{Monthly Rate}}{\text{Total workable days (Weekdays and AusAID Jakarta public holidays) in Month}}$$

4.7 Leave accrued during the assignment for long term personnel shall be deemed to be taken in the year it falls due and cannot be accumulated or paid out.

5. REIMBURSABLE SHORT TERM PERSONNEL

5.1 AusAID shall reimburse the Contractor up to a maximum of **AUDXXXX** for the following short term personnel specified in Annexes 3A / 3B.

5.2 For each Short Term Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears for actual inputs provided, an all-inclusive Daily Professional Fee. The actual costs paid by the Contractor to or on behalf of Long Term Personnel shall be reimbursed by AusAID up to the limit specified in Annexes 3A / 3B and paid within thirty (30) days of AusAID's receipt of a correctly rendered invoice.

5.3 The Daily Professional Fee for Short Term Personnel is:

- (a) **Inclusive** of all personnel-related taxes, levies and insurances incurred in Indonesia and Australia, with the exception of GST for Services performed in Australia [refer to Clause 21 (Goods and Services Tax) of Part 6;
- (b) **Inclusive** of all salary and allowances;
- (c) **Inclusive** of superannuation levy, if any, as appropriate;
- (d) **Inclusive** of all escalators for the full period of the Program; BUT
- (e) **Exclusive** of any profit, overheads, administration or management fee, or any other mark-up/margins on the part of the Contractor.

5.4 In addition to the items listed under Clause 5.3 above, the following items only will be reimbursable at cost (subject to reasonableness) in arrears up to a maximum of **AUD343,600**:

- (a) Airfares reimbursed at economy class for flight legs under four hours and business class for flight legs over four hours. Any travel undertaken at cheaper rates (eg. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
- (b) Compulsory Arrival and Departure Taxes, and Travel to and from Airport: reimbursed at cost;
- (c) Hotel Accommodation: reimbursed at lesser of actual cost incurred or AUD237;
- (d) Travelling Allowance: An agreed daily rate of AUD105 towards the costs of meals and incidental;

6. REIMBURSABLE PROCUREMENT AND OPERATIONAL COSTS

6.1 AusAID shall reimburse all reasonable costs actually incurred by the Contractor for Reimbursable Procurement and Operational Costs as shown in Annex 4, up to a maximum of **AUD2,620,750**.

6.2 Reimbursable Procurement and Operational Costs means goods and services such as office furniture, computers, transport hire, internal economy airfares for Facility related in

Indonesia travel, associated accommodation and per diems, vehicle purchase, office supplies/stationary, recurrent office costs (phone, fax, printers, papers, photocopier and software), communications, utilities and office rent required by the Contractor for the day-to-day administration of the Facility.

- 6.3 All reasonable costs actually incurred will be reimbursed quarterly in arrears on submission of a correctly rendered invoice including certification that the reimbursable costs have been provided as required by the Contract. Costs shown in Annex 4 may be reallocated between line items, with AusAID's prior written approval but cannot be reallocated between the two categories.

7. IMPREST ACCOUNT

- 7.1 The maximum amount payable for Imprest Account payments by AusAID to the Contractor shall not exceed the sum of **AUD20,000,000**.
- 7.2 The Contractor will establish and manage the Imprest Account for the purpose of funding Approved Activities under the Program. These funds will not be reallocated for any other purpose under this Basis of Payment and may be only used for the implementation of approved Facility activities.
- 7.3 The Imprest Account is to be used to fund approved technical advisors, including the Technical Support Pool and other technical support and procurement which has been endorsed by the Executive Committee. Any Long Term Adviser positions shall be paid in accordance with the conditions detailed in Clause 2 of this Schedule 2.
- 7.4 Any technical advisers or other personnel engaged and funded through the Imprest Account will be deemed to be Contractor Personnel in accordance with Clause 7 of Part 6 (Standard Contract Conditions). The Long Term personnel engaged by the Contractor will be deemed to be Specified Personnel in accordance with Clause 8 of Part 6 (Standard Contract Conditions).
- 7.5 Imprest Account Funds shall be paid, expended, managed and accounted for in accordance with Clause 13 of Part 2 (Project Specific Contract Conditions).

8. FINANCIAL MANAGEMENT REQUIREMENTS

- 8.1 Within one month of the Contract Start Date AusAID will provide the Contractor with Payment Event numbers for all expected payments.
- 8.2 The Contractor will advise AusAID if amounts, dates of services or any other changes to financial estimates occur in between the three monthly and five monthly submission points.
- 8.3 The Contractor will quote the agreement number and the Payment Event number in all invoices.

9. CLAIMS FOR PAYMENT

- 9.1 The Contractor's claims for payment must be submitted when due pursuant to this Schedule in a form identifiable with the Services.

9.2 All claims for payment must include a certification by a Company director of the Contractor, or their delegate:

- (a) that the invoice has been correctly calculated;
- (b) that the Services included in it have been performed in accordance with the Contract; and
- (c) that the invoice is addressed to the AusAID Activity Manager.

9.3 All claims for payment must be made out to:

Chief Finance Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601

9.4 Tax invoices should be sent to the above address. Alternatively, AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au

9.5 Invalid tax invoices will be returned to contractors. Information on what constitutes a valid tax invoice can be found at <http://www.ato.gov.au/business/content.asp?doc=/content/50913.htm>

Annex 1A: Milestone Payments

Milestone	Deliverable Output	Verifiable Indicator	Completion Date	Payment (AUD)
1	Inception Report and Activity Management Plan and AIPEG Facility Operations Handbook	Accepted by AusAID	Q1 Sept 2009	
2	Initial Program Review and Implementation Plan (FRIP)	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 Sept 2009	
3	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q2 Dec 2009	
4	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 August 2010	
5	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q3 Feb 2011	
6	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 August 2011	
7	Six-monthly PRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q3 Feb 2012	
8	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 August 2012	
TOTAL AMOUNT				

Annex 1B: Milestone Payments - should AusAID, at its sole discretion, decide to extend the contract Milestones 9 to 14 shall apply.

Milestone	Deliverable Output	Verifiable Indicator	Completion Date	Payment (AUD)
9	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q3 Feb 2013	
10	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 August 2013	
11	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q3 Feb 2014	
12	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q1 August 2014	
13	Performance Assessment and Evaluation Report	Accepted by AusAID	Q3 Feb 2015	
14	Facility Completion Report	Accepted by AusAID	Q3 Feb 2015	
TOTAL AMOUNT				

Annex 2A: Reimbursable Long Term Personnel

Position	Inputs Months	Monthly Rate Year 1	Monthly Rate Year 2	Monthly Rate Year 3	Mobilisation and Demobilisation Costs	Maximum Amount Payable (AUD)
Facility Director						
Facility Deputy Director						
Activity Design and Management Mentor						
<i>To be derived from preferred Tenderer's bid as per Annex 3 Part 1 of the RFT as required under Clause 6.3 of Part 1 (Team member inputs bar chart)</i>						
<i>Gender Coordinator</i>						
<i>Program Coordinator</i>						
<i>Management Information Systems (MIS) Coordinator</i>						
<i>Finance Officer</i>						
<i>Facility Administrator (1 or 2)</i>						
<i>Driver</i>						
Total						

Annex 2B: Reimbursable Long Term Personnel - should AusAID, at its sole discretion, decide to extend the contract.

Position	Inputs Months	Monthly Rate Year 4	Monthly Rate Year 5	Monthly Rate Year 6	Maximum Amount Payable (AUD)
Facility Director					
Facility Deputy Director					
Activity Design and Management Mentor					
<i>To be derived from preferred Tenderer's bid as per Annex 3 Part 1 of the RFT as required under Clause 6.3 of Part 1 (Team member inputs bar chart)</i>					
<i>Gender Coordinator</i>					
<i>Program Coordinator</i>					
<i>Management Information Systems (MIS) Coordinator</i>					
<i>Finance Officer</i>					
<i>Facility Administrator (1 or 2)</i>					
<i>Driver</i>					
Total					

Annex 3A: Short Term Personnel Costs

Position	Input days	Daily Rate Year 1	Daily Rate Year 2	Daily Rate Year 3	Maximum Amount Payable (AUD)
Economic Governance/Public sector reform specialist					
First M&E Specialist					
Second M&E Specialist					
Program Reviewer					
<i>Additional positions derived from preferred Tenderer's bid</i>					
Total					

Annex 3B: Short Term Personnel Costs - should AusAID, at its sole discretion, decide to extend the contract.

Position	Input days	Daily Rate Year 4	Daily Rate Year 5	Daily Rate Year 6	Maximum Amount Payable (AUD)
Economic Governance/Public sector reform specialist					
M&E Specialist (1)					
M&E Specialist (2)					
Program Reviewer					
<i>Additional positions derived from preferred Tenderer's bid</i>					
Total					

Annex 4: Reimbursable Procurement and Operational Costs

Item	Description	Maximum Amount Payable (AUD)
Procurement		
Office establishment	Vehicle; office furniture and fixtures; office equipment including IT/MIS Software)	465,000
Office Recurrent Expenses	Office rent; cleaning and insurance; utilities and communication; stationary and consumables; vehicle operation and maintenance, and car hire until Facility vehicle is procured. May also include additional vehicle hire, as required	960,000
Sub Facility Office establishment (if needed)	Office furniture; computers and software; printers; fax; photocopier; other miscellaneous office equipment.	60,000
Sub-Total		1,485,000
Travel Costs for Specified Personnel		
International Travel: to include all airfare, accommodation, travel advance and ground transport costs	Management Support Team (MST)	324,550
	Facility Evaluation Team (FET)	343,600
	Sub-Facility Advisers	210,800
Domestic Travel (Home Base): to include all airfares, accommodation, travel advance and ground transport costs.	Contractor's MST, FET, Sub-Facility Advisers and others as required	6,800
Domestic (Indonesia): to include airfare, accommodation and per diem	Contractor's MST, FET, Sub-Facility Advisers and others as required	250,000
Sub-Total		1,135,750
Maximum Amount Payable (up to)		2,620,750

Annex 5A: Fixed Management Fees

Fixed Management Fees				
	Year 1	Year 2	Year 3	Maximum amount payable (AUD)
Head Office Overheads				
Program Support Staff				
Risk & Contingencies				
Profit				

Annex 5B: Fixed Management Fees should AusAID, at its sole discretion, decide to extend the contract.

Fixed Management Fees				
	Year 4	Year 5	Year 6	Maximum amount payable (AUD)
Head Office Overheads				
Program Support Staff				
Risk & Contingencies				
Profit				

SECTION 2

PART 5 – STANDARD TENDER CONDITIONS

Bolded words are defined in the Tender Particulars in Part 1 of this RFT.

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

- (a) Electronically, via AusTender at <https://tenders.gov.au> before the Closing Time and in accordance with the tender lodgement procedures set out in Annex C to this Part and on AusTender; or
- (b) Physically, by depositing by hand in the Canberra Tender Box before the Closing Time.

1.2 AusAID's preference is for electronic lodgement of Tenders. However, if electronic lodgement is not possible, you may lodge a hard copy of your Tender instead.

1.3 For both electronic and hard copy Tender lodgement, you must submit the following documents as part of your Tender:

- (a) the technical proposal which includes:
 - (i) Tender Schedule A addressing the selection criteria and including the required annexes in the form specified in Part 1; and
 - (ii) Tender Schedule B providing details of Specified Personnel in the form specified in Part 1;
- (b) The financial proposal in the form specified in Part 1 Tender Schedule C. For electronic submissions, Tender Schedule C must be submitted as a separate file, and for hard copy submissions, Tender Schedule C must be submitted in a separate sealed envelope;
- (c) The financial assessment material in the form specified in Part 1 Tender Schedule D. For electronic submissions, Tender Schedule D must be submitted as a separate file, and for hard copy submissions, Tender Schedule D must be submitted in a separate sealed envelope; and
- (d) The completed and signed Tenderer Declaration in the form specified in Annex B of this Part.

1.4 All documentation submitted as part of the Tender must be in English.

1.5 Tenderers must include all information specified in this RFT in their Tender. Tenderers accept that their failure to provide all information required, in the format specified will result in their Tender being considered as a non-conforming Tender and liable to rejection.

- 1.6 The Tenderer must submit the number of copies specified in the Tender Particulars (Part 1 Clause 1 of this RFT). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.
- 1.7 Tenders submitted by facsimile or email will not be considered.
- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the Tender Validity Period specified in Clause 1 (Tender Particulars) of Part 1 of this RFT.
- 1.9 A person or persons having authority to lodge the Tender and enter into a contract on behalf of the Tenderer must sign the Tenderer Declaration (Annex B of this Part).
- 1.10 AusAID may extend the Closing Time at its sole and absolute discretion, and will issue an Addendum notifying any decision to extend.

Conditions Applying to Electronic Tender Lodgement

- 1.11 Electronic tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the Closing Time and in accordance with the tender lodgement procedures set out in Annex C of this Part and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with Clause 1.11 above will be excluded from evaluation.
- 1.14 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth takes any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

Conditions Applying to Hard Copy Tender Lodgement

- 1.15 For hard copy lodgement, the Tenderer is responsible for the delivery of their Tender. The Tender must be placed in AusAID's Canberra Tender Box. The Tender must be delivered during Business Hours by the Closing Time. Failure to submit a Tender in accordance with this clause may render the Tender liable to rejection.
- 1.16 The Original Tender document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.
- 1.17 The Tender should be endorsed with the name of the Project and marked: "Tender Box: Attention Contact Person." The Tenderer's postal address and fax number should be provided on the outside of the Tender.

2. TENDERER ENQUIRIES

- 2.1 Any enquiries that Tenderers may have must only be directed to the Contact Person specified in the Tender Particulars.

2.2 If a Tenderer:

- (a) finds any discrepancy, error or omission in the terms and conditions of the RFT, including of the Contract Conditions; or
- (b) wishes to make any enquiry, including seeking clarification, of the RFT, including of the Contract Conditions,

the Tenderer must notify the Contact Person in writing, which notice may be sent by means of facsimile transmission or email, as soon as possible and not later than fourteen (14) days prior to the Closing Time.

2.3 AusAID will respond to any Tenderer enquiries no later than seven (7) days prior to the Closing Time.

2.4 AusAID reserves the right to issue or publish answers to any Tenderer enquiries to all Tenderers.

3. LATE TENDERS

Conditions Applying to Tenders Lodged Electronically

3.1 A Tender lodged electronically is a Late Tender in accordance with the conditions specified in Clause 6, Annex C of this Part. Late tenders that have been lodged electronically will be excluded from evaluation.

3.2 For tenders submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which AusAID will determine whether Tenders lodged electronically have been lodged by the Closing Time.

3.3 The judgement of AusAID as to the time a Tender has been lodged electronically will be final.

Conditions Applying to Tenders Lodged in Hard Copy

3.4 A hard copy Tender lodged after the Closing Time is a late Tender.

3.5 AusAID will admit to evaluation a Tender that was received late solely due to AusAID mishandling. AusAID mishandling does not include mishandling by a courier or mail service provider engaged by a Tenderer to deliver their Tender. It is the responsibility of tenderers to ensure that their Tender is dispatched in sufficient time for it to be received by AusAID by the Closing Time.

3.6 Late Tenders that are rejected by AusAID will be returned to tenderers unopened, except in cases where a Tender must be opened to identify the return address of the Tenderer or to establish which tender process the Tender was for.

3.7 If a Tender is taken to be late, the Tenderer may be asked to provide explanatory evidence in an appropriate form to the Contact Person specified in the Tender Particulars.

4. NON-CONFORMING TENDERS

- 4.1 Subject to Clause 3 (Late Tenders) of this Part, Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.
- 4.2 AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with Clause 5 of this Part.
- 4.3 Subject to Clause 3 of this Part, AusAID may, at its absolute discretion, assess or reject a non-conforming Tender.
- 4.4 AusAID will not enter into correspondence about a decision to assess or reject a non-conforming Tender.

