



Australian Government

AusAID

12 June 2010

Request for Tender

SIG RAMSI PEOPLE'S SURVEY

REQUEST FOR TENDER

SIG RAMSI People's Survey

AusAID is seeking proposals from organisations interested in providing services for the **SIG RAMSI PEOPLE'S SURVEY** (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 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 1.15, Part 5)

2.00 pm local time in Canberra
Australian Capital Territory, Thursday **29 July 2010**.

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 1.15, 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 D 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.

Tenderer's Submission Checklist: One (1) electronic
copy.

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

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

Tender Submission Checklist: One (1) electronic copy

Tender Declaration: One (1) electronic copy

For hard copy tender lodgement

Technical Proposal: One (1) printed Original.

Tenderer's Submission Checklist: One (1) printed Original.

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

Financial Assessment material: One (1) printed Original in a separate sealed envelope.

Tender Submission Checklist: One (1) printed Original.

Tender Declaration: One (1) printed Original.

CD: Containing one (1) file for each proposal section (IE: Technical, Financial etc.)

Endorsement of hard copy Tenders:

(Clause 1.17, Part 5)

“Tender for the SIG RAMSI People’s Survey.”

Tender Validity Period:

(Clause 1.8, Part 5)

180 days

Contact Person:

(Clause 2.1, Part 5)

Email address: ramsipeoplesurvey@ausaid.gov.au

Page limits:

(Clauses 7.12 and 7.14, Part 5)

Technical proposal four (4) pages plus annexes.

Annex 1 Past Experience Forms (up to 2 examples max. 1 page each A4)

Annex 2 Work Plan (max. 1 page A3)

Annex 3 Team Member Inputs (1 page A3)

Annex 4 Risk Management Plan (max. 3 pages, A4)

Annex 5 Mobilisation Plan (Max. 4 pages, A4)

Annex 6 Conflict of Interest Declaration - if required (no limit)

Annex 7 Letters of Association (max. 1 page, A4 for each associate)

Annex 8 Commonwealth Government Policies Compliance – if required (no limit)

CurriculumVitae (max.4 pages for each CV, A4)

Information:

The following documents are attached:

Design Document

SIG RAMSI Partnership Framework;

SIG Foreign Relations Review Committee Report (late 2009);

SIG Medium Term Development Strategy 2008-2010 and associated performance reports, reviews and updates;
RAMSI Briefing Manual (Prepared by RAMSI Public Affairs for new staff)

Report of Independent Review of the People’s Survey (2008)

MS Word versions of all Tables in Part 1.

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 a pre-tender briefing at AusAID House in Canberra on **Wednesday 30 June 2010** commencing at **9.30am**.
- 2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by e-mail, indicating the name of the organisation and the number of people planning to attend, to ramsipeoplesurvey@ausaid.gov.au by close of business **Friday 25 June 2010**. Tenderers may request a meeting of a maximum of 10 minutes with AusAID representatives after the pre-tender briefing but these must be confirmed in advance.

Note to Tenderers: AusAID House is a secure building. This means that all visitors must be signed in and out of the building and escorted while inside the building at all times.

3. **SCORE WEIGHTINGS**

- 3.1 The technical assessment of the proposal will account for 85% of the overall score using the following formula:

$$\text{Technical Score} = \frac{\text{Tenderer's Weighted Technical Score (out of 100)}}{\text{Highest Weighted Technical Score (out of 100)}} \times 85\%$$

- 3.2 Following consideration of the technical merit of Tenders, a like-for-like price assessment will be undertaken by AusAID of the proposals that are assessed by the Technical Assessment Panel (TAP) as technically suitable.
- 3.3 The like-for-like price assessment will represent 15% of the overall score. The following formula for the scoring and ranking of Tenders on the basis of price will be used:

$$\text{Price Score} = \frac{\text{Bid Price of Lowest Priced Technically Suitable Bid}}{\text{Tenderer's Bid Price}} \times 15\%$$

- 3.4 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 6 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.

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

4.1 **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 4.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 4.3** of this part;

4.2 **Selection Criteria**

4.1 The Technical Proposal must comprise not more than **four (4)** A4 pages (including tables and diagrams but excluding the annexes specified in Clause 4.3 below).

4.2 Tenderers must ensure that each of the following **selection criteria** is addressed individually in the Technical Proposal.

(A) Organisational Capability and Capacity Building [Weighting 10%]

Demonstrated recent and relevant experience including capacity building approaches when undertaking similar activities in similar environments.

In framing their response to this criterion, Tenderers should bear in mind that in **Annex 1** to the technical proposal they are separately required to provide up to **two (2) Past Experience Forms**. AusAID will also consider **Annex 1** when making its assessment of Criterion A.

(B) Development of the SIG RAMSI People’s Survey [Weighting 30%]

Articulate approach to planning and conducting annual participative, gender appropriate workshops to assist in identifying the priorities, data and information required for the annual People’s Survey.

The response should also identify risks and provide management responses.

(C) Data Capture [Weighting 30%]

Demonstrated experience in conducting complex surveys in challenging implementation environments. Particular attention needs to focus on the management of enumerator and facilitator teams to achieve results.

The response should also identify ethical standards required to capture high quality data from representative samples of men and women across Solomon Islands. Risks and management responses to the implementation of a survey of this nature should also be considered.

(D) Analysis and Dissemination of Data

[Weighting 30%]

Demonstrated experience in conducting quantitative and qualitative analysis using relevant software packages and conducting all necessary data auditing, entry and cleaning using quality control protocols and templates.

In framing their response to this criterion, Tenderer's should consider their approach to stakeholder engagement during the data dissemination phase.

TOTAL

[100%]

4.3 Annexes

Annex 1 – Past Experience Form (maximum of two (2) examples – one (1) page each A4 size)

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 two (2) examples and details of each activity must not exceed one (1) A4 page.

Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with **Clauses 7.15 – 7.18, 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 (Maximum one (1) page – A3 size)

A detailed work plan 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 maximum one (1) page.

Annex 3 – Team Member Inputs (Bar Charts) (Maximum one (1) page A3 size)

One (1) bar chart will show the proposed inputs per team member for this Project and indicate total person months or person days for the duration of the Project (denoting a person as “part-time” is not acceptable). This chart must be presented on A3 paper.

Annex 4 – Risk Management Plan (Maximum three (3) pages – A4 size)

A detailed Risk Management Plan 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.

Annex 5 – Mobilisation Plan (Maximum 4 pages – A4 size)

A detailed Mobilisation Plan for the first 3 months of the Project. The Mobilisation Plan must include provision for:

- (a) establishment of communication channels with AusAID, the Australian Diplomatic Mission and Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including but not limited to;
 - (i) establishment of report preparation and delivery mechanisms;
 - (ii) establishment of financial control procedures;

- (iii) establishment of all other management and administration requirements; and
- (c) any other matters specified in the Scope of Services, **Part 3** of this RFT.

Annex 6 – Conflict of Interest – (no page limit)

Tenderers are required to disclose in this annex any actual or potential conflict of interest as outlined in **Clause 11, Part 5**.

Annex 7 - Letters of Association and other details of other proposed sub-contractors (Maximum of one (1) page for each associate)

Clause 9.2, 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 9.4, 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.

Annex 8 – Commonwealth Government Policies Compliance – (no page limit)

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**.

Clause 17.6, Part 5 refers to the World Bank List and similar lists maintained by other donors of development funding. **Clause 13.4, Part 5** requires each Tenderer to disclose, in its Tender, the information specified in that clause regarding investigations, proceedings, informal processes, temporary suspension and listing by the World Bank or any other donor of development funding. Tenderers must disclose any relevant information in this annex

5. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

- (a) a list of proposed team members in the table format (in landscape) provided below at table 1 and in accordance with the instructions included in **Clauses 5.2-5.3** below;
- (b) a **skills matrix** providing a summary illustration of the skills of the proposed Project team as a whole (broken down by individual team members) in the key skill areas required for the Project's implementation; and
- (c) a **curriculum vitae** for each proposed team member that conforms with the requirements outlined in **Clauses 7.13 and 7.14, Part 5**.

5.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.15 - 7.18, Part 5**.

- 5.3 The Commitments column in the Specified Personnel table (table 1 below) 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.
- 5.4 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.
- 5.5 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.
- 5.6 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 **20** working days. The type of employment should be specified as 'overseas employment.' Overseas, different checking procedures apply in each country and may take six (6) 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 – Short Term Technical Staff

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	Solomon Islands	#1	#2	
Survey Director	Specify			Specify		Specify
Survey Manager	Specify			Specify		Specify
In-country Manager	Specify		N/A	Specify		Specify
In-country Consultant/Trainer 2 staff in total	Specify		N/A	Specify		Specify

6. TENDER SCHEDULE C - FINANCIAL PROPOSAL

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

6.2 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) a preference is for Australian dollars, however other currencies will be accepted and converted to AUD as at the day the tender closes; and
- (c) include detailed information on assumptions used in preparing the pricing.

6.3 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.

6.4 Information provided in the tables below will be used for any financial assessment and for the like-for-like price assessment.

6.5 Part 4 Draft Basis of Payment outlines the payment regime in detail. The Contract will include three (3) categories of payments:

- (a) **The fixed Total Management Fee (TMF).**
- (b) **Reimbursable Short Term Personnel Costs.**
- (c) **Reimbursable Operational Staff, Travel, Accommodation, Per Diems, Training & Administration** costs up to a maximum total amount of **AUD763,069 plus GST** (if any) up to a maximum amount of **AUD76,306.90**.

6.6 For each identified Short Term Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, up to the maximum amounts specified in **Table 3** below.

Table 2: Total Management Fee – Years 1 and 2 (AUD)

	Year 1	Year 2	Total
Total Management Fee	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>

Table 3: SPECIFIED PERSONNEL – Short Term Personnel

Table 3: SPECIFIED PERSONNEL – Short Term Personnel									
Position	Name	Total Inputs in person days		Daily Rate (AUD)		Daily Rate (AUD)		Daily Rate (AUD)	
		Initial Contract 1/10/10 to 30/9/12		Year 1 Initial Contract 1/10/10 to 30/9/11		Year 2 Initial Contract 1/10/11 to 30/9/12		Year 3 Contract Extension 1/10/12 to 30/9/13	
		Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands
Technical Staff									
Survey Director	Specify	38 days per year	52 days per year	Specify	Specify	Specify	Specify	Specify	Specify
Survey Manager	Specify	55 days per year	83 days per year	Specify	Specify	Specify	Specify	Specify	Specify
In-country Manager	Specify	105 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
In-Country Consultant/Trainer 2 staff in total	Specify	35 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
Administrative Survey Staff									
23 x Supervisors	TBA	30 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
80 x Enumerators	TBA	25 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
16 x Facilitators	TBA	20 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
6 x Data Entry	TBA	15 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A

7. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

- 7.1 No Contract will be entered into unless AusAID has satisfied itself of the financial capacity of the Tenderer to undertake the contractual obligations. In this regard, AusAID requires that each Tenderer provide information on its financial status at **Tender Schedule D**. Two (2) options are available.

Option 1

- 7.2 This option is mandatory for:
- (a) those Tenderers who have not been subject to a financial assessment by AusAID in the 12 months preceding the date of release of this Tender; or
 - (b) those Tenderers who have been subject to a financial assessment by AusAID within the 12 months preceding the date of release of this Tender who have experienced a material change in financial position since the last financial assessment was completed by AusAID; or
 - (c) those Tenderers who have finalised their latest annual financial statements since the Tenderers last financial assessment by AusAID.
- 7.3 Under this Option 1, Tenderers must provide details of the following:
- (a) the name of the tendering entity and its ultimate owner(s).
 - (b) the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group.
 - (c) the previous three years' annual financial statements for the tendering entity. These annual financial statements must be prepared in accordance with Generally Accepted Accounting Standards applicable to the Tenderers country of residence (audited if available). The annual financial statements for each year must include:
 - (i) a balance sheet;
 - (ii) a profit and loss statement; and
 - (iii) a cashflow statement

each prepared on an accrual accounting basis.

An auditor's statement of financial viability or short form financial statements are not acceptable.

- (d) contact name and telephone number of the Tenderer's financial accountant.

- (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its contractual obligations to AusAID associated with this RFT.

