



Australian Government

AusAID

19 March 2009

Request for Tender

Philippines

Provincial Road Management Facility

REQUEST FOR TENDER

Philippines Provincial Road Management Facility

In accordance with notification to tenderers dated 25 February 2009, AusAID is requesting proposals for implementation of the **Philippines Provincial Road Management Facility** (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**.

A tenderer briefing will take place in Manila on 30 and 31 March 2009.

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, Tuesday, 21 April 2009.
Mode of submission: (Clause 1.1, Part 5)	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 and Annex C, Part 5)	Via AusTender at http://tenders.gov.au Tenderers are advised to allow sufficient time to upload their tender documents.
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 C to Part 5)	PDF (Portable Document Format)
Number of Copies of Tender: (Clause 1.6, Part 5)	<u>For electronic tender lodgement</u> The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of each Tender Schedule. Tenderer Declaration: One (1) electronic copy in a separate file. Tender Schedule A - Technical Proposal: One (1) electronic copy containing all parts and annexes. Tender Schedule B – Specified Personnel: One (1) electronic copy in a separate file. Tender Schedule C - Financial Proposal: One (1) electronic copy in a separate file. Tender Schedule D - Financial Assessment material: One (1) electronic copy in a separate file.

For hard copy tender lodgement

The Tenderer's contact name, position and contact details (phone, email and fax) must be listed on the front cover of each Tender Schedule.

Tenderer Declaration: One (1) signed original, to be included with the Financial Proposal.

Tender Schedule A - Technical Proposal: One (1) printed Original and (five) 5 copies containing all parts and annexes.

Tender Schedule B – Specified Personnel: One (1) printed Original and five (5) copies.

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

Tender Schedule D - Financial Assessment material: One (1) printed copy in a separate sealed envelope.

One CD, containing the files specified as for electronic lodgement.

Endorsement of hard copy Tenders:
(Clause 1.17, Part 5)

“Tender for the Philippines Provincial Road Management Facility.”

Tender Validity Period:
(Clause 1.8, Part 5)

One hundred and eight (180) days

Contact Person:
(Clause 2.1, Part 5)

Ruth Megirian
Fax: +612 6206 4885
Email address: pprmf@ausaid.gov.au

Last date for tenderer enquiries:
(Clause 2.2, Part 5)

7 April 2009
Responses to tenderer enquiries will be issued no later than 14 April 2009 (ie 7 days prior to the **Closing Date** (Clause 2.3, Part 5)

Page limits:
(Clauses 7.15 and 7.17, Part 5)

Tender Schedule A: Technical proposal 15 pages plus annexes.
Tender Schedule B: Curriculum Vitae - 5 pages each, including declaration and signature.

Annex 3 – Risk Management Plan – 5 pages

Annex 4 – Mobilisation Plan – 3 pages

Information:

The following documents are attached:

1. Annex 5 to the Facility Design Document - Procurement Report

The Request for Tender and any associated documents are available from the AusTender website <https://tenders.gov.au>

2. TENDER BRIEFING

- 2.1 AusAID intends to hold the tender briefing in Manila, 30 and 31 March 2009.
- 2.2 Tenderers planning to attend the tender briefing are requested to send advanced notification by facsimile (+612 6206 4885) or e-mail to pprmf@ausaid.gov.au, addressed to Ruth Megirian by COB **Monday 23 March 2009**.

3. ALTERNATIVE TENDERS

- 3.1 AusAID reserves the right to accept and consider alternative Tenders providing they:
- (a) are submitted with a conforming Tender;
 - (b) clearly identify the differences and improvements offered in the alternative Tender;
 - (c) are fully costed; and
 - (d) are clearly marked with the name of the Project and the words “Alternative Tender”.
- 3.2 Alternative Tenders will be considered only after completion of the technical assessment of conforming Tenders.
- 3.3 Only the alternative Tender of the preferred tenderer (following TAP assessment of conforming Tenders) will be assessed.
- 3.4 Alternative Tenders will be technically assessed against the selection criteria contained in this RFT.

4. SCORE WEIGHTINGS

- 4.1 The technical assessment of the proposal will account for **100%** of the overall technical score.
- 4.2 AusAID will engage an independent firm to conduct a separate value for money assessment.
- 4.3 Following the technical and value for money assessment, confirmation of the Tenderer’s financial capacity to meet the contractual obligations referred to in **Clause 9 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.

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

5.1 **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 5.2 of this Part** taking into consideration “other factors” under **Clause 7.8, Part 5**; and
- (b) the required annexes included in **Clause 5.3 of this Part**.

5.2 Selection Criteria

- | | | |
|---|--|-----|
| 1 | Response to the Design Document | 40% |
| | <ul style="list-style-type: none"> (a) Demonstrated understanding of the program and strategic approach to delivering on the objectives, including the ability to manage the planning and delivery of road maintenance works and governance elements in partnership with government agencies; (b) Proven experience in, and understanding of, the context and broader development challenges of working at the sub-national level in the Philippines, including managing political economy issues; (c) Demonstrated understanding of the risks associated with the use of Philippines local government financial and procurement systems, and a robust plan to manage these; (d) An M&E outline reflecting on the objectives, and linked to the Southern Philippines Road Maintenance Program framework and the Philippines Development Assistance Strategy 2007-2011; (e) Demonstrated understanding of the issues underpinning sustainability; and (f) Demonstrated understanding of institutional change issues as they relate to the Philippine Provincial Government reforms required to underpin the Facility. | |
| 2 | Facility Director | 25% |
| | <ul style="list-style-type: none"> • Demonstrated appropriate skills and experience | |
| 3 | Other nominated personnel | 35% |
| | <ul style="list-style-type: none"> • Demonstrated appropriate skills and experience and team balance | |

5.3 Annexes

Annex 1 – Implementation Schedule

An implementation schedule showing dependencies, eg. A Gantt Chart or Critical Path Method identifying resources, dependencies and milestones. Dates referring to commencement or mobilisation are taken to be indicative only for the purpose of tender assessment. If submitting the proposal in hard copy, this annex must be presented on A3 paper.

Annex 2 – Team Member Inputs

A bar chart showing the proposed inputs per team member for the Facility by province and indicating total person months or person days for the duration of the Project (denoting a person as “part-time” is not acceptable). If submitting the proposal in hard copy, this chart must be presented on A3 paper.

Annex 3 – Risk Management Plan

A Risk Management Plan (of no more than 5 pages) that must identify:

- (a) all risks, but in particular procurement 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 4 – Mobilisation Plan

A Mobilisation Plan (of no more than 3 pages) for the first 6 months of the Project. The Mobilisation Plan must include provision for:

- (a) recruitment of Provincial Coordinators;
- (b) establishment of communication channels with AusAID, the Australian Diplomatic Mission and the 7 provincial governments identified in Part 3 of this RFT;
- (c) 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 imprest account and financial control procedures;

- (iii) establishment of other management and administration requirements;
and
- (d) any other relevant matters specified in the Scope of Services, **Part 3** of this RFT and Project Specific Contract Conditions, **Part 6** of this RFT.

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

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 6 – Commonwealth Government Policies Compliance

Tenderers are required to disclose in this annex if they are non compliant and/or have (or have had) issues associated with policies named in **Clause 17, Part 5**. It is not necessary to submit this annex unless the Tenderer is non-compliant or has or has had issues associated with these policies.

6. TENDER SCHEDULE B – SPECIFIED PERSONNEL

- 6.1 **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 (in landscape) format provided and in accordance with the instructions included in **Clauses 6.2-6.3** 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 7.16 and 7.17, Part 5**.
- 6.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5**.
- 6.3 The Commitments column in the Specified Personnel table must include details of proposed team members' commitments to other projects (both AusAID and others) for the period of the Project. In addition to existing commitments, tenderers must detail potential commitments. Potential commitments include nominations in any contemporaneous AusAID or other tenders. Where a proposed team member has an existing commitment to another AusAID project, Tenderers must also detail the duration of the position in the other AusAID project as reflected in the AusAID contract for that project.

- 6.4 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.
- 6.5 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.
- 6.6 Tenderers are reminded of the requirements of **Clause 18.2, 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 18.2, 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 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.

CORE PERSONNEL

Position	Name	Total Inputs in person months	Referee Contact Details		Commitments
			#1	#2	
Team Leader					
Road Engineer Coordinator					
Human Resource management and Development Coordinator (or Capacity Building Coordinator)					

Position	Name	Total Inputs in person months	Referee Contact Details		Commitments
			#1	#2	
Monitoring and Evaluations Coordinator					
Procurement Coordinator					

OTHER NOMINATED PERSONNEL

Position	Name	Total Inputs in person months		Referee Contact Details		Commitments
		Home Base	O/s	#1	#2	

7. TECHNICAL ASSESSMENT

- 7.1 The Tender Assessment Panel (TAP) will assess tenderers' proposals against the selection criteria described in **Clause 5.2** and annexes described in **Clause 5.3**.
- 7.2 Tenderers will also be invited to interview. It is anticipated that the following individuals will be invited to interview:
- (a) Up to 3 tenderer representatives, but no more than 1 representative from each member of a consortium. If more than 2 or more organisations are part of the consortium, at least 2 tenderer representatives must be present, but no more than 1 individual from each organisation.
 - (b) Proposed Team Leader and one other member of the Core Personnel to be identified by the Tenderer; and
 - (c) One observer. This person is not required to participate in the interview.
- 7.3 The proposed format of the interview will be as follows:
- (a) Presentation by the Tenderer (no more than 15 minutes);

- (b) TAP members may interview tenderers on any aspect of the proposals submitted and seek any further information or clarification from bidders in accordance with requirements set out in this RFT.

8. **TENDER SCHEDULE C - FINANCIAL PROPOSAL**

8.1 The financial proposal must be substantially in the format set out in the attached Tables 1, 2 and 3, and contain the information required and in the format detailed in this clause.

8.2 It must:

- (a) be a fully costed fixed price based on the outputs and inputs specified in the Scope of Services, including:
 - (i) escalation and any allowance for foreign exchange rate variations;
 - (ii) necessary insurances required by the Contract Conditions and for the performance of the Services;
- (b) be expressed in Australian dollars; and
- (c) include detailed information on assumptions used in preparing the pricing.

8.1 Any escalators, foreign exchange rate variations, or other price risks, must be built into the fixed price proposal but separately disclosed. AusAID will not consider any “across the board” escalators subsequently applied to any rates or Project costs.

8.2 Information provided in the tables will be used for financial assessment.

8.3 The Contractor will be paid according to the following categories as detailed in Part 4 of the RFT:

- (a) A fixed management fee (FMF) to be paid on AusAID acceptance of milestones;
- (b) A variable management fee (VMF) associated with managing activity implementation, excluding any costs which fall under fixed management fees or reimbursable costs, paid quarterly in arrears;
- (c) Long Term Personnel fees, paid on a reimbursable basis quarterly in arrears;
- (d) Administration, equipment and operational costs, paid on a reimbursable basis; and
- (e) Payments made to an Imprest Account.

Fixed Management Fee

- 8.4 These costs as defined in **Part 4** – Draft Basis of Payment must be included in the Fixed Management Fee and detailed in Table 1 of the financial proposal.

Variable Management Fee

- 8.5 Tenderers must describe in detail the services to be provided for each Category of activity that attracts a Variable Management Fee, and the assumptions made in calculating the Variable Management Fee. There are two categories of activities:
- (a) Category A: procurement and project management activities required for the Contractor to manage roads infrastructure sub-contracts;
 - (b) Category B: training and mentoring activities supplied by the Contractor in specified provinces prior to a province graduating to managing its own infrastructure procurement.
- 8.6 Tenderers are also asked to estimate the total value of Variable Management Fee, based on their own assumptions about the split of costs from the Imprest Account over the life of the Project.