5. CLARIFICATION OF TENDERS

- 5.1 AusAID reserves the right to seek clarification of any Tender. Tenderers must:
- (a) respond to any request for clarification within the time period specified by AusAID;
 - (b) ensure that additional information provided answers AusAID's enquiry and is fully consistent with the Tender submitted by the Tenderer; and
 - (c) not seek to change any aspect of their Tender by providing additional information to AusAID.
- 5.2 Clarifications are provided on the terms of the RFT.
- 5.3 Failure to supply clarification to the satisfaction of AusAID may render the Tender liable to rejection.

6. AMENDMENT OF THE RFT

- 6.1 AusAID may amend the RFT at any time by issuing an Addendum. All conditions of this RFT will apply to Addenda.

7. ASSESSMENT OF TENDERS

- 7.1 Tenders will be assessed on the following basis:
- (a) technical, which includes the other factors described in Clause 7.8 of this Part which in AusAID's opinion may impact upon the suitability of any Tenderer including the financial viability of any Tenderer; and
 - (b) financial
- to achieve the best value for money outcome.
- 7.2 Tenderers should note that value for money determinations are made on a whole-of-life basis and that AusAID is not bound or required to accept the lowest priced Tender or any Tender.

Technical Assessment

- 7.3 The technical assessment will be undertaken by the Technical Assessment Panel (the “TAP”) comprising AusAID representative(s) and independent specialists appointed at AusAID’s sole discretion. Representatives of the Partner Government may also participate. The TAP will assess Tenders based on the technical selection criteria specified in Part 1.
- 7.4 AusAID may invite a Tenderer (shortlisted or otherwise) to give AusAID a short presentation and be interviewed by the TAP. Specified Personnel, such as the proposed in-country team leader and the project director, will be required to attend at the presentation. If Specified Personnel are unable to attend, a teleconference presentation may be arranged. Specified Personnel will be required to answer any questions asked by the TAP. The TAP will be convened in Canberra and the costs of the Tenderer's (and its personnel's) attendance must be borne by the Tenderer.
- 7.5 Tenderers should note that failure by a Tenderer or proposed Specified Personnel to attend the presentation (either in person or via teleconference) may disadvantage the Tender.
- 7.6 TAP members are required to maintain the “commercial-in-confidence” nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any tender with any party. Tenderers must not make contact with any members of the TAP, outside any TAP meeting, and any such contact will be considered a breach of confidentiality and may result in AusAID rejecting the tender of the Tenderer concerned.
- 7.7 AusAID reserves the right to take into account in the assessment of this Tender the past performance of the Tenderer or any proposed personnel contained in the Tender in accordance with Annex A of this Part.
- 7.8 In making its assessment the TAP or AusAID may have regard to other factors relevant to the suitability, capacity and qualifications of a Tenderer including but not limited to:
- (a) the Tenderer's ability to comply with AusAID policies referred to in this RFT and the Tenderer's ability to comply with the Contract Conditions;
 - (b) the resourcing of Tenders;
 - (c) information obtained from any source which is relevant to the capacity of the Tenderer or any proposed personnel to perform the Services and achieve the Project goals and objectives. Such information may be the result of inquiries made by AusAID; and
 - (d) the Tenderer’s demonstrated understanding of the cultural environment of the Project.

These other factors have not been allocated any specific weightings.

- 7.9 TAP members may adjust technical scores as a consequence of the presentation, interview and consideration of past performance.

Goods and Services Tax

- 7.10 All Tenderers should be aware that under *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*, AusAID is treated as a taxable enterprise. To allow a like-for-like price assessment, the financial proposal must state the value of the supplies exclusive of the GST.

Insurances

- 7.11 The financial proposal must be inclusive of all necessary insurances required by the Contract Conditions and for the performance of the Services. Notwithstanding the requirements of the Contract AusAID strongly recommends that all Tenderers seek advice on and consider arranging professional indemnity insurance as a matter of prudent commercial practice. Where such insurance is arranged, AusAID recommends that it be maintained for the duration, plus a further three (3) years, of the full Term of the Contract or earlier termination.

Project Vehicles

- 7.12 For the purposes of this clause, “Project Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided primarily for Contractor Personnel use for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute AUD250. for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 7.14 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;
 - (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
 - (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
 - (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
 - (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
 - (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer’s requirements.

Tenderers Note: compliance with the requirements detailed in Clause 7.13 above may be subject to a review undertaken by or on behalf of AusAID under the Standard Conditions clause of the Contract titled Reviews.

Technical proposal format

7.15 The technical proposal must:

- (a) indicate the Tenderer’s nominated contact person and contact details on the cover page;
- (b) be in a type font of no less than 12 point on A4 paper;
- (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
- (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and
- (e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

7.16 The curriculum vitae for team member must include the following information:

- (a) name and personal contact details (this can be an email address or phone number);
- (b) nationality and if relevant permanent resident status;
- (c) professional qualifications, including institution and date of award; and
- (d) details of recent relevant professional and development work experience, including the duration and extent of inputs.

7.17 CVs must be no longer than the page limit detailed in the Tender Particulars, must be signed and dated by the proposed team member, and must include the following certification:

“I, *[insert name]*, declare that:

- (a) the information provided in this CV is accurate and hereby authorise the Commonwealth to make whatsoever inquiries it may consider reasonable and necessary to undertake in the course of the Tender assessment in relation to the information I have provided in this CV or any other matter which may relate to my suitability for the position for which I have been nominated; and
- (b) I am available to participate in the Project in the role in which I have been nominated in the Tender for the period or periods indicated in the Tender”.
- (c) I have not been convicted of an offence of, or relating to, bribery of a public official, nor am I subject to any proceedings which could lead to such a conviction.

While an original signature on CVs is preferred, copies are allowed. However, Tenderers are reminded of their warranties (Clauses 3.3 and 3.4) and the potential consequences to their Tender (Clause 3.5), as detailed in the Annex B (Tenderer Declaration) of this Part.

Referees

- 7.18 Tenderers must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by the organisation (if the Annex titled Past Experience Forms is used) or the proposed team member (regarding Tender Schedule B). Referees who can supply character references only are not sufficient.
- 7.19 Tenderers must ensure that nominated referees do not have an actual or potential conflict of interest when acting as a referee. In particular, Tenderers must ensure that referees:
- (a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;
 - (b) are not included in the Tender as proposed team members; and
 - (c) are not AusAID employees.
- 7.20 Tenderers must further ensure that nominated referees:
- (a) are available to be contacted in the three (3) week period after the Closing Time; and
 - (b) are able to provide comments in English.
- 7.21 AusAID reserves the right to check with nominated referees and with other persons as AusAID chooses, the accuracy of the information and quality of work performed.

8. JOINT VENTURES AND CONSORTIUMS

- 8.1 AusAID intends to contract with a single legal entity.
- 8.2 In the case of a joint venture or consortium that does not constitute a single legal entity, AusAID will contract with the lead joint venture or consortium member that is required to be nominated by the tenderer.
- 8.3 Tenders by a joint venture or consortium must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the joint venture or consortium must be clearly specified in the body of the text in Tender Schedule A.
- 8.4 AusAID may require parent company guarantees from the parent companies of parties to a joint venture or consortium.

9. ASSOCIATES AND OTHER SUB-CONTRACTORS

- 9.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Tenderer, is intended

to act as the prime contractor and any other party becomes a sub-contractor known as an “Associate”.

- 9.2 Tenders involving Associates will be assessed on the basis of that arrangement. Tenders must include:
- (a) details on the activities to be performed and responsibilities assumed by each party where Associates are involved must be described in the body of the text of Tender Schedule A; and
 - (b) assurance to AusAID from an authorised representative of the Associate of their corporate commitment to and involvement in the Project in the form of a single page Letter of Association in a separate annex to Tender Schedule A.

Details of Associate responsibilities, if any, will be included in the Contract.

- 9.3 In addition to Associates, Tenderers are required to include detailed information on other work to be sub-contracted (excluding Specified Personnel) and proposed sub-contractors, where these are reasonably known at the time of the Tender and have expressed their willingness to be involved in the Project. These details must also be included in a separate annex to Tender Schedule A in the form described in Clause 9.4 below.
- 9.4 Letters in which organisation’s express their willingness to be involved with the Tenderer in the Project as a sub-contractor must be limited to a single page per organisation and include details on the broad skills or areas in which the organisation may add value.
- 9.5 Tenderers note: AusAID contracts assign full responsibility for all sub-contracted Services to the contractor.

10. OWNERSHIP OF TENDERS AND RFT

- 10.1 All Tenders become the property of AusAID on lodgement.
- 10.2 Such intellectual property rights as may exist in the information contained in each Tender will remain the property of the Tenderer.
- 10.3 The Tenderer authorises AusAID to copy, adapt, amend, disclose, including to AusAID contractors and advisers, or do anything else necessary, in AusAID's sole discretion, to all materials including that which contains intellectual property rights of the Tenderer or other parties contained in the Tender.
- 10.4 Copyright in the RFT is reserved to AusAID.

11. CONFLICT OF INTEREST

- 11.1 Tenderers must:
- (a) identify any actual or potential conflict of interest; and
 - (b) the procedures they intend to implement for dealing with, any actual or potential conflicts of interest,

which may arise in connection with the submission of their Tender or the conduct of the Services described in this RFT. Tenders should include details of any known circumstances that may give rise to either an actual conflict or potential of conflict of interest in relation to the Project.

- 11.2 If any actual or potential conflicts of interest arise for a Tenderer before entering into a Contract for the Services, AusAID may:
- (a) enter into discussions to seek to resolve such conflict of interest; or
 - (b) disregard the Tender submitted by such a Tenderer; or
 - (c) take any other action that AusAID considers appropriate.

12. TENDERING CONDUCT

- 12.1 Each Tenderer warrants that it has not engaged in collusive or anti-competitive practices with any other Tenderer in the preparation of its Tender.
- 12.2 If a Tenderer is found to have made false or misleading claims or statements, or receives improper assistance or improperly obtains confidential information, AusAID reserves the right to reject at any time, any Tender lodged by or on behalf of that Tenderer.

13. INELIGIBILITY TO TENDER

- 13.1 A Tenderer is ineligible to tender where the Tenderer or any subcontractor of the Tenderer is listed by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “World Bank List”).
- 13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding (“Relevant List”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.
- 13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under Clause 13.2 above. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.
- 13.4 Tenderers should note that if they tender in breach of this Clause 13, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
- 13.5 For the purpose of this Clause 13, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor

within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.

14. AusAID's RIGHTS

14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.

14.2 AusAID reserves the right to:

- (a) seek Tenders from any organisation;
- (b) accept or reject any Tender;
- (c) terminate, extend or vary its procurement process for the Services;
- (d) request clarification in relation to a Tender;
- (e) seek information or negotiate with any organisation that has not been invited to submit a Tender;
- (f) terminate negotiations with the preferred Tenderer and commence negotiations with any other Tenderer;
- (g) evaluate Tenders as AusAID sees appropriate; and
- (h) negotiate with any one or more Tenderers.

15. TENDERER'S ACKNOWLEDGEMENT

15.1 A Tender is submitted on the following basis:

- (a) no legal obligation or agreement whatsoever is intended to be or is created between AusAID and any Tenderer by virtue of the tender process (including but not limited to statements contained in this RFT) unless and until contract negotiations are completed and a formal written agreement acceptable to AusAID is entered into and executed by an authorised officer of AusAID and by the successful Tenderer, if any;
- (b) the Tenderer acknowledges and agrees that AusAID, its employees, agents and advisers are not, and will not be responsible, or liable for the accuracy or completeness of any information contained in this RFT; and
- (c) the Tenderer is responsible for all costs of and incidental to the preparation and delivery of the Tender, including obtaining this RFT, or any subsequent stage of the procurement process, including answering any queries and providing any further information sought by AusAID.

16. DEBRIEFING OF TENDERERS

16.1 If requested, AusAID will provide Tenderers with a written debriefing on the results of the assessment of their Tender, including reasons why the tender was not successful.

16.2 AusAID will not enter into discussion or communications on the content of the tender debrief once it has been completed.

17. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES

17.1 Freedom of Information

- (a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.
- (b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

17.2 Privacy

- (a) The *Privacy Act 1988* establishes a national scheme providing, through codes of practice adopted by private sector organisations and the National Privacy Principles, for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations.
- (b) The Draft Contract provides that the Contractor will comply with the *Privacy Act 1988*, including the Information Privacy Principles and the National Privacy Principles whether or not the Contractor is an organisation subject to the *Privacy Act 1988*.
- (c) The Contractor acknowledges that the Privacy Act 1988 reflects the principles of the International Covenant on Civil and Political Rights and OECD Guidelines, in particular, the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
- (d) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Privacy Act 1988* on their participation in this RFT process and any subsequent contract.

17.3 Access by Australian National Audit Office

- (a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.
- (b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, the Draft Contract provides that the Contractor will provide the Auditor-General, or an authorised person, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of

the contract and for a period of seven years from the date of expiration or termination.

- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

- (a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.
- (b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.
- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

17.5 Equal Employment Opportunity for Women in the Workplace Act 1999.

- (a) Australian Government policy prevents AusAID from entering into contracts with suppliers who are currently named as non compliant under the *Equal Employment Opportunity for Women in the Workplace Act 1999* (EEO Act).
- (b) AusAID will exclude from consideration any Tender from a Tenderer who is named or whose subcontractor is named as not complying with the EEO Act.

17.6 United Nations Act, Criminal Code Act 1995 and World Bank List

- (a) AusAID will exclude from consideration any Tender from a Tenderer who is listed:
- (b) by the Minister for Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Further information about listed persons and entities is available from the Department of Foreign Affairs and Trade website at www.dfat.gov.au/icat/UNSC_financial_sanctions.html and from <http://www.nationalsecurity.gov.au/>
- (c) by the World Bank on its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at www.worldbank.org (the "World Bank List") and/or any similar list maintained by any other donor of development funding.

17.7 Other Australian Government and AusAID Policies

- (a) Tenderers should familiarise themselves with AusAID policies including:

- (i) the policy *Gender Equality in Australia's Aid Program – Why and How* (March 2007). This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>;
- (ii) AusAID's policy on the environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's website at <http://www.ausaid.gov.au/keyaid/envt.cfm>.
- (iii) AusAID's *Child protection policy*, in particular the child protection compliance standards at Attachment 1 to the policy. This document is available on AusAID's website at <http://www.ausaid.gov.au/publications/default.cfm>.
- (iv) any other policies published from time to time on <http://www.ausaid.gov.au> or as otherwise notified to Tenderers.

18. FURTHER REQUIREMENTS

- 18.1 Tenderers should be aware that current employees of AusAID cannot be included in Tenders for AusAID projects. Former AusAID employees may be included in Tenders if doing so does not represent a breach of conflict of interest. See AusAID's Frequently Asked Questions website for further information: www.ausaid.gov.au/business/frequent.cfm.
- 18.2 Tenderers should note that the Commonwealth Procurement Guidelines require that Commonwealth agencies must not enter into agreements with suppliers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not paid the claim. AusAID will reject submissions from tenderers in this position.
- 18.3 Tenderers must keep any discussions or contact with AusAID in connection with the Tender, the RFT and any contract negotiations confidential. Any unauthorised approach by a Tenderer to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

19. CONTRACT NEGOTIATIONS

- 19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.
- 19.2 The preferred Tenderer(s) must within fourteen (14) days of written notification from AusAID that it has been selected as preferred Tenderer, provide AusAID with originals of Police Clearance Certificates for all Personnel nominated in their Tender in positions specified in Table 1: Specified Personnel (Clause 7, Part 1) as working with children.
 - (a) Police Clearance Certificates must be provided for each country in which the individual has lived for twelve (12) months or longer over the last five (5) years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than twelve (12) months before the Tender Closing Time;

- (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with Clause 19.2 above, AusAID may exercise its right, specified at Clause 19.2 above, to terminate negotiations with the preferred Tenderer and commence negotiation with any other Tenderer. AusAID recognises that in limited instances it may prove impossible to obtain a reliable Criminal Record Check, and will take non-provision of a Criminal Record Check into account upon request;
 - (d) AusAID reserves the right to require the preferred Tenderer(s) to replace any Personnel whose Police Clearance Certificate shows conviction of criminal offences of, or relating to, child abuse where AusAID, in its absolute discretion, considers that the Personnel poses an unacceptable risk to children's safety or well-being. Nominated replacement Personnel must have qualifications and experience equal to or better than those of the personnel being replaced, and must be acceptable to AusAID.
- 19.3 It is AusAID's intention to contract on the basis of the Contract Conditions contained in this RFT. Following the selection of a preferred Tenderer AusAID may enter into negotiations with the preferred Tenderer in respect of the Scope of Services and the Basis of Payments of the contract. Such negotiations will be strictly limited to matters of detail rather than substance.
- 19.4 If the Scope of Services is reduced as a result of constraints imposed on AusAID before or after the Closing Time, AusAID and the preferred Tenderer must negotiate, in good faith, a proportionate reduction, if necessary, to the fixed price quote.
- 19.5 Enhancements to the Scope of Services included in the Tender in accordance with the selection criteria should be costed into the fixed price quote for the purposes of the like-for-like price assessment. Where AusAID has instructed that the like-for-like price assessment is to be based on indicative values, the Tenderer must clearly specify all cost implications of enhancements proposed in the Tenderer's technical proposal.