Option 2

- 7.4 This option may be considered by a Tenderer where:
- (a) a Tenderer has been subject to an AusAID financial assessment in the previous twelve months, except where the Tenderers latest annual financial statements have been finalised since the last financial assessment by AusAID; and
 - (b) the Tenderer can demonstrate to the satisfaction of AusAID that their financial circumstances have not materially changed since the time of the previous financial assessment.
- 7.5 Tenderers who consider that they may qualify for Option 2 must provide the following information:
- (a) the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;
 - (b) an explanation of why a Tenderer believes a further financial assessment is not warranted; and
 - (c) a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.
- 7.6 Where a Tenderer considers itself exempt from the need to provide the full financial information (Option 1) and chooses instead to supply with the information in Option 2 AusAID reserves the right to subsequently require the Tenderer to provide the information required in Option 1.
- 7.7 A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.
- 7.8 Tenderers should be aware that AusAID may wish to contact the nominated financial accountant to obtain further information to assess the financial capacity of the Tenderer to undertake the Contract.
- 7.9 AusAID reserves the right to engage appropriate external expertise to assist with the analysis of the financial information. A report on the financial capacity of the Tenderer to undertake the Contract may be provided to either the delegate or the TAP.
- 7.10 The financial information of Tenderers will be treated confidentially.

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**.

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development
(AusAID)

ABN 62 921 558 838

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

SIG RAMSI PEOPLE'S SURVEY

AusAID AGREEMENT NUMBER 00000

CONTRACT made _____ day of []

BETWEEN:

COMMONWEALTH OF AUSTRALIA represented by the Australian Agency for International Development ("AusAID") ABN 62 921 558 838 of the Department of Foreign Affairs and Trade.

AND

Contractor's Name, ABN xx xxx xxx xxx of Street Address (the "**Contractor**").

RECITALS:

- A. AusAID requires the provision of certain Services for the purposes of **Agreement Name** (the "**Project**").
- B. The Contractor has expertise in the provision of the Services and has offered to provide the Services to AusAID subject to the terms and conditions specified in this Contract.

OPERATIVE:

AusAID and the Contractor promise to carry out and complete their respective obligations in accordance with the attached Parts A and B.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by the Australian Agency
for International Development by:

in the presence of:

Signature of FMA Act s44 Delegate

Delegate Name

Name

Position, Section

Position, Section

Signature of witness

Name of witness
(Print)

SIGNED for and on behalf of
CONTRACTOR'S NAME by:

Section 1, Part 2
Project Specific, Contract Conditions

Signature of director

Signature of director/company secretary

Name of director
(Print)

Name of director/company secretary
(Print)

STRUCTURE OF THE CONTRACT

This contract has two parts and five (5) schedules as follows:

Part A	Project Specific Contract Conditions
Part B	Standard Contract Conditions
Schedule 1	Scope of Services
Schedule 2	Basis of Payment
Schedule 3	Deed of Confidentiality
Schedule 4	Deed of Novation and Substitution
Schedule 5	Performance Guarantee

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PART A: PROJECT SPECIFIC CONTRACT CONDITIONS

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** (Term of Contract) **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.

"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 Table 3, Schedule 2 (***Milestone Payments Table***) 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.

"Schedule of Rates" means the rates for Short Term Personnel in Table 4 in Schedule 2, Part 4 "Basis of Payment".

"Short Term Personnel" or **"STP"** means advisers working on the Project for less than six (6) months continuously.

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

"Survey Director" means the specified person nominated in Table 1 Part 1 (***Specified Personnel***).

"Survey Manager" means the specified person nominated in Table 1 Part 1 (***Specified Personnel***).

"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. TERM OF CONTRACT

- 2.1 The term of this Contract commences upon execution by both parties, being the date indicated at the front of this Contract, and continues until all obligations under this Contract have been fulfilled or earlier notice of termination under this Contract.

Section 1, Part 2
Project Specific, Contract Conditions

- 2.2 The Contractor must commence the Services in the Partner Country by no later than **1 October 2010** and must complete the Services by **30 September 2012** unless the option in **Clause 2.3** below of this **Part A** of this Contract is exercised by the Commonwealth.
- 2.3 The Contractor grants to the Commonwealth an option to extend the period of the Services for a period of up to **twelve (12) months**. The option must be exercised by notice in writing to the Contractor prior to the date of completion of the Services as specified in **Clause 2.2** above of this **Part A** of this Contract. If this option to extend is exercised, the Contractor shall continue to provide the Services for the extended period on the terms and conditions contained in this Contract, except that this **Clause 2.3** shall no longer apply.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 14.1(e)** (Accounts and Records) 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 (3) months**; and
 - (d) forward expenditure and expenses by category for the period of **three (3) months**.

4. NOTICES

- 4.1 For the purposes of Standard Conditions **Clause 39** (Notices), 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:	Honiara
Attention:	Agreement Manager Name
Postal Address:	RAMSI, Office of the Special Coordinator PO Box 1931 Honiara Solomon Islands
Street Address:	Lelei Resort Honiara Solomon Islands
Facsimile:	677-25502

Contractor

To: Contractor's Name
Attention: Title First Name Surname

Postal Address: Postal Address

Street Address: Street Address

Facsimile: fax number

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 including but not limited to security, health, cultural, environment, detail on project objective relevant contract obligations and AusAID's gender, disability and child protection policies.
 - (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; and
 - (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID.

6. SUB-CONTRACTING

- 6.1 In addition to the Standard Conditions **Clause 10** (Sub-Contracting) 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.

7. MEETINGS

- 7.1 The Survey Director or Contractor Representative must attend meetings in Honiara on a regular basis as requested 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.

8. RIGHT OF AusAID TO RECOVER MONEY

- 8.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.
- 8.2 AusAID may review any payments made to the Contractor at any time and:
- (a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;
 - (b) the Contractor must within 28 days after receipt of AusAID's notification:
 - (i) refund the excess to AusAID; or
 - (ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;
 - (c) failure by the Contractor to provide evidence as required in **Clause 8.2 (b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and
 - (d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:
 - (i) calling for payment within 28 days of the refund determined by AusAID's review; or

- (ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or
- (iii) of AusAID's agreement that there is no refund payable.

8.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 8.2**, or pay any amount due to AusAID, the amount of the refund or payment is recoverable by AusAID from the Contractor by deducting the amount from subsequent payments owed to the Contractor or in any court of competent jurisdiction as a debt due and payable to AusAID by the Contractor.

8.4 Where AusAID deducts the amount of a debt or payment in accordance with this clause, it must advise the Contractor in writing that it has done so.

9. GOVERNMENT TAXES, DUTIES AND CHARGES

9.1 Except to the extent referred to in this clause and Standard Conditions **Clause 20** (Goods and Services Tax), each Party must bear and is responsible for its own costs in connection with the preparation, execution, and carrying into effect of the Contract.

9.2 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.

9.3 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.

9.4 Subject to **Clause 9.8 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.

- 9.5 An increase in the Fees under **Clause 9.4 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.
- 9.6 A decrease in Fees under **Clause 9.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.
- 9.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.
- 9.8 **Clause 9.4 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.

10. INSURANCES

- 10.1 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 33** (Insurance) 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.
- 10.2 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.
- 10.3 In respect of the public liability insurance, Standard Conditions **Clause 33.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is 20 million.

11. SECURITY CLEARANCE OF CONTRACTOR

- 11.1 AusAID may require a security clearance of the Contractor to be undertaken prior to the Contractor obtaining access to information deemed as classified and premises deemed as secure by AusAID, and AusAID Confidential Information.
- 11.2 If a clearance is required, the Contractor must cooperate fully with AusAID and any other person nominated by AusAID to conduct a security assessment of the Contractor, including the disclosure of any personal information required to undertake such assessment.

The Contractor may be required to pay for all costs associated with undertaking such an assessment.

12. PERFORMANCE GUARANTEE

[Note to Tenderers: If required, the inclusion of this clause will be negotiated between AusAID and the preferred tenderer.]

- 12.1 The Contractor must, at its expense, provide to AusAID; within 10 Business Days of the Project Start Date, a performance guarantee executed by a guarantor acceptable to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 5**.

PART 3 – SCOPE OF SERVICES

Note to Tenderers: Although these Scope of Services are presented as **Part 3** of this RFT, in the consolidated Contract Conditions it will appear as **Schedule 1**.

DRAFT - SCHEDULE 1 - SCOPE OF SERVICES

SIG RAMSI People's Survey

1. BACKGROUND

Background to the Survey

- 1.1 In 2006, The Regional Assistance Mission to the Solomon Islands (RAMSI) introduced the People's Survey as an annual information gathering mechanism to gauge the effectiveness and public acceptance of RAMSI interventions. The People's Survey became a high profile source of information in relation to RAMSI and also the identification of issues of a more general nature.
- 1.2 From 2010, the People's Survey topics and questions will retain similarities with previous versions, especially for providing longitudinal information covering specific areas and priorities. Over time, some changes will progressively be made in the Survey's content and methods, in order to meet the emerging information needs of both Solomon Island's Government (SIG) and RAMSI.
- 1.3 From 2010, the annual Survey will be known as the '**SIG RAMSI People's Survey**'.

The Structure of RAMSI

- 1.4 Support provided by RAMSI is organised into the three (3) main Pillars of:
(a) Law and Justice; (b) Economic Governance; and (c) Machinery of Government. Across these Pillars are integrated three cross-cutting issues, being: Gender; Capacity Building; and Anti-Corruption.
- 1.5 The three (3) RAMSI pillars each have a broad direction for the future: they are,
 - (a) The **Law and Justice** pillar encompasses all strategic and operational activities of three (3) related but distinct Solomon Island groups: the police force, correctional services, and the justice system. The Law and Justice Aspiration is a secure, safe, ordered and just Solomon Islands society where laws are administered fairly, regardless of position or status, giving due recognition to traditional values and customs.
 - (b) The **Economic Governance** pillar is primarily concerned with Ministry of Finance and Treasury, including budgets and revenue, economic policy and regulatory reform. The Economic Governance and Growth Aspiration is a Solomon Islands achieving broad-based economic growth and a more prosperous society (including for those living in rural areas) supported by

a fiscally responsible government which promotes sound economic policies.

- (c) The **Machinery of Government** (MoG) pillar has the SIG Office of the Prime Minister as its primary contact with connections across the government. The MoG pillar focuses on parliamentary processes, executive and administrative decision making and public sector performance. The Machinery of Government Aspiration is a public administration that is strategic, professional, transparent and accountable in the delivery of services and priority programs of the government of the day.

The SIG RAMSI Partnership Framework

- 1.6 In 2009, the Solomon Islands Government (SIG) and RAMSI jointly developed and signed the Partnership Framework, an agreement that set the overall goals, objectives, and aspirations of RAMSI's work with Solomon Islands. The Framework includes a set of guiding partnership principles, and sets out specific verifiable indicators and indicative timelines for the agreed program of work, including expectations on the three (3) cross cutting RAMSI themes of – capacity development, gender equality and anti-corruption.

[Note to Tenderers: The Partnership Framework is available at <http://www.ramsi.org/node/401>]

- 1.7 The Partnership Framework Goal is: A peaceful Solomon Islands where key national institutions and functions of law and justice, public administration and economic management are effective, affordable and have the capacity to be sustained without RAMSI's further assistance.
- 1.8 The SIG-RAMSI Partnership Framework will enable future People's Surveys to provide information and opinion from a broad cross section of society in a form that can be used to support higher level SIG and RAMSI cooperation, as well as joint decision making.

SIG RAMSI People's Survey Goal

- 1.9 The SIG-RAMSI People's Survey aims to meet information needs of both SIG and RAMSI partners, as reflected in the three objectives below:
 - (a) **Aim:** To support SIG and RAMSI reporting and decision-making aligned with the Partnership Framework through the annual capture of diverse community and public servant perceptions from men and women, including and attitudes on key development, capacity and social issues.

- (i) **Objective 1:** To engage annually with SIG, RAMSI and other key stakeholders to identify ongoing (core) and contemporary People's Survey topics about which timely, valid information is needed to support the SIG RAMSI Partnership Framework and needs of key SIG Ministries.
- (ii) **Objective 2:** To implement the People's Survey using ethical standards, capturing high quality data from representative samples of men and women citizens, public servants and others across Solomon Islands to provide insightful, integrated analysis against identified topics.
- (iii) **Objective 3:** To prepare and disseminate integrated, targeted reports of People's Survey results and outputs to key SIG and RAMSI Partners, using methods and media customised to support evidence-based decision making and individual agency planning needs, as well as for providing broad feedback to Solomon Island citizens.

2. SERVICES

- 2.1 The Contractor shall perform services as identified in the following sections. This includes the activities as outlined in the Detailed Schedule of People's Survey Activities (**Annex 1**) in accordance with the terms and conditions of this Contract, to effectively manage, implement and report in the SIG-RAMSI People's Survey.