Long Term Personnel Costs

- 8.7 Tenderers must detail in the financial proposal in Table 3 the leave entitlements of nominated Specified Personnel. Where annual recreation leave entitlements exceed 4 weeks per 12 month period, a justification must also be provided along with a narrative description of how the Tenderer will ensure, during Specified Personnel absences, the continued quality of Services. Tenderers should note that leave entitlements and the management strategy may be assessed by the TAP or AusAID as part of the technical assessment process. ***AusAID reserves the right to negotiate leave entitlements should AusAID consider them excessive.***

Reimbursable Administration, equipment and operational costs

- 8.8 These costs will be paid on a reimbursable basis as set out in Annex 3 of Part 4 Draft Basis of Payment, and will not be taken into consideration in the financial assessment.

9. TENDER SCHEDULE D – FINANCIAL ASSESSMENT

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 options are available.

Option 1

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.

Under this Option 1, Tenderers must provide details of the following:

1. the name of the tendering entity and its ultimate owner(s).
2. the names and financial relationships between the tendering entity, its parent entity (if relevant) and other related entities within the group.
3. 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:
 - a) a balance sheet;
 - b) a profit and loss statement; and
 - c) 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.

4. contact name and telephone number of the Tenderer's financial accountant.
5. 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

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.

Tenderers who consider that they may qualify for Option 2 must provide the following information:

1. the date of its most recent financial assessment and the name of the tender for which this assessment was undertaken;
2. an explanation of why a Tenderer believes a further financial assessment is not warranted; and
3. a statutory declaration declaring that the Tenderer's financial position has not altered materially since the date of the previous assessment.

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.

A Tenderer must respond to either Option 1 or Option 2 to satisfy the requirements of this Tender.

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.

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.

The financial information of Tenderers will be treated confidentially.

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TENDER SCHEDULE C

TABLE 1 – FIXED MANAGEMENT FEE

Item	A\$
Financial management costs and financing costs (not covered under the VMF)	
Management support costs for all nominated personnel	
Cost of administrative and head office staff	
Security costs for all personnel	
Insurance, as required in accordance with Clauses 33 and 34 of Part B (Standard Contract Conditions) of the Contract	
Taxation	
Health, Medivac, worker's compensation, liability and indemnity insurances	
Costs of complying with the Contractor's reporting and liaison obligations under the Contract	
Costs associated with all personnel briefings in Australia or Philippines	
All other costs not specified as Reimbursable Costs	
Allowances for risks and contingencies	
Profit and overheads	
TOTAL MILESTONE PAYMENTS	

TENDER SCHEDULE C

TABLE 2 – VARIABLE MANAGEMENT FEE

Rate	Description	Services to be provided	Assumptions
X %	Category A Procurement and project management activities required for the Contractor to manage roads infrastructure sub-contracts		
Y %	Category B Training and mentoring mentoring activities supplied by the Contractor in specified provinces prior to a province graduating to manage its own infrastructure procurement		
Estimated total value of Variable Management Fee			

TENDER SCHEDULE C

TABLE 3 – LONG TERM PERSONNEL COSTS

Position	Name	Monthly Fee (A\$)	Inputs (Months)	Mobilisation (A\$)	Demobilisation (A\$)	Annual Leave Entitlement (weeks)	Financial Limitation (A\$)
Team Leader			60				
Road Engineer Coordinator			60				
Human Resource Management and Development / Capacity Building Coordinator			60				
Monitoring and Evaluation Coordinator			60				
Procurement Coordinator			60				
Provincial Coordinators (up to 10)	<i>Tenderers are not required to nominate personnel for the Provincial Coordinator positions.</i>		maximum of 600 person months in total				Up to maximum of \$4,400,000
Administrative staff (<i>Tenderers to specify</i>)							
TOTAL							

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

Note to Tenderers: These Project Specific Contract Conditions are presented as **Part 2** of this RFT and will appear as Part A of the consolidated Contract.

Part A - Project Specific Contract Conditions

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

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

"MOA" means the Memoranda of Arrangement between the Government Australia, the Philippines Department of Interior and Local Government and provincial governments described in **Schedule 1**.

"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 **Annex 1 to Schedule 2** (Milestone Payment Table) and for which the Contractor is entitled to receive a payment in accordance with the Contract.

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

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

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

"Team Leader" means the specified person nominated in **Annex 1 to Schedule 1**.

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

2. PROJECT COMMENCEMENT

- 2.1 The Contractor must commence the Services no later than (*to be agreed with the preferred tenderer*), which date will be referred to as the Project Start Date.
- 2.2 The term of this Contract is deemed to have begun on the Project Start Date and continues until the final payment is made or earlier notice of termination under the Contract.
- 2.3 The Contractor must ensure that the Services commence in the Partner Country no later than ***insert date***.

3. ACCOUNTS AND RECORDS

- 3.1 The statement of Project expenditure referred to in Standard Conditions **Clause 15.1(e)** (Accounts and Records) must be provided on a quarterly basis and must indicate:
 - (a) total expenditure of the Project to the end of the previous quarter;
 - (b) disaggregated expenditure for the Project to the end of the previous quarter identifying all categories of expenditure including the Fees component, Reimbursable items and Imprest Account expenditure;
 - (c) total expenditure for the quarter; and
 - (d) forward expenditure and expenses by category for 2 forward quarters.

4. NOTICES

- 4.1 For the purposes of Standard Conditions **Clause 40** (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 (Canberra)

To: Desk Name
Attention: Desk Officer

Postal Address: Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601

Street Address: 255 London Cct
CANBERRA ACT

Facsimile: Desk Fax

AusAID (Manila)

Attention: Portfolio Manager, Infrastructure Management Group

Postal Address: Australian Agency for International Development
PO Box 1071 MCPO
1250 Makati City

Manila, Philippines

Street Address: Australian Embassy
Level 22-24, Tower 2, RCBC Plaza
6819 Ayala Avenue (Makati City)
Manila, Philippines

Facsimile: +63 2 7578 265

Contractor

To: Contractor's Name

Attention: Contact Person

Postal Address: Contractor's Postal Address

Street Address: Contractor's Head Office Street Address

Facsimile: Contractor's Fax

5. MANAGEMENT SERVICES

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

- (a) provide pre-mobilisation briefings to Contractor Personnel, including but not limited to security, medical/health situation, cultural environment, detail on project objectives, relevant contract obligations.
- (b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;
- (c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;
- (d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan including in relation to Supplies after delivery and before their incorporation into the Project;
- (e) attendance at briefings with AusAID and status reporting to AusAID on progress at the times required by AusAID;

6. QUALITY MANAGEMENT PLAN

6.1 The Contractor must supply a detailed Quality Management Plan within 1 month of the Project Start Date in a form agreed with AusAID and for written approval by AusAID.

6.2 The Quality Management Plan is subject to AusAID approval. It must include provision for:

- (a) the establishment of communication channels with AusAID, the Australian Diplomatic Mission, Philippines Department of Interior and Local Government and Philippine provincial government Stakeholders;
- (b) a description of all obligations required to be performed by the Contractor to implement the Services, and their timing, including without limitation:
 - (i) the supply and deployment of Long and Short Term Advisers and overall approach to their assignments;
 - (ii) the establishment of procedures relevant to the Services;
 - (iii) a planned approach to coordination of all aspects of implementation of the Services including identification of Supplies, mobilisation of personnel and obtaining necessary approvals; and
 - (iv) a planned approach to coordination of all aspects of implementation and management of sub-contracts;
- (c) the establishment of report preparation and delivery mechanisms;
- (d) the establishment of financial control procedures;
- (e) the establishment of all other management and administration requirements; and
- (f) any other matters specified in **Schedule 1**.

6.3 Once approved in writing by AusAID the Quality Management Plan will be deemed to be annexed to this Contract. Changes to the Quality Management Plan will be subject to a Variation Order as described in Standard Conditions **Clause 12** (Contract Amendments and Variation).

7. TECHNICAL MONITORING GROUP

7.1 AusAID may establish a Technical Monitoring Group (the “TMG”) whose purpose is to provide AusAID with independent technical and other advice on any aspects of the Project and to assist AusAID to assess the performance of the Services.

7.2 The Contractor must:

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

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

8. ANNUAL PLAN

- 8.1 The Contractor must provide to AusAID, within three months of the Project Start Date, and by 31 March in each following year of the Project, an Annual Plan which, before it is implemented, must be approved by AusAID.
- 8.2 The Annual Plan should be prepared in accordance with directions provided in writing by AusAID, must be consistent with this Contract and must include the following matters:
 - (a) the Contractor's plan for performance of the Services required for the period of the Annual Plan;
 - (b) the Contractor's proposed strategy for coordinating any Third Party Issues and for providing the Services in a flexible manner as is appropriate;
 - (c) a detailed budget for the period of the Annual Plan;
- 8.3 The Contractor must make amendments to the Annual Plan as reasonably requested by AusAID.
- 8.4 Within 30 days of receipt of the Annual Plan in accordance with **Clause 8.1 above** AusAID shall notify the Contractor in writing when a decision is likely to be made to reject or accept the Annual Plan. If such Annual Plan has not been approved or rejected within the stated period of 30 days AusAID shall give fair and reasonable consideration to granting an extension of time to the Contractor in respect of the performance of the Services.

- 8.5 Acceptance by AusAID of an Annual Plan does not represent a change to the Contract. The Contract may only be varied in accordance with the Standard Conditions **Clause 12** (Contract Amendments and Variation).

9. SUB-CONTRACTING

- 9.1 In addition to the Standard Conditions **Clause 11** (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 **A\$500,000** 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.
- 9.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e)** (*with respect to Deeds of Novation and Substitution*) will apply to sub-contracts valued at A\$500,000.
- 9.3 The Contractor must not enter into any contract for the procurement of any Supplies or services from any Related Corporation without AusAID's prior approval.

10. MEETINGS

- 10.1 The Team Leader may be required to attend meetings in Canberra at AusAID request 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.
- 10.2 AusAID may require an implementation briefing in Canberra or in Manila prior to mobilisation. The Team Leader and Contractor representative must attend this meeting. AusAID may also require the Team Leader and other Specified Personnel to attend a meeting at the Australian Diplomatic Mission in or having responsibility for the Partner Country before commencement of implementation.
- 10.3 The Contractor acknowledges and agrees that the costs of any meetings under this clause are included in the Fees. AusAID may determine the length of the meetings required, but AusAID expects that such meetings shall be for approximately 8 hours (excluding meal breaks).

11. **RIGHT OF AusAID TO RECOVER MONEY**

- 11.1 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.
- 11.2 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 11.2(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.

11.3 If the Contractor fails within the relevant time to make a refund to AusAID of an overpayment determined under **Clause 11.2**, 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.

11.4 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.

12. GOVERNMENT TAXES, DUTIES AND CHARGES

12.1 Except to the extent referred to in this clause and Standard Conditions **Clause 21** (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.

12.2 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.

12.3 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.

12.4 Subject to **Clause 12.8 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.

12.5 An increase in the Fees under **Clause 12.4 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.

12.6 A decrease in Fees under **Clause 12.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

12.7 The Contractor may claim a Changed Tax adjustment only once in respect of any change.

12.8 **Clause 12.4 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.

13. INSURANCES

13.1 In addition to the Contractor's obligations regarding insurance detailed in Standard Conditions **Clause 34** (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.
- 13.2 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.
- 13.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is \$20 million.