20. CONTRACT PLANS

- 20.1 The preferred Tenderer may be required to convert the Technical Proposal submitted in its Tender into appropriate schedules for the Contract based on the Contract Conditions. The Tenderer must take into account the outcome of any negotiations and give effect to amendments agreed with AusAID.

21. APPLICABLE LAW

- 21.1 The laws of the Australian Capital Territory apply to the RFT and the RFT process.

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

1. AusAID reserves the right to take into account in the assessment of this Tender the past performance, in previous AusAID and non-AusAID activities, or activities of:
 - (a) any Tenderer; and
 - (b) any member of the proposed personnel,in its capacity as:
 - (a) contractor, consultant or sub-contractor;
 - (b) an associate or employee of a contractor, consultant or sub-contractor; or
 - (c) a joint venture partner.
2. AusAID may:
 - (a) include in the assessment any contractor performance information contained in any internal AusAID contractor performance reporting systems in relation to performance of the Tenderer or proposed management, administrative and Project personnel on previous AusAID activities, providing the contractor has seen the report and has had reasonable opportunity to comment; and
 - (b) take into account relevant performance information provided by external referees in relation to a Tenderer or proposed personnel member obtained by AusAID as a result of inquiries made within the previous twelve (12) months.
3. AusAID reserves the right to use any relevant information obtained in relation to a Tenderer or proposed personnel member obtained either during the Tender period or within the previous twelve (12) month period by providing it to the Technical Assessment Panel (TAP) or to any other relevant person for the purposes of Tender assessment, and such information may be taken into account in the course of assessment of the Tender by the TAP and AusAID. Where information has been received in accordance with paragraph 2 (a) above, this may also be introduced into the TAP process.
4. AusAID may, at any time, make independent inquiries of:
 - (a) any person or entity which it reasonably believes to have actual knowledge of the performance of the Tenderer or proposed personnel member/s on a previous project or activity, whether or not that person or entity is nominated in the Tender as a referee for the Tenderer or proposed personnel member; and
 - (b) any Commonwealth Government department, agency or other government entity in Australia whether Commonwealth or State, or any other country, including law enforcement agencies in relation to a person who is proposed for inclusion in a Tender or a Tenderer.

5. AusAID may request a Tenderer to provide additional or clarifying information in relation to information obtained during the assessment process following the Closing Time for the purpose of assessment of the Tender.
6. Information obtained as a result of inquiries made by AusAID in relation to performance on previous activities will be sought on a confidential basis and AusAID shall not be obliged to disclose the content or source of prior performance information about a Tenderer or individual to any person.
7. AusAID shall not be liable upon any claim, demand, proceeding suit or action by any Tenderer or any proposed personnel member in relation to any matter, thing or issue arising out of or in any way in relation to the collection of information from any source or the use of any information collected pursuant to this Annex in the Tender assessment process.

ANNEX B – TENDERER DECLARATION

I, *[name, address and corporation of person making the declaration]*, do solemnly and sincerely declare that:

1. DEFINITIONS

1.1 In this declaration:

“**AusAID**” means the means the Australian Agency for International Development and represents the Commonwealth of Australia;

“**Services**” means Services to be performed by the Contractor in the *[enter Project name]*;

“**Tenderer**” means *[list name, address and ABN and ACN if appropriate. Note, Tenderers must provide their ABN if they have one. Moreover, if you are a Company and your ACN is not included in your ABN, you must also provide your ACN]*; and

“**Tender Price**” means the total amount excluding Reimbursable Expenses indicated by a Tenderer as being the lowest amount for which that Tenderer is prepared to undertake the Services.

2. BASIS OF DECLARATION

2.1 I hold the position of *[managing director or other title]* of the Tenderer and am duly authorised by the Tenderer to make this declaration.

2.2 I make this declaration on behalf of the Tenderer and on behalf of myself.

3. THE OFFER

3.1 The Tenderer tenders to perform the Services for the Tender Price set out in the Tender, which is submitted as a separate file (for electronic submissions), or in a separate sealed envelope (for hard copy submissions).

3.2 The Tenderer undertakes, if this Tender is accepted and a Contract acceptable to AusAID is executed by both parties, to commence the provision of the Services and to perform them in accordance with the Contract.

3.3 The Tender is accurate in every respect. In particular, I warrant that the information and certification included in each CV submitted in the Tender is accurate, that the proposed team members have been approached and confirmed their availability and that AusAID has the authority to make the inquiries referred according to the CV certification.

3.4 I acknowledge that if the Tenderer is found to have made false or misleading material claims or statements in the Tender or in this declaration, or to have used confidential information, or received improper assistance, AusAID will reject at any time any Tender lodged by or on behalf of the Tenderer.

3.5 I acknowledge and agree to the matters specified in Clauses 14 (AusAID’s Rights) and 15 (Tenderer’s Acknowledgement) of Part 5.

- 3.6 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the Closing Time; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.10 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality.
- 3.11 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in Clause 13 (Ineligibility to Tender) of Part 5 of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.12 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.
- 3.13 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.
- 3.14 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.
- 3.15 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

- 3.16 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.
- 3.17 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the Closing Time.
- 3.18 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a “cover bid”, whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.
- 3.19 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.20 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.
- 3.21 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

I acknowledge receipt of the following Addenda, the terms of which are incorporated in the Tender:

Number _____ Dated _____ Number _____ Dated _____
 Number _____ Dated _____ Number _____ Dated _____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

SIGNED for and on behalf of *insert*)
organisation/ company name ABN (and)
ACN if applicable) by:)

insert name and title

Signature

ANNEX C – CONDITIONS FOR USE OF AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

- 1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at <https://www.tenders.gov.au>.
- 1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
- 1.3 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.
- 1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

- 2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this Clause 2.
- 2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.
- 2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.
- 2.4 Tenderers are required to log in to AusTender and collect addenda as notified.
- 2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.
- 2.6 If a tenderer has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. AUSTENDER HELP DESK

3.1 All queries and requests for technical or operational support must be directed to:

AusTender Help Desk
Telephone: 1300 651 698
Email: tenders@finance.gov.au

The AusTender Help Desk is available between 9am and 5pm Canberra Time, Monday to Friday (excluding ACT and national Australian public holidays).

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

4.1 In submitting their tenders electronically, tenderers warrant that they have taken reasonable steps to ensure that tender response files are free of viruses, worms or other disabling features which may affect AusTender and/or AusAID computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from the evaluation process.

Tender File Formats, Naming Conventions and Sizes

4.2 Tenderers must lodge their tender in accordance with the requirements set out in this Clause 4 for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.

4.3 AusAID will accept tenders lodged in the File Formats for Electronic Tenders specified in the Tender Particulars (Clause 1 of Part 1 of this RFT).

4.4 The tender file name/s must:

- (a) incorporate the Tenderer's company name
- (b) reflect the various parts of the bid they represent, where the tender comprises multiple files;
- (c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
- (d) not exceed 100 characters.

4.5 Tender files:

- (a) must not exceed a combined file size of 5 megabytes per upload;
- (b) should be uploaded from a high level directory on a Tenderer's desktop, so as not to impede the upload process; and
- (c) should be zipped (compressed) together for transmission to AusTender.

- 4.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:
- (a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or
 - (b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.
- 4.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the Closing Time.
- 4.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

- 4.9 Scanned images of signed and/or initialled pages within the tender, including Statutory Declarations and Deeds of Confidentiality, where they are required, are permitted so long as the total file size does not exceed the 5 megabyte limit. The use of scanned or imaged material, where it expands the tender file size beyond the 5 megabyte limit per upload, is prohibited.

5. ELECTRONIC LODGEMENT PROCESS

- 5.1 Before submitting an electronic tender, tenderers must:
- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender's Help guidance, if required, on uploading tenders;
 - (c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;
 - (d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in Clause 4 above or otherwise advised by AusAID or required by AusTender.
- 5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Time.
- 5.3 Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the Closing Time. An error message will be issued if the lodgement process is attempted after the Closing Time.

- 5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.
- 5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated Contact Person (Clause 1 of Part 1) or the AusTender Help Desk (Clause 3.1 above) prior to the Closing Time. Failure to do so will exclude a tender from consideration.

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

- 6.1 Any attempt to lodge a tender electronically after the Closing Time will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.
- 6.2 Where electronic submission of a tender has commenced prior to the Closing Time but concluded after the Closing Time, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, Closing Time.
- 6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the Closing Time and Clause 6.2 above will only apply to the final upload.
- 6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.

7. PROOF OF LODGEMENT

- 7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to Clauses 5.2 and 5.5 above.

8. AUSTENDER SECURITY

- 8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 8.2 Tenderers acknowledge that:
- (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

- (b) AusAID will not be liable for any loss, damage, costs or expenses incurred by tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

PART 6 - STANDARD CONTRACT CONDITIONS

Note to Tenderers: Although these Standard Contract Conditions are presented as **Part 6** of this RFT, in the consolidated Contract Conditions they will appear as **Part B**.

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

"**APS Code of Conduct**" refers to the code of conduct of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

"**APS Values**" refers to the values of the Australian Public Service (for details visit the Internet website address: www.apsc.gov.au).

"**Associates**" means an organisation or organisations whom the Contractor identified in its tender for the Project as an associate or joint venturer or consortium member to provide the Services.

"**Auditor-General**" has the meaning set out in the *Auditor-General Act 1997*.

"**AusAID Confidential Information**" means information that:

- (a) is designated by AusAID as confidential; or
- (b) the Contractor knows or ought to know is confidential;
- (c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;
- (d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:
- (e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or
- (f) has been independently developed or acquired by the Contractor, as established by written evidence.

"**AusAID Eligibility Criteria**" means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at <http://www.ausaid.gov.au/business/contracting/eligibility.cfm>.

"**Business Day**" means a day on which AusAID is open for business.

"**Commonwealth**" means Commonwealth of Australia or AusAID, as appropriate.

"**Commonwealth Procurement Guidelines**" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and departments. Details are available at:

http://www.finance.gov.au/procurement/procurement_guidelines.html.

"**Contract**" means this agreement including all Parts, the Schedules and any annexes.

"**Contract Conditions**" means the provisions contained in Part A "Project Specific Conditions" and Part B "Standard Conditions" of the Contract excluding the Schedules and any annexes.

"**Contract Material**" means all material created or required to be developed or created as part of, or for the purpose of performing, the Services, including documents, equipment, information and data stored by any means.

"**Contractor Personnel**" means personnel either employed by the Contractor or Associates, engaged by the Contractor or Associates on a sub-contract basis, including the Specified Personnel, or agents of the Contractor or Associates engaged in the provision of the Services.

"**Control**" has the meaning given to that term in the *Corporations Act 2001*.

"**Cost**" or "**Costs**" means any actual costs or expenses.

"**Criminal Record Check**" means a check of an individual's criminal history record, conducted by the police or other authority responsible for conducting such checks.

"**Data**" includes any information provided to the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

"**Director of Equal Opportunity for Women in the Workplace**" means the person so named in section 9 of the *Equal Opportunity for Women in the Workplace Act 1999*.

"**Dispute Notice**" means a notice of dispute given by one Party to the other Party under this Contract.

"**Document**" includes:

any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(g) a disc, tape or other article, or any material, from which sounds, images, writings or messages are capable of being reproduced with or without the aid of any other article or device.

"**Encumbrance**" means any lien, mortgage, charge or third party right or interest.

"**Fees**" means the fees for the Services set out in Schedule 2, including Reimbursable Costs.

"Force Majeure Event" means any of the following where they are beyond the reasonable control of the Contractor or AusAID and where they make it impossible to perform the Contract obligation:

acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;

- (h) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (i) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (j) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosion, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly.

"GST" means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Intellectual Property" means business names, copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property.

"Loss" or **"Losses"** means any loss, losses, damage, liability, cost or expense including legal expenses on a solicitor and own client basis.

"MOU" or **"Treaty"** (if any) means the Memorandum of Understanding or treaty in relation to development cooperation, including any related "Subsidiary Arrangement" entered into between AusAID and the government of the Partner Country which deals with a number of governmental arrangements relevant to this Contract.

"NAA" means National Archives of Australia.

"Partner Government" means the Government of the Partner Country.

"Party" means AusAID or the Contractor.

"Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, as set out in section 6 of the *Privacy Act 1988* (Cth).

"Police Clearance Certificate" means the certificate showing the results of a **"Criminal Record Check"**, issued by the police or other authority responsible for conducting such checks.

"Privacy Commissioner" means the person so named in section 19 of the *Privacy Act 1988* (Cth).

"Prior Material" means all material developed by the Contractor or a third party independently from the Services whether before or after commencement of any Services.

"Project Administration and Equipment" means goods and services, such as office furniture, computers, vehicles, communications, utilities and office rent required by the Contractor for the day-to-day administration of the Project.

"Project Specific Conditions" means Contract Conditions in Part A of this Contract.

"Project Start Date" means the date specified in the Project Specific Conditions Clause 2 (Project Commencement) as the date by which the Contractor must commence the Services.

"Project Supplies" means goods provided to the Partner Country by the Contractor during the course of the Project as required by this Contract.

"Reimbursable Costs" means any costs incurred by the Contractor for which AusAID shall reimburse the Contractor as specified in Schedule 2.

"Relevant List" means any similar list to the World Bank List maintained by any other donor of development funding.

"Services" means the services described in Schedule 1 together with any supplies or materials incidental to the services.

"Specified Acts" means classes or types of acts or omissions performed by or on behalf of AusAID which would infringe an author's right of attribution, or integrity, of authorship but does not include those which would infringe an author's right not to have authorship falsely attributed.

"Specified Personnel" means the Contractor Personnel who are identified in Schedule 1.

"Standard Conditions" means Contract Conditions in Part B of this Contract.

"Supplies" means Project Supplies and Project Administration and Equipment purchased by the Contractor for use in this Project.

"Tax" means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other fees, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.

"Working With Children" means working in a position that involves regular contact with children, either under the position description or due to the nature of the work environment.

"World Bank List" means a list of organisations maintained by the World Bank in its "Listing of Ineligible Firms" or "Listings of Firms, Letters of Reprimand" posted at: <http://web.worldbank.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148989&piPK=64148984>

General

- 1.2 In this Contract, including the recitals, unless the context otherwise requires:
- (a) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
 - (b) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;
 - (c) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
 - (d) a word denoting the singular number includes the plural number and vice versa;
 - (e) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
 - (f) a word denoting a gender includes all genders;
 - (g) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
 - (h) where used in the Contract the words “including” or “includes” will be read as “including, without limitation” or “includes, without limitation” (as the case may be);
 - (i) a reference to any contract or document is to that contract or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (j) “shall” and “must” denote an equivalent positive obligation;
 - (k) a reference to any Party to this Contract, or any other document or arrangement, includes that Party's executors, administrators, substitutes, successors and permitted assigns; and
 - (l) a reference to "dollars" or "AUD" is to an amount in Australian currency.