3. Implementation of Objective 1: Development of the People's Survey

- 3.1 The Contractor must plan and conduct annual participative, gender appropriate workshops to assist in identifying the priorities, data and information required from the People's Survey. There will be a minimum of four (4) workshops; one for each of the three RAMSI Pillars, followed by a fourth that will incorporate cross cutting issues and facilitate discussion with other key stakeholders. The final composition of the workshops will be proposed by the Contractor, in consultation with the appropriate SIG and RAMSI partners.
- 3.2 As part of preparation for the People's Survey, the Contractor must be responsible for leading the four (4) annual workshops and arrange a suitable venue and workshop materials, providing for any other associated costs.
- 3.3 Wherever possible, venues will be located within an appropriate local agency or institution in Honiara (e.g. using University of the South Pacific facilities) so the workshops are clearly identified as development activities that encourage local

technical and professional inputs from SIG and from other local stakeholders / specialists.

- 3.4 The Contractor must manage the annual workshops to:
- (a) Identify and prioritise ongoing/core and contemporary topics of interest;
 - (b) Match the topics with qualitative or quantitative approaches and questions;
 - (c) In consultation with RAMSI identify appropriate groups and ranges of respondents (men/women, ordinary citizens, public servants, other groups; as well as geographical coverage);
 - (d) Working with SIG and RAMSI participants, identify how the Survey information can best be used, leading to what nuances are important for development of questions as well as what forms of analysis, interpretation and representation of the results will be most effective for decision makers in SIG and in RAMSI.
- 3.5 Workshop participants will likely be middle to senior staff with line responsibilities for the planning, management or the delivery of services. The People's Survey will not address all components of the SIG-RAMSI Partnership framework. With only some parts of each SIG-RAMSI Pillar being involved, careful selection of participants by the Contractor is necessary and the SIG-RAMSI Secretariat will provide advice on this.
- 3.6 Important balances and trade-offs will be discussed and priorities decided within each workshop, as the data requests will likely exceed available Survey resources and practical limitations. The Contractor must guide the development of specific priorities as part of achieving a suitable number of questions from each Pillar, while linking these into the Performance Matrix. RAMSI's three (3) cross cutting issues must also be addressed, so that they are mainstreamed across the Pillar programs and SIG initiatives.
- 3.7 The final (fourth) workshop to be organised by the Contractor must take a broader view of the Survey, ensuring internal consistency across the instrument, overarching alignment with the Partnership Framework, and ensuring that the cross-cutting issues embedded in RAMSI programs are integrated, minimising any duplication between the People's Survey and other SIG or donor-funded surveys.
- 3.8 Participants in the final workshop will also include those that hold broad overall responsibility for the People's Survey, including inputs from the SIG-RAMSI Secretariat in ways that ensure the Survey addresses RAMSI Development Policy and the three (3) SIG RAMSI Cross Cutting issues. Other stakeholders might include donors and NGOs that hold a broad interest in (or potential to benefit from) the Survey and its outcomes.

- 3.9 Following the final workshop, the Contractor must work with the National Statistics Office (NSO) to identify sample locations (statistically representative and/or purposive samples), design the Survey method and draft the qualitative and quantitative questions to meet SIG and RAMSI priority information needs.
- 3.10 Survey questions from previous People's Surveys will remain, especially where there is a continuing interest from SIG or RAMSI in the gathering of longitudinal data and information.
- 3.11 In drafting the quantitative and qualitative questions, the Contractor must utilise appropriately qualified and experienced staff to:
- (a) **Phrase questions** clearly to prevent any false or misleading interpretations, questions/responses/options being raised. A SIG Foreign Relations Review Committee hearing into RAMSI demonstrated there is still much confusion in Solomon Islands communities about the role of RAMSI, with many Solomon Islanders believing RAMSI's role is larger than it actually is. People's Survey questions should aim to clarify public perceptions of RAMSI's role in relation to SIG and to the community.
 - (b) **Phrase responses** to provide information that can support decision making in relation to SIG or RAMSI programs and interventions.
 - (c) **Avoid repeating questions** that are asked elsewhere, including by other surveys. The Contractor must also include a broad 'Most Significant Change' (MSC) question, to reveal meaningful new topics and useful information on local developments / perceptions, in a form suitable for SIG and RAMSI.
 - (d) Take account that the **number of words in Pijin is far fewer than English** and therefore specific meanings do not necessarily translate accurately, particularly meanings associated with technical terms used in SIG RAMSI programs. Translation and back-translation is essential between English and Pijin, and should be overseen by a native Pijin speaker who is familiar with both SIG and RAMSI programs.

Type of information to be collected:

- 3.12 The Contractor must use trained Enumerators to collect quantitative information. The Enumerators will conduct interviews with individuals based on a questionnaire with multiple-choice responses. The qualitative information will be collected by trained male and female Facilitators via structured discussion groups.
- 3.13 The process for collecting information will align with the nature of the information being sought: i.e. questions that would benefit from receiving more nuanced responses should be addressed through structured discussion groups.

Cultural norms indicate that qualitative approaches are of particular value in Solomon Islands, where an oral culture for sharing information exists and where women are more likely to talk with other women and men to talk with men.

Purpose of the information collected:

- 3.14 The Contractor must include core topics and contemporary or emerging topics into the People's Survey. The core topics will be focused on those trends that are identified and required by the RAMSI Pillars and by SIG and will be asked in successive years. Trends can then be described in both quantitative and qualitative terms, therefore the core questions can be both quantitative and qualitative.
- 3.15 To ensure accuracy and relevance in terms of trends, some core questions for the new SIG RAMSI People's Survey will be taken from the existing People's Survey. For example, those questions relating to Solomon Islander's perceptions of crime in their community are important to show if there is a trend and will continue to be included in the new Survey. Some new core questions may also be devised by the Contractor as a result of discussions and priorities that arise from the three (3) Pillar workshops.
- 3.16 Contemporary (i.e. new) topics are not trend-related and will be identified through the annual workshop process. These new questions will be included by the Contractor as a response to current SIG or RAMSI interventions or the emerging context. Like core questions, the contemporary questions can be either qualitative or quantitative, with the appropriate split and format determined through Contractor consultation with SIG and RAMSI, based on best Survey practice.
- 3.17 The Contractor must ensure sampling matches the purpose of the information. Wherever information about distributions is required, then representative samples are necessary. All quantitative and some qualitative information (that which is associated with trends) will likely be collected from a representative sample. When the intention is to gain insights, purposive sampling will be appropriate.
- 3.18 The Contractor must carefully manage expectations of both SIG and RAMSI workshop participants, especially in relation to information the People's Survey can provide and the relevance of this information to the Performance Matrix. The Contractor must manage these expectations through methods and advice that lead to SIG and the RAMSI Pillars having an appreciation of what tangible outcomes are available from the Survey data.

Type of respondents:

- 3.19 The People’s Survey includes two (2) broad classes of respondents. The main class is a statistically representative set of Solomon Island citizens who respond to the quantitative questionnaire. The extent of the geographical coverage of the People’s Survey will be determined by the Contractor, in consultation with SIG (including the National Statistics Office (NSO)) and RAMSI. Within this class, statistical representation needs to extend to two (2) further dimensions: to male and female respondents and to older and younger respondents. Qualitative information should be appropriately geographically and statistically representative.
- 3.20 The other class of respondents is people who are closely involved in SIG-RAMSI activities and service delivery, including male and female public servants. Some other groups may also be nominated by SIG-RAMSI during the Survey development stage including (for example) local business people. These groups will be either appropriately representative (where core questions are concerned and the intention is to elicit trends and relationships) or purposive samples (where the intention is to illuminate and uncover insights).

Number of questionnaires and focused discussion groups

- 3.21 The Contractor must deliver the following services relating to the overall Survey management. The information below is meant to guide the Contractor in the resources that will be required to undertake the work.
- 3.22 The following Table provides the Contractor with guidance in relation to the scope of the quantitative and qualitative Survey work, including the indicative requirements for collection, analysis and reporting. The scope of the Survey work (i.e. actual Survey number and provincial location) is indicative and may vary slightly from year to year, with the approval of AusAID. However, it is important that the Contractor understands the complexity of the task, the importance of quality Survey outcomes and the time / local resources that will be required.

Quantitative Component	Qualitative Component
A target of 6,000 completed questionnaires, each of 50-60 questions, (primarily multiple choice). Conducted in most provinces. For Survey data auditing and cleaning, should allow at least 10% of data entry time. First pass analysis of quantitative data. After this integrate with the initial qualitative results and conduct	A minimum of 60 structured discussion groups including a ‘Most Significant Change’ question, involving 10-15 sessions in Honiara and other provincial capitals, involving SIG and related personnel. The remainder will be conducted with SI citizens in nationally geographically representative locations that reflect the quantitative component, including with older and younger men and women. Devise transcription/coding templates with the coding, expect around 50 nodes to emerge. After validation and first pass analysis, integrate with

detailed second pass analysis.	quantitative and conduct detailed second pass analysis.
Provide 3 Pillar Survey Summary reports for the use of the RAMSI Pillars, plus an overarching People's Survey Report that contains all relevant data, tables, outcomes and recommendations.	

Finalising the Survey questionnaire

- 3.23 The Contractor must finalise the Survey instrument and sampling locations following the fourth workshop. The Contractor must design the form to be consistent with the data entry process and so it is efficient and effective for both the interviewer (Enumerator) and the data entry process. The use of colour coding and best practice information design principles is required for the Survey instrument.
- 3.24 The Contractor must provide final draft instruments, samples and provincial coverage to the nominated representative of the SIG-RAMSI Secretariat for comment. Once this feedback has been received and agreed changes made, the Contractor must provide the final draft People's Survey instrument to SIG-RAMSI Secretariat for final approval.
- 3.25 On receiving approval from the SIG-RAMSI Secretariat, the SIG RAMSI People's Survey instrument and sampling methodology will be completed by the Contractor, with a copy provided to key representatives and partners associated with the workshops. In subsequent years, participative workshops will have the same focus, but mainly to determine the contemporary and emerging topics, with only a brief review required for agreed ongoing topics.

4. Implementation of Objective 2: Data Capture

- 4.1 The Contractor must conduct small pilots of approved instruments to confirm the validity, which could be incorporated in the training program for Enumerators and Facilitators. The Contractor must recruit local men and women Enumerators and Facilitators. The Enumerator and Facilitator profiles will match the respondent profiles i.e. the group of Enumerators and Facilitators needs to include roughly equal numbers of women and men, as well as older and younger Solomon Islanders.
- 4.2 Matching the Enumerators and Facilitators to their home geographical provinces is also preferable, because of their capacity to speak the local dialects and understand the context. However, all will be required to be fluent in Pijin and in English.
- 4.3 The Contractor must develop separate training for the Enumerators and the Facilitators, reflecting different approaches and skills required for gathering the two types of information (qualitative and quantitative). While there may be some overlap between the two types of training, the content of each program will be

comprehensive, including appropriate information on; environmental concerns; personal health and safety (including HIV and AIDS prevention); the standards and ethics expected from all staff; as well as risk management.

- 4.4 The risk management approach will also include the Contractor providing all staff with a Security and Health Plan circular that includes information for men and women on potential risks and how best to deal with them, as a group and as individuals. The Security and Health Plan will also include specific advice and awareness raising for women, especially regarding the potential for sexual and other violence.
- 4.5 The Contractor may use materials already developed for previous People's Survey training, although this has largely focused on Enumerators. Additional training for Facilitators on the application of high quality qualitative methodologies (facilitation, data capture, recording, transcription, preparation for analysis) will be required.
- 4.6 The likely duration of each training program to be held in Honiara is one (1) week. The number of Enumerators (approximately 60-80) means the program may need to be run twice by the Contractor. The program for both Enumerators and Facilitators should include simulations that provide constructive feedback on realistic data collection methods and activities (i.e. mock or pilot interviews and structured discussion groups).
- 4.7 The Contractor must then select Enumerators and Facilitators from this group that have completed the initial training. The Supervisors should then be selected and receive additional briefings and training. The Contractor must aim for a team ratio of four (4) Enumerators / Facilitators (representing older and younger men and women) to each Supervisor, who will also represent an appropriate balance of men and women.
- 4.8 Data auditing, entry, and cleaning will start as soon as practicable following its capture. Appropriate quality control protocols must be in place and used by the Contractor.
- 4.9 If possible, the venue for data entry should be located within an appropriate local agency or institution (e.g. a University South Pacific (USP) computer laboratory located in Honiara).
- 4.10 Once preliminary quantitative results are available, the Contractor must review these in combination with the preliminary nodes and outcomes of the qualitative analysis, including analysis of the "Most Significant Change" (MSC) responses, and reflect on how well the information matches needs as were identified in the participatory workshops.

- 4.11 The Contractor must integrate qualitative and quantitative results to identify firm conclusions that are meaningful for the key stakeholder groups. Good practice will be adhered to, so exceptions to dominant themes (for example) should be reported. Both quantitative and qualitative data will always be reported as gender and age-disaggregated, even where there are no significant differences.