14. **IMPREST ACCOUNT**

- 14.1 The Contractor shall establish an Imprest Account in accordance with this **Clause 14**.
- 14.2 The Contractor must undertake a selection process in order to recommend a commercial banking institution which represents value for money for AusAID approval, with which to establish the separate Imprest Account.
- 14.3 The Imprest Account will be titled Philippines Provincial Road Management Facility Imprest Account. In correspondence with AusAID the Imprest Account will be referred to by title.
- 14.4 Money in the Imprest Account is the money of the Contractor and is not held by the Contractor on trust for AusAID or as agent for AusAID.
- 14.5 The Contractor agrees that the money in the Imprest Account is to be used for the purpose of funding approved Project activities. No money paid into the Imprest Account, or paid to the Contractor for the purposes of the Imprest Account shall be intermingled with the Contractor's other money.
- 14.6 The Contractor is responsible for the management of (including scheduling, acquittal and disbursement) and reporting on the Imprest Account.
- 14.7 The Contractor must produce and submit to AusAID for approval within 30 days of the Project Start Date a Manual of Operations which details the management arrangements and operational procedures for the Imprest Account. Where appropriate the Manual of Operations must be developed in consultation with counterparts using counterpart systems, forms and processes as much as possible.
- 14.8 The Contractor in consultation with the Partner Government, where appropriate, will appoint two personnel from one or both of their respective organisations as principal signatories to the Imprest Account. In the case of the Contractor, the personnel shall be Specified Personnel. Both are to sign withdrawals. In circumstances where one of the principal signatories is absent from the Project, a

third approved nominee may act as an alternative signatory to the Imprest Account. All principal and alternative signatories will be named in the Manual of Operations for the Imprest Account and approved by AusAID.

- 14.9 The funds held in the Imprest Account shall be used solely for the purpose of funding activities described in Schedule 1 Scope of Services.
- 14.10 Bank charges relating to the Imprest Account shall be paid with monies from the Imprest Account and acquitted in the same way other expenditure is acquitted.
- 14.11 Interest earned on the Imprest Account shall remain in the Imprest Account and shall be used for Project purposes and acquitted to AusAID as such.
- 14.12 ***If AusAID requires the Contractor to provide an Unconditional Financial Undertaking, this clause will be included in the final Contract.*** The Contractor must provide AusAID prior to the deposit by AusAID of monies into the Imprest Account, financial security in accordance with **Clause 15**.
- 14.13 Subject to **Clause 14.14** and **14.15** below and requirements set out in **Schedule 2**, monies for the Imprest Account will be paid by AusAID to the Contractor on a quarterly basis.
- 14.14 The first payment is payable following AusAID approval of the Manual of Operations and each subsequent payment is payable following AusAID approval of the Contractor's:
- (a) acquittal of the previous payment; and
 - (b) cashflow projection of funds required for each subsequent payment, over the next twelve month period.
- 14.15 Amounts payable in accordance with **Clause 14.3** above, will be paid within 10 days of notification received by AusAID's Finance Section.
- 14.16 The balance of the Imprest Account must be reported as at 30 March, 30 June, 30 September and 31 December each year, within 10 days of the end of each period, to the AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), with a copy of the balance provided to AusAID's Chief Finance Officer by:

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

Post AusAID
Attention: Chief Finance Officer
GPO Box 887
Canberra ACT 2601
Australia

- 14.17 On every anniversary of the Project Start Date, an audit of the Imprest Account and all documentation relating to the Imprest Account for the previous twelve months must be conducted by an independent external auditor. The audit must be completed within 28 days of each anniversary of the Project Start Date and three

copies of each audit report sent to AusAID within 7 days of the Contractor's receipt of the audit report. One copy must be sent to the relevant AusAID officer specified for the purposes of Standard Conditions **Clause 40** (Notices), one copy must be sent to the Director Audit and the third copy sent to the Chief Finance Officer at the following address:

AusAID
Attention: Director, Audit / Chief Finance Officer (delete as appropriate)
GPO Box 887
Canberra ACT 2601
Australia

- 14.18 The Contractor will undertake independent random audits where Imprest Account funds have been provided to provincial governments for procurement and/or implementation of approved Project activities and which are managed through provincial government systems.
- 14.19 Where partner provinces undertake internal audits that are assessed as inadequate by the Contractor, or a partner province fails to meet the required standards for the use of imprest account funds with respect to a PRMF-funded activity, the Contractor will make recommendations to AusAID as to an appropriate response and, if fraud, corruption or other criminal activity is detected, suspending all PRMF operations in that province.
- 14.20 A final independent audit of the Imprest Account and all documentation relating to the Imprest Account must be provided with the Project Completion Report for the period since the last independent audit provided in accordance with **Clause 14.17** above.
- 14.21 The cost of an audit conducted in accordance with **Clauses 14.17 and 14.18** is included in the fees payable to the Contractor, and the cost of any corrections or remedial work required to the Imprest Account pursuant to audit findings is to be borne by the Contractor.
- 14.22 The Imprest Account and all documentation relating to the Imprest Account, including documentation related to the use of the Imprest Account funds may be subject to audit by or on behalf of AusAID at any time and from time to time.
- 14.23 If, upon the premature termination of the Contract or at the end of the Contract, money remains in the Imprest Account, the Contractor shall pay to AusAID an amount equal to the total amount of money (including any accrued interest) remaining in the Imprest Account.
- 14.24 In the event that AusAID becomes aware that any money cannot be accounted for by the Contractor in the Imprest Account including upon premature termination of the Contract, AusAID has the right to recover the amount in question (plus interest equal to the interest that would have been earned on the funds had they remained in the Imprest Account) from monies due and owing to the Contractor under this Contract or as a debt due to the Commonwealth **or by calling in the Unconditional Financial Undertaking referred to in Clause 15**, whichever AusAID in its absolute discretion considers appropriate.

14.25 This clause shall survive expiration or termination of this Contract.

15. UNCONDITIONAL FINANCIAL UNDERTAKING

AusAID may require the Contractor to provide an Unconditional Financial Undertaking. This clause would then be included in the final Contract.

- 15.1 The Contractor must, on or before the Project Start Date, provide to AusAID a performance security in respect of the Services in the form of an unconditional and irrevocable financial undertaking from a financial institution authorised to carry on banking business under the *Banking Act 1959* (Cth) in Australia and approved by AusAID.
- 15.2 The performance security provided must be in the form appearing in **Schedule 6** and must be provided at the Contractor's cost, for the maximum aggregate sum of **[insert \$ amount]** and be available for the term of the Contract.
- 15.3 AusAID is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the performance security duly executed and, where applicable, stamped, in accordance with **Clause 15.1 above**.
- 15.4 If AusAID becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, AusAID may exercise all or any of its rights under the performance security.

16. PERFORMANCE GUARANTEE

- 16.1 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 delivered to AusAID, guaranteeing the performance by the Contractor of its obligations under the Contract, which must be substantially in the form appearing in **Schedule 7**.

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PART 3 – DRAFT SCOPE OF SERVICES

Provincial Road Management Facility (PRMF)

Note to Tenderers: This Part 3 of the RFT will appear as Schedule 1 of the consolidated Contract.

SCHEDULE 1 – DRAFT SCOPE OF SERVICES

Provincial Road Management Facility

1. BACKGROUND

- 1.1 The Provincial Road Management Facility (PRMF) seeks to promote economic growth and improved public access to infrastructure services in the southern Philippines.
- 1.2 PRMF forms one component of a broader Government of Australia (GOA) intervention in road rehabilitation and maintenance and sub-national government capacity building. Coordination with other GOA funded projects will be important to leverage the greatest impact. In addition to PRMF, GOA contributions may be made as follows:
 - (a) Potential cofinancing with the World Bank to support the National Roads Improvement and Management Program, Phase II (NRIMP2), or similar activities being undertaken by other development partners;
 - (b) Support for Municipal and Barangay roads through cofinancing of the World Bank supported Mindanao Rural Development Project, Phase II (MRDP2); and
 - (c) Potential cofinancing of a World Bank program to support improved financial allocations from central government to local government units (LGUs) based on performance criteria.
- 1.3 In addition to the Subsidiary Arrangement between GOA and GOP for the implementation of the PRMF, GOA (through AusAID) and the Department of Interior and Local Government (DILG) will sign separate Memoranda of Arrangement (MOA) with each province that is selected and agrees to participate in the PRMF. Seven provinces will have MOA in place prior to PRMF mobilisation. These are: Misamis Occidental, Misamis Oriental, Agusan del Sur, Suragao del Norte, Bukidnon, Guimaras, and Bohol.
- 1.4 Prior to mobilisation of PRMF, AusAID will undertake and make available to the Contractor:

- (a) Provincial Assessments (one detailed assessment per province and one comparison document) examining provincial government practises and capacities;
- (b) A Procurement Report titled “Southern Philippines Road Maintenance Program (SPRMP): Comparison of AusAID and Philippines Procurement Requirements”;
- (c) Engineering Designs, environment plans, maintenance plans, costings, and other documents required for road rehabilitation sub-contract packages for the first-year’s physical works program in each province specified in **Clause 1.3**;
- (d) An Environment Compliance Certificate to meet GOP requirements; and
- (e) Peace and Conflict Analyses for each of the Provinces specified in **Clause 1.3**;

2. FACILITY DESCRIPTION

- 2.1 The goal of PRMF is to increase economic activity and improve public access to infrastructure and services in the southern Philippines. The Facility will contribute towards this goal by (a) rehabilitating and maintaining a core road network in selected provinces, and (b) through strengthening provincial government systems.
- 2.2 The PRMF will pursue two complementary development objectives:
 - (a) Improve and make sustainable Government of the Philippines (GoP) provision and maintenance of a core network of provincial roads in targeted provinces in Mindanao and the Visayas; and
 - (b) Strengthen provincial institutional capacity and governance systems related to the provision, management and maintenance of provincial roads.
- 2.3 To achieve this the PRMF will have two components:
 - (a) **Component 1: Capacity Building for Road Sector Planning and Management** – with the intended outcome that target provinces have strengthened institutional capacity and systems to develop and implement road sector plans in support of broad-based sustainable social and economic development.
 - (b) **Component 2: Road Network Rehabilitation and Maintenance** – with the intended outcome that provincial roads are rehabilitated to a good condition and are sustainably maintained on an annual basis
- 2.4 The use of Philippines Provincial government systems is key to ensuring the sustainability of the program. It is intended that the Facility-funded activities will progressively use provincial government systems including planning processes, financial management processes, procurement processes, monitoring and evaluation processes, and quality assurance processes. This will be undertaken progressively and based on thorough analysis as described in **Clauses 6.1 to 6.8** of this Schedule 1.

2.5 PRMF will be supported by two funding streams:

- (a) funds from a Base Program allocated by AusAID to each partner province on an annual basis and used for capacity building and physical road works; and
- (b) Performance-based funds known as the Performance Program, as described in **Clauses 6.30 to 6.34** of this Schedule 1. The Performance Program will have two parts: (i) funds for physical works activities approved under PRMF; and (ii) an untied contribution to the Provincial Governments' Development Fund. The untied portion will be determined by the province's ability to increase local source tax and fee revenue.

3. **MANAGEMENT ROLES AND OVERSIGHT**

- 3.1 A Project Steering Committee (PSC) is responsible for strategic oversight of the PRMF and for ensuring that PRMF objectives are achieved. The PSC will consist of representatives from AusAID and the Department of the Interior and Local Government (DILG), and other government departments and civil society as may be invited from time to time to join the PSC in an advisory capacity. The PSC will provide direction to the Contractor and is responsible for approving plans submitted by the Contractor as set out in this Scope of Services. The Contractor will provide secretariat services to the PSC as set out herein.
- 3.2 AusAID has appointed a Portfolio Manager to manage the Contract. The Portfolio Manager will be responsible for coordination and liaison with DILG and provincial governments in regard to Memoranda of Arrangements (MOA) and with other projects. The Portfolio Manager will be supported by an AusAID appointed team including a range of technical advisers.
- 3.3 This Scope of Services describes the Contractor's role and responsibilities from the Contract start date to 31 June 2014. The Contractor will report to the Project Steering Committee (PSC) and to AusAID as described herein.