Counterparts of the Contract

- 1.3 This Contract may be executed in any number of counterparts and by the different Parties on different counterparts, each of which constitutes an original Contract. In the event of any discrepancy between the Parties' versions of the Contract, the Contract held by AusAID as the original will prevail.

Contract prevails

- 1.4 If there is any inconsistency (whether expressly referred to or to be implied from the Contract or otherwise) between the Contract Conditions and the provisions in the

Schedules, the Schedules are to be read subject to the Contract Conditions and the Contract Conditions prevail to the extent of the inconsistency.

Inconsistency

- 1.5 If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific Conditions and the Standard Conditions, the Project Specific Conditions are to be read subject to the Standard Conditions and the Standard Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Conditions.

2. SCOPE OF CONTRACT

- 2.1 The Contract sets out the terms and conditions on which the Contractor agrees to secure the aims and objectives of the Project supplying, or procuring the supply of, the provision of the Services.
- 2.2 The activities to be performed and responsibilities assumed by the Contractor are detailed in Schedule 1.
- 2.3 Neither the Contractor, nor Contractor Personnel or Associates, shall by virtue of this Contract be, or for any purpose be deemed to be, and must not represent themselves as being, an employee, partner or agent of AusAID.

3. AUSAID'S OBLIGATIONS

- 3.1 AusAID must:
- (a) make payments to the Contractor in accordance with the Contract; and
 - (b) perform, fulfill, comply with, submit to and observe the terms and conditions of the Contract, which are to be performed, fulfilled, complied with, submitted to or observed by AusAID.

4. NON-EXCLUSIVITY

- 4.1 The Contractor may not be the exclusive provider of services to AusAID similar to those provided under this Contract.
- 4.2 The Contractor must cooperate with any other service provider appointed by AusAID to ensure the integrated and efficient carrying on of the Project and must provide such reasonable assistance to other service providers as AusAID may reasonably request.

5. PROVISION OF SERVICES

- 5.1 In providing the Services, the Contractor must:
- (a) perform the Services as described in Schedule 1 for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;

- (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
- (d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
- (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;
- (f) within the term of the Contract assist AusAID in the maintenance and ongoing implementation of the Services, including monitoring and evaluating the Services to ensure results accord with the aims of the Project, and provide necessary handover assistance to any subsequent service provider and to the Partner Country;
- (g) ensure that the Services are provided to a standard which shall promote Australia's international reputation and standing as a source of skill and expertise in the provision of international assistance;
- (h) perform the Services in a manner which, as far as possible, establishes and maintains a harmonious, cooperative and effective working relationship with stakeholders and any personnel from the Partner Country involved in the Project;
- (i) if a Risk Management Plan for the Project has not been prepared prior to the Project Start Date, the Contractor must prepare a Risk Management Plan within 30 days after the Project Start Date. If requested by AusAID, the Contractor will make the Risk Management Plan available to AusAID;
- (j) whether a Risk Management Plan is prepared under paragraph (i) above, or was prepared prior to the Project Start Date (for example, as part of the Contractor's tender for the Project or as part of the Project Design Document or similar document), the Contractor must maintain and update the Risk Management Plan, as necessary, to ensure that at all times it adequately reflects Project risks and includes risk-minimisation strategies. The Contractor must promptly advise AusAID of any significant risks in accordance with Clause 6 below. The Contractor must also ensure the Risk Management Plan contains provisions for advance notification of AusAID of risks that may lead to disruption or delay of the Project;
- (k) liaise with, and obtain all necessary consents, approvals and authorisations from any public and other authorities in the Partner Country;
- (l) provide adequate support resources to secure the aims and objectives of the Project;
- (m) be responsive to the changing needs and environment of the Partner Country; and
- (n) seek to improve the quality, effectiveness and efficiency of the Services at every opportunity.

5.2 Without limiting its other obligations and liabilities under this Contract, the Contractor must remedy at its cost any failure to comply with its obligations to perform the Services in accordance with this Contract as soon as practicable after becoming aware of the failure.

5.3 The Parties recognise that the performance of the Services may be affected by changes to relevant policy in the Partner Country, and that some flexibility in the performance of the Services shall be required.

6. EARLY NOTIFICATION

6.1 The Contractor must report immediately, and in any event within seven (7) days, to AusAID on any actual, perceived or anticipated problems or risks that may have a significant effect on the achievement of the aims and objectives of the Project, on the cost to AusAID or on the delivery or operation of the Services. If the report is first given orally, the Contractor must promptly confirm the report in writing to AusAID. The Contractor must recommend to AusAID options to prevent or mitigate the impact of problems on the Project.

7. CONTRACTOR PERSONNEL

7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.

7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.

7.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:

- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
- (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
- (c) share information known as a result of their work on, or relationship to, the Project,

in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.

7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.

7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.

7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.

7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.

7.8 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.

7.9 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

8.1 The Contractor must provide all Specified Personnel for the Project and for the minimum periods specified in Schedule 1.

8.2 During the minimum periods specified in Schedule 1, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.

8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:

- (a) are of good fame and character;
- (b) are properly qualified for the tasks they are to perform;
- (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
- (d) are adequately briefed and understand the environment and culture of the Partner Country; and
- (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.

8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in Clause 8.8 below.

8.5 Subject to Clause 8.4 above, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of two (2) weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.

- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;
 - (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
 - (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.
- 8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.
- 8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with Clause 31 of this Part and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

- 9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute AUD250. for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.
- 9.3 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;

- (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
- (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
- (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
- (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
- (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer's requirements.

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

- (a) determine what Supplies are required for proper implementation of the Services and advise AusAID;
- (b) keep AusAID informed of ongoing requirements for Supplies in connection with the Project;
- (c) implement procedures so that procurement is undertaken in a manner that is consistent with the Commonwealth Procurement Guidelines, in particular, observing the Core Principle of achieving value for money and the supporting principles;
- (d) maintain complete and accurate records documenting the procedures followed in procuring, and the particulars of Supplies; and
- (e) use its best endeavours to ensure Supplies are maintained including taking appropriate steps to ensure that manufacturers' warranties of Supplies are secured and warranty conditions followed.

10.2 The Contractor shall bear the loss or damage in respect of Supplies until handover of Supplies to the Partner Government.

10.3 The Contractor must use its best endeavours to ensure all Supplies are free from defects in design, material, manufacture or workmanship. The Contractor must replace defective Supplies under warranty provisions or at its own cost.

10.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at AUD2,000 or more, which at a minimum contains the following information: reference identification number (which may be for example, a serial number, engine number or chassis number); description of the asset; date of procurement; cost; location; current status; and disposal or handover details.

- 10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.
- 10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. SUB-CONTRACTING

- 11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:
- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
 - (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
 - (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:
 - (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding Clauses 15 (Accounts and Records), 18 (Audits), 19 (Access to Premises), 26 (Privacy), and 35.4 (Anti-corruption) of this Part and as required by Clause 3 (Accounts and Records) of Part A as the Contractor; and
 - (iv) be bound by appropriate obligations in relation to ongoing software licensing, computer maintenance requirements and handover arrangements to the Partner Country;
 - (d) if requested by AusAID, the Contractor must provide to AusAID an executed Deed of Novation and Substitution in the form at Schedule 5, contemporaneously with or within ten (10) Business Days of execution of the sub-contract by the Contractor;
 - (e) the sub-contract must include the right of AusAID, in the event of AusAID issuing a notice of substitution under the Deed of Novation at Schedule 5 (Deed of Novation), to further novate the sub-contract to another contractor;

- (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with Clause 27 (AusAID Use of Contract Information) below;
- (g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and
- (h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

11.2 The obligations of Clause 11.1 above apply equally to Associates.

11.3 Despite any consent or approval given by AusAID, the Contractor shall remain at all times responsible for ensuring the suitability of Associates and sub-contractors and for ensuring that the Services are performed in accordance with the Contract.

12. CONTRACT AMENDMENTS AND VARIATION

12.1 The Contractor must not do anything that amounts to a variation of this Contract in whole or in part otherwise than in accordance with this clause.

Contract Amendment

12.2 Changes to Contract Conditions shall not be legally binding upon either party unless agreed in writing and signed by both Parties in the form of a Deed of Contract Amendment.

Contract Variation

12.3 AusAID or the Contractor may propose variations to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services. These changes shall be subject to a "Variation Order" as described below.

12.4 The Contractor must prepare a "Variation Proposal" for any variation sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.

12.5 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.

12.6 No proposed variation must take effect unless it is in writing, titled a "Variation Order" and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in Schedule 4B (Variation Summary Schedule).

Costing Variations

- 12.7 If AusAID approves the Contractor's Variation Proposal including any increase or decrease in the amount payable, implementation shall be effected by issuing a Variation Order in the form of Schedule 4A and the Contractor must promptly perform the variation.
- 12.8 If AusAID does not approve the Contractor's cost estimate in the Variation Proposal and appropriate rates on which to cost the variation are not included in Schedule 2, the Parties undertake to negotiate a fair and reasonable amount within twenty (20) Business Days.
- 12.9 In the event that the Parties cannot resolve a reasonable amount within twenty (20) Business Days, either Party may seek to have an independent third party appointed pursuant to Clause 39 (Resolution of Disputes) of this Part, to determine a reasonable amount and the Parties agree that they shall be bound by that determination.
- 12.10 If AusAID does not approve the Contractor's cost estimate in the Variation Proposal and there are appropriate rates included in Schedule 2, AusAID may nevertheless issue a Variation Order requiring the Contractor to carry out the variation in the form of Schedule 4A and subject to the appropriate rates and fees detailed Schedule 2.
- 12.11 Where no agreement can be reached, AusAID reserves the right to perform itself, or engage another service provider to perform, the services which were the subject of the Variation Proposal.

Omission of Services

- 12.12 AusAID may issue a Variation Order omitting any part, though not the whole, of the Services. AusAID shall notify the Contractor in writing of its determination in respect of the valuation of the omitted services. The value of the omitted Services will be determined in accordance with Schedule 2 having regard to:
- (a) the Services omitted from the Contract;
 - (b) any particular Payment Milestone affected by the omission;
 - (c) other relevant payments; and
 - (d) the extent of the work and/or inputs already performed or provided by the Contractor in respect of any such Payment Milestones.
- 12.13 AusAID will not be liable upon any claim by the Contractor as a result of any part of the Services being omitted, whether or not AusAID performs the omitted Services itself, or engages another service provider to carrying out the omitted Services.
- 12.14 If the Contractor disagrees with AusAID's determination of the value of the omitted Services, based on the rates included in Schedule 2, the Parties undertake to negotiate fair and reasonable amount within twenty (20) Business Days.
- 12.15 In the event that the Parties cannot resolve a reasonable amount within twenty (20) Business Days, either Party may seek to have an independent third party appointed pursuant to Clause 39 (Resolution of Disputes) of this Part, to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

Suspension and rescheduling of Services

12.16 AusAID may issue a Variation Order directing the Contractor to:

- (a) suspend for such time as AusAID thinks fit, the progress of the whole or any part of the Services; or
- (b) reschedule the performance of Services to a time determined by AusAID.

AusAID does not have a duty to exercise this right for the benefit of the Contractor.

12.17 If the suspension or rescheduling is due to:

- (a) an act, default or omission of the Contractor or Contractor Personnel, the Contractor will not be entitled to any Costs or Losses arising from the suspension; or
- (b) any other cause:
 - (i) the Contractor will be entitled to be paid any extra reasonable Costs incurred by it as a result of the suspension subject to the Contractor taking reasonable steps to mitigate the extra Costs incurred;
 - (ii) AusAID's liability under the payments provisions of Schedule 2 shall, in the absence of an agreement to the contrary, abate proportionately to the reduction in the Services.

12.18 Upon receipt of a Variation Order suspending part or all of the Services, the Contractor must:

- (a) stop work as specified;
- (b) take all reasonable steps to minimise any Loss resulting from the suspension and to protect Supplies and Contract Material; and
- (c) continue work on any part of the Services not affected by the suspension.

12.19 The Contractor must promptly recommence the performance of the Services when so directed by AusAID.

13. EXTENSION OF TIME

13.1 Subject to Clause 13.6 below neither AusAID nor the Contractor shall be in breach of the Contract to the extent that performance of their Contract obligations is prevented by any of the following causes ("Relevant Causes") that arise during the term of the Contract:

- (a) a Force Majeure Event;
- (b) a significant change in circumstances beyond the control of the Contractor;
- (c) an Australia-wide or Partner Country-wide industrial dispute; or

- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.
- 13.2 Where in the Contractor's reasonable opinion there is likely to be a delay in the Contractor's discharging an obligation under the Contract because of a Relevant Cause the Contractor must:
- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
 - (b) give details of the likely effect on the Project and any Contractual implications;
 - (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
 - (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Proposal in accordance with Clause 12.5 above; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 13.3 AusAID must give consideration to the Contractor's recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID's approval of a request may be granted subject to conditions.
- 13.4 If AusAID approves in writing a request, the approval should be titled a "Variation Order" and recorded in the Variation Schedule, Schedule 4B (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.
- 13.5 Even if the Contractor has not given notice under Clause 13.2 above, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds forty five (45) Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under Clause 13.6 above takes effect on the date that the notification is received by the Contractor.

- 13.8 In the event of suspension, deletion or termination of Services or the Contract under Clause 13.6 above the Contractor may claim, Fees for Services performed as payable under Schedule 2, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.

14. HANDOVER

- 14.1 The Contractor must within twelve (12) months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Project to the Partner Country in a manner which ensures the Partner Country is able to continue the Project and in particular to manage ongoing maintenance requirements as well as any other matters specified in Schedule 1 and provide a copy to AusAID.
- 14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and six (6) months before the end of the Contract.
- 14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.
- 14.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:
- (a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
 - (c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
 - (d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;
 - (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
 - (f) provide all information necessary for an alternative service provider to assume provision of the Services;
 - (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;

- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

- 15.1 The Contractor must at all times maintain full, true, separate and up-to-date accounts and records in relation to the Fees, Supplies and the Services. Such accounts and records must:
- (a) record all receipts and expenses in relation to the Supplies and Services, including those involving foreign exchange transactions;
 - (b) be kept in a manner that permits them to be conveniently and properly audited;
 - (c) enable the extraction of all information relevant to this Contract;
 - (d) contain details of the disposition of Supplies as agreed to by AusAID such as replacement, write-off or transfer to the Partner Country; and
 - (e) the Contractor shall provide to AusAID a statement of Project expenditure on a regular basis for the duration of the Project. The details of the timing and content of the statement of expenditure are defined in Part A Project Specific Contract Conditions.
- 15.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 15.3 The accounts and records must be held for the term of this Contract and for a period of seven (7) years from the date of expiry or termination of this Contract.

16. REPORTS

- 16.1 The Contractor must ensure that all reports required in accordance with Schedule 1, provide the information required and conform with the quality and format requirements specified.
- 16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.
- 16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. REVIEWS

- 17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.

- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within twenty eight (28) days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
 - (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
 - (g) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

18. AUDITS

- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:
- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
 - (b) providing AusAID with additional documentation to support the claim for payment; or
 - (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.
- 18.2 The Contractor must respond to any notice received under Clause 18.1 above within fourteen (14) days.

- 18.3 Where the Contractor does not respond within fourteen (14) days, or the response does not alleviate AusAID's concern, AusAID reserves the right, if it has not already done so, to direct the Contractor to provide AusAID with certification from an independent auditor as described in Clause 18.1(c) above.
- 18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:
- (a) the terms of reference must be agreed in writing by AusAID;
 - (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
 - (c) the Contractor will bear the total cost of the audit; and
 - (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

19. ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS

- 19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.
- 19.2 Such access must be available to AusAID and its nominees:
- (a) during the hours of 9 am and 5 pm on a Business Day;
 - (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
 - (c) at no additional charge to AusAID.
- 19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.
- 19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

20. PAYMENT

- 20.1 AusAID must make payment of the Fees within thirty (30) days of:
- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in Schedule 2; and
 - (b) receipt of a correctly rendered invoice.