5. Implementation of Objective 3: Analysis and Dissemination

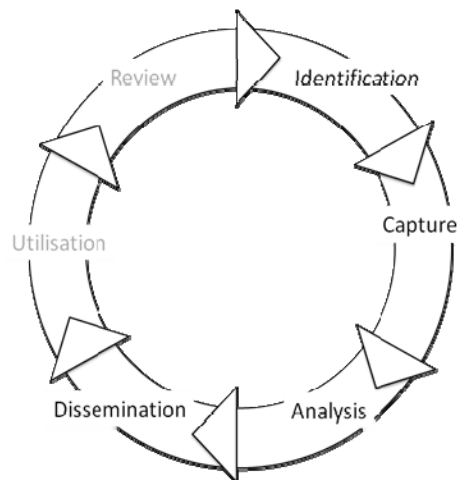
- 5.1 The Contractor must statistically analyse quantitative questionnaire outputs using an appropriate software package, such as Statistical Package for Social Sciences (SPSS). Structured analysis of qualitative data will be undertaken with an appropriate software package, such as NVivo. The Contractor must have ongoing access to computers with adequate processing capacity and power, as well as ensuring that the data is backed up and secured from unauthorised access.
- 5.2 The Contractor must manage data auditing, entry, and cleaning as soon as practicable following capture. Quality control protocols and templates must be used. Appropriate structures to stratify samples for analysis must be maintained, such as being able to subdivide structured discussion groups on the basis of gender, age, location etc. If “Most Significant Change” questions are asked, separate analysis of this data may be required. If possible, the venue for data entry and preliminary coding should be an appropriate local agency or institution (e.g. a USP computer laboratory in Honiara).
- 5.3 A descriptive coding frame that reflects the theories and topics nominated in the workshops will be developed by the Survey Director, used to underpin the coding training session. Appropriate data reliability checks must be undertaken by the Contractor, such as random checks on coding by a nominated experienced researcher.
- 5.4 Not all structured discussion group transcripts will need to be coded; the extent of descriptive coding should be determined iteratively - code and analyse and code further transcripts until saturation is reached (i.e. until no new descriptive codes arise).
- 5.5 As analysis of qualitative data progresses beyond descriptive coding to pattern coding and interpretation, the Contractor must look for and note the new relationships that will emerge in the data, especially the ‘dissenting views’ - those that are outside the original descriptive frame.
- 5.6 The Contractor must pay careful attention to quantitative data, with data entry processes carefully structured. The entered data will be subjected to at least two kinds of basic checks by the Contractor: random checks on accuracy of entry

procedures (i.e. are the answers on the forms being entered correctly) and systematic checks on coding (i.e. are there errors on the form and if so, are these errors nullifying the data). These checks should be performed in parallel with the data entry, so that errors and omissions can be rectified immediately.

- 5.7 Analysis and interpretation of qualitative and quantitative raw data will occur in an integrated fashion. Once preliminary quantitative results are available, the Contractor must review this in combination with preliminary nodes and outcomes of qualitative analysis, including analysis of any MSC responses, and reflect on how well information matches the needs outlined in the participatory workshops.
- 5.8 The Contractor must devise subsidiary, appropriately nuanced analytical questions to guide the further analysis of quantitative and qualitative data. The goal of the analysis and interpretation is to integrate qualitative and quantitative results to identify firm conclusions that are meaningful for the key stakeholder groups. Good practice must be adhered to, so that exceptions to dominant themes (for example) are reported.

6. Elements of quality data

- 6.1 The Contractor must pay careful attention to the six elements of a good quality data cycle (shown below) during its delivery of the Services.



- 6.2 **Identification** refers to consultative processes associated with determining People's Survey topics.
- (a) Four (4) participative workshops initiated and facilitated by the Contractor.
 - (b) The second component of identification is constructing the Survey methods and questions in ways that provide useful information.

- 6.3 **Capture (collection)** refers to the recruitment, methodological and ethics training and assessment of Supervisors, quantitative Enumerators and qualitative Facilitators.
- (a) Collection includes the sampling and logistics of field work, including travel to Enumeration areas, identify respondents, procure informed ethical consent, arrange and conduct interviews and structured discussion groups, then capture, store and return the data to Honiara.
 - (b) The final element of collection services provided by the Contractor is the translation of the data from Pijin to English, ready for the analysis. This includes quantitative and qualitative data entry, auditing and cleaning.
- 6.4 **Analysis** refers to iterative statistical and content analysis, and interpretation and re-interrogation of the data to produce answers to those questions and themes noted in the People's Survey identification stage. Analysis and interpretation of qualitative and quantitative data will occur in an integrated fashion i.e. quantitative results will inform lines of inquiry in the qualitative data, and vice versa.
- (a) The Contractor must commence the initial parts of data analysis in a suitable venue in Honiara, observed by key SIG staff who have an interest in (and responsibility for) research and / or survey data management.
- 6.5 **Dissemination** refers to the design and presentation of the People's Survey outputs in terms that are meaningful to (and readily accessible by) SIG, RAMSI and other recipients, for their use in reporting, planning, programming and resource allocation.
- 6.6 **Utilisation** is how People's Survey outputs are incorporated into reporting and planning, including providing data and information that can influence decisions about programs, interventions and resource allocation.
- (a) The Contractor's role is to facilitate better utilisation by providing briefing sessions with stakeholders, using the three Pillar Survey Reports and the overarching Summary Report to explore how the People's Survey data, trends and outputs can best relate to the SIG and RAMSI forward planning processes.
- 6.7 **Review** refers to the annual process of reflecting on whether People's Survey topics covered were the most relevant; how well the questions and outputs matched perceived SIG RAMSI information needs; and the extent to which the information was used.
- 6.8 **The Scope** of quantitative questions will ensure meaningful responses from individuals. Sixty (60) questions may be equally distributed amongst the three

(3) Pillars (approx 20 questions for each), leaving remaining questions for gaining background / demographic information; some for the specific cross-cutting issues and some that are focused on emerging areas of priority for SIG and / or RAMSI.

7. Addressing RAMSI Cross Cutting Issues

- 7.1 The following three (3) RAMSI cross-cutting issues will be addressed by the Contractor across the Survey, as agreed by SIG and by RAMSI:
- (a) **Capacity Building:** supporting Solomon Islands public institutions and agencies with the capacity to identify their own direction, lead and manage sustainable change, to reflect on strengths and weaknesses and to continuously improve performance.
 - (i) The Contractor must implement the Survey in ways that respond to long term local capacity building needs of Solomon Islands, especially through encouraging local staff to engage in the research methods used in the Survey and the research data collected.
 - (ii) The Contractor must be careful to engage local male and female consultants to support the annual workshops and also in finalising the People's Survey. This support to local capacity building in relation to conducting and documenting research will provide knowledge and skills to local consultants that are transferable to similar activities.
 - (b) **Anti-Corruption:** the establishment of an effective and cohesive approach to address corruption in Solomon Islands.
 - (i) The Contractor must ensure the People's Survey operates in a transparent manner and will provide information that is, as much as possible, free from bias or interference. The Contractor's management of the People's Survey will reflect good financial practice and model good governance, in the selection, contracting and treatment of local staff and consultants.
 - (ii) The Contractor must brief Survey Supervisors and Enumerators and others as relevant, to maintain awareness of any potential for local interference in any of the quantitative or qualitative responses. This will include taking into account (and being sensitive to) the complex social and cultural issues that surround traditional forms of leadership. The Contractor must liaise with appropriate SIG and RAMSI partners in relation to the Survey and the role of traditional leadership.

- (c) **Gender Equality:** SIG policy commitments on gender are advanced consistently across the government.
- (i) The Contractor must involve women and men in the planning, decision making and leadership of the People's Survey. Composition of the management (as well as operational staff) will model good practice. Women will be provided an equal opportunity to guide the development of questions, as well as to ensure the instrument is suitable for gathering agreed information that it reflects the views of men and women.
 - (ii) The Contractor must ensure the SIG RAMSI People's Survey uses gender sensitive language and that the results are gender disaggregated, providing SIG and RAMSI stakeholders with unambiguous information to identify gender-specific issues or circumstance.
 - (iii) The Contractor must ensure no harm is done to women throughout the process, either as enumerators or participants e.g. if consultation suggests question about violence against women are to be included, special training to enumerators will need to be given to ensure questions are asked appropriately and conditions for participants are safe so that no-one suffers any untoward repercussions from their participation.

8. Implementation Arrangements

- 8.1 **Annex 1** provides a detailed breakdown of the SIG RAMSI People's Survey activities, timing and sequencing. The Contractor must develop and manage the Survey against these activities and will assign sufficient resources and staff to accomplish the work as well as provide quality data and outcomes.
- 8.2 Contractor staff will have the required skills, knowledge, qualifications and technical support to complete the Survey work within the required time. The Contractor must also have ongoing access to the hardware and software that is required for the data analysis, as well as the systems and tools that ensure that the People's Survey data is secure, backed up, well analysed and accurately reported against.
- 8.3 The travel required for the Supervisors, Facilitators and Enumerators to complete the People's Survey will include air, ferry, small boat, car and (sometimes) walking. To reach the villages in the outer provinces requires careful planning and back up by the Contractor, so that the wellbeing of the staff is protected and the People's Survey is completed on time.
- 8.4 The Contractor must ensure all staff comply with appropriate ethical codes, such as the 'National Statement on Ethical Conduct in Human Research'
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(<http://www.nhmrc.gov.au/files/nhmrc/file/publications/synopses/e72-jul09.pdf>) developed by the National Health and Medical Research Council, the Australian Research Council, and the Australian Vice-Chancellors' Committee.

- 8.5 In addition to the technical elements of the Survey, the training program will also cover dangers and issues associated with HIV and AIDs and the potential for violence against women, especially when they are mobilised in the field. The importance of the overall group taking a level of responsibility in monitoring the safety and wellbeing of the individual group members must be stressed in training and briefings, including the appropriate emergency procedures.
- 8.6 To increase the safety and wellbeing of the men and women involved in the Survey, the Contractor must develop a straightforward Security and Health Plan that will be provided to all local staff at the time of their recruitment. The Security and Health Plan will include references to the dangers associated with violence against women, rape, HIV and AIDS and emergency procedures to be followed in case of serious accident or illness. This Plan, provided in English and Pijin, will include key contact numbers as well as who to specifically contact in an emergency.
- 8.7 The Solomon Islands Statistics Act (Cap 54) http://www.pacii.org/sb/legis/consol_act/sa150 sets the legal framework for conducting surveys. The Act is primarily concerned with protection of the rights of respondents, particularly in relation to publication of outputs. The Contractor must be fully aware of (and compliant with) provisions of this Act and other relevant SIG legislation.
- 8.8 The Contractor must be familiar with the SIG RAMSI Partnership Framework and use this as the starting point for the planning and delivery of the future SIG RAMSI People's Surveys.
- 8.9 The Contractor must review, at a minimum, the following documents to familiarise staff with the context, sensitivities, RAMSI history and Survey background. The background documents include:
- (a) SIG-RAMSI Partnership Framework <http://www.ramsi.org/node/401> ;
 - (b) SIG Foreign Relations Review Committee Report (late 2009);
 - (c) SIG Medium Term Development Strategy 2008-2010 and associated performance reports, reviews and updates;
 - (d) Royal Solomon Islands Police Force's Strategic and Business Planning documentation;
 - (e) RAMSI Briefing Manual (Prepared by RAMSI Public Affairs for new staff);

- (f) Report of Independent Review of the People's Survey (2008);
- (g) Historical People's Survey Questionnaires, Summary Reports and Full Reports (2006, 2007, 2008, 2009).

[Note to Tenderers: (a) – (c) + (e) – (f) attached to RFT. Document (d) and (g) will be made available to the preferred tenderer.]

- 8.10 The Contractor must be familiar with other relevant surveys conducted by SIG, donors and Non-Government Organisations (NGOs) (e.g. UNICEF). The Contractor must engage with the other donors and NGOs through workshops, in order to identify other information sources and minimise any potential Survey duplication.