4. **SERVICES**

- 4.1 The Contractor will provide all the necessary technical, design, procurement, logistical, operational, financial management, quality assurance, monitoring and evaluation, audit, and coordination services required to mobilise and implement activities under the PRMF in accordance with this Scope of Services.
- 4.2 Within 6 weeks of Contract start date, the Contractor will develop an Implementation Schedule for the initial seven provinces (refer **Clause 1.3**) showing detailed timeframes for:
 - (a) establishment of PRMF presence in each province;
 - (b) recruitment and deployment key personnel; and

- (c) commencement of the services described in this Scope of Service.
- 4.3 The Contractor will develop criteria for the selection of additional provinces for approval by the PSC. The Contractor will recommend to the PSC specific provinces for inclusion in the expansion of the program as budget becomes available. The expansion will include one conflict affected province within 24 months of facility mobilization.
- 4.4 The Contractor must outline its approach in the conflict affected province to ensure effective engagement, and will seek PSC approval for any changes to its operations and approach in that province prior to their adoption by the Contractor.
- 4.5 The Contractor will update each PCDA developed under **Clauses 5.1-5.3** when a province no longer qualifies for or graduates from PRMF assistance, or at the Completion of the Facility, whichever occurs earlier. This update will report on the impact PRMF has had in the province with respect to Peace and Conflict.
- 4.6 The Contractor will develop an Environmental Management System (EMS), consistent with GOP and GOA requirements, to manage PRMF related environmental issues. This EMS will contribute to the overall PRMF Monitoring and Evaluation system. Each environment management plan developed for each road segment in each province will be linked to the EMS.
- 5. **SERVICES REQUIRED PRIOR TO MOBILISATION IN EACH PARTNER PROVINCE**
 - 5.1 AusAID has undertaken Peace, Conflict and Development Analyses (PCDA) for each of the initial seven partner provinces specified in **Clause 1.3** of this Scope of Services. The Contractor will ensure this analysis is updated as required to provide sufficient information to properly inform PRMF implementation and maximise PRMF contribution to peace and stability.
 - 5.2 Where the Contractor determines that the PCDA undertaken by AusAID is insufficient to properly inform the implementation of PRMF in any particular province, the Contractor will update the analysis to meet any identified shortcomings.
 - 5.3 The Contractor will undertake a PCDA for any province not specified in **Clause 1.3** that is approved as a partner province by the PSC. The PCDA will include:
 - (a) An analysis of the current peace and conflict environment, including sufficient data to be used as a baseline to measure changes in the peace and conflict environment within each province;
 - (b) Considerations and recommendations for implementing a road rehabilitation and maintenance program given the current environment; and

- (c) An analysis of the potential impact of PRMF on the peace and conflict environment.
 - 5.4 The PCDA will be submitted to the PSC and will require PSC endorsement prior to the Contractor commencing any other PRMF activity within the province.
 - 5.5 In addition to the Manual of Operations for the Imprest Account (**Clause 14.7 of Part A** of the Contract), the Contractor will prepare a Financial Operations Manual. The Financial Operations Manual will be approved by AusAID prior to PRMF mobilisation in any province and will provide a detailed description of financial flows and financial approval processes. Particular attention will be provided to describe the financial processes involved when using provincial government systems, taking into account GOP financial requirements (eg that finances are available within a provincial government bank account prior to a tender being called). The Financial Operations Manual will also detail financial risks and the risk management and mitigation approaches to be adopted to address those financial risks.
 - 5.6 The Contractor will not mobilise in any province until the relevant Provincial Government has signed a Memorandum of Arrangement with the Australian Government and the Department of Interior and Local Government (DILG). AusAID will notify the Contractor when the MOA has been signed.
6. **SERVICES REQUIRED UNDER FACILITY COMPONENTS**
- COMPONENT 1
- OUTPUT 1.1 – Provincial Road Sector Planning and Management Review
- 6.1 For the initial seven provinces, detailed in **Clause 1.3** of this **Schedule 1**, the Contractor will review the Provincial Assessment documents produced by AusAID and undertake any additional primary data collection, research and analysis the Contractor determines is required to complete and update each Provincial Road Sector Planning and Management Review as described in **Clauses 6.3 to 6.8**.
 - 6.2 For additional provinces (not detailed in **Clause 1.3** of this Schedule 1), which are approved by the PSC to partner with PRMF, the Contractor will produce a Provincial Road Sector Planning and Management Review, as described in **Clauses 6.3 to 6.8**, through the Contractor's own primary data collection, research, verification and analysis.
 - 6.3 The Contractor will ensure that the Provincial Road Sector Planning and Management Review provides sufficient information to allow the relevant Provincial Governor, Contractor and AusAID to understand the strengths and weaknesses specific to each Province that influence the ability of the Province to deliver road services in a sustainable way. Each Review will examine current work practices in the relevant province and compare them to the relevant province's stipulated processes and any relevant national or provincial government laws, regulations and policies.

- 6.4 The Contractor will ensure that, at a minimum, each Provincial Road Sector Planning and Management Review includes the identification and prioritisation of road management and maintenance issues, and examination of:
- (a) Budget preparation and execution;
 - (b) Expenditure management;
 - (c) Planning and project cycle management;
 - (d) Internal controls and internal audit;
 - (e) Capacity and capability of relevant provincial government departments, in terms of staff numbers, staff qualifications, staff experience, staff motivation, access to and use of equipment and services, office space, and any other relevant issue that may impact on capacity and capability;
 - (f) Procurement processes;
 - (g) Service delivery systems;
 - (h) Activities and processes required to manage and implement the physical works component of PRMF, including but not limited to the preparation of feasibility studies, preparation of environment management plans, preparation of monitoring and evaluation plans, preparation of road rehabilitation designs, and preparation of annual routine road maintenance plans and periodic road maintenance plans.
 - (i) Linkages between relevant departments with particular emphasis on mutual linkages between the planning department, the budget department, the internal audit office, the Provincial Bids and Awards Committee, and the Provincial Engineer's Office; and
 - (j) Road safety issues within the province, including a provincial road safety assessment, road safety awareness within the provincial government; awareness among the general public of road safety, and provision of road safety information to the general public.
- 6.5 In assessing procurement issues, the Contractor will ensure that each Provincial Road Sector Planning and Management Review verifies and updates data and information contained in the report titled "Southern Philippines Road Maintenance Program (SPRMP): Comparison of AusAID and Philippines Procurement Requirements, December 2008" for each partner province. The Contractor will ensure that the Review recommends to the PSC and to each Provincial Government as appropriate any additional measures that may be necessary in each province to enhance transparency, efficiency and/or accountability.
- 6.6 The Contractor will develop a province specific risk management matrix based on each Provincial Road Sector Planning and Management Review.

- 6.7 During the Review process, the Contractor will assist the Provincial Government to assess the relative merits of delivering road rehabilitation and maintenance through force account procedures and contracting out through a competitive tender process. This assistance must be tailored for each Provincial Government and contain sufficient detail and analysis to enable Provincial Governments to base future road delivery decisions on this output.
- 6.8 The Contractor will undertake for each partner province an annual update of the Provincial Road Sector Planning and Management Review to assess progress in strengthening the capacity of Provincial Governments, and to determine on a province by province basis which government systems can be used, or continue to be used, to deliver PRMF services. Based on these assessment updates the Contractor will recommend to AusAID which government systems in each province adequately address identified risks and are suitable for use by PRMF. AusAID will provide written approval to the Contractor to proceed in using these systems on a province specific basis.

OUTPUT 1.2 – Five Year Provincial Road Network Development Plans Prepared

- 6.9 The Contractor will facilitate, provide quality assurance and, where necessary, provide capacity building, technical and administrative inputs and coordinate the development of a five year Provincial Road Network Development Plan (PRNDP) for each partner Province.
- 6.10 The Contractor will consult the Provincial Governor of each Partner Province and take the Governor's direction as to which Provincial Government Department will take responsibility for preparing the PRNDP. The Contractor will, in each province, assess the capacity of this nominated department and provide technical and administrative assistance as may be required to support the coordination and any technical or administrative role this department may have in developing the plan described in **Clause 6.11**.
- 6.11 The five year PRNDP for each partner province must include:
- (a) An update to the Provincial Road inventory that covers:
 - (i) road condition (including specification of any necessary rehabilitation, upgrading, and maintenance)
 - (ii) any other capital works required (including but not limited to bridges, slope protection, and drainage); and
 - (iii) identification of provincial road work priorities consistent with the provincial development plan.
 - (b) A revenue and expenditure plan for the management of the provincial road network over the 5-year period of the PRNDP. The PRNDP will identify funding sources for each priority activity in the Plan.

- (c) Identification of procurement and service delivery mechanisms to implement the plan. This section will be determined during the Workshop described in **Clause 6.22**.
 - (d) A framework for monitoring and evaluation of the plan's implementation. This framework must include the requirement for an annual review of the PRNDP that addresses the previous year's implementation, reviews remaining priorities and adds a new fifth year to the PRNDP.
 - (e) A Human Resource Management and Development (HRMD) Plan to build the required skills and structure to properly manage the plan. The Contractor will ensure the HRMD plan incorporates all identified capacity, organisational and institutional issues identified under Output 1.1. (**Clauses 6.3 to 6.8** of this Schedule1).
- 6.12 The Contractor will assess the capability and capacity of each Provincial Engineers Office (PEO) to undertake the road inventory update in a timely and effective manner, and provide capacity building, technical and administrative inputs as may be required to ensure that the inventory provides accurate information that clearly identifies road conditions, required works, and priority of works over a 5-year period.
- 6.13 It is intended that PRMF improves transparency and consistency of road inventory data so as to provide a more reliable management tool and improve the basis for the allocation of the Special Local Road Fund from the National Government to each provincial government. To contribute towards this it will be important for DILG and each partner province to use a Geographic Information System (GIS) that is compatible with the GIS used by Department of Public Works and Highways (DPWH). The Contractor will assess DILG and each province's GIS requirements and where necessary purchase hardware, software, and provide training required by each to operate a GIS that is compatible with the GIS used by DPWH for the purpose of the road inventory. The Contractor must also recommend to each Provincial Government and DILG the appropriate department or unit to house the GIS system and operating procedures to ensure access by all relevant provincial government and DILG staff to the GIS. The Contractor will provide training to all relevant provincial government and DILG staff in the use of the GIS.
- 6.14 The Contractor will ensure that any purchases under **Clause 6.13** are limited to hardware and software that are necessary to operate stand-alone GIS in each provincial government and within DILG and will avoid any purchase where adequate hardware and software already exists.
- 6.15 The Contractor will verify the accuracy of the road inventory undertaken by the PEO of each province whether or not capacity, technical or other support was provided by the Contractor, through an independent assessment.
- 6.16 In determining the relative priority of individual road segments, the Contractor will assist each provincial government to develop sound prioritization criteria, which

considers the potential economic contribution of the road segment, relevant social issues, peace and conflict issues, and gender considerations.

- 6.17 For each province, the Contractor will review the PRNDP to determine whether it meets national government requirements for PRNDPs, will provide the Contractor with a clear indication of the issues outlined in **Clauses 6.11 to 6.16** and provides sufficient information to allow the Contractor to develop annual works and reform programs (as detailed in **Clauses 6.21 to 6.34**), capacity building plans (as detailed in **Clauses 6.35 to 6.41**), and annual physical works programs (as detailed in **Clauses 6.50 to 6.58**). Where judged deficient, the Contractor will work with relevant Provincial Government Departments to rectify, and if necessary will provide technical and administrative inputs for this purpose.
- 6.18 The Contractor will assist the relevant Provincial Government department within each partner province present the PRNDP to the various Governors for approval. The Contractor will, if requested, assist the Governor in presenting the PRNDP to the appropriate Provincial Development Council for approval.
- 6.19 Once finalized and approved, the Contractor will provide necessary resources to each Provincial Government to enable each PRNDP to be published and distributed to any interested parties including DILG, DPWH, non-government organisations and civil society. This may be accomplished through making the PRNDP for each province available on the PRMF web-site, if this approach is agreed to by the respective Provincial Governor.
- 6.20 The Contractor will undertake a review of the effectiveness of the PRNDP for each partner province as a planning tool for managing the provincial road network at the mid-term of the Facility and again at Completion or at the point a province graduates from PRMF assistance, whichever is sooner. The mid-term review will make recommendations to each provincial government for improving the PRNDP's effectiveness if necessary and the final review will articulate lessons learned from the PRNDP process.