- 20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within thirty (30) days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.
- 20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions Clause 15.1 (Accounts and Records) and may be audited by AusAID in accordance with Clause 17 (Reviews) of this Part.
- 20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.
- 20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within thirty (30) days of receipt of a correctly-rendered invoice.
- 20.8 An invoice is correctly rendered if:
- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
 - (b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with Clause 9.2 of this Part;
 - (c) the invoice is based upon the calculation of Fees referred to in Schedule 2; and
 - (d) a company director of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;
 - (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.
- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed

an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.

- 20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.
- 20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account nominated by the Contractor. The Contractor must provide AusAID with the necessary details as soon as possible following execution of this Contract. Requests to change bank account must be provided to AusAID with forty five (45) days notice.

21. GOODS AND SERVICES TAX

- 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 21.2 The amount shown against each item in Schedule 2 is the 'value' of the 'periodic supplies' to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 21.3 The amount payable under the Contract for each supply listed in Schedule 2 is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.
- 21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.
- 21.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 Subject to Clause 22.2, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.
- 22.2 Clause 22.1 does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this Clause 22.2 includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.
- 22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 23.1 The Contractor must at all times indemnify AusAID, its employees and agents and the Partner Country ("those indemnified") from and against any Loss or liability whatsoever incurred by any of those indemnified or arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such Loss or liability arose out of an infringement, or an alleged infringement, of the Intellectual Property rights of any person, which occurred by reason of the performance or use of the Services.

24. MORAL RIGHTS

- 24.1 The Contractor warrants or undertakes that the author of any Contract Material, other than Prior Material, has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of AusAID in relation to such material used, reproduced, adapted and exploited in conjunction with the other Contract Material.

25. CONFIDENTIALITY

- 25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.
- 25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.

- 25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at Schedule 3, relating to the non-disclosure of that information.
- 25.4 The Contractor may disclose AusAID Confidential Information:
- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;
 - (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
 - (c) if required in connection with legal proceedings,
- but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.
- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.
- 25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.
- 25.7 This clause shall survive expiration or termination of this Contract.

26. PRIVACY

- 26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 26.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.
- 26.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) where that section or NPP is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of a NPP – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorized by this Contract is inconsistent with the NPP;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with a NPP binding a party to this Contract;
- (g) to immediately notify AusAID if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any sub-contractor;
- (h) not to transfer such information outside Australia, except to the Partner Country, or to allow parties outside Australia or the Partner Country to have access to it, without the prior approval of AusAID; and
- (i) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause.

- 26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.
- 26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in Clause 26.4 above.
- 26.6 This clause shall survive expiration or termination of this Contract.

27. AusAID USE OF CONTRACT INFORMATION

- 27.1 AusAID may disclose matters relating to the Contract, including the Contract and the names of sub-contractors as specified in Clause 11.1 (f) above, except where such information may breach the *Privacy Act 1988*, to Commonwealth governmental

departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to the Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

27.2 This clause shall survive termination or expiration of the Contract.

28. PUBLICITY

28.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.

28.2 The Contractor must not make any press, media or other announcements or releases relating to this Contract and the Services without the prior approval of AusAID Public Affairs Group as to the form, content and manner of the announcement or release.

28.3 The Contractor must only use the Australian Government/AusAID logo (in-line version) to denote association with Australia, the Australian Government or AusAID in any publicity or other project related materials. The Contractor must comply with the “AusAID Logo Guidelines for Managing Contractors” at all times, including when advertising for sub-contractors or personnel. The Guidelines are available from the AusAID Business website.

28.4 The Contractor shall, if appropriate, erect a sign at each Project site that acknowledges the contributions of the Australian and Partner Governments. Such signs shall in all cases be discussed and agreed between AusAID and the Partner Government. Signs should use the Australian Government/AusAID logo (in-line version). No independent project or program logos or emblems are to be used. Contractor signs may also be displayed, but not in greater number or prominence than acknowledgments to either the Australian or Partner Governments.

29. WARRANTIES

29.1 The Contractor represents and warrants that it has made its own assessment of all information made available to the Contractor in respect of the Services and sought appropriate professional advice concerning:

- (a) any information, statements or representations;
- (b) the regulatory regime applicable to the delivery of the Services both in Australia and in the Partner Country;
- (c) the assumptions, uncertainties and contingencies which may affect the future business of the Services; and
- (d) the impact that a variation in future outcomes may have on any Services.

29.2 Subject to any law to the contrary, and to the maximum extent permitted by law, AusAID, its employees, agents and advisers each disclaim all liability for any Losses (whether foreseeable or not) suffered by any other person acting on any part of the information made available to the Contractor in respect of the Service, whether or not the loss arises in connection with any negligence, default or lack of care on the part of AusAID, its employees, agents or advisers or any other person or any misrepresentation or any other cause.

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.

30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.

30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au

30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:

- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
- (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

31.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:

- (a) commits a breach of this Contract and:
 - (i) that breach is not capable of remedy;
 - (ii) fails to remedy that breach within ten (10) Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or

- (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
- (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;
- (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
- (d) is wound up by resolution or an order of the court;
- (e) ceases to carry on business;
- (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
- (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this paragraph (n) the Contractor includes Contractor Personnel; or

- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

31.2 If this Contract is terminated under this Clause 31:

- (a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;
- (b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;
- (d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and
- (e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. **TERMINATION FOR CONVENIENCE**

32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.

32.2 Where notice is given under Clause 32.1 the Contractor must:

- (a) comply with all directions given by AusAID;
- (b) cease or reduce (as applicable) the performance of work under the Contract; and
- (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this Clause 32.

32.3 In the event of termination or reduction in scope under this Clause, subject to Clause 32.4, AusAID will only be liable to the Contractor for:

- (a) Fees, as payable under Schedule 2, for Services performed prior to the termination, on a pro rata basis; and
- (b) Costs that are:
 - (i) directly attributable to the termination or reduction in scope of this Contract; and
 - (ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,

to the extent that such Costs are substantiated to AusAID.

32.4 AusAID is not liable for any loss of profits or any other form of expectation loss arising out of, or in connection with, the termination or reduction in scope of this Contract under this Clause 32.

33. INDEMNITY

33.1 The Contractor must at all times indemnify AusAID, its employees, agents and contractors (except the Contractor) ("those indemnified") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Contract.

33.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in Clause 33.1 above for the benefit of each of such persons in the name of AusAID or of such persons.

33.3 The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by AusAID, its employees or contractors (except the Contractor), as substantiated by the Contractor.

33.4 The Contractor is responsible for all risks associated with the Data, the Supplies and any AusAID property while in the possession or control of the Contractor.

33.5 This indemnity shall survive termination or expiration of this Contract.

34. INSURANCE

34.1 The Contractor must arrange and maintain for the duration of the Contract unless otherwise specified:

- (a) public liability insurance with a limit of at least AUD5,000,000 (five million) for each and every claim which covers:
 - (i) loss of, or damage to, or loss of use of any real or personal property; or
 - (ii) personal injury to, illness (including mental illness) or death of any person arising from the performance of the Contract;

- (b) motor vehicle third party property damage insurance;
- (c) workers' compensation insurance:
 - (i) which fully insures the Contractor for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
 - (ii) to be effected in the Partner Country as well as every state or territory in Australia where the Contractor Personnel normally reside or in which their contract of employment was made; and
 - (iii) which, where possible at law extends to indemnify AusAID as principal for AusAID's liability to persons engaged by the Contractor.

Where there is no workers compensation legislation in force in the Partner Country the Contractor should arrange adequate personal accident and illness insurance (accidental death and weekly benefits) for any Contractor Personnel not otherwise covered for the duration of the Contract;

- (d) property insurance covering any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value;
 - (e) professional indemnity insurance to cover the Contractor's obligations under this Contract. The Contractor's professional indemnity policy must respond to claims arising under the *Trade Practices Act (Cth) 1974*, in regard to this Contract. The Contractor may obtain the insurance on an annual basis if necessary, but must maintain the necessary insurance each year until the expiration of three (3) years after the full Term of the Contract or earlier termination of the Contract;
 - (f) adequate medical and dental insurance for Contractor Personnel who are engaged to operate outside their country of permanent residence; and
 - (g) adequate insurance for medical evacuation and evacuation resulting from an insured event for all Contractor Personnel.
- 34.2 The Contractor must, within fourteen(14) days after a request by AusAID, provide for any insurance policy: a certificate of currency, a list of exclusions; and the amount of excess payable.
- 34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.
- 34.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

35. CONFLICT OF INTEREST

Conflict of Interest

- 35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.
- 35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to Clause 35.3 below, that may result in a conflict of interest arising or continuing.
- 35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

- 35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions Clause 31 (Termination for Contractor Default) by notice from AusAID.

36. FRAUD

- 36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 36.5 The Contractor must report in writing within five (5) working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;

- (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg. political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.
- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.
- 36.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
 - (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- 36.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:

- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
- (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.

36.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.

36.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

- (a) Terminate the Contract with the Contractor, in which event, AusAID shall not be liable to the Contractor for any claim, demand, proceeding suit or action by the Contractor, and the Contractor shall indemnify, defend and hold harmless AusAID from any claim, demand, proceeding suit or action from any party or individual resulting from such termination; and / or.
- (b) Not enter into any further agreement with the Contractor until such time as AusAID is satisfied that any recommended changes to the Contractor's management and procedures have been made in order to prevent any further fraudulent activity from occurring and to ensure timely reporting of suspected, attempted or detected fraud to AusAID.

37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

37.1 The Contractor must at all times have regard to and comply with, and use its best endeavours to ensure that all Contractor Personnel comply with, the laws in Australia, the Partner Country and applicable laws of other countries.

37.2 A list, as amended from time to time, of Australian laws that may apply to the delivery of developmental aid to foreign countries can be found on the AusAID website:
<http://www.ausaid.gov.au/business/contracting.cfm>.

This list is not exhaustive and is provided for information only. The provision of this list does not relieve the Contractor from complying with the obligations contained in Clause 37.1.

- 37.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: <http://www.usaid.gov.au/business/contracting.cfm>.
- 37.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this Clause 37.
- 37.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under Clause 31.
- 37.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.
- 37.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:
- (a) the policy Gender Equality in Australia's Aid Program – Why and How (March 2007);
 - (b) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
 - (c) Environment. AusAID is bound by the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - 2. comply with AusAID's Environmental Management System outlined in the *Environmental Management Guide for Australia's Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;

- b. report regularly on any such impacts as required by the Scope of Services; and
- 3. comply with all relevant environmental laws and regulations of the Partner Country.

The *Environmental Management Guide for Australia's Aid Program* can be found at: <http://www.aisaid.gov.au/keyaid/envt.cfm>.

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a "Commonwealth service provider" under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
 - (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
 - (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and
 - (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.
- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. RESOLUTION OF DISPUTES

- 39.1 The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract. Subject to Clause 20.11 (Payment) of this Part and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 39.2 A Party may give the other Party a notice of dispute ("dispute notice") in connection with this Contract. Following the giving of a dispute notice, the dispute must be referred to a senior officer of AusAID and a senior officer of the Contractor, who must use reasonable endeavours to resolve the dispute within twenty (20) Business Days or such other period as is agreed by the Parties.
- 39.3 If the Parties have not been able to resolve the dispute in accordance with Clause 39.2 above, then the Parties may agree on a process for resolving the dispute through means other than litigation or arbitration, including by mediation or conciliation.
- 39.4 In the event that the dispute, controversy or claim has not been resolved within fifty (50) Business Days (or such other period as agreed between the Parties in writing) after the dispute notice has been received in accordance with clause headed 'Notices' in Part B (Standard Contract Conditions) of this Contract, then either Party is entitled to treat the mediation process as terminated and may, if it wishes, commence legal proceedings.
- 39.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

40. NOTICES

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

Waiver

- 41.1 The failure, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred upon that Party by this Contract does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Contract.

Liability of Party

- 41.2 If any Party to this Contract consists of more than one person then the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons.

Entire agreement

- 41.3 This Contract constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Contract is of no force or effect.

Severance

- 41.4 If any provision of this Contract is invalid and not enforceable in accordance with its terms, other provisions that are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

Assignment

- 41.5 No Party may assign or transfer any of its rights or obligations under this Contract without the prior consent in writing of the other Party.

Governing Law and Jurisdiction

- 41.6 This Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and the Parties submit to the exclusive jurisdiction of the courts of the Australian Capital Territory and any court hearing appeals from those courts.

Contra Proferentem

- 41.7 No rule of construction shall apply in the interpretation of this Contract to the disadvantage of one Party on the basis that such Party put forward or drafted this Contract or drafted any provision of this Contract.

False and Misleading Information

- 41.8 The Contractor acknowledges that it is aware that, in relation to section 137.1 of the Commonwealth Criminal Code, giving false or misleading information is a serious offence.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the day of []

in favour of **COMMONWEALTH OF AUSTRALIA** represented by the Australian Agency for International Development ("**AusAID**") which is part of the Department of Foreign Affairs and Trade.

BY [Insert name and address of Recipient] (the "**Recipient**").

RECITALS

- A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.
- B. The Recipient has been engaged by the Contractor to work on the project.
- C. The Recipient will, in carrying out that work, be given access to Confidential Information.
- D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. INTERPRETATION

In this Deed:

"**Confidential Information**" means information that:

- (a) is designated by AusAID as confidential; or
- (b) the Recipient knows or ought to know is confidential,
and includes to the extent that it is confidential:
- (c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;
- (d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

- (e) the Data; and
- (f) personal information under the Privacy Act 1988;
but does not include information which:
- (g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or
- (h) has been independently developed or acquired by the Recipient as established by written evidence.

"Data" includes any information provided to the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

2. NON DISCLOSURE

- 2.1 The Recipient must not copy, reproduce or disclose any of the Confidential Information without the prior written consent of AusAID, which consent AusAID may grant or withhold in its absolute discretion.

3. RESTRICTION ON USE

- 3.1 The Recipient must use the Confidential Information only for the purpose of the Services.

4. DELIVERY UP OF DOCUMENTS

- 4.1 AusAID may, at any time and without notice, demand, either orally or in writing, the delivery to AusAID of all documents in the possession or control of the Recipient which contain the Confidential Information.

5. SURVIVAL OF OBLIGATIONS

- 5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence)
of:)
Signature of

.....
Signature of witness

.....
Name of witness
(Print)

SCHEDULE 4A – VARIATION ORDER PRO FORMA

VARIATION ORDER NO. #

FOR CONTRACT #

between

COMMONWEALTH OF AUSTRALIA

represented by

The Australian Agency for International Development

(AusAID)

and

CONTRACTOR'S NAME

ABN #

in relation to

CONTRACT TITLE

VARIATION ORDER No. # UNDER CLAUSE # OF CONTRACT #

TO: CONTRACTOR – *insert Name*

FROM: AusAID

1. This Variation Order is given pursuant to Standard Condition clause headed **Amendments and Variation** in the Contract.
2. The Contract *Schedule 1 and/or Schedule 2* is varied as follows:

EITHER *detail here under the headings of:*

3. **SERVICES**
4. **COMMENCEMENT AND COMPLETION OF SERVICES**
5. **REPORTING REQUIREMENTS**

OR *where variation requires a reissue of Schedules 1 and/or 2. Use paragraphs 6 and/or 7 as appropriate.*

6. Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.
7. Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.
8. There will be an *increase/decrease/no change* of AUDx,xxx.xx in the financial limit of this Contract for the performance of these Services.
9. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely

FMA Section 44 Delegate
Insert date

SCHEDULE 4B - VARIATION SUMMARY SCHEDULE

The Contract has been varied in accordance with Standard Condition clause headed **Amendments and Variation** of the Contract on the following dates relating to:

Variation Order #	Date signed by AusAID	Very Brief Summary of variation	Increase/Decrease in financial limit	Adjusted Financial Limit

SCHEDULE 5 – DEED OF NOVATION AND SUBSTITUTION

This **DEED OF NOVATION AND SUBSTITUTION** made the _____ day of

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development of the Department of Foreign Affairs and Trade (“**AusAID**”)

AND:

[_____ ABN _____ of _____] (the “**Subcontractor**”) of the second part;

AND:

Contractor's Name ACN# of Contractor's Address (the “**Contractor**”) of the third part.