9. Consultations

- 9.1 The organisational structure of RAMSI is complex and the Contractor must spend the required time to achieve maximum engagement and cooperation with the SIG and relevant RAMSI staff.
- 9.2 The Contractor must report (and be responsible) to the SIG-RAMSI Secretariat, nominating a single point of contact who will report to the SIG RAMSI Joint Performance Oversight Group. A member of the Secretariat will also be nominated to act as a single point of contact for the Contractor. The nominated person from the Secretariat will be the contact for receiving, distributing and responding to drafts and for endorsing the final versions of the People's Survey instruments (as well as the subsequent Reports) on behalf of SIG RAMSI.
- 9.3 The Secretariat will assist in identifying and organising participation of individuals from SIG. The lead SIG agency the Contractor must liaise with is the Office of Prime Minister and Cabinet (OPMC). It is likely others will include representatives from the National Statistics Office (NSO), the Ministry for Development Planning and Aid Coordination and the Policy Research Division of the Ministry of the Public Service.
- 9.4 The Contractor must work with the NSO in respect to complying with the Statistics Act, accessing technical assistance the NSO may provide (e.g. identification and details of the Enumeration areas targeted), accessing logistical assistance NSO may provide, (e.g. the printing of survey instruments and access to the NSO vehicles/boats).
- 9.5 The Contractor must (where possible) engage Solomon Islands institutions and expertise as part of implementing the Survey. This includes using (for example) the University of South Pacific (USP) Campus for the venue and for technical expertise in the training of Enumerators.

10. Capacity Building

- 10.1 As previously mentioned, an important long term outcome of the SIG-RAMSI People's Survey is local capacity building of both men and women in the use of research and good quality data cycles to inform policy and decision-making. The Contractor must implement the People's Survey in ways that support the demand and supply of evidence-based decision making. That is, to help build SIG's recognition of the need for (and value of) independent evidence. This approach will also build both SIG's and local / regional researchers / contractors capacity to undertake this kind of research, whilst strengthening SIG's capacity to make use of the research outcomes.
- 10.2 Where possible, the Contractor must design and manage the People's Survey in ways that can strengthen research and survey data plus analytical expertise in Solomon Islands, through supporting the development of both the individual men and women and of the local institutions. Local capacity building will be facilitated by the Contractor within three distinct groups of men and women:
- (a) Support for SIG;
 - (b) Through the local and/or regional research and consulting sector,
 - (c) Where appropriate, capacity building opportunities for local NGOs.
- 10.3 Where the opportunity presents itself, the Contractor may access local NGOs - such as Transparency Solomon Islands - as part of a strategy to better engage with (and build capacity in) local research and technical survey expertise.

11. Staffing Arrangements

- 11.1 The following specified staff will be required to lead the People's Survey, supporting both SIG and RAMSI to receive maximum benefit from the information and data. Estimated inputs are given at **Annex 2**.
- 11.2 The **People's Survey Director (Short Term Technical Personnel)**, with:
- (a) Good communication skills and the capacity to analyse the existing context and move the People's Survey into the next phase of its development;
 - (b) Provide a single point of contact for RAMSI and hold the necessary management authority and autonomy to ensure that the required resources are applied;
 - (c) Strong background in qualitative and quantitative survey methods and application with a sound understanding of the limitations of survey instruments;

- (d) Professionally qualified and able to apply theoretical frameworks and practical solutions in ways that meet survey requirements;
- (e) Capacity to provide leadership in a complex survey context and to facilitate key workshops and discussions at the appropriate part of the People's Survey cycle;
- (f) An awareness of the key issues and constraints in the Pacific and the capacity to work with partners (RAMSI, SIG and others) to achieve the agreed People's Survey outcomes;
- (g) Capacity to manage a tight budget, reflect on previous practice and to provide value for money outcomes.

11.3 The People's Survey Manager (Short Term Technical Personnel), with:

- (a) Strong technical and analytical background in conducting qualitative and quantitative surveys;
- (b) Professionally qualified in a related field with formal qualifications that can be applied to the People's Survey work, EG: management qualification and experience;
- (c) Experienced in the use of contemporary software for qualitative and quantitative survey analysis and reporting, such as SPSS and NVivo;
- (d) Experienced in conducting a large, distributed survey (i.e. of around 5,000 respondents and around 100 Focus Groups) and in providing reports;
- (e) Experience in training staff and in providing detailed briefings to Facilitators and Enumerators, including the support of field work at both strategic and operational levels;
- (f) Understanding of the constraints and technical / logistical / communication issues in the Pacific.

11.4 People's Survey In-Country Manager (Short Term Technical Personnel), with

- (a) Managing the Supervisors;
- (b) Allocating People's Survey Enumerators and Facilitators to Enumeration areas;
- (c) Provisioning Enumerators and Facilitators (e.g. funds, wages and disbursements) as well as small token gifts such as drinks to share with structured discussion group participants; the printed People's Survey instruments; first aid kits; where appropriate life vests etc;
- (d) Developing a reasonable work schedule e.g. the People's Survey teams will generally need to spend two (2) nights in one location;

- (e) Ensuring quality systems and protocols are in place to track and manage raw People's Survey data (including, e.g., being able to trace data entry processes) and ensure the raw Survey data has adequate back-up and is securely stored.

11.5 Solomon Island **Consultant / Trainers (Short Term Technical Personnel)**, with

- (a) Provide information and support to the Contractor for the workshops and in phrasing the instrument questions;
- (b) Support Facilitator, Enumerator and Supervisor training and preparation;
- (c) Support the Contractor to advocate the new SIG RAMSI People's Survey through local networks and community groups;
- (d) Provide support (as appropriate) in the analysis of the data.

12. **Transition Arrangements**

12.1 The Contractor must develop and submit an **Implementation Plan**, within **one (1) month** of commencement of this Contract. The implementation Plan will:

- (a) Provide a schedule of activities and responsibilities for implementing the Survey including details of how to maximise use of local facilities (i.e. USP areas / staff) and local technical expertise (including accessing specific skills in questionnaire development to suit Solomon Islands context and initial data analysis), and
- (b) Identify how any existing People's Survey training materials, databases, contact lists (e.g. previous Enumerators and Facilitators) etc will be used.

12.2 In the subsequent years the Contractor must update the Implementation plan to suit the nature of the information required and the circumstances at the time.

13. **Monitoring and Evaluation of SIG RAMSI People's Survey**

Continuous Quality Improvement

- 13.1 The Contractor must exhibit best practice principles for all elements of engagement, qualitative and quantitative survey design, training, data capture and entry, analysis, interpretation, dissemination and use.
- 13.2 The Contractor must use recognised quality tools for qualitative and quantitative survey, data collection and analysis as part of self assessment and continuous quality improvement.
- 13.3 The use of recognised quality tools is intended to ensure the People's Survey is benchmarked against accepted standards. The quality tools will enable the

Contractor to reflect on each element of the People's Survey cycle, as part of the continued evolution of its methods and outcomes.

Annual Contractor Performance Review

- 13.4 At the completion of the annual dissemination of Survey reports, the Secretariat will conduct a Contractor Performance Review to assess the year's activities and agree on any adjustment or change required to improve Survey management.
- 13.5 The Contractor must adapt and improve its operations and systems in response to the assessment outcomes, with the Performance Review criteria included as **Annex 5** of the Design Document.
- 13.6 Prior to the annual assessment, the SIG-RAMSI Secretariat may canvas SIG, RAMSI or other stakeholders in relation to their perceptions of the Contractor's effectiveness in managing the Survey, as well as the quality and utility of the outcomes.
- 13.7 Immediately following the Performance review, the Contractor must provide a short report to the SIG-RAMSI Secretariat on how the Survey can be refined and improved.

Monitoring Trends over Time

- 13.8 Over the period of the Contract the Contractor must monitor the pre-2010 Survey outcomes and the new SIG RAMSI Survey outcomes in two (2) ways, in order to maintain consistency of longitudinal data collection while at the same time allowing for new Survey information to be gathered and methods used:
 - (a) In relation to survey data, the SIG RAMSI People's Survey will be monitored in relation to the historic levels and type of information that have been collected over past years for the Pillars, thereby enabling trend information to continue, while new topics can also be introduced for data and information gathering.
 - (b) For Survey methods and quality measures, the SIG RAMSI People's Survey can be compared against existing Survey practice: e.g. the number and type of respondents; the extent of analysis undertaken (including MSC); the capacity building initiatives; and the type and nature of Survey Reports and briefings.
- 13.9 The four (4) annual workshops provide an opportunity for SIG and RAMSI to review the Survey data and information, especially in relation to the utility and impact of Survey results. This aspect of the M&E would be the responsibility of RAMSI representatives attending the workshop, who would initiate a simple feedback session that focused on how and where the People's Survey data was

directly being utilised by SIG or RAMSI. This could include a discussion, initiated by the Secretariat, that identified:

- (a) Where elements of the Peoples' Survey results were published as any part of either SIG or RAMSI reporting;
- (b) Where Peoples' Survey results were used to strengthen either the SIG or RAMSI planning processes, both at the RAMSI Pillar level; more broadly across SIG agencies; or for RAMSI priorities / cross cutting areas;
- (c) Examples where the Peoples' Survey results were used to inform either SIG or RAMSI policy development, as well as resource allocation.

14. REPORTING REQUIREMENTS

14.1 The Contractor must also provide the following reports by the date indicated:

- (a) The Contractor must submit an **Implementation Plan**, within one month of commencement of this Contract. The Implementation Plan will be endorsed by the Secretariat for implementation. This Plan will be updated annually and will:
 - (i) Provide a schedule of activities and responsibilities for implementing the Survey including details of maximising the use of local facilities (i.e. USP training areas / staff) and local technical expertise (including specific skills in questionnaire development to suit Solomon Islands context and in the initial data analysis), and
 - (ii) Identify how existing People's Survey training materials, databases, contact lists (e.g. previous Enumerators and Facilitators) will be used.
- (b) The Contractor must provide the draft Quantitative and Qualitative questions / instruments for approval by RAMSI by the end of June each year.
- (c) The Contractor must provide to the Secretariat by the end of October each year, three (3) short, targeted People's Survey summary reports that integrate quantitative and qualitative results and interpretations, suitable for use by each RAMSI Pillar. The three (3) reports will include RAMSI cross cutting themes, drawing together primary Survey results. The summary Pillar Report will be presented in a way that ensures data is accessible and meaningful and aligns with agreed topics and questions identified during participatory workshop. The **three (3) targeted Pillar reports** will comprise graphs, trends and where a MSC has been identified.
- (d) The Contractor must provide the Secretariat with an overarching **People's Survey report** by end of November each year that brings together all analytical outcomes of both the questionnaires and discussion groups, in a

way that enables SIG and RAMSI leadership to identify trends and key outcomes. The detailed data will be included in Appendices.

- (e) The Contractor must provide a **report to SIG RAMSI Secretariat** (date advised by Secretariat) on how the Survey can be refined and improved the following year.
 - (f) Primary data, including appropriate documentation of its structure and content (i.e. protocols for file names, dates, locations, data entry people), will be delivered to the NSO following the completion of each Survey.
- 14.2 After the submission of all four (4) Reports, the Contractor must arrange for four (4) Survey outcome briefing sessions: one (1) for SIG and RAMSI representatives from each Pillars and an additional briefing for a more general audience. The Contractor must present relevant findings, explore subtleties of the results (particularly unexpected or dissenting views), provide information about cross cutting themes and support discussion on how the Survey data can be used by SIG, by RAMSI and others to inform their reporting, forward planning and resource allocation.
- 14.3 The Contractor must liaise with SIG and RAMSI Public Affairs Units to participate in launches of the People's Survey results. Responsibility for the costs and logistics of the launch rest with SIG and RAMSI. The Contractor's responsibility is to prepare appropriate presentations and to participate (if requested) in any promotional activities.
- 14.4 The Contractor is responsible for drawing out suitable examples or stories from the SIG RAMSI People's Survey that have potential for strong public relations. The Contractor must liaise closely with the SIG and RAMSI Public Affairs Units to identify such stories and mechanisms for their publication and dissemination.
- 14.5 All reports must be provided in accordance with the specification under Standard Condition **Clause 7** (Reports);
- (a) be accurate and not misleading in any respect;
 - (b) be prepared as directed in writing by AusAID;
 - (c) allow AusAID to properly assess progress under the Contract;
 - (d) be provided in the format, number and media approved or requested by AusAID;
 - (e) be provided at the time specified in this Schedule; and
 - (f) incorporate sufficient information to allow AusAID to monitor and assess the success in achieving objectives of AusAID's Gender and Development Policy.
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Schedule 1, Part 3
Scope of Services
Annex 1

[illegible]

Schedule 1, Part 3
Scope of Services
Annex 2

Estimated Time Inputs (days) for People's Survey Staff Per Year

		Number of staff	Total days / Staff member	ADMIN and MANAGEMENT	IDENTIFICATION OF TOPICS AND QUESTIONS	CAPTURE OF SURVEY DATA	ANALYSIS OF DATA	DISSEMINATE SURVEY OUTCOMES	ASSESSMENT AND FEEDBACK	Total	Total Days
Survey Director	In Australia	1	52	12	10	10	10	5	5	52	90
	In Solomon Islands	1	38	0	10	15	0	8	5	38	
Survey Manager	In Australia	1	83	20	17		33	8	5	83	138
	In Solomon Islands	1	55	0	0	35	15	0	5	55	
In-Country Manager	In Solomon Islands	1	105	20	15	35	15	10	10	105	105
SI Consultant / Trainers	In Solomon Islands	2	70		15	10	20	15	10	70	70
Data Entry	In Solomon Islands	6	15				90			90	90
Survey Supervisors	In Solomon Islands	23	30			690				690	690
Survey Enumerators	In Solomon Islands	80	25			2,000				2,000	2,000
Survey Facilitators	In Solomon Islands	16	20			320				320	320
											3,503

PART 4 – BASIS OF PAYMENT

Note to Tenderers: Although this Basis of Payment is presented as **Part 4** of this RFT, in the consolidated Contract Conditions it will appear as **Schedule 2**.