OUTPUT 1.3 – Provincial Annual Works and Reform Program

- 6.21 Each year the Contractor will prepare a Provincial Annual Works and Reform Program (PAWRP) for each partner province. The PAWRP will detail the components of the PRNDP that will be implemented under the PRMF against an agreed timeframe and linked to a budget. Prior to the development of the PAWRP, and by 31 May each year, AusAID will inform the Contractor as to Facility budget allocations under both the base-program funding stream and the incentive program funding stream for each partner province. These budgets may be revised by AusAID during the course of the year.
- 6.22 In developing the first PAWRP the Contractor will, in each partner province, convene a workshop to discuss which elements of the 5-year PRNDP can be best assisted under PRMF. The workshop should include the Governor, relevant

Provincial Government Staff, regional DILG representatives, regional DPWH representatives, regional Department of Environment and Natural Resources (DENR) representatives, and civil society organisations. The Contractor will use this workshop to identify a broad 5-year program of assistance, or a program for the remaining duration of the Facility if less, for each province. This broad program will be provided to the PSC and will be used by the Contractor to develop annual PAWRPs. The Contractor will ensure that the first PAWRP for each of the initial seven provinces identified in **Clause 1.3** includes a physical works program consistent with the agreement AusAID has in place with each Provincial Government and for which road segment designs have been provided by AusAID.

- 6.23 The Contractor will ensure that the workshops are structured so as to capture the views of all stakeholders as to the priorities for PRMF. In doing this, the Contractor will ensure that each workshop is conducted consistent with gender equality principles and incorporate views from civil society in affected geographical areas. The Contractor will ensure that the process is transparent and the outcomes are distributed to all stakeholders when finalised.
- 6.24 The Contractor will ensure that each PAWRP contains an appropriate mix of road rehabilitation and maintenance work and required capacity building. At a minimum each PAWRP will identify for the appropriate province:
- (a) A well sequenced capacity building outline for each of the critical areas supporting the sustainability of PRMF, including, but not limited to, procurement, budget and financial management, planning, internal controls and internal audit, human resource management and development, support to PEO to underpin operational functions, and strengthening of linkages among provincial government departments particularly in planning, budgeting, and monitoring and evaluation.
 - (b) A prioritized list of provincial gravel roads for rehabilitation and maintenance works with expected timeframes. The Contractor will ensure the first year rehabilitation and maintenance program for each of the provinces identified in **Clause 1.3** is consistent with the road segments agreed between AusAID and each provincial government.
- 6.25 The Contractor will recommend within the PAWRP whether the physical works component will be undertaken through “rehabilitate and maintain” long term contracts, or whether through rehabilitation only contracts with a separate long term maintenance contract awarded for multiple road segments within the province. Different recommendations may be made for each province or road segment depending on circumstances and operating environment.
- 6.26 Prior to preparation of the second and each subsequent PAWRP, the Contractor will undertake consultations with stakeholders, including civil society, and confirm priorities with each Provincial Governor.

- 6.27 From the second year of engagement in any partner province the PAWRP will also include physical works to be funded from the Performance Program funding stream. These may include additional road segments, bridges, slope stabilisation and other physical works that support base-program PRMF activities.
- 6.28 The Contractor will provide for each partner province, all necessary resources for the workshop and annual consultations including resources to enable members of civil society to attend and participate.
- 6.29 The Contractor must provide a copy of each PAWRP to DILG and AusAID for “no objection” approval as it is prepared and after it has been approved by the Provincial Government. In the event of an “objection” from either AusAID or DILG, the Contractor will discuss the objection with all stakeholders including DILG, AusAID and the Provincial Government. Following these discussions, the PAWRP will be revised and resubmitted to DILG and AusAID for “no objection” approval.

Performance Program

- 6.30 From the second year of engagement in any partner province, PRMF funding to that province will consist of a base allocation and a performance allocation. The performance allocation will be determined by AusAID on an annual basis based on each partner provinces’ achievement of previously agreed reform targets, namely:
 - (a) Increase in locally generated tax and fee revenue;
 - (b) Level of contracting out of road services by each Provincial Government using own-source funds;
 - (c) Development of multi-year budgets linked to provincial plans;
 - (d) Establishment and effectiveness of internal control procedures and internal audit; and
 - (e) Development and implementation of a multi-year Human Resource Management and Development Plan to support Provincial Government service delivery.
- 6.31 During the development of each PAWRP, and based on the information collected under Output 1.1, the Contractor will negotiate appropriate annual performance targets, and performance indicators, with each partner provincial government relevant to each of the four areas of the Performance Program that require such targets (**Clause 6.30(b) to 6.30(e)**). Once negotiated these targets and indicators will be provided to AusAID for approval.
- 6.32 For each partner province, the Contractor will collect baseline data for each performance indicator approved under **Clause 6.31**. In addition, the Contractor will collect baseline data relevant to the untied portion of the Performance Program namely the current provincial government revenue collected from locally generated tax and fee revenue..

- 6.33 The Contractor will collect data on all five performance targets and their associated indicators to compare against the baseline on a 6-monthly basis. Any change to Performance targets and/or indicators will require approval from AusAID.

OUTPUT 1.4 – Capacity Building Plans formulated and delivered

- 6.34 The Contractor will develop and implement an annual Capacity Building Plan (CBP) for each province based on the PAWRP. The CBP, including a budget for implementation, will be submitted to the PSC for approval on an annual basis, and must be updated every 6 months. The annual Capacity Building Plan will provide details about the type of capacity building that is needed to:
- (a) support the Provincial Government and other stakeholders and enable them to fulfil the immediate needs of PRMF implementation;
 - (b) strengthen government systems to allow use of these systems in implementing PRMF;
 - (c) support the long term sustainability of PRMF objectives; and
 - (d) raise awareness of road safety issues within the community and within the Provincial Government administration.
- 6.35 The Capacity Building Plan will cover capacity needs relevant to PRMF Components 1 and 2. Any office equipment required by a provincial government or National Government department to make effective use of the capacity building will be separately listed within the relevant activity under the capacity building plan along with costings and justifications. This office equipment must be listed on the Assets Register.
- 6.36 The Contractor will ensure that the Capacity Building Plan for each Province covers the areas identified under the Performance Program described in **Clauses 6.30 to 6.34**.
- 6.37 The Contractor will ensure that the Capacity Building Plan for each Province includes relevant procurement training for provincial government bodies with responsibility for procurement, including but not limited to, Bids and Awards Committees (BAC), BAC Secretariats, Technical Working Groups, Accounting Units, contract management units of the PEO, and the Provincial Executive including Governors.
- 6.38 The Contractor will ensure that capacity building offered under PRMF is consistent among provinces and that all Provinces receive training to ensure that partner provincial governments work towards a common set of procedures relating to procurement including, but not limited to, record keeping, measures for monitoring and evaluation, complaint handling mechanisms, proper handling of bids and securities, regular use of the Philippines Government Electronic Procurement System (PhilGEPS), regular participation of the Commission on Audit (COA) and civil

society in BAC meetings, no inappropriate delegation of work by BACs to line agencies, proper contract management including compliance with designs, specifications and conditions of contract, quality assurance, claims, variation orders, and management and certification of works in progress and completed works.

- 6.39 The Contractor will submit to the PSC six monthly progress reports concerning the Capacity Building Plans for each partner province. These progress reports will cover key outcomes achieved and progress made in each of the partner provinces and with other relevant stakeholders.
- 6.40 The Contractor will submit to AusAID a quarterly acquittal of Imprest Account funds used for capacity building activities, physical works and for any other AusAID approved purposes for the previous quarter and provide an estimate of expenditure for the next quarter. Based on this estimate and the balance of funds held in the Imprest Account, AusAID will advance funds to the Imprest Account in accordance with **Clause 14.5 of Part A** of the Contract.

COMPONENT 2

- 6.41 The Contractor will prepare, implement and monitor long-term “rehabilitate and maintain” sub-contracts, or rehabilitate-only sub contracts that are accompanied by separate long term maintenance sub-contracts, for priority road networks, as described in **Clauses 6.43 to 6.47** of this Schedule 1.

OUTPUT 2.1 - Annual Physical Works Program

- 6.42 Based on the PAWRP (Output 1.3), the Contractor will develop an Annual Physical Works Programs (APWP) for each partner province. The Annual Physical Works Program will identify specific road segments for rehabilitation and maintenance and a schedule of works over the next 12-month period, broken into 6-month segments. In the first year of engagement with the initial seven provinces specified in **Clause 1.3**, the APWP must be consistent with the road segment priorities agreed between AusAID and the provincial governments and for which rehabilitation designs have been undertaken by AusAID.
- 6.43 The Annual Physical Works Program will indicate the sequencing and resource requirements for all physical works activities for each province. It will also include details of all equipment purchases necessary with justification and costs. This equipment must be listed on the Assets Register.
- 6.44 The Contractor will undertake or sub-contract feasibility studies for each proposed package of works detailed in the APWP. If AusAID has approved a particular provincial government to undertake feasibility studies (see **Clause 6.8**), the Contractor will provide funds to the Provincial Government to undertake the required feasibility studies under the APWP. The provision of funds will be in accordance with the PRMF Financial Operations Manual approved by AusAID.

- 6.45 The Contractor will submit the Annual Physical Works Program to the PSC for approval. Any changes made to the APWP will be submitted to the PSC for approval.
- 6.46 The Contractor will submit six monthly progress reports against the Annual Physical Works Program to the PSC. These reports will cover key outcomes achieved and progress made in each of the partner provinces and with any other stakeholder as may be relevant.
- 6.47 From the second year of engagement in any partner province, funding allocation will include the funding from the Performance Program. The Contractor will work with the Provincial Government to determine potential physical works that could be funded from the Performance Program allocation. These activities will be included in a separate section of the Annual Physical Works Program. Once the level of Performance funding allocated to each province has been determined by AusAID and communicated to the Contractor, the Contractor will determine the Province's priorities that fit within available budget. The Performance Program allocation will fund all activities required to implement physical works agreed to under the Performance Program including any feasibility studies, designs, tendering and implementation of activities as may be required.

OUTPUT 2.2 Service Delivery Mechanisms Mobilised

- 6.48 The Contractor will implement the APWP as described in **Clauses 6.50 to 6.60**.
- 6.49 The Contractor will ensure all physical works sub-contracts that it or the Provincial Government enters into that utilises PRMF funding (excluding physical works funded under the Performance Program where these do not involve road segments) are to either:
- (a) “rehabilitate and maintain” road segments over a 5-year period, or a period equal to the remaining life of the Facility whichever is shorter; or
 - (b) Rehabilitate road segments only, with a separate 5-year (or a period equal to the remaining life of the Facility if shorter) maintenance sub-contract covering a sub-set of the PRMF rehabilitated road segments in the province.
- 6.50 The Contractor will ensure that the value of each road segment “rehabilitate and maintain” sub-contract, or rehabilitate-only sub-contract, prepared under the APWP, remains under PHP15,000,000 (fifteen million Philippine pesos). In the event rehabilitate-only sub-contracts are entered into, the Contractor will ensure the accompanying but separate maintenance sub-contract value also remains under PHP15,000,000 (fifteen million Philippine pesos).
- 6.51 In the first year of engagement with any partner province, the Contractor will be responsible for directly undertaking, or directly sub-contracting, all activities required under Output 2.2. Once partner government systems have been approved by AusAID as suitable for use (see **Clause 6.8**), the Contractor will use these government systems and processes.