WHEREAS:

- A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.
- B. The Subcontractor is a subcontractor to the Contractor for the Services.
- C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under Clauses 31 and 32, Part B of the Contract.
- D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under Clauses 31 and 32, Part B of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. DEFINITIONS

“**Business Day**” means a day on which trading banks are open for business in Canberra;

“**Commencement Date**” has the same meaning as in the Contract;

“**Contract**” means the Contract for the provision of Services between AusAID and the Contractor dated on or about [_____];

“**Deed**” means this Deed of Novation;

“**Services**” means the services to be provided by the Contractor to AusAID under the Contract;

“**Party**” means AusAID, the Subcontractor or the Contractor;

“**Subcontract**” means the contract between the Contractor and the Subcontractor for the provision of the Subcontractor Services; and

“**Subcontractor Services**” means the services that the Subcontractor is obliged to provide to the Contractor under the Subcontract.

2. APPLICATION OF DEED

2.1 The Contractor and the Subcontractor agree that:

- (a) this Deed is entered into for the benefit of AusAID; and
- (b) AusAID may exercise the rights granted to it under this Deed.

2.2 This Deed commences on the Commencement Date of the Subcontract.

3. NOVATION

3.1 AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under Clauses 31 or 32, Part B of the Contract.

3.2 The Parties agree that on and from the date of issue of a notice of substitution:

- (a) AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;
- (b) AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;
- (c) subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and
- (d) the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

3.3 If AusAID exercises its rights of novation under this deed, AusAID may further novate the Subcontract by substituting a new contractor in place of the Contractor on the terms of this deed with appropriate alterations. In the event of such novation, the rights and obligations of the Subcontractor with respect to the Contractor shall become the rights and obligations of the Subcontractor with respect to the new contractor.

4. RELEASE

4.1 Except in relation to payment due from the Contractor to the Subcontractor under the Subcontract but unpaid on the date of issuing of the notice of substitution referred to in Clause 3 of this Schedule, the Contractor releases and discharges AusAID from any and all claims, actions, proceedings, obligations and liabilities (whether based in negligence or any other form of legal liability) in respect of or in any way arising from the Subcontract prior to the date of the notice of substitution in respect of the Subcontractor Services.

5. FURTHER ASSURANCES

- 5.1 Each Party must take such steps, execute all such documents, and do all such acts and things as may be reasonably required by the other Party to give effect to any of the transactions contemplated by this Deed.

6. DISCHARGE

- 6.1 Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.
- 6.2 The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in Clause 3 of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.
- 6.3 This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.
- 6.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

7. NOTICES

- 7.1 A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:
- (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or
 - (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

Address of Party

- 7.2 For the purposes of this clause, the address of a Party is the address set out below or another address of which that Party may from time to time give notice to each other Party:

AusAID

To: **Desk Name**
Attention: Country Program Manager
Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
Facsimile: **Desk Fax**

Contractor

To: **Contractor's Name**

Attention:

Address: **Contractor's Address**

Facsimile: **Contractor's Fax**

Subcontractor

To:

Attention:

Address:

Facsimile:

8. LAWS

8.1 This Deed is subject to and construed in accordance with the laws in force in the Australian Capital Territory.

9. WARRANTY

9.1 The Subcontractor and the Contractor each warrant and represent to AusAID that at all times:

- (a) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;
- (b) the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;
- (c) this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and
- (d) to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. GENERAL

Counterparts

10.1 This Deed may be executed up to three (3) counterparts and all of those counterparts taken together constitute one and the same instrument.

Attorneys

10.2 Where this Deed is executed on behalf of a Party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this Deed on behalf of that Party.

Further Assurance

10.3 Each Party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from another Party effectively to carry out and give full effect to this Deed and the rights and obligations of the Party under it.

Assignment

10.4 No Party may assign or transfer any of its rights or obligations under this Deed without the prior consent in writing of the other Parties. AusAID may withhold its consent in its absolute discretion.

EXECUTED as a Deed.

SIGNED, for and on behalf of the)
COMMONWEALTH OF)
AUSTRALIA in the presence of:)
) Signature

.....

Signature of witness
Name of witness
(*Print*)

SIGNED for and on behalf of)
[Subcontractor] by:)
.....

Director
Name of Director
(*Print*)

Director/Secretary
Name of Director/Secretary
(*Print*)

SIGNED for and on behalf of)
[Contractor] by:)
.....

Director
Name of Director
(*Print*)

Director/Secretary
Name of Director/Secretary
(*Print*)

SCHEDULE 6 - UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED POLL made

20

BY:

[]

(the “Guarantor”)

FOR THE BENEFIT OF:

COMMONWEALTH OF AUSTRALIA (represented by the Australian Agency for International Development of the Department of Foreign Affairs and Trade (“AusAID”).

RECITALS:

- A. AusAID and *[to be inserted]* (hereinafter called the “Contractor”) have agreed to enter into a contract for the provision of services in [] (“the Contract”).
- B. The Contractor has agreed to provide to AusAID prior to execution of the Contract a performance security in respect of the services to be performed by the Contractor in accordance with the executed Contract.
- C. The Contractor has agreed that the performance security shall be in the form of an unconditional and irrevocable financial undertaking of [to be inserted] for the period of [to be inserted] (“the Undertaking”).
- D. The Guarantor has signed this Deed Poll at the request of the Contractor and in consideration of AusAID accepting the Undertaking.
- E. AusAID shall enter into the Contract with the Contractor on condition that the Contractor provides the Undertaking and the Guarantor signs this Deed Poll.

THE GUARANTOR DECLARES as follows:

- 1. The Guarantor unconditionally undertakes and covenants to pay to AusAID on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by AusAID to a maximum aggregate sum of [].
- 2. The Guarantor’s liability under this Undertaking shall be a continuing liability and shall continue until payment is made under this Undertaking of the said maximum aggregate sum or AusAID notifies the Guarantor that this Undertaking is no longer required.
- 3. This Undertaking shall be governed by and construed in accordance with the laws for the time being in force in the Australian Capital Territory.
- 4. The Guarantor may at any time pay to AusAID the maximum aggregate sum or such lesser sum remaining after any part payment or payments, which payment shall discharge this Undertaking.

EXECUTED as a deed poll.

SIGNED, for and on behalf of **the**
GUARANTOR, **by:**

Signature of Director

Signature of Director/Secretary

Name of Director
(Print)

Name of Director/Secretary
(Print)

OR

SIGNED, for and on behalf of **the**
GUARANTOR **under power of attorney in**
the presence of:

Signature of attorney

Signature of witness

Name of attorney
(Print)

Name of witness
(Print)

Date of power of attorney

notwithstanding that the Contractor has been dissolved or is subject to external administration procedures under chapter 5 of the *Corporations Law* or any other law.

7. The guarantee in this Deed is a continuing guarantee to AusAID until the obligations and liabilities of the Contractor under the Contract have in all respects been performed, observed and discharged.
8. The following notice arrangements apply:
 - (a) notice or other communication which may be given to or served on the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing, signed on behalf of AusAID and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to AusAID from time to time;
 - (b) a notice or other communication which may be given to or served on AusAID under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to AusAID at the address set out above or such other address as is notified in writing to the Guarantor from time to time;
 - (c) a notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically shall be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.

SIGNED, for and on behalf of the)
COMMONWEALTH OF)
AUSTRALIA by:)

In the presence of:

..... Name and Position
Signature of witness (*Print*)

.....
Name of witness (print)

SIGNED, for and on behalf of)
[Guarantor] by:)
)

.....)
Director Director/Secretary
Name Name
(*Print*) (*Print*)



Date: 12 May 2009

Pages: 1

Subject: Addendum 1 to the Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility) Request For Tender of 2 May 2009

Tenderers are advised of the following changes to the Request for Tender (RFT):

1. Delete Clause 2.1 (Pre-Tender Briefing) of Part 1 and replace with new Clause 2.1 as follows:

“2.1 AusAID intends to hold a pre-tender briefing starting at 10:00am on Thursday 14 May 2009, in the Multiara 12 Meeting Room on Level 3 of the Ritz Carlton Hotel, Jl. Lingkar Mega Kuningan Kav E. 1.1 No.1, Mega Kuningan, Jakarta, Indonesia.”

All other information as set out in the RFT dated 2 May 2009 remains unchanged.



Date: 26 May 2009

Pages: 6

Subject: Addendum 2 to the Australian Indonesia Partnership for Economic Governance Facility RFT of 2 May 2009.

Tenderers are advised of the following:

Clarifications to the RFT

1. Delete the reference to 'quarterly' in Clause 8.12, Part 1 and replace with 'monthly'.
2. References to the "Manual of Operations" referred to in Clause 13 Part 2 are the same as references to the "Financial Operations Manual" referred to in Clause 7.5 Part 3.

Further information about the Services sought through the RFT

3. Can AusAID please provide a comprehensive list of previous and current TAMF 3 activities, including details of periods and conditions of contract that will need to be novated to the successful Tenderer?

A: This information has been provided in Attachments 1 and 2 to this Addendum. Tenderers should note that whilst this list provides all the current activities underway, it is not clear at this stage exactly how many of these activities will continue beyond TAMF III and so may not all be novated. AusAID will provide further details of the exact activities requiring novation closer to the time. Tenderers should also note that it is anticipated that there will be a staggered novation of personnel commencing in October 2009.

Questions raised by interested Tenderers at the pre-tender briefing held on 14 May 2009

4. Will Tenderers be able to obtain a copy of the presentations from the pre-tender briefing?

A: Yes, the presentations are available at Attachment 3 to this Addendum.

5. Is there a requirement for a Contractor to be any particular size, or to have certain assets or capital, or be from Australia or New Zealand?

A: As per Clause 4.1 of Part 1 of the RFT there are no eligibility restrictions for this Tender.

Consortiums

6. Will the Contractor cover all the projects (sub facilities) or do they need to form a consortium of sub-contractors to manage each of sub-facility (e.g. debt management, tax)?

A: It is the Tenderers' discretion as to whether the Tender is submitted by an individual organisation or submitted by a consortium with a lead organisation. As per Clause 8.1 and 8.3 of Part 5, AusAID will contract with a single legal entity.

Consortium members have discretion to determine how the activities will be delivered but must specify the delivery and consortium member responsibilities in Tender Schedule A of Part 1 and Annex 5 (Clause 6.3) of Part 1.

Sub-contracting

7. Who is a sub-contractor responsible to, is it directly to the main Contractor or AusAID?

A: Any sub-Contractors would be responsible to the Contractor and as per Clause 9.5 of Part 5, the Contractor is fully responsible for all sub-contracted services. Tenderers should also note Clause 8 of Part 2 regarding sub-contracting.

Personnel

8. Should the proposal mention the names of pre-appointed candidates for the positions of Facility Director (deputy) and Facility Design & Management Mentor or should the Facility Director (deputy) and Facility Design & Management Mentor and other experts be selected through advertising after the Contractor appointed?

A: Yes, Tenderers are to provide the names and other details as stated in Table 1, Tender Schedule B of Part 1 for nominated Specified Personnel.

9. The Terms of Reference (ToRs) for the Organizational Development Adviser and the Economic Policy Adviser do not appear to be in the PDD; would it be possible to request these ToRs?

A: All the required position descriptions are included in Annex 1, Part 3 of the RFT. Tenderers should be responding to the RFT and not the PDD.

10. Would it be possible to reconfirm whether or not the MIS Coordinator position (listed in the RFT) is the same as the Database Coordinator position (listed in the PDD)?

A: Yes, the position known as the Database Coordinator in the PDD has changed to the Management Systems Information (MIS) Coordinator in the RFT.

11. Annex 5 of the PDD (p. 24) states that the Economic Governance/Public Sector Reform Specialist and the M&E Specialist are part of the Facility Evaluation Team and it appears that these positions are to be nominated by AusAID. Are these the same positions as those mentioned in the Reimbursable Short Term Personnel Table (Table 4A/4B of Part 1 of the RFT)?

A: Clause 5.12 of Part 3 of the RFT states that the Facility Evaluation Team (FET) is a three person team engaged by the Contractor and those positions will be reimbursed as short term personnel shown in Table 4A/4B of Part 1.

12. Are the positions identified in Table 4A/B mandatory positions, or can the Tenderer change them if they wish?

A: The positions identified in Table 4A/B are mandatory positions.

13. The list of personnel in Table 4A of Part 1 is different to the list of short term personnel in the technical support pool at 5.18 of Part 3. How does the list of personnel in Table 4A relate to the list of technical support pool personnel in Part 3?

A: Yes, the technical support pool shown at Clause 5.18 of Part 3 is different to the short-term personnel listed in Table 4A/4B of Part 1. Positions required in Table 4A/4B of Part 1 refers to those identified by Tenderers in Annex 3 (Clause 6.3) of Part 1 and the Facility Evaluation Team identified in Clause 5.12 of Part 3.

Technical Support Pool personnel will be engaged in consultation with AusAID following contract award and funded through the imprest account.

14. Clause 8.13 of Part 1 states that "Tenderers must detail in the following Tables the costs of all required personnel in the format provided". Does this mean that the seven positions shown in italics in the left hand column of Tables 3A and 3B need to be costed in Tables 3A and 3B and also need to be included in the Annex 3 of Part 1 (Clause 6.3 team number inputs bar chart)?

A: The additional personnel identified in Table 3A in italics are indicative positions that may be filled by the Contractor if required (refer to Clause 7.3 of Part 3). Tenderers may nominate any additional positions they deem necessary. All positions deemed necessary by the Contractor are to be included in Annex 3 of Part 1 (Team Member Inputs Bar Chart).

15. Do Tenderers have to provide the names and CVs of positions other than the 3 key personnel?
- A: No. CVs are only required for the 3 key personnel, however bidders should identify costs associated with other long term and short term personnel required, and as set out in Tables 3A/B and 4A/B of Part 1. The other positions will be subject to separate recruitment processes by the Contractor after Facility mobilisation.
16. Why are there 2 M&E positions identified under Tables 4A/B for short term personnel?
- A: The two M&E positions are for one Indonesian member nominated by Government of Indonesia and the other is for an international expert nominated by AusAID and/or the Contractor.
17. Re-RFT Part 3 page 9: Where is the Contractor Rep on the joint appraisal panel drawn from?
- A: The Contractor's Management Support Team
18. Is the Activity Design Mentor a 2 or 3 year position, can AusAID clarify this as it is unclear from references in RFT.
- A: 3 year position
19. The job description of the Facility Director states it requires fluency in Indonesian – is this an essential or desirable criteria for this position?
- A: It is a desirable and important criterion for either the Facility Director or Deputy Director to be fluent in Indonesian.

Financials

20. Clause 8.12 of Part 1 states that 'Reimbursable Costs will be paid quarterly in arrears and be inclusive of Long and Short Term Personnel costs ...' which is inconsistent with Clauses 4.2 and 5.2 of Part 4 which state that payments for Long and Short Term Personnel will be paid monthly on a reimbursable basis in arrears. Can AusAID advise whether these payments will be monthly or quarterly?
- A: Refer to Item 1 of this Addendum.
21. Clause 7.3 of Part 4 states that "Any Long Term Adviser positions shall be paid in accordance with the conditions detailed in Clause 2 of this Schedule 2". Does AusAID mean in Clause 4 - since Clause 2 is Fixed Management Fees? and if so, why is this sentence in Clause 7.3 under the Imprest Account?

A: Yes, Long Term Adviser positions shall be paid in accordance with Clause 4 of Part 4.