DRAFT - SCHEDULE 2 - BASIS OF PAYMENT

SIG RAMSI People's Survey 2010

Note to Tenderers: This Part forms a key Schedule of the Contract Conditions.

1. TOTAL AMOUNT

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

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows:
 - (a) The fixed **Total Management Fee (TMF)** in accordance with **clause 3** of this Schedule 2 and paid as Milestone Payments in accordance with **clause 4** of this Schedule 2 up to a maximum total amount of **AUDxx** plus GST, if any to a maximum of **AUDXX**
 - (b) **Reimbursable Short Term Personnel Costs** in accordance with **clause 5** of this Schedule 2, up to a maximum total amount of **AUDxx** plus GST, if any to a maximum of **AUDXX**
 - (c) **Reimbursable Operational Staff, Travel, Accommodation, Per Diems, Training & Administration costs** in accordance with **clause 6** of this Schedule 2, up to a maximum total amount and shall not exceed the sum of **AUD763,069** plus GST (if any) up to a maximum amount of **AUD76,306.90** .

3. TOTAL MANAGEMENT FEE

- 3.1 The TMF will comprise (but will not be limited to):
 - (a) All aspects of profit, including commercial margins for all personnel;
 - (b) All overheads, including rent and utilities, maintenance for office and computer equipment, supplies and consumables, vehicular maintenance and petrol costs for the Contractor's head office;
 - (c) Communications and telecommunications costs;
 - (d) Financial management costs and financing costs, if any;
 - (e) All management support costs for all nominated personnel;
 - (f) Cost of Contractor head office staff;

- (g) Security costs for all personnel;
- (h) Insurance, as required in accordance with **Clauses 33** of Part B (Standard Contract Conditions) of the Contract;
- (i) Taxation, as applicable;
- (j) Health, Medical Evacuation, worker's compensation, liability and indemnity insurances;
- (k) Costs, including financial costs and freight, associated with any subcontracting and procurement of goods and services;
- (l) Costs of complying with the Contractor's reporting and liaison obligations under the Contract;
- (m) Costs associated with personnel recruitment and all personnel briefings in Australia or in-country;
- (n) Costs, including domestic and international travel, accommodation, per diems, and local transport costs where required for all Contractor Head Office personnel (*other* than those listed as Short Term Personnel costs at Clause 5 of this Schedule 2);
- (o) Any costs associated with tendering and subcontracting any services;
- (p) All other costs not specified as Reimbursable Costs; and
- (q) Allowances for risks and contingencies.

3.2 The Annual TMF, for years one (1) and two (2) inclusive of this Contract, is **AUDxxx** plus GST, if any to a maximum of **AUDXX**, as follows in **Table 1**.

Table 1: Total Management Fee – Years 1 and 2

	Year 1	Year 2	Total AUDxx
Total Management Fee	<i>Specify</i>	<i>Specify</i>	<i>Specify</i>

3.3 TMF FOR OPTION PERIOD

- (a) If AusAID exercises its rights, under Clause 2.3 of the Project Specific Conditions to extend the term of this Contract, the TMF applying to the Contract extension will be increased in accordance with the escalation rates specified in Table 2 below.

Table 2: Escalation Rates for Option Period

Item	Year 3
Total Management Fee (TMF)	Escalation % <i>Specify</i>

Schedule 2, Part 4
Basis of Payment

4. MILESTONE PAYMENTS

- 4.1 The TMF outlined above will be paid by AusAID to the Contractor as a series of milestone payments in accordance with **Table 3** below.

Table 3 – Milestone Payments

OUTPUT REFERENCE	MILESTONE NUMBER	MILESTONE DESCRIPTION	MEANS OF VERIFICATION	ESTIMATED CLAIM PERIOD	VALUE (AUD)
Schedule 1, 14.1 (a)	1	People's Survey Implementation Plan and resource schedule for the year	RAMSI Secretariat acceptance in writing of Implementation Plan.	June 2010	20% of Year 1 TMF
Schedule 1, 14.1	2	Quantitative and Qualitative Survey Instruments	RAMSI Secretariat acceptance in writing of Quantitative and Qualitative Survey Instruments.	July 2010	25% of Year 1 TMF
Schedule 1, 14.1	3	Summary Report of Survey Outcomes	RAMSI Secretariat acceptance in writing of Summary Survey Report.	October 2010	25% of Year 1 TMF
Schedule 1, 14.1	4	Specific reports focussed on RAMSI pillars and SIG	RAMSI Secretariat acceptance in writing of Specific Survey Reports.	November 2010	30% of Year 1 TMF

Schedule 2, Part 4
Basis of Payment

OUTPUT REFERENCE	MILESTONE NUMBER	MILESTONE DESCRIPTION	MEANS OF VERIFICATION	ESTIMATED CLAIM PERIOD	VALUE (AUD)
Schedule 1, 14.1	5	People's Survey Implementation Plan and resource schedule for the year	RAMSI Secretariat acceptance in writing of Implementation Plan.	June 2011	20% of Year 2 TMF
Schedule 1, 14.1	6	Quantitative and Qualitative Survey Instruments	RAMSI Secretariat acceptance in writing of Quantitative and Qualitative Survey Instruments.	July 2011	25% of Year 2 TMF
Schedule 1, 14.1	7	Summary Report of Survey Outcomes	RAMSI Secretariat acceptance in writing of Summary Survey Report.	October 2011	25% of Year 2 TMF
Schedule 1, 14.1	8	Specific reports focussed on RAMSI pillars and SIG	RAMSI Secretariat acceptance in writing of Specific Survey Reports.	November 2011	30% of Year 2 TMF

Schedule 2, Part 4
Basis of Payment

If option to extend term for 1 year is exercised:

OUTPUT REFERENCE	MILESTONE NUMBER	MILESTONE DESCRIPTION	MEANS OF VERIFICATION	ESTIMATED CLAIM PERIOD	VALUE (AUD)
Schedule 1, 14.1	9	People's Survey Implementation Plan and resource schedule for the year	RAMSI Secretariat acceptance in writing of Implementation Plan.	June 2012	20% of Year 3 TMF
Schedule 1, 14.1	10	Quantitative and Qualitative Survey Instruments	RAMSI Secretariat acceptance in writing of Quantitative and Qualitative Survey Instruments.	July 2012	25% of Year 3 TMF
Schedule 1, 14.1	11	Summary Report of Survey Outcomes	RAMSI Secretariat acceptance in writing of Summary Survey Report.	October 2012	25% of Year 3 TMF
Schedule 1, 14.1	12	Specific reports focussed on RAMSI pillars and SIG	RAMSI Secretariat acceptance in writing of Specific Survey Reports.	November 2012	30% of Year 3 TMF

Schedule 2, Part 4
Basis of Payment

- 4.2 All payments will be payable to the Contractor within thirty (30) days of AusAID's acceptance of the satisfactory completion of identified outputs and a correctly rendered invoice.
- 4.3 The criteria for "satisfactory completion" of an identified output will be as specified in Table 2 above as the means of verification.
- 4.4 Where a Milestone Payment is to follow acceptance of a report, AusAID shall not be obliged to make payment until all outputs to be achieved by the Contractor in the period covered by the report have been achieved.
- 4.5 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 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.

5. REIMBURSABLE PAYMENTS: SHORT TERM PERSONNEL

- 5.1 AusAID shall reimburse the Contractor up to a maximum total of **AUDxxx** for Short Term Personnel Costs.
- 5.2 For each identified Short Term Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears, up to the maximum amounts specified in **Table 4** below.

Table 4: Reimbursable Payments – Short Term Personnel

Table 4: Reimbursable Payments				Short Term Personnel					
Position	Name	Total Inputs in person days		Daily Rate (AUD) Year 1		Daily Rate (AUD) Year 2		Daily Rate (AUD) Year 3	
		Initial Contract 1/10/10 to 30/9/12		Initial Contract 1/10/10 to 30/9/11		Initial Contract 1/10/11 to 30/9/12		Contract Extension 1/10/12 to 30/9/13	
		Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands
Technical Staff									
Survey Director	Specify	38 days per year	52 days per year	Specify	Specify	Specify	Specify	Specify	Specify
Survey Manager	Specify	55 days per year	83 days per year	Specify	Specify	Specify	Specify	Specify	Specify
In-country Manager	Specify	105 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
In-Country Consultant/ Trainer 2 staff in total	Specify	35 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A

Schedule 2, Part 4
Basis of Payment

Position	Name	Total Inputs in person days		Daily Rate (AUD) Year 1		Daily Rate (AUD) Year 2		Daily Rate (AUD) Year 3	
		Initial Contract 1/10/10 to 30/9/12		Initial Contract 1/10/10 to 30/9/11		Initial Contract 1/10/11 to 30/9/12		Contract Extension 1/10/12 to 30/9/13	
		Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands	Home Base	Solomon Islands
Administrative Survey Staff									
23 x Supervisors	TBA	30 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
80 x Enumerators	TBA	25 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
16 x Facilitators	TBA	20 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A
6 x Data Entry	TBA	15 days per year	N/A	Specify	N/A	Specify	N/A	Specify	N/A

- 5.3 Short Term Personnel are personnel engaged under the contract for a period less than six (6) consecutive months.
- 5.4 The Contractor must maintain a record of Short Term Personnel costs incurred over the life of the Program.
- 5.5 AusAID shall reimburse the Contractor for Short Term Personnel costs on a monthly basis in arrears. Reimbursement shall be made for actual inputs (excluding travel and per-diems) at rates agreed in accordance with this Clause and as paid directly to or on behalf of the Short Term Personnel. This may also include escalators, superannuation and personnel-related taxes where applicable.
- 5.6 The Daily Fee Rate for Short Term Personnel, is:
- (a) Based on a five (5) day working week for home country inputs;
 - (b) **Inclusive** of all personnel-related taxes and levies incurred in the Solomon Islands and Australia, with the exception of GST for Services performed in Australia [refer to Clause 20 of the Standard Contract Conditions (Goods and Services Tax)];

- (c) **Exclusive** of any profit, overheads, administration or management fee, or management fee or any other mark-up on the part of the Contractor. The Contractor must provide evidence to support this if requested by AusAID (e.g. copies of employment contracts, payslips, etc).
 - (d) **Inclusive** of superannuation levy, if any, as appropriate;
 - (e) **Exclusive** of travel costs, per diems and accommodation (these costs are covered under Clause 6 below).
- 5.7 If any personnel inputs have not been supplied in accordance with **Table 4**, the Contractor must, in its final claim for payment, reduce the amount claimed based on the number of days that any personnel have not provided the required inputs. The Contractor must include with the claim details of the inputs not provided, together with the amount of the reduction in the total cost for relevant personnel.
- 5.8 For the purpose of calculating part months, where necessary, a full month is deemed to be 30 days. Part months will be pro-rated on a daily basis.
6. **REIMBURSABLE OPERATIONAL STAFF, TRAVEL, ACCOMMODATION, PER DIEMS, TRAINING & ADMINISTRATION COSTS**
- 6.1 The maximum amount payable by AusAID to the Contractor for Reimbursable Costs shall not exceed the sum of **AUD763,069** plus GST (if any) up to a maximum amount of **AUD76,306.90**.
- 6.2 The Contractor will be reimbursed on the basis of the actual cost incurred for items that are identified as reimbursable costs, up to the specified limit, within thirty (30) days of AusAID's receipt of a correctly rendered invoice.
- 6.3 The Contractor will invoice AusAID on a quarterly basis for reimbursable costs no sooner than three (3) months after project commencement.
- 6.4 Administration and Equipment mean goods and services, such as office furniture, computers, vehicles, international communications required by the Contractor for the day-to-day administration of the project in Solomon Islands. Operational Costs are specified reimbursable items as listed in **Table 5** below. The purchase of these goods shall not attract a procurement fee.
- 6.5 The Contractor will be reimbursed on the basis of the actual cost incurred for items identified as reimbursable, up to the maximum amounts specified in **Table 5** below. The actual cost will be exclusive of any costs that are included in the TMF in accordance with **Clause 3** of this Part.
- 6.6 In accordance with **Clause 6.1** above, the Contractor will be entitled to reimbursement for reasonable expenses incurred in respect of Reimbursable Administration, Equipment and Operational Costs, subject to:

- (a) Details of the items purchased or expenses incurred contained in a quarterly payment invoice prepared in accordance with **Clause 14 of Part B** (Standard Contract Conditions); and
 - (b) Original receipts and invoices being maintained to substantiate any claim.
- 6.7 The Contractor shall be reimbursed airfares at economy class for each flight sector of four (4) hours or less and business class for each flight sector greater than four (4) hours duration. Any travel undertaken at cheaper rates (e.g. 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. A 'flight sector' means from any one flight departure point to any one flight landing point.
- 6.8 When expenditure reaches 80% of the limits specified in **Table 5** below the Contractor must advise AusAID of the remaining commitments and must ensure that the upper limits are not exceeded.
- 6.9 The Contractor may vary the sums assigned against individual line items in **Table 5**, within the overall financial limitation of this payment stream and subject to AusAID's written approval. Changes to the value of individual line items will not require a variation to this Contract.
- 6.10 The Contractor must notify AusAID in writing of the intended changes to the descriptions of individual line items. Any changes will be subject to AusAID's written approval. Such changes will not require a variation to this Contract.
- 6.11 The Contractor must maintain a Register of Assets in accordance with **Clause 9.4 of Part B** (Standard Contract Conditions) in a format approved by AusAID.
- 6.12 Should AusAID exercise its rights, under **Clause 2 of Part A (Project Specific, Contract Conditions)** to extend the term of this Contract, the "**Reimbursable Operational Staff, Travel, Accommodation, Per Diems, Training and Administration Costs**" applying to the Contract extension period will be subject to agreement between AusAID and the Contractor.