- 6.52 Where AusAID has approved a particular provincial government to undertake any activity or process (under **Clause 6.8**), the Contractor will:
- (a) Provide funds to the Provincial Government to allow these activities to occur in accordance with the PRMF Financial Operations Manual as approved by AusAID (see **Clause 5.5**).
 - (b) Novate any existing sub-contracts that use only the approved systems or processes to the relevant Provincial Government. Funding associated with these existing novated sub-contracts will also be transferred to the relevant Provincial Government in accordance with the PRMF Financial Operations Manual.
- 6.53 The Contractor must determine which of following steps are required in order to mobilise delivery mechanisms and must undertake or sub-contract them as necessary, including:
- (a) Road segment designs
 - (b) Environment management plans
 - (c) Preparing tender documents
 - (d) Tendering, tender assessment and contract negotiation
 - (e) Contract management
 - (f) Monitoring and Evaluation; and
 - (g) Certification of completion.
- 6.54 The Contractor will ensure that road designs follow DILG standards and contain safety features including appropriate signage and drainage appropriate to the terrain and climate.
- 6.55 The Contractor must not enter into any sub-contracts, nor allow the Provincial Government to enter any contract using PRMF funds, with:
- (a) any Philippines government entity, including any National Government department or agency, local government unit, or any other government owned or controlled corporation or business;
 - (b) any private sector entity which is associated¹ with any staff member² of the Provincial Government, other local government unit, or the National Government

¹ This includes but is not limited to any financial interest a provincial government staff member and/or staff member's family may have in the private sector entity, and any decision making role held whether paid or voluntary.

² whether regular, contracted, voluntary, paid, not paid, elected, or salaried personnel

(including staff members' immediate family defined as father, mother, wife, sons, daughters, brothers and sisters).

- (c) any firm or individual that is listed on the World Bank's "Listing of Ineligible Firms" or "Listing of Firms, Letters of Reprimand".
- 6.56 The Contractor must also take into consideration procurement issues described in **Clause 8**.
- 6.57 The Contractor must maintain a database of costs associated with the inputs for physical works for each province which can be used as a reference point by the Contractor, AusAID, DILG, and the Partner Provincial Government in future years.
- 6.58 The Contractor must prepare a pro forma Deed of Novation for AusAID approval that will be appended to each sub-contract entered into by the Contractor for physical works. The pro forma will include the requirements, at a minimum, that the provincial government's internal audit office audit the provincial government's use of funds provided from the Imprest Account and stipulate the conditions under which the Contractor will resume responsibility for the sub-contracts. The Deed of Novation must also contain provision for the Contractor to undertake separate random audits of funds passed to partner provincial governments.
- 6.59 The Contractor will monitor implementation of all sub-contracts that have been novated to, or contracted directly by the Provincial Government. Where deficiencies are identified by the Contractor and not remedied by the Provincial Government in a reasonable time frame, the Contractor will resume responsibility for those sub-contracts. The Contractor must notify AusAID in the event it wishes to resume these contracts.
- 6.60 Where responsibility for preparing cost estimates has been handed over to any Partner provincial government, the Contractor will compare cost estimates with the independent first year estimates. Where discrepancies occur that cannot be validly explained by the Provincial Government, the Contractor will undertake an independent assessment of costs.

OUTPUT 2.3 - Road Network Completion Reports

- 6.61 As part of the second and subsequent Annual Physical Work Program for each province, the Contractor will prepare a Road Network Completion Report to document the physical works undertaken and the results thereof. The Road Network Completion reports will document:
- (a) the physical accomplishment of road rehabilitation and maintenance work;
 - (b) the performance of the road maintenance contractors;
 - (c) the costs of works;

- (d) the use of any office equipment purchased;
- (e) comments by the independent supervision consultant or PEO works monitor; and
- (f) any information obtained during the conduct of the works that will be of value in the development of subsequent Annual Physical Works Program, or Capacity Building Plans.

6.62 If identified as a priority in Output 1.3 for a particular partner provincial government, the Contractor will over time be in a position to use provincial government reporting to satisfy the requirements of **Clause 6.61**. The Contractor will be responsible for ensuring Provincial Government reports meet required information requirements and quality and will supplement these reports where they do not.

7. GOVERNMENT SYSTEMS

7.1 To promote the use of Partner Government systems, the Contractor will avoid setting up and will actively discourage provincial governments from establishing PRMF-specific institutional arrangements within provincial government structures.

7.2 The Contractor will ensure that no government system or process involving funding and/or procurement will be used for PRMF purposes until such time as the Contractor assesses that the fiduciary risks are acceptable to GOA. At a minimum the Contractor will ensure that:

- (a) funds passed to provincial governments for management will be assessed by a provincial government internal audit and the first such internal audit outcome is confirmed by an independent audit conducted by the Contractor following this first internal audit of PRMF funds;
- (b) robust expenditure management processes are in place within the Provincial Government;
- (c) financial and procurement records are kept for all PRMF related activities and are accessible by the Contractor and internal auditor;
- (d) provincial government staff have the required expertise and capacity to properly manage PRMF related activities; and
- (e) Bids and Awards Committees' are appropriately staffed and equipped.

7.3 The Contractor may move to using provincial government systems that do not involve management of funds and/or procurement, whether or not the conditions of **Clause 7.2** are met, once these systems and processes are assessed as robust, transparent and meet GOA requirements.

7.4 The Contractor will arrange independent random audits of activities utilising PRMF funds for both Contractor managed activities and activities managed through

provincial government systems. The Contractor will also undertake random audits of physical works to ensure the services have been delivered according to contract.

- 7.5 In the event a partner province does not undertake an internal audit that is assessed by the Contractor as adequate, or a partner province fails an internal audit with respect to a PRMF related activity, the Contractor will make recommendations to AusAID as to an appropriate response, including if appropriate returning management of PRMF activities to the Contractor, and, if fraud, corruption, or other criminal activity is detected, suspending all PRMF operations in that province.

8. PROCUREMENT

- 8.1 The Contractor will develop PRMF Procurement Guidelines that are consistent with recommendations made in the “Southern Philippines Road Maintenance Program (SPRMP): Comparison of AusAID and Philippines Procurement Requirements, December 2008” report, for endorsement by the PSC. The PRMF Procurement Guidelines will be followed for all PRMF procurements using Philippine Government systems.

- 8.2 Where Partner Government procurement systems and processes are used, the Contractor will monitor the key steps for procurement undertaken by all provincial government procurement entities, including:

- (a) Planning
- (b) Invitation to bid
- (c) Bid opening and bid evaluation
- (d) Contract award
- (e) Contract negotiations
- (f) Contract administration

- 8.3 Where partner government procurement systems and processes are used, the Contractor will participate as an observer in pre-bid meetings, bid opening, bid evaluation, and contract negotiations. The Contractor will verify disbursement vouchers and related documents which certify goods have been delivered and/or services and works have been carried out in accordance with its specifications before payments are made.

9. MANAGEMENT SERVICES

- 9.1 The Contractor will act as secretariat to the PSC. The Contractor will also attend all Provincial Advisory Group meetings. The Provincial Advisory Group provides input to the Provincial Development Council and may require information from the Contractor about PRMF activities.

- 9.2 Within 12 months of mobilizing in any partner province, the Contractor will prepare a graduation strategy for that province. This strategy will be negotiated with the Provincial Government and contain clear criteria to be used to determine when graduation will occur and indicators to assess performance against these criteria. The graduation strategy will provide for graduation of the province when the graduation conditions are met or at the end of the Facility life, whichever occurs first. The graduation strategy will be submitted to AusAID for approval.
- 9.3 Within 1 month of Project Start Date the Contractor will prepare a Security Plan and provide this Plan to AusAID for information.
- 9.4 Within 3 months of the Project Start Date the Contractor will prepare a Monitoring and Evaluation System for AusAID Approval. The System will maximize the use of existing provincial and national government data collection and reporting requirements and practices. Where the Contractor deems that existing provincial and/or national monitoring and evaluation systems are ineffective, it will design capacity building programs to strengthen these systems. These capacity building plans will be incorporated in Output 1.4.
- 9.5 Where Monitoring and Evaluation data requirements are additional to current data being collected by Provincial or National Governments, the Contractor will determine whether the Provincial Government data collection systems can be improved to cover the requirements in the PRMF Monitoring & Evaluation System, or whether parallel collection process should be established. If parallel data collection systems are required, the Contractor will establish these systems and will determine how best to integrate them with existing GOP systems to ensure sustainability.
- 9.6 Within 1 month following AusAID approval of the Monitoring and Evaluation System the Contractor will begin collecting baseline data required in each partner province.
- 9.7 The Contractor will undertake required monitoring and evaluation as set out in the M&E System and prepare summary M&E information for inclusion in six-monthly reports and in briefing documents for independent monitoring missions.
- 9.8 Within 3 months of Facility mobilization the Contractor will establish a web-site for public communications. The internet site will be a tool for ensuring transparency in the implementation of PRMF. The Contractor will ensure that the following are made available on the web-site:
 - (a) All tender advertisements and outcomes (not to substitute for standard advertising required for each tender process)
 - (b) Each PAWRP
 - (c) Key achievements

(d) Contact details for main office and each provincial coordinator

(e) Complaint handling systems

9.9 The Contractor will provide logistic support for a 6-monthly independent Technical Monitoring Group. The TMG will consist of 3 to 4 independent experts, an AusAID representative and a DILG representative. AusAID will appoint the independent experts for the TMG. The Contractor will ensure that the TMG has access to office facilities, Facility personnel, and any documentation that they may request. AusAID will provide Terms of Reference for the TMG prior to their deployment.

10. PERSONNEL

10.1 The Contractor will provide a core team consisting of:

(a) Team Leader

(b) A Provincial Coordinator for each partner province (up to 10) – see **Clause 10.3**

(c) A Road Engineer Coordinator

(d) A Human Resource Management and Development Coordinator / Capacity Building Coordinator

(e) A Monitoring and Evaluations Coordinator; and

(f) A Procurement Coordinator

10.2 A Position description for each core position is at Annex 1, and forms part of this Scope of Services.

10.3 A Provincial Coordinator for each partner province (up to 10 provinces are expected to participate in PRMF) will be recruited and appointed by the Contractor subject to AusAID approval of the personnel and all costs. This selection process will begin on Contract signing for those provinces that have signed a Memorandum of Agreement (see **Clause 1.3**) and will be completed before PRMF services commence in that province.

10.4 The Contractor must have sufficient administrative, procurement and financial management, and other Facility support services to support implementation of PRMF.

10.5 The Contractor will identify additional skills required for undertaking specific activities required by this Schedule 1 and provide details, including expected costs, in the Capacity Building Plan or the Annual Physical Works Program as appropriate. All appointments must be consistent with the capacity building and physical works activities approved by the PSC and will be funded from the Imprest Account.