22. Clause 2.2 (c) of Part 4. Can AusAID remove the word “reimbursed” from the first sentence and delete the second and third sentences from this sub-Clause. Fixed Management Fees are not “reimbursable” and the Contractor should be able to make their own decisions on the flight class for their head office staff assigned to the project.

A: Clause 2.2 (c) of Part 4 has been amended as follows:

2.2 (c) “Airfares for Contractor representative and head office staff;”

23. Clause 6.1 of Part 4: is the \$2,620,750 Reimbursable Procurement and Operational Costs amount for the first 3 years or 6 years?

A: 3 years.

24. What is the financial limit of the project?

A: As stated in the PDD the financial limit over the 6 year period is A\$66 million, however actual expenditure will be subject to AusAID’s parliamentary allocation. The RFT is for a period of 3 years and sets limits for the Imprest Account of A\$20 million and procurement and operating costs of A\$2,620,750.

25. Clause 7.4 (a) of Part 3: will the recruitment costs referred to therein be reimbursed from the Reimbursable Procurement and Operational Costs under Part 4 Clause 6.3?

A: No, Clause 6.2 of Part 4 refers to reimbursement of procurement and operational costs and does not list recruitment as a reimbursable item. Please refer to Clause 2.2 (f) of Part 4 which states that “Fixed management fees include but are not limited to ... (f) all other costs not listed as reimbursable items.”

General

26. What is the current status of the ANZOG proposal?

A: Their proposal has stalled in the last six months. This is the last year of the Government Partnerships Fund (GPF) so it is not clear if they can mobilise support before GPF finishes. It may be picked up in next phase of GPF instead.

27. What is the limit of the file size for electronic submission?

A: Refer to with Clause 4 of Annex C Part 5.

28. Please confirm the page limits of the Tender submission.

A: Tenderers should refer to information as described in Tender Schedule A, Part 1.

29. Can we provide details on individual's personnel experience in the Past Experience Forms?

A: No, the Past Experience forms are for information on the firm itself or consortia. Past information on key personnel should be included in the CVs.

30. Re- Clause 10.2 of Part 1 – please clarify what the property insurance is to cover.

A: Refer Clause 34 of Part 6.

31. What is the role of the Australian New Zealand School of Government?

A: This is yet to be determined.

32. Can AusAID please provide details of ongoing activity of the Government Partnerships Fund?

A: This information is provided in Attachment 4 to this Addendum.

Attachments to this Addendum

1. Information on current sub-activities
2. Information on personnel novation conditions
3. Pre-tender Briefing presentations
4. Government Partnerships Fund summary brief

All other information as set out in the RFT dated 2 May 2009 and Addendum 1 of 12 May 2009 remains unchanged.

Policy Area / Program / Activities					
A. ACHIEVING FISCAL SUSTAINABILITY					
TAX ADMINISTRATION REFORM			Period		Status
			Start date	Finish Date	
1	Tax Potency and Revenue Forecasting		13-Jul-07	31-Dec-08	Ongoing
2	Communication Specialist Support (Phase 3)		5-Jan-09	19-Jun-09	Ongoing
3	Taxpayer Office Taxpayer Follow-up Surveys		16-Mar-09	16-May-09	Ongoing
4	Tax Administration Sub Facility Continuation		13-Jan-09	31-Aug-09	Ongoing
5	Learning and Development Review		1-Apr-09	31-Oct-09	Ongoing
6	Data Base Clean Up & restructuring Support		18-Feb-09	31-Jan-10	Ongoing
7	Tax Benchmarking Support		27-Feb-09	30-Sep-09	Ongoing
8	Outbound Call Center Continuation		1-Jan-09	30-Jun-09	Ongoing
9	Revenue Initiatives				Proposed
10	Communication Support Cont.				Proposed
11	Learning and Development Follow on				Proposed
12	Small Tax Payer Survey				Proposed
DEBT & CASH MANAGEMENT					
1	Directorate General Debt Management (DGDM) Information Communication Technology (ITC) Support		1-Feb-09	31-May-09	Ongoing
2	Government Securities Survey Development		1-Jun-09	30-Sep-09	Ongoing
3	Islamic Finance Asia Summit 2009		27-Apr-09	30-Apr-09	Ongoing
4	Training/Conference Support				Proposed
5	DGDM ITC Support Continuation				Proposed
6	Government Securities Survey Development - continuation				Proposed
B. FINANCIAL SECTOR STRENGTHENING					
FINANCIAL SYSTEM STABILITY					
1	Human Resource (HR) Support		1-May-07	30-Nov-08	Ongoing
2	Assistance for Coordinating Ministry for Economic Affairs (CMEA)		15-Nov-07	30-Nov-08	Ongoing
3	Financial Sector Taxation Review		16-May-08	30-Nov-08	Ongoing
4	Review of Indonesia's Pension Regime		14-Apr-09	30-Jun-09	Ongoing
5	Financial Sector Strengthening Sub Facility Continuation		20-Jan-09	31-Aug-09	Ongoing
6	Assistance for Financial Stability Committee Secretariat and Financial Sector Assessment Program (FSAP)		1-Mar-09	31-Aug-09	Ongoing
7	Insurance Bureau support				Proposed
ANTI MONEY LAUNDERING					
1	IT Programming Support		1-Mar-09	30-Nov-09	Ongoing
C. PROMOTING GROWTH					
INTERNATIONAL TRADE POLICY					
1	Trade Sector Research: Health and Education		9-Jun-09	31-Oct-09	Ongoing
2	Int'l Trade Sub-Facility Continuation		11-Jul-09	31-May-09	Ongoing
3	Trade Policy Advice Reports: Business & Construction Services		19-Feb-09	31-Aug-09	Ongoing
4	Service Sector Study X 2				
5	Negotiation Guide - Socialization				
6	Identification of Restrictions on Services in Indonesia's Export Markets				
D. IMMEDIATE & EMERGING ISSUES					
Ongoing					
1	Economic Package		21-Sep-08	30-Sep-09	Ongoing
2	Communication Technical Assistance : Ministry of Finance		7-Apr-08	31-Jan-09	Ongoing
3	Climate Change		30-Mar-09	30-May-09	Ongoing
4	Central HRM Support: Continuation		13-Apr-09	31-Aug-09	Ongoing
5	Natural Resource Management		20-Mar-09	30-Apr-09	Ongoing
6	Bappenas Performance Management		13-Mar-09	31-Jul-09	Ongoing
7	Climate Change Continuation				Proposed
8	Natural Resource Management Continuation				Proposed
9	Ministry of Finance Leadership Training				Proposed
10	Central HR Continued				Proposed

	TOTAL Nov 15th - Dec 31st	Terms and Conditions Summary
Adviser A	68,000.00	One LA has 3 Business Class Flights to home base to the value of \$21,000; One has 3 economy Class Flights to home base to the value of \$7,000; One has travel not stipulated, ie. flights costs are wrapped up his daily fees; All get a \$1,500 - 2000 visa allowance
Adviser B	56,000.00	
Adviser C	50,000.00	
	174,000.00	

AIPEG Facility Overview

Pre Tender Briefing

Australia Indonesia Partnership for
Economic Governance (AIPEG) Facility

Jakarta, 14 May 2009

The Context

- Technical Assistance Management Facility for Economic Governance
 - Around \$25 million over five years
 - Well reviewed and received
 - Concludes in 2009
- Features
 - Flexibility & Responsiveness
 - Government of Indonesia Leadership

The AIPEG Design

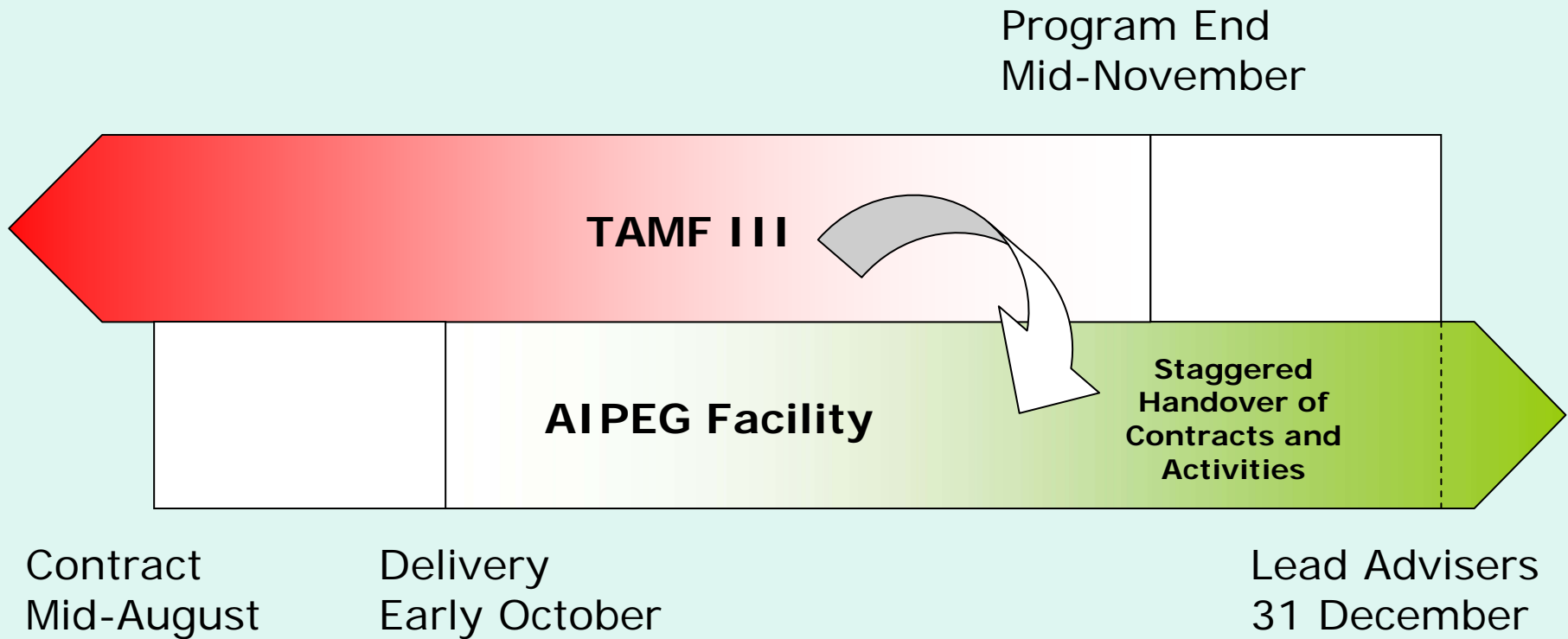
- Priorities for the Government of Indonesia
 - Retain the best features of TAMF
 - Continuity of support
- The balance between Technical Assistance and Capacity Building
- Increasing emphasis on institutional strengthening

AIPEG Pillars

- Taxation
- Financial System Stability
- Trade
- Debt Management
- Immediate and Emerging Issues
- Public Financial Management
- Policy Coordination

Ensuring Continuity

- Six week overlap between TAMF & AIPEG
- Advisory Board has agreed a program of activity for TAMF/AIPEG to 31 December
- Lead Advisers are also contracted until 31 December 2009
 - Lead Adviser contracts to be novated from TAMF to AIPEG
- Some other contracts may also be active



Six-Week Transition Period

Themes

- One Australia Program
 - Engagement with AusAID Country Economist
 - Collaborative relationship with the Government Partnerships Fund
- Scaling Up
 - The potential to use multi-donor mechanisms and Government systems
 - Needs to be regularly tested

Themes

- Linkages with AusAID's sub-national program
 - Public Financial Management sub-facility to be focussed on DG Fiscal Balance
- Aid Effectiveness
 - The need to demonstrate results for both TA and capacity building activities

Issues

- The importance of relationship management
- Possible change in counterparts following the elections



Australia Indonesia Partnership

Kemitraan Australia Indonesia





Australian Government

AusAID

Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility)

Request for Tender (RFT)
Pre-Tender Briefing – 14 May 2009
Jakarta

Simone Patton – Procurement Management Group
Byron Singline - Procurement Management Group



Structure of the RFT

- > Two Sections, 6 parts:
- > Section 1
 - Project Specific Tender Conditions
 - Project Specific Contract Conditions
 - Draft Scope of Services
 - Draft Basis of Payment
- > Section 2
 - Standard Tender Conditions
 - Standard Contract Conditions



Australian Government

AusAID

Links

Tenderers are encouraged to familiarise themselves with the following documents available on the Ausaid website:

>the AusAID contracts charter:

(<http://www.ausaid.gov.au/business/pdf/charter.pdf>);
and

>the Commonwealth Procurement Guidelines (CPGs)

(http://www.finance.gov.au/procurement/procurement_guidelines.html)



Australian Government

AusAID

AusAID policies

Tenderers are expected to be compliant with AusAID policies :

- > Be familiar and compliant with overarching policies including Gender Equality and Development, and the Environment Policies, in the context of the Facility role and program
- > <http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>
- > Recent additions to be aware of:
 - > Child Protection Policy (2008) – to provide a framework for managing and reducing risks of child abuse by persons engaged in delivering Australian aid program activities; and
 - > Development for All (2008) – to ensure that people with disability are included and supported in improving their quality of life through all aspects of the aid program.



Australian Government

AusAID

Closing Time

- >Tender closing Time
 - 2.00 pm, Tuesday 16th June 2009

- >Mode of submission:
 - Electronic or Hard Copy



Australian Government

AusAID

Electronic Submission

Must be submitted via AusTender at <http://tenders.gov.au> before Tender Closing Time.

- PDF noting file formats and size limits
- Technical Proposal (Tender Schedule A)
- Specified personnel (Tender Schedule B)
- Financial Proposal (Tender Schedule C)
- Financial Assessment (Tender Schedule D)
- Tenderer's Declaration



Hard Copy Submission

- > Must be deposited in the Tender Box before Tender Closing Time
- > Tender Box located on the Ground Floor of AusAID, 255 London Circuit, Canberra ACT 2601
 - One Original and 1 Copy
 - Technical Proposal (Tender Schedules A and 6 Annexes as outlined in RFT; plus Tenderers Declaration)
 - One Original only
 - Financial Proposal (Tender Schedule C)
 - Financial Assessment Material (Tender Schedule D)
 - One CD



Tender Schedule A: Technical Proposal

Tender Schedule A : Technical Proposal (Response to Selection Criteria)

> Limited to ten (10) pages maximum plus annexes:

> **Selection Criteria**

A. MANAGEMENT CAPABILITIES (25% weighting)

B. APPROACH TO PROGRAM (35% weighting)

C. PERSONNEL (40% weighting)

i) Facility Director (25%)

ii) Other Key Team Members (15%)



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Tender Schedule A: Technical Proposal

- > Response to Selection Criteria
 - Annex 1 – Past Experience Forms
 - Annex 2 – Work Plan
 - Annex 3 – Team Member Inputs Bar Chart
 - Annex 4 – Risk Management Critique
 - Annex 5 – Letters of Association
 - Annex 6 – Commonwealth Government Policies Compliance



Australian Government

AusAID

Tender Schedule B: Specified Personnel

- > Three (3) Specified Personnel:
 - Facility Director
 - Deputy Facility Director
 - Activity Design and Management Mentor
- > CV length up to 4 pages per person
- > Select appropriate, independent referees
- > Conflict of Interest



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Tender Schedule C: Financial Proposal

- > Fixed Management Fees
 - include escalator
- > Breakdown of Management Fees
- > Reimbursable Costs
- > Fees for Option to Extend
 - include escalator
- > Insurances
- > Imprest Account
- > Total Tender Amount



Australian Government

AusAID

Tender Schedule D: Financial Assessment

- > New Procedure for this RFT:
 - independent financial assessor to undertake evaluation directly, who will contact tenderers after shortlisting to gather necessary records to undertake the assessment.
- > Tenderers don't need to submit additional financial records or documentation to AusAID
- > Financial records provided to the assessor and available to AusAID, but not provided to the TAP and will be treated and stored confidentially. Financial assessor's report on capacity of the Tenderer to undertake the Contract may be provided to either the TAP or AusAID delegate, should TAP chair deem it necessary.