Table 5 – Reimbursable Costs

Item	Total AUD
Travel (international flights and associated miscellaneous travel costs), car hire/ fuel costs	70,125
Accommodation and per diems for all staff	521,310
Training costs for the Supervisors, Facilitators and Enumerators, including (but not limited to) including venue hire, refreshments, IT and other equipment / projectors, plus any other costs	21,150
Honiara office and support costs (rental, furniture, utilities, stationary, security, communications)	150,484
Total Reimbursable Costs	763,069

7. CLAIMS FOR PAYMENT

- 7.1 The Contractor's tax invoice must be submitted when due pursuant to this Schedule in a form identifiable with the Services.
- 7.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:
- (a) that the invoice has been correctly calculated; and
 - (b) that the Services included in it have been performed in accordance with the Contract.

- 7.3 All claims for payment must be **made out to:**

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

- 7.4 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

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

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

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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 D 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**.
- (e) The completed and signed Tenderer's Submission Checklist in the form specified in **Annex C 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.

Standard Tender Conditions

- 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 the Tender Particulars (**Part 1 Clause 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 D 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** 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 14 days prior to the **Closing Time**.

2.3 AusAID will respond to any Tenderer enquiries no later than 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 D of this Part** and 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.

Standard Tender Conditions

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 (Late Tenders) 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**.

Standard Tender Conditions

- 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 3 years, of the full Term of the Contract or earlier termination.

Technical proposal format

- 7.12 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

- 7.13 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.
- 7.14 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;

Standard Tender Conditions

- (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 am a person of good fame and character; and
- (d) 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 (**paragraphs 3.3 and 3.4**) and the potential consequences to their Tender (**paragraph 3.5**), as detailed in the Tenderer Declaration (**Annex B of this Part**).

Referees

- 7.15 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.
- 7.16 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.
- 7.17 Tenderers must further ensure that nominated referees:
 - (a) are available to be contacted in the 3 week period after the **Closing Time**; and
 - (b) are able to provide comments in English.
- 7.18 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

Standard Tender Conditions

- (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**. 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.

Standard Tender Conditions

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.

Standard Tender Conditions**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. COMPLIANCE WITH LAWS, GUIDELINES 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 Tenderers acknowledge 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.

Standard Tender Conditions

- (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) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located at http://www.ausaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;
 - (iii) 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>.
 - (iv) 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>;
 - (v) *Family Planning and the Aid Program: Guiding Principles* (August 2009). This document is available on AusAID's website at: <http://www.ausaid.gov.au/keyaid/health.cfm>; and
 - (vi) 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.
- 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.

Standard Tender Conditions

- 19.2 The preferred Tenderer(s) must within 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 the Specified Personnel Table (**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 12 months or longer over the last five years, and for the individual's country of citizenship;
 - (b) Police Clearance Certificates must be dated no earlier than 12 months before the Tender Closing Time;
 - (c) If any required Police Clearance Certificates are not provided to AusAID in accordance with **Clause 18.2** above, AusAID may exercise its right, specified at **Clause 14.2** 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:
 - (c) contractor, consultant or sub-contractor;
 - (d) an associate or employee of a contractor, consultant or sub-contractor; or
 - (e) 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 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 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;

“**Related Entity**” has the meaning given in **Clause 13.1** (Ineligibility to Tender) of **Part 5** of the RFT;

“**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, that no proposed team member is a current AusAID employee, and that AusAID has the authority to make the inquiries referred according to the CV certification.

3.4 I warrant that the Tenderer has used its best endeavours to ensure that all employees of the Tenderer, or of its agents or contractors, proposed as Contractor Personnel for the Contract are of good fame and character.

3.5 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.

- 3.6 I acknowledge and agree to the matters specified in **Clauses 14** (AusAID's Rights) and **15** (Tenderer's Acknowledgement) of **Part 5**.
- 3.7 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.
- 3.8 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.9 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.10 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.
- 3.11 **[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.
- 3.12 I warrant that the Tenderer and its Related Entities are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT; or
 - (b) listed on a Relevant List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of the RFT.
- 3.13 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not subject to any proceedings or informal processes which could lead to listing on a World Bank List or listing on a Relevant List. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is subject to proceedings or an informal process which could lead to listing on a World Bank List or listing on a Relevant List. I warrant that the Tenderer has included information regarding the proceedings in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).

- 3.14 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process, or temporarily suspended from tendering by a donor of development funding other than the World Bank. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity has been temporarily suspended from tendering by either the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the temporary suspension in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.15 **[Select Option A or Option B] [Option A:]** I warrant that the Tenderer and its Related Entities are not the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding. **OR [Option B:]** I acknowledge that the Tenderer or a Related Entity is the subject of a formal or informal investigation by the World Bank or another donor of development funding. I warrant that the Tenderer has included information regarding the investigation in Annex 7 (Commonwealth Government Policies Compliance) to Tender Schedule A (Technical Proposal).
- 3.16 I undertake that, if the Tenderer becomes aware of a circumstance referred to in **Clause 13.4** (Ineligibility to Tender) of **Part 5** of the RFT after it has submitted its Tender, I will immediately notify AusAID in writing.
- 3.17 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.
- 3.18 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.
- 3.19 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.
- 3.20 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

[Note to Tenderers: The following Clauses 3.21 and 3.22 will be used by AusAID to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles]

- 3.21 The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the procurement for the Project.
- 3.22 Compliance with Fair Work Principles
- (a) The Tenderer declares the following:
- (i) The Tenderer has had _____ **[Nil or specify number]** adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this Request for Tender.
[If response is nil adverse decisions go to 3.22(a)(iii) below]
- (ii) **[Note to Tenderers: Strike through whichever option does not apply]**

The Tenderer has fully complied or is fully complying with all penalties or

orders arising from the Court or Tribunal decisions declared above.

OR

The Tenderer has not fully complied with or is currently not fully complying with _____ **[Number]** of the penalties or orders arising from the Court or Tribunal decisions declared above and has provided as part of its Tender information about each of these penalties or orders in the form required in Appendix A to the Fair Work Principles User Guide.

Tenderers must provide additional information about each decision declared above in Clause 3.22(a)(ii) as specified in Appendix A to the Fair Work Principles User Guide. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

- (iii) The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer undertakes that it complies with all of these obligations.
- (iv) The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the Fair Work Principles User Guide) it:
 - (A) has consultation arrangements which encourage cooperation and engagement of employees and management; and
 - (B) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.
- (v) Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010 that enterprise agreement includes a genuine dispute resolution procedure that includes the following:
 - (A) the ability for employees to appoint a representative in relation to the dispute;
 - (B) in the first instance procedures to resolve the dispute at the workplace level;
 - (C) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (D) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.

- (b) If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise AusAID of that change within 7 calendar days.
- (c) The Tenderer agrees that failure to comply with **Clause 3.22** of this Tenderer Declaration will result in its Tender being excluded from further consideration.

- 3.23 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.
- 3.24 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**.
- 3.25 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.
- 3.26 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.27 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.
- 3.28 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 – TENDERER’S SUBMISSION CHECKLIST

This checklist is to be included with all proposals. Tenderers are to confirm that their Tender complies with the requirements of the Request for Tender (RFT) by initialling the box where appropriate.

This checklist is provided to Tenderers in order to assist in the submission of a proposal which conforms with the requirements of the RFT, however it is not an exhaustive list of these requirements. It is incumbent on Tenderers to ensure that proposals comply with the terms of the RFT. It should be considered that all requirements detailed in the RFT are mandatory and that failure to comply with any of the requirements detailed in the RFT may lead to a Tenderer’s proposal being deemed non-conforming.

	Checked
Tenderer’s Declaration	
Has the Tenderer’s Declaration been completed and signed?	
For electronic lodgement has one (1) electronic copy in a separate file been submitted?	
For hard copy lodgement, has one (1) printed original been submitted?	
Tender Schedule A: Technical Proposal and Annexes	
Is the Technical Proposal within the specified page limit?	
Does the Technical Proposal address each of the selection criteria individually?	
Does the Technical Proposal indicate the Tenderer’s nominated contact person and contact details on the cover page?	
Are the required annexes included and within the specified page limit(s)?	
If the Past Experience Annex is used have at least two (2) referees been nominated and has it been confirmed that they are: a) 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 of the Tenderer? b) not included in the Tender as proposed team members? c) not AusAID employees?	

	Checked
Are both the Technical Proposal and annexes: a) in a type font of no less than 12 point on A4 paper? b) formatted with left and right page margins no less than 2.5cm and top and bottom page margins no less than 3cm, excluding headers, footers and page numbers? c) absent of AusAID's logo or any representation or mark which indicates that the Tenderer is in any way related to or connected with AusAID?	
For electronic lodgement, has one (1) electronic copy containing all parts and annexes been provided?	
For hard copy lodgement, has one (1) printed original containing all parts and annexes been provided?	
Tender Schedule B: Specified Personnel	
Are the CV's within the specified page limit and certified and signed by the nominated personnel?	
Do the CV's include the name and personal contact details of the nominated personnel?	
Do the CV's include the nationality and, if relevant, permanent residency status of the nominated personnel?	
Do the CV's include details of the professional qualifications of nominated personnel (if relevant), including institution and date of award?	
Do the CV's include details of recent relevant professional and development work experience, including the duration and extent of inputs?	

	Checked
Have at least two (2) referees been nominated on each of the CV's and has it been confirmed that they are: a) 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 of the Tenderer b) not included in the Tender as proposed team members? c) not AusAID employees?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed original been provided?	
Tender Schedule C: Financial Proposal	
Is the financial proposal in the required format as per Clause 1, Part 1 of the RFT?	
Is the financial proposal a fully costed schedule of rates based on the inputs as specified in the Scope of Services, including: (a) escalation? (b) necessary insurances required by the Contract Conditions and for the performance of the Services? (c) detailed information on assumptions used in preparing the pricing? Note a preference is for Australian dollars, however other currencies will be accepted and converted to AUD as at the day the tender closes.	
For electronic lodgement has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement has one (1) printed original been provided in a separate, sealed envelope?	

	Checked
Tender Schedule D: Financial Proposal (Option 1 or 2 is to be selected by Tenderers in accordance with the terms detailed in the RFT).	
Option 1	
Have the names of the tendering entity and its ultimate owners been provided?	
Have the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group been provided?	
Have the previous three (3) years annual financial statements for the tendering entity been provided including: (a) a balance sheet? (b) a profit and loss statement? (c) a cashflow statement? (d) contact name and telephone number of the Tenderer's financial accountant? (e) a statement detailing any other tendering opportunities being pursued by the tendering entity or the group and the likely impact of such tendering opportunities on the financial capacity of the Tenderer to discharge its potential contractual obligations to AusAID under this RFT ?	
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	
Option 2	
Has the date of the most recent financial assessment and the name of the Tender for which this assessment was undertaken been provided?	
Has an explanation of why the Tenderer believes a further financial assessment is not necessary been provided?	
Has a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment been provided?	