11. REPORTING REQUIREMENTS

11.1 The Contractor must provide the following reports by the date indicated in Table 1 below:

Table 1: Reporting Requirements

Report	Reference	Due Date <i>(to be agreed during contract negotiation)</i>
Implementation Plan	Clause 4.2 of this Schedule 1.	Within 6 weeks of Contract start date.
Security Plan	Clause 9.3 of this Schedule 1	
Monitoring and Evaluation System	Clauses 9.4 to 9.7 of this Schedule 1;	1 October 2009
Quality Management Plan	Clause 6 of Part A of the Contract	
A Financial Operations Manual	Clause 5.5 of this Schedule 1.	
PRMF Procurement Guidelines	Clause 8.1	
Provincial Road Sector Planning and Management Reviews (Output 1.1)	Clauses 6.1 to 6.8 of this Schedule 1.	Within 1 month of mobilising in each partner province.
Provincial Road Network Development Plan (Output 1.2)	Clauses 6.9 to 6.16 of this Schedule 1.	As approved by each Provincial Government.
PAWRP (Output 1.3)	Clauses 6.17 to 6.29 of this Schedule 1.	Within 1 month of each province's approval of the PRNDP.
Capacity Building Plans (Output 1.4)	Clause 6.30 to 6.39 of this Schedule 1.	Annual as developed or updated for each partner province with six monthly updates.
Feasibility Studies (Output 2.1)	Clauses 6.41 to 6.47 of this Schedule 1.	As required.
Annual Physical Works Program (Output 2.2)	Clauses 6.48 to 6.55 of this Schedule 1.	Annual as developed or updated for each partner

Report	Reference	Due Date <i>(to be agreed during contract negotiation)</i>
		province with six monthly updates.
Road Network Completion Reports (Output 2.4)	Clauses 6.61 to 6.62 of this Schedule 1 .	Following completion of each road segment rehabilitation, and at completion of each physical work sub-contract.
Annual Plan	Clause 8 of Part A of the Contract.	1 November (Annually from 2009 – 2013 with six-month updates)
Graduation strategies	Clause 9.2 of this Schedule 1 .	Within 12 months of mobilisation within any partner province.
Completion Report		30 June 2014

Annex 1 – Core Personnel ¹

	Position	Name	Province
A	Team Leader		
B	Road Engineer Coordinator		
C	Human Resource Management and Development / Capacity Building Coordinator		
D	Monitoring and Evaluation Coordinator		
E	Procurement Coordinator		
F	Provincial Coordinator		Misamis Occidental
			Misamis Oriental
			Agusan del Sur
			Surigao del Norte
			Bukidnon
			Guimaras
			Bohol
			TBA
			TBA
			TBA

¹ These positions are recruited and selected by the Contractor and the Provincial Government. The individual's appointment to the position is subject to AusAID approval.

Annex 2 - Position Statements and Experience Requirements for Core PRMF Personnel

A. TEAM LEADER – INTERNATIONAL EXPERIENCE

Duration	Full Time, 60 months
Reporting to	AusAID, through the Lead Task Manager, Infrastructure Management Group (IMG)
Duties	The Team Leader will have overall responsibility for the management of the Facility and its interaction with stakeholders. The Team Leader shall have responsibility for supervising and reporting on all activities contained in this Scope of Services and ensuring the quality of all Facility activities. The Team Leader will manage and supervise the core team and all short-term specialists, advisers and other staff employed through the Imprest Account. The Team Leader will represent PRMF to all stakeholders, provide coordination, facilitation, and ensure consistency of operations across all partner governments.

Essential Skills and Experience

1. Experience in Public Investment Planning and facilitating institutional reform and good governance within sub-national levels of government.
2. Experience in managing projects or facilities involving the delivery of public infrastructure and services at sub-national levels in developing countries.
3. Experience in developing public and private sector partnerships for the delivery of public infrastructure and services.
4. Capacity to build and maintain effective relationships with senior personnel in government and donor agencies.
5. Capacity to champion institutional reforms and work with local governments and executives in pursuing these reforms.
6. Strong interpersonal, oral and written communication skills in English.
7. Strong leadership and management skills, with experience managing a culturally diverse team.

Desirable competencies and experience

1. An understanding of the social, cultural, political and institutional factors affecting development in Philippines.
2. Written and spoken Tagalog would be an advantage.
3. Experience in the infrastructure development in the Asia Pacific region at the sub-national level.

4. Experience with AusAID or other international development agency processes and procedures.
5. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and ability to integrate these in program development and implementation.

B. ROAD ENGINEER COORDINATOR

Duration	Full Time, 60 months
Reporting to	Team Leader
Duties	Under the direction of the Team Leader and working closely with relevant Provincial Coordinators, the Road Engineer Coordinator will be responsible for: a. all activities relating to the development, implementation and monitoring of the physical works program. This will include, where necessary, managing short-term experts to deliver specific activities, and mentoring provincial government officials to manage activities as required; b. identifying capacity needs within each partner provincial government relating to all aspects of the physical works program; c. Identify capacity building requirements for local contractors to enable them to participate in civil works under PRMF; d. ensuring all capacity building plans and activities developed by the Human Resource Coordinator or by other Facility personnel or sub-contractors, are appropriate, robust, well sequenced and meet the long term needs of the Facility objectives as the relate to the physical works component (both roads and incentive programs); e. Providing feedback to Provincial Coordinator, Human Resource Management and Development Coordinator and Team Leader on effectiveness of capacity building programs related to the physical works program; f. quality control of all aspects of the physical works program including where partner government systems and processes are used; g. provide mentoring to Facility personnel, provincial government officials and other stakeholders as required;

The Road Engineer Coordinator will be responsible for the following activities required by the Services:

- a. The physical road network component and capacity review of the Provincial Engineers Office, private sector firms, and other physical works related entities components of the road sector planning and management review (Output 1.1);
- b. The formulation and prioritisation of the PRNDP with emphasis on rehabilitating and maintaining the core provincial road network;

- c. The technical, procurement and service delivery specifications for the efficient and cost effective implementation of the Annual Works Program; and
- d. The HRMD requirements for (a) developing skills and capacity within the PEO to manage and monitor the plan and (b) improving contractor performance in the delivery of quality road rehabilitation and maintenance services.

Essential skills and Experience

- a. Demonstrated skills in road rehabilitation and maintenance and in working with government and the private sector for the delivery and management of road services.
- b. Experience working with the local governments on road planning and management.
- c. Good oral and written communication skills in English.

Desirable competencies and experience

- a. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and ability to integrate these in activity development and implementation.

C. HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT / CAPACITY BUILDING COORDINATOR

Duration **Full Time, 60 months**

Reporting to **Team Leader**

Duties The HRMD / Capacity Building Coordinator will be responsible for developing human resource management and development plans for each partner provincial government (component of Output 1.2) that examines the mandate of the provincial government and maximizes the efficiency in delivering on this mandate, and using this plan to develop a well-sequenced capacity building plan consistent with the PAWRP (Output 1.3). The HRMD / Capacity Building Coordinator will be responsible for:

- a. Developing capacity building plans for each partner province (Output 1.4), appropriately incorporating the capacity building activities recommended by other Coordinators;
- b. Quality control the capacity building activities developed by other Coordinators and ensure these activities are appropriate, well sequenced, employ robust methodologies, are consistent with the HRMD plan, and meet the requirements of the Facility;
- c. Develop specific capacity building activities required under the Capacity Building Plan and not developed by other Coordinators;
- d. Assisting each partner province with any change management issues that may be encountered under a new HRMD plan;
- e. Identifying, procuring and quality controlling the work of short term expert inputs that may be required to assist this work;
- f. determining capacity of provincial government to undertake all or part of this work and mentoring relevant staff within the provincial governments as required;
- g. quality control over the delivery of all capacity building activities;
- h. reporting on the outcomes of all capacity building activities to the Provincial Coordinator and Team Leader.

The HRMD / Capacity Building Coordinator will also develop an HRMD plan for the Facility. This will include a review of all ToRs for Facility personnel, a mobilization plan for Facility personnel, and consideration of organization and management issues.

Essential Skills and Experience

- a. The HRMD Coordinator will have experience in the development of HRMD plans for government agencies (at the sub-national level is preferable).
- b. Knowledge of Philippines sub-national planning, budgeting, and financial management systems is essential.
- c. Demonstrated capacity to develop well sequenced capacity building activities, and utilize sound capacity building methodologies is essential.
- d. Good oral and written communication skills in English.

Desirable competencies and experience

- a. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and ability to integrate these in activity development and implementation.

D. MONITORING AND EVALUATION COORDINATOR

Duration **Full Time, 60 months**

Reporting to **Team Leader**

Duties The Monitoring and Evaluations Coordinator will be responsible for developing and implementing a Facility M&E system, maximizing the use of national and provincial government reporting systems, establishing baseline data for each partner province, regular updating of data and preparation of Facility progress reports. The Monitoring and Evaluation Coordinator will also be responsible for:

- a. Ensure the Facility M&E system adequately monitors and evaluates key economic, social and gender issues and captures GoP requirements for infrastructure projects;
- b. Reviewing the capacity of current national and partner provincial government monitoring and evaluation systems to meet the needs of PRMF and maximize the use of these systems where capacity does exist;
- c. Design capacity building programs to further develop national and/or provincial government capacity to undertake monitoring and evaluation;
- d. Quality control capacity building programs relevant to monitoring and evaluation;
- e. Supervise and quality assure data collection;
- f. Participate in, or contribute towards, the preparation of the AusAID Quality at Implementation (QAI) and Annual Program Pillar Reports (APPR)

Ensure the Facility M&E system complies with GOP reporting requirements.

Essential Skills and Experience

- a. The M&E Coordinator will have experience in the development and management of M&E frameworks on large donor assisted programs and projects.
- b. A good understanding of GOP national and sub-national M&E systems.
- c. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and experience incorporating these in M&E system.
- d. Good oral and written communication skills in English.

E. PROCUREMENT COORDINATOR

Duration **Full Time, 60 months**

Reporting to **Team Leader**

Duties The Procurement Coordinator will manage of procurement related activities of the Facility. Specifically the Procurement Coordinator will:

- a. Assess the capacity of all relevant entities within each provincial partner to undertake transparent and robust procurement to a standard that meets the requirements of RA.. modified by the MSA (Component of Output 1.1);
- b. Develop capacity building plans to strengthen all relevant procurement entities within partner provinces, including Bids and Awards Committees, line departments, the executive and any other relevant entity;
- c. Recommend structural, procedural, regulatory, and/or legal changes required by partner provincial governments to implement transparent and robust procurement systems that meet the requirements of RA
- d. Recommend criteria to determine when and under what conditions provincial government procurement systems should be used by the Facility;
- e. Monitor capacity building programs relating to procurement and report on outcomes;
- f. Monitor compliance by the Facility and partner provincial governments with RA ... modified by the MSA.
- g. Provide mentoring to other Facility personnel and partner provincial government officials;
- a. Identify, procure and quality control any short term expert inputs required to assist in delivering assistance related to procurement issues.

Essential Skills and Experience

- a. Demonstrated knowledge of procurement systems including the role various entities play in the process;
- b. A sound understanding of both the Commonwealth procurement guidelines and the Philippines procurement law and enabling regulations;
- c. A good understanding of the political economy in the Philippines at the sub-national level;
- d. Good oral and written communication skills in English.
- e. Tagalog language skills would be an advantage.

F. PRMF PROVINCIAL COORDINATORS (PPC) – ONE PER PARTNER PROVINCE

Duration **Full Time, 60 months**

Reporting to **Team Leader**

Duties Under the direction of the Team Leader, each Provincial Coordinator will represent the Contractor in one particular province and coordinate and facilitate all PRMF activity in that province, including as a member of the PRMF Provincial Advisory Group. The Provincial Coordinator will be responsible for ensuring a suitable sequencing for PRMF activities, incorporating provincial government views and requirements in PRMF activities as may be relevant, and provide high level quality assurance for all activities and outputs within that province. The Provincial Coordinator will report to the Team Leader and the provincial political and administrative executive on progress.

Specifically the Provincial Coordinator will represent the PRMF in a specific province and:

- b. Assist the partner province and other facility personnel to develop a program of capacity building and physical works in that province;
- c. Negotiate performance criteria and indicators with the province and ensure the Monitoring and Evaluation systems of the Facility are able to measure these indicators;
- d. Ensure the capacity building plans are well sequenced and meet the requirement of the performance program negotiated with the province;
- e. Assist other facility personnel identify capacity building requirements for local community leaders and leaders of civil society to enable them to participate in relevant functions of provincial departments and the PDC such as planning, priority setting and monitoring road maintenance under PRMF;
- f. Facilitate the mobilization and implementation of PRMF activities in the province; and
- g. Provide general oversight and monitoring of all PRMF activity in the province.