Australian Government

AusAID

Questions on RFT

- > To be submitted in writing to aipegtender@ausaid.gov.au
- > Can be submitted anytime prior to close of business (AEST) Wednesday 3rd June.
- > Will be answered by issue of a public addendum to the RFT via AusTender before close of business Wednesday 10th June.



Assessment – Evaluation Process

- > Combines technical assessment with an assessment of value for money.
- > Technical Assessment Panel (TAP) consists of three to five members with a combination of skills and experience, and may include AusAID staff, partner country representatives and external, independent consultants.
- > TAP members will make individual assessments against the selection criteria using all information provided in Tender Schedule A and B (including all Annexes).
- > The TAP's objective is to rank bids on the basis of technical merit against the criteria.



Australian Government

AusAID

Assessment Process

- > Check bids for conformance to tender requirements.
- > Assess bids against Selection Criteria and establish shortlist.
- > Interview shortlist and confirm technical rankings.
- > Review value for money assessments.
- > Confirm financial capacity.
- > Negotiate contract with successful tenderer.
- > Notify unsuccessful bidders.



Value for Money

- > The Financial Management and Accountability (FMA) Act requires AusAID to achieve a value for money outcome.
- > Value for money means “the best available outcome when all relevant costs and benefits over the procurement cycle are considered”.
- > There is no formula to assess value for money.
- > Cost is not the sole determining factor in assessing value for money.
- > Lowest price is not a reliable indicator of value for money.



Some considerations AusAID considers when assessing Value for Money

- > Performance history of each tenderer:
 - A record of achievement?
 - Able to deliver quality outcomes, on time and on budget?
 - Previous clients satisfied?
- > Flexibility to adapt to change:
 - Does your proposal recognise the need for flexibility in the environment in which the activity will be implemented?
 - Does the proposal contain strategies to manage change?



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- > Is the proposal balanced in terms of its articulation of inputs, outputs, outcomes, risks, costs, quality and timeliness and overall effectiveness?
- > In your proposal, you should demonstrate to AusAID the value for money merits within the page limit for the technical proposal.



Australian Government

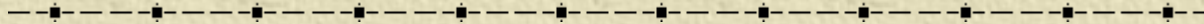
AusAID

Important Dates

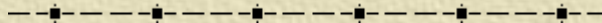
3 June 2009	Final date for questions to AusAID on RFT (14 days before tender close)
10 June 2009	Final date for AusAID to issue addenda/respond to tenderer questions (7 days before tender close)
16 June 2009	RFT closing date
24 June 2009	TAP Short-listing
7 - 8 July 2009	TAP assessment against Selection Criteria, interviews, VFM and TAP recommendation
July – August 2009	If delegate approves TAP recommendation, negotiate contract
August 2009	Contract Start Date



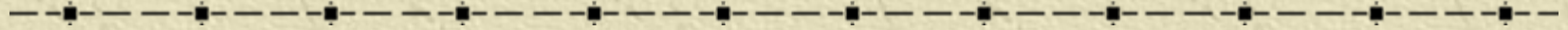
Australia Indonesia Partnership for Economic Governance Facility (AIPEG Facility)



Pre-Tender Briefing
14 May 2009



PROBITY PRINCIPLES



- 1.1 Best Value for Money
- 1.2 Encouraging Competition
- 1.3 Efficient Effective and Ethical use of Commonwealth Resources
- 1.4 Accountability and Transparency
- 1.5 Confidentiality & Impartiality

Commonwealth Procurement Guidelines ¹

Legislative & Policy Framework

Governs Australian Public Service

Financial Management Framework

Governs financial management, including proposals to spend public money

Procurement Policy Framework

Governs duties related to the procurement of property or services

¹ Department of Finance & Deregulation – Financial Management Guidance No. 1

1. PROBITY PRINCIPLES

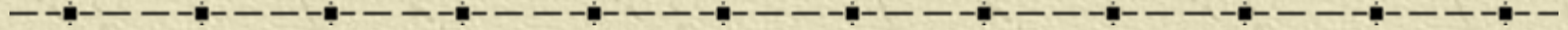
1.1 Value for Money

- Core principle underpinning the procurement
- Cost is only one element in assessing VFM

1.1.1 Whole of life value for money assessment

- Fit for purpose
- Performance history of the supplier
- Relative risk of each proposal
- Flexibility to adapt to change

1. PROBITY PRINCIPLES (Cont'd)



1.2 Encouraging Competition

- Potential suppliers should have an equal opportunity

1. PROBITY PRINCIPLES (Cont'd)

1.3 Efficient Effective and Ethical use of Commonwealth Resources - requirement of S44 of the Financial Management & Accountability Act 1997

1.3.1 Efficiency – the selection of the procurement process in terms of transparency and fairness.

1.3.2 Effectiveness – accuracy in the specification, rigor in the evaluation process and contract negotiations, and management of the contract.

1.3.3 Ethics – moral boundaries underpinning the procurement process, eg. honesty, consistency, integrity

1. PROBITY PRINCIPLES (Cont'd)

1.4 Accountability & Transparency

- Prime consideration throughout the procurement process.
- Documentation of the procurement process to facilitate scrutiny.

1. PROBITY PRINCIPLES (Cont'd)

1.5 Confidentiality & Impartiality

- Proposals are treated as Commercial in Confidence
- TAP members are required to sign Confidentiality and Conflict of Interest declarations
- Proposals are only assessed on responses to the selection criteria

2. Probity Advisor

2.1 Advisor vs Auditor

2.2 Probity Audit Opinion

Government Partnerships Fund

The Australia Indonesia Partnership Government Partnerships Fund (GPF) was launched by Joint Ministerial Commission on 17 March 2005 as part of the post-tsunami Australia Indonesia Partnership for Reconstruction and Development. The program is worth \$50 million with the current phase concluding in June 2010. The program has strong support from the Governments of both Australia and Indonesia and discussions are currently underway to determine whether a second phase of GPF will follow.

Activities are delivered primarily in the form of technical assistance and training and include: institutional strengthening and capacity-building for counterpart organisations in Indonesia; training for counterpart organisation staff in either Indonesia or Australia; secondments and work attachments for Indonesian organisation staff with their Australian counterpart organisation; secondment of Australian staff to advise or work in their counterpart organisation in Indonesia; and technical assistance and applied policy research.

To date 13 Australian institutions have partnered with 15 Indonesian counterparts. In addition to the current partnerships, by mid 2009, GPF is expected to have added two new partnership activities.

Partnerships to Date

Australian Bureau of Statistics
 Attorney-General's Department
 Australian National Audit Office
 Australian Prudential Regulatory Authority
 Australian Public Service Commission
 Australian Securities and Investments Commission
 Australian Taxation Office
 Commonwealth Ombudsman
 Department of Finance and Deregulation
 Department of Foreign Affairs and Trade*
 Department of Prime Minister and Cabinet*
 Department of the Treasury
 Reserve Bank of Australia

*Activities are no longer conducted under these partnerships.

New Partnerships

Australian Transaction Reporting and Analysis Centre (AusTRAC)
 Australia New Zealand School of Government (ANZSOG)

Of the above agencies, four have long term deployees placed in their counterpart agencies in Jakarta: Treasury; Department of Finance and Deregulation; Australian Public Service Commission; and Australian Securities and Investments Commission. When the AusTRAC partnership is established the agency will have two deployees placed in the Indonesian counterpart.

GPF and TAMF/AIPEG

As part of the 'one Australia' concept of support for economic governance in Indonesia, AusAID is keen to ensure that complementarities between programs are fully realised. TAMF/AIPEG and GPF advisers are expected to share relevant information and wherever possible work collaboratively. Regular meetings of all advisers are coordinated through AusAID and chaired by AusAID's Country Economist.

When the GPF was established, \$2 million of its budget was provided to the Technical Assistance Management Facility (TAMF) to mobilise support on behalf of GPF agencies. This funding will be exhausted by the time TAMF's replacement program, the Australia Indonesia Partnership for Economic Governance (AIPEG) is established and it is not expected that further funding will be allocated until GPF concludes in mid-2010. Preliminary discussions are currently underway to design a subsequent phase of GPF but it is not yet clear whether similar support will be provided through AIPEG.

As well as the core programs, both TAMF and AIPEG have a pillar of support for Immediate and Emerging Issues (IEI). Subject to the agreement of the Advisory Board this pillar could be used for activities which align with both the objectives of a GPF agency and with the broader objectives of AIPEG, especially in areas where AIPEG may have a comparative advantage or standing resources, such as human resource management or information technology.

As well as general cooperation, TAMF has provided some GPF agencies with greater levels of support, including:

- Collaboration between the Australian Prudential Regulatory Authority (APRA) and the TAMF financial system stability sub-facility. The sub-facility lead adviser acts as a contact and coordination point for APRA's activities. The sub-facility has also undertaken activities in support of the APRA partnership, such as publishing manuals developed under the APRA program.
- Assistance with scoping provided by the TAMF taxation sub-facility to the Australian Taxation Office (ATO). There are many donors providing assistance to the Directorate General Taxation in a very complex organisational environment. The TAMF lead adviser has supported the ATO in developing its activity plans and ensuring that it engages with the most appropriate counterparts.
- Collaboration with the Australian Treasury to undertake high priority analysis on climate change and natural resource management policy.
- Development of a Public Sector Management Review report which identified prospective reforms across a range of government ministries and agencies.



Date: 9 June 2009

Pages: 4

Subject: Addendum 3 to the Australian Indonesia Partnership for Economic Governance Facility (AIPEG Facility) Request for Tender of 2 May 2009

Tenderers are advised of the following:

A. Clarifications to the RFT

1. Delete Clause 8.13 of Part 1 and replace with a new Clause 8.13 as follows:
"8.13 Tenderers must detail in the following tables the costs of all required Personnel in the format provided. These costs must include consideration of all factors of pay, including leave entitlement, as outlined in Clauses 4 and 5 of Part 4 (draft Basis of Payment). Tenderers must also list in the tables the year/s in which the inputs will be undertaken, if the inputs are less than full-time."
2. Delete the heading (row 1) of Table 4B of Part 1 and replace with heading (row 1) follows:

Position	Input days	Daily Rate Year 4	Daily Rate Year 5	Daily Rate Year 6	Maximum Amount Payable (AUD)
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3. Delete Clause 7.2 (c) of Part 3 and replace with the following sub-clause:
"(c) Activity Design and Management Mentor – three (3) years full-time."
4. Delete Milestone 3 (row 3) Annex 1A: Milestone Payment of Part 4 and replace with the following row:

Milestone	Deliverable Output	Verifiable Indicator	Completion Date	Payment (AUD)
3	Six-monthly FRIP Update and Performance Assessment and Evaluation Report	Endorsed by Executive Committee; Appraised and Accepted by AusAID	Q2 Feb 2010	

B. Questions raised by interested Tenderers

Personnel

- Q1. *Do we need to provide the CVs of supporting positions, such as gender coordinator, in this proposal stage, or could we provide them once the project is up and running?*

Please refer to Question 15 of Addendum 2, regarding the required CV's.

- Q2. *Should the Activity Design and Management Mentor be costed under Table 3B as part of an option to extend?*

Please refer to Question 18 of Addendum 2 and cost accordingly.

- Q3. *Is the program reviewer (identified under reimbursable short term personnel Table 4A of Part 1) a member of the Facility Evaluation Team (Clause 5.13 of Part 3) and if so who is responsible for nominating this position?*

Please refer to Question 13 of Addendum 2 and Clause 5.12 of Part 3 of the RFT, that is, the program reviewer must be nominated by the Tenderer.

- Q4. *Can AusAID advise which of the positions listed in Table 4A of Part 1 are not part of the FET (facility Evaluation Team) and whether or not all those positions are considered to be mandatory?*

All four positions in Table 4A/4B of Part 1 are mandatory positions. Of those four positions, three are members of the Facility Evaluation Team as per Clause 5.12 of Part 3.

- Q5. *Please confirm that Table 4B of Part 1 should show years 4, 5 and 6, rather than 3, 4 and 5?*

Yes, this is correct. Please refer to Clarification no. 2 shown above.

Taxes

- Q6. *One of our proposed consultants is not a resident of Australia and will be liable for paying taxes in their country of origin. The aid agreement between Australia and Indonesia does not (appear) to cover personnel from third countries so can financial proposals be net of income tax payable?*

The General Agreement on Development Cooperation (GADC) between the Government of Australia (GoA) and the Government of Indonesia (GoI) explains the treatment of GoI taxes. The agreement does address income tax exemptions for residents of all countries, excluding Indonesian nationals.

Tenderers' attention is drawn to Article II(b) and Article XI of the agreement and the link to the agreement is as follows:

[www.austlii.edu.au/cgi-in/sinodisp/au/other/dfat/treaties/1999/13.html?query=title\(indonesia\)](http://www.austlii.edu.au/cgi-in/sinodisp/au/other/dfat/treaties/1999/13.html?query=title(indonesia))

Q7. *We would like to meet with AusAID and discuss some questions, is this possible?*

As per Clause 2 of Part 5 enquires must be made in writing to the Tender contact person at least fourteen days prior to the Tender closing date. We will not meet with any prospective Tenderers outside of the identified pre-tender briefing session.

Reports

Q8. *Can AusAID clarify whether the six monthly FRIPs are to be submitted to AusAID (Clause 7.1 of Part 2) or to the Facility Advisory Board (Table 2 of Part 3)?*

Please refer to Clause 7.1 of Part 1 and Clause 5.6 of Part 3. That is, the FRIP should be submitted to AusAID and that these, along with other Contractor reports or briefings, would be reviewed by the Advisory Board.

Financials

Q9. *The dates shown for Table 1A Milestone payments of Part 4 appear to be from an earlier iteration. Will the dates be adjusted to accommodate the early October start date advised at the pre-tender briefing?*

The Contract start date is still scheduled for **August 2009 as per Clause 2.1 of Part 2, noting that as indicated at the pre-tender briefing, there may be a staggered handover but the start date will not be October. Milestones will be adjusted accordingly.

Q10. *Will AusAID consider varying the RFT such that tenderers are required to submit time inputs for the Facility Evaluation Team listed in Table 4A/4B only, and not monthly rates for FET members? (as we feel it may make an impact on our financial assessment when the nominees are beyond the tenderers control and skills base).*

No, please complete Tables 4A/4B as they stand.

Q11. *Can AusAID clarify which is the base level number of leave trips as there is inconsistency between Clause 8.11 of Part 1 (2 trips per 12 months) and Clause 4.5 of Part 4 (1 trip per 12 months)?*

Clause 4.5 of Part 4 is correct.

Q12. *We intend to include demobilisation costs within the fixed management fees (Clause 8.8 and 8.9 of Part 1 and Tables 2a / 2b of Part 1). Should these be costed into the end of year 3 or the end of year 6?*

Demobilisation should not be listed in fixed management fees but listed in reimbursable long term personnel costs in Table 2A. Tenderers are reminded that the contract is for 3 years, with the option for an extension and not assume an extension.

Q13. *Is the establishment and maintenance of a website considered a reimbursable cost as per use of the term “Communications” in clause 8.15 of Part 1?*

Yes, however the cost and content is to be agreed in advance with AusAID.

Insurance

Q14. *To assist us in obtaining quotations for this insurance (Clause 10.2 of Part 1) can you provide a description of the contract material, supplies and data referred to in this clause?*

Clause 10.2 of Part 1 states that Tenderers are to use their best endeavours to obtain appropriate cover. See definitions of ‘Contract Material’, ‘Supplies’ and ‘Data’ in Clause 1.1 of Part 6 (Standard Contract Conditions).

Q15. *Would AusAID be prepared re-word Clause 11.1 (c) (i) of Part 2 during contract negotiations?*

No.

All other information as set out in the RFT (dated 2 May 2009), Addendum 1 (dated 12 May 2009) and Addendum 2 (dated 26 May 2009) remains unchanged.