	Checked
For electronic lodgement, has one (1) electronic copy been provided in a separate file?	
For hard copy lodgement, has one (1) printed copy been provided in a separate sealed envelope?	

ANNEX D – 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 B - 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**.

PART B – STANDARD CONTRACT CONDITIONS

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Standard Contract Conditions

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PART B – STANDARD CONTRACT CONDITIONS

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/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 Deregulation that governs purchasing by Commonwealth agencies and departments. Details are available at: <http://www.finance.gov.au/publications/fmg-series/procurement-guidelines/index.html>.

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

"Contract Conditions" means the provisions contained in Part A **"Project Specific Contract Conditions"** and Part B **"Standard Contract 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, and any software and associated instrumental/operations manuals.

"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:

- (a) 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
- (b) 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:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition, or embargo;
- (c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution, or military usurped power, or civil war; and
- (d) 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 Contract Conditions" means Contract Conditions in Part A of this Contract.

"Project Start Date" means the date specified in the Project Specific Contract 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 Contract 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

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 "\$" is to an amount in Australian currency.

1.2 Counterparts of the Contract

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.

1.3 Contract prevails

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.

1.4 Inconsistency

If there is any inconsistency (whether expressly or to be implied from the Contract or otherwise) between the Project Specific Contract Conditions and the Standard Contract Conditions, the Project Specific Contract Conditions are to be read subject to the Standard Contract Conditions and the Standard Contract Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Contract 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 are of good fame and character.
- 7.3 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*.
- 7.4 The Contractor must use its best endeavours to ensure that all Contractor Personnel and their accompanying family members while in-country:
 - (a) are aware of local laws, culture and customs in the Partner Country; and
 - (b) act in a fit and proper manner.
- 7.5 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.

- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 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.
- 7.10 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.
- 7.11 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 properly qualified for the tasks they are to perform;
 - (b) 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; and
 - (c) are adequately briefed and understand the environment and culture of the Partner Country.

- 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 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 30** and sue for damages.

9. PROCUREMENT SERVICES

9.1 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.

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

9.3 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.

9.4 The Contractor shall establish and maintain a Register of Assets which shall record any non-consumable Supplies valued at \$2,000 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.

9.5 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.

9.6 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.

10. SUB-CONTRACTING

10.1 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.aisaid.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, and also *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aisaid.gov.au/keyaid/health.cfm>);
 - (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 14** (Accounts and Records), **17** (Audits), **18** (Access to Premises), **25** (Privacy), and **34.4** (Anti-corruption) **below** and as required by Project Specific Contract Conditions **Clause 3** (Accounts and Records) 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 4** (Deed of Novation), contemporaneously with or within 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 4** (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.

10.2 The obligations of **Clause 10.1 above** apply equally to Associates.

10.3 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.

11. CONTRACT AMENDMENT

11.1 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.

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

11.3 AusAID or the Contractor may propose an amendment 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.

11.4 The Contractor must prepare an “Amendment Proposal” for any change sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.

11.5 The Amendment 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.

11.6 AusAID may, at its sole discretion, accept or reject the Amendment Proposal submitted by the Contractor.

12. EXTENSION OF TIME

12.1 Subject to **Clause 12.6 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.

12.2 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 an Amendment Proposal in accordance with **Clause 11.5 above**; and
 - (e) use its best endeavours to continue to perform its obligations under the Contract.
- 12.3 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.
- 12.4 If AusAID approves in writing a request, the extension of time and any approved changes to the Contract will be documented in a "Deed of Amendment". The Contract shall be deemed to have been varied once the Deed of Amendment is signed by both the Contractor and AusAID.
- 12.5 Even if the Contractor has not given notice under **Clause 12.2 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.
- 12.6 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 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.
- 12.7 A notice of suspension, deletion or termination of the Contract under **Clause 12.6 above** takes effect on the date that the notification is received by the Contractor.
- 12.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 12.6 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.

13. HANDOVER

- 13.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over Contract Material, Supplies, information, documents and other materials to the Partner Country in a manner which ensures the Partner Country is able to benefit from the Project and in particular enables the Partner Country to manage ongoing maintenance requirements, as well as any other matters specified in **Schedule 1**. The Contractor must provide a copy of the Draft Handover Plan to AusAID within 12 months of the Project Start Date.
- 13.2 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 6 months before the end of the Contract.
- 13.3 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.
- 13.4 The Contractor must provide all reasonable assistance and cooperation necessary, on expiration or termination of the Contract, to facilitate the provision of further maintenance 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 and Contract Material, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;
 - (c) if requested by AusAID, facilitate the assignment to AusAID, AusAID's nominee or 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 to AusAID or, if requested, to AusAID's nominee all information, including Data and Contract Material, 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.

14. ACCOUNTS AND RECORDS

- 14.1 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.
- 14.2 Accounts and records must be provided for inspection by AusAID immediately upon the request of AusAID.
- 14.3 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.

15. REPORTS

- 15.1 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.
- 15.2 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.
- 15.3 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.

16. REVIEWS

- 16.1 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.

16.2 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 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.

16.3 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.

16.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.

16.5 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.

17. AUDITS

17.1 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.

- 17.2 The Contractor must respond to any notice received under **Clause 17.1 above** within 14 days.
- 17.3 Where the Contractor does not respond within 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 17.1(c) above**.
- 17.4 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.

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

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.

19. PAYMENT

- 19.1 AusAID must make payment of the Fees within 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.
- 19.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 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.
- 19.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.
- 19.4 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 Contract Conditions **Clause 14.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Contract Conditions **Clause 16** (Reviews).
- 19.5 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.
- 19.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.
- 19.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.
- 19.8 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** Error! Reference source not found.;
 - (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.
- 19.9 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.

- 19.10 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.
- 19.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 19.12 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.
- 19.13 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.
- 19.14 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.
- 19.15 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 45 days notice.

20. GOODS AND SERVICES TAX

- 20.1 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.
- 20.2 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).
- 20.3 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.
- 20.4 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.

- 20.5 AusAID shall not pay to the Contractor any amount referable to GST, except as provided in this clause.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 Subject to **Clause 21.2**, 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.
- 21.2 **Clause 21.1** 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 21.2** 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.
- 21.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.
- 21.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

22. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 22.1 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.

23. MORAL RIGHTS

- 23.1 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.

24. CONFIDENTIALITY

- 24.1 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.

- 24.2 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.
- 24.3 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.
- 24.4 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.
- 24.5 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.
- 24.6 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.
- 24.7 This clause shall survive expiration or termination of this Contract.

25. PRIVACY

- 25.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 25.2 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*.
- 25.3 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.
- 25.4 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.
- 25.5 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 25.4 above**.
- 25.6 This clause shall survive expiration or termination of this Contract.

26. AusAID USE OF CONTRACT INFORMATION

- 26.1 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.
- 26.2 This clause shall survive termination or expiration of the Contract.

27. PUBLICITY

- 27.1 The Contractor must identify and implement appropriate opportunities for publicising the Project.
- 27.2 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.
- 27.3 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.
- 27.4 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.

28. WARRANTIES

- 28.1 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.
- 28.2 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.

- 28.3 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.

29. PERSONNEL SECURITY

- 29.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 29.2 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.
- 29.3 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
- 29.4 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.

30. TERMINATION FOR CONTRACTOR DEFAULT

- 30.1 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 **[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 Clause 31.1(o) the Contractor includes Contractor Personnel;
- (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; or
- (q) is in breach of the warranty, regarding the good fame and character of Contractor Personnel, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

30.2 If this Contract is terminated under this **Clause 30**:

- (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).

31. TERMINATION FOR CONVENIENCE

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 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.

31.2 Where notice is given under **Clause 31.1** 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 31**.

- 31.3 In the event of termination or reduction in scope under this **Clause 31**, subject to **Clause 31.4**, 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.

- 31.4 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 31**.

32. INDEMNITY

- 32.1 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.
- 32.2 The Contractor agrees that AusAID may enforce the indemnity in favour of the persons specified in **Clause 32.1 above** for the benefit of each of such persons in the name of AusAID or of such persons.
- 32.3 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.
- 32.4 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.
- 32.5 This indemnity shall survive termination or expiration of this Contract.

33. INSURANCE

- 33.1 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 \$5 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.
- 33.2 The Contractor must, within 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.
- 33.3 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.

- 33.4 In the event of an insurance claim any deductible/excess payable shall be the responsibility of the Contractor.

34. CONFLICT OF INTEREST

Conflict of Interest

- 34.1 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.
- 34.2 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 34.3 below**, that may result in a conflict of interest arising or continuing.
- 34.3 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

- 34.4 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 Contract Conditions **Clause 30** (Termination for Contractor Default) by notice from AusAID.

35. FRAUD

- 35.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 35.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 35.3 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*.
- 35.4 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.
- 35.5 The Contractor must report in writing within 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.

- 35.6 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.
- 35.7 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.
- 35.8 Following the conclusion of an investigation, where a suspected offender has been identified, the Contractor must report all alleged, suspected or detected cases of fraud to the local police and any other appropriate law enforcement agency in the country where the incident has occurred, unless the Director of the Audit section of AusAID agrees otherwise in writing.
- 35.9 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.
- 35.10 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 make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, 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.
- 35.11 The Contractor must keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 35.12 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.
- 35.13 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.
- 35.14 **Clauses 36.6, 36.7, 36.8, 36.9, 36.10, 36.11 and 36.12** shall survive termination or expiration of this Contract in relation to:
 - (a) any fraud detected by the Contractor before the date of termination or expiry of this Contract but the Contractor had not commenced an investigation under **Clause 36.6** before that date,

- (b) any investigation commenced by the Contractor under **Clause 36.6**, but not completed, before the date of termination or expiry of this Contract, and
- (c) any investigation commenced by AusAID under **Clause 36.7**, but not completed, before the date of termination or expiry of this Contract.

36. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

36.1 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.

36.2 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.aisaid.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 36.1**.

36.3 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.aisaid.gov.au/business/contracting.cfm>.

36.4 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 36**.

36.5 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 30**.

36.6 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.

36.7 The Contractor and all Contractor Personnel 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) The strategy 'Development for All: Towards a Disability-Inclusive Australian Aid Program 2009-2014', and in particular the strategy's six guiding principles, located

at

http://www.aisaid.gov.au/publications/pdf/FINAL%20AusAID_Disability%20for%20All.pdf;

- (c) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID's *Child protection policy*;
- (d) *Family Planning and the Aid Program: Guiding Principles* (August 2009), accessible on AusAID's website (<http://www.aisaid.gov.au/keyaid/health.cfm>);
- (e) 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>.

37. INVESTIGATION BY THE OMBUDSMAN

- 37.1 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.
- 37.2 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.

- 37.3 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.
- 37.4 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.
- 37.5 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.
- 37.6 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.
- 37.7 This clause shall survive expiration or termination of this Contract.
38. **RESOLUTION OF DISPUTES**
- 38.1 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 19.11** (Payment) and unless otherwise agreed by the Parties, the Parties shall at all times during the dispute proceed to fulfil their obligations under this Contract.
- 38.2 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 20 Business Days or such other period as is agreed by the Parties.
- 38.3 If the Parties have not been able to resolve the dispute in accordance with **Clause 38.2 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.
- 38.4 In the event that the dispute, controversy or claim has not been resolved within 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.

38.5 Nothing in this clause prevents either Party from seeking urgent injunctive relief.

39. NOTICES

39.1 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).

40. MISCELLANEOUS

40.1 Waiver

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.

40.2 Liability of Party

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.

40.3 Entire agreement

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.

40.4 Severance

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.

40.5 Assignment

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.

40.6 Governing Law and Jurisdiction

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.

40.7 Contra Proferentem

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.

40.8 False and Misleading Information

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 1 SCOPE OF SERVICES

SCHEDULE 2 BASIS OF PAYMENT

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 4 – 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 **Clause 31** and **32** 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 **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

6. **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.

7. **APPLICATION OF DEED**

- 7.1 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.

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

8. NOVATION

8.1 AusAID may issue a notice of substitution to the Subcontractor if AusAID is entitled to exercise its rights under **Clauses 31 or 32** of the Contract.

8.2 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.

8.3 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.

9. RELEASE

9.1 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.

10. FURTHER ASSURANCES

10.1 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.

11. DISCHARGE

11.1 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.

- 11.2 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.
- 11.3 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.
- 11.4 The obligations of AusAID under this Deed in its application to the Subcontract must not exceed the obligations of the Contractor under the Subcontract.

12. NOTICES

- 12.1 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

- 12.2 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:

13. LAWS

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

14. WARRANTY

- 14.1 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.

15. GENERAL

Counterparts

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

Attorneys

- 15.2 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

- 15.3 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

- 15.4 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)

RECITALS

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)**