Essential Skills and Experience

- a. Strong leadership and management skills with the ability to coordinate a range of activities;
- b. Practical skills and experience in working with provincial and municipal governments in the design, implementation and management of public infrastructure and services

- (including procurement and contract management) and/or in public financial/administrative management programs and projects;
- c. Good understanding of LGU systems of planning, budgeting, accounting, auditing and financial management.
 - d. Experience in working on donor funded projects would be an advantage.
 - e. Good negotiation skills and ability to manage political environment.
 - f. Good oral and written communication skills in English and Tagalog essential.

Desirable competencies and experience

- a. Experience managing or working with a donor-funded project.
- b. An understanding of the cross-cutting themes (poverty alleviation, gender equity, health and HIV/AIDS, anti-corruption, environmental management, peace and conflict) and ability to integrate these in activity development and implementation.

PART 4 – DRAFT BASIS OF PAYMENT

Provincial Road Management Facility (PRMF)

Note to Tenderers: This Part 4 of the RFT will appear as Schedule 2 of the consolidated Contract.

**SCHEDULE 2: DRAFT BASIS OF PAYMENT
PHILIPPINES PROVINCIAL ROAD MANAGEMENT FACILITY**

1. TOTAL AMOUNT

- 1.1 The total amount payable by AusAID to the Contractor shall not exceed the sum of **A\$xxx** plus GST if any up to a maximum amount of **A\$xxx**, excluding funds paid to the Imprest Account as specified in Clause 1.3 below.
- 1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.
- 1.3 The maximum amount payable by AusAID into the Provincial Road Management Facility Imprest Account under Clause 8 of this Schedule 2 is **A\$88,000,000**, including GST if any.

2. PAYMENT STREAMS

- 2.1 For the performance of the Services described in the Contract, AusAID shall pay the Contractor as follows to a maximum amount specified in Clause 1.1 above:
 - (a) **Fixed Management Fee (FMF)** 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 **A\$xxx**;
 - (b) **Variable Management Fee (VMF)** in accordance with **Clause 5** of this Schedule 2.
 - (c) **Reimbursable Long Term Personnel Costs**, in accordance with **Clause 6** of this Schedule 2, up to a maximum total amount of **A\$xxx**;
 - (d) **Reimbursable Administration, Equipment and Operational Costs**, in accordance with **Clause 7** of this Schedule 2, up to a maximum total amount of **A\$xxx**.
 - (e) **Provincial Road Management Facility Imprest Account** shall be used only for funding the costs specified in **Clause 8** of this Schedule 2 (up to a maximum amount of **A\$88,000,000**).

3. FIXED MANAGEMENT FEE (FMF)

- 3.1 The FMF will comprise (but will not be limited to):
 - (a) All aspects of profit, including commercial margins for all personnel;
 - (b) All overheads;

- (c) Financial management costs and financing costs (not covered under the VMF), if any;
 - (d) All management support costs for all nominated personnel;
 - (e) Cost of any Contractor administrative and head office staff;
 - (f) Security costs for all personnel;
 - (g) Insurance, as required in accordance with **Clauses 33 and 34** of Part B (Standard Contract Conditions) of the Contract;
 - (h) Taxation, as applicable;
 - (i) Health, Medivac, worker's compensation, liability and indemnity insurances;
 - (j) Costs of complying with the Contractor's reporting and liaison obligations under the Contract;
 - (k) Costs associated with all personnel briefings in Australia or Philippines;
 - (l) All other costs not specified as Reimbursable Costs; and
 - (m) Allowances for risks and contingencies.
- 3.2 The FMF is fixed for the term of the Contract and will be billed to AusAID on satisfactory achievement of Milestones as per **Clause 4** to this Schedule 2.
- 3.3 The FMF must not include any costs which fall under the Variable Management Fee outlined in **Clause 5** below.
4. **MILESTONE PAYMENTS**
- 4.1 AusAID shall pay the Contractor the FMF in instalments known as Milestone Payments. The Milestone Payments payable by the Commonwealth to the Contractor shall not exceed the sum of **A\$xxx** plus GST, if any, to a maximum of **A\$xxx**.
- 4.2 The Milestone Payments will be payable to the Contractor progressively, within thirty (30) days of AusAID's acceptance of the satisfactory achievement of the Milestones specified in **Annex 1** of this Schedule 2 and subject to the provisions of **Clause 20** of Part B.
- 4.3 AusAID's assessment of the Contractor's achievement of Milestones may be informed by independent review in accordance with **Clause 17** of Part B.
5. **VARIABLE MANAGEMENT FEE (VMF)**
- 5.1 The VMF are costs associated with managing the implementation of Imprest Account funded activities under the Facility.

- 5.2 The VMF is a percentage of the value of each activity managed (but not implemented) by the Contractor under the Program. The VMF must not include any costs which fall under the “Personnel Costs” in **Clauses 6 and 7**, or “Fixed Management Costs” in **Clause 3** of this Schedule 2.
- 5.3 There are two categories of activities:
- (a) Category A: procurement and project management activities required for the Contractor to manage roads infrastructure sub-contracts;
 - (b) Category B: training and mentoring activities supplied by the Contractor in specified provinces prior to a province graduating to managing its own infrastructure procurement.
- 5.4 The VMF includes all costs associated with:
- (a) establishing and managing the Provincial Road Management Facility Imprest Account;
 - (b) identification, design and scoping of activities;
 - (c) any costs associated with tendering and subcontracting activities;
 - (d) costs, including financial costs and freight, associated with any subcontracting and procurement of goods and services; and
 - (e) quality assurance of all activities.
- 5.5 The VMF will be paid quarterly in arrears at a rate of x% of the actual Category A expenditure and y% of the actual Category B expenditure from the Imprest Account in the previous quarter and on the basis of activities in the agreed in the Provincial Annual Works Programs and Capacity Building Plans.
- 5.6 The VMF must not exceed A\$xxx. over the life of the Contract.
- 6. REIMBURSABLE PAYMENTS: LONG TERM PERSONNEL COSTS**
- 6.1 AusAID shall reimburse the Contractor up to a maximum total of **A\$x,xxx,xxx** for Long Term Personnel Costs.
- 6.2 For each identified Long Term Personnel, AusAID shall pay the Contractor, monthly on a reimbursable basis in arrears up to the maximum amounts specified in **Annex 2** of this Schedule 2. Mobilisation and Demobilisation costs will be reimbursed at cost up to the maximum one-off amounts which apply to each position.
- 6.3 The Monthly Fee is:
- (a) **Inclusive** of all personnel-related taxes and levies incurred in Philippines and Australia, except;

- (i) GST for Services performed in Australia in accordance with **Clause 21** of Part B (Goods and Services Tax);
 - (b) **Inclusive** of superannuation levy, if any, as appropriate;
 - (c) **Inclusive** of paid annual leave allowances of up to four (4) weeks per annum, to accrue on a pro rata basis per twelve months' continuous engagement on the Program (noting that leave allowances cannot be carried over from one twelve month period to another and must be taken in the twelve month period in which they fall due), including all leave costs such as airfares to and from the Philippines;
 - (d) **Inclusive** of accommodation, utilities and private transport costs;
 - (e) **Inclusive** of all escalators for the term of the Contract; **but**
 - (f) **Exclusive** of mobilisation/demobilisation costs (including airfares, in accordance with **Clause 6.2 above**), which will be reimbursed at cost (subject to reasonableness in arrears); and
 - (g) **Exclusive** of any profit, overheads, administration or management fee, or any other mark-up on the part of the Contractor.
- 6.4 Where leave entitlements for Long Term Personnel exceeds two (2) trips or a total of four (4) weeks per twelve month period, a satisfactory justification must be provided to AusAID of how the Contractor will ensure, during Specified Personnel absences, the continued quality of the Services.
- 6.5 If any personnel inputs have not been supplied in accordance with **Annex 2**, 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.
- 6.6 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.
- 6.7 The entitlement to reimbursement for travel costs is as follows:
- (a) reimbursed at economy class for flight legs under four hours and business class for flight legs over four hours. Any travel undertaken at cheaper rates (eg. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
 - (b) international travel undertaken on an Economy Class airfare does not entitle the Contractor to claim for reimbursement of the equivalent business class airfare.

7. **REIMBURSABLE PAYMENTS: ADMINISTRATION, EQUIPMENT AND OPERATIONAL COSTS**
- 7.1 AusAID shall reimburse the Contractor up to a maximum of **A\$~~x,xxx,xxx~~** for Administration, Equipment and Operational Costs.
- 7.2 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 **Annex 3**. The actual cost will be exclusive of any costs that are included in the FMF or VMF in accordance with **Clause 3 and Clause 5** of this Schedule.
- 7.3 In accordance with **Clause 7.2** 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 as described in **Clause 3** of Part B; and
 - (b) Original receipts and invoices maintained to substantiate any claim.
- 7.4 The entitlement to reimbursement for travel costs is as follows:
- (a) reimbursed at economy class for flight legs under four hours and business class for flight legs over four hours. Any travel undertaken at cheaper rates (eg. discount fares) does not entitle the Contractor to reimbursement of the cost of any higher class of travel. Travel must be via the most direct and cost effective route;
 - (b) international travel undertaken on an Economy Class airfare does not entitle the Contractor to claim for reimbursement of the equivalent business class airfare.
- 7.5 When expenditure reaches 80% of the limits specified in **Annex 3** of this Schedule 2 the Contractor must advise AusAID of the remaining commitments and must ensure that the upper limits are not exceeded.
- 7.6 The Contractor may vary the sums assigned against individual line items in **Annex 3** of this Schedule 2, 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.
- 7.7 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.
- 7.8 The Contractor must maintain a Register of Assets in accordance with **Clause 10** of Part B in the format described in **Annex 4** to this Schedule 2.
8. **IMPREST ACCOUNT**
- 8.1 The maximum amount payable by AusAID into the Imprest Account will be up to **A\$88,000,000** including GST, if any.

- 8.2 The Contractor will establish and manage the Imprest Account for the purpose of funding approved goods and services to be provided to provincial governments, their contractors and other levels of government as specified in Schedule 1. The Contractor must not allocate Imprest Account funds for any other purpose except as approved by AusAID.
- 8.3 AusAID will make payment into the Imprest Account on a quarterly basis. AusAID will make the first payment on its written acceptance of the Manual of Operations for the Imprest Account. The amount of each subsequent payment will be determined by consideration of the approved forward financial projections provided by the Contractor in the Annual Program Expenditure Statement/Detailed Financial Plan and of the balance of the Imprest Account. The Contractor will acknowledge receipt of each tranche of funds immediately upon their receipt.

9. CLAIMS FOR PAYMENT

- 9.1 The Contractor's claims for payment shall be submitted when due pursuant to this Schedule 2 in accordance with the Standard Contract Conditions clause headed Payment in the Contract, and shall be submitted in a form identifiable with the services.
- 9.2 Claims for payment should include the Payment Event Number that will be issued by AusAID. Payment Event numbers will be issued for:
- (a) Milestone Payments
 - (b) Variable Management Fees
 - (c) Reimbursable Long Term Personnel Costs
 - (d) Reimbursable Administration, Equipment and Operational Costs
 - (e) Imprest Account Payments
- 9.3 Invoices involving foreign exchange transactions must be made in the equivalent Australian dollar amount, converted at an exchange rate which is calculated in accordance with appropriate accounting standards and as entered by the Contractor in their general ledger.
- 9.4 All claims for payment shall be made to:
- Chief Financial Officer
Australian Agency for International Development
GPO Box 887
CANBERRA ACT 2601
- 9.5 Tax invoices should be sent to the above address. Alternatively AusAID will accept electronic tax invoices. These can be sent to accountsprocessing@ausaid.gov.au

- 9.6 A copy (electronic or hard copy) of the invoice should also be forwarded to the Activity Manager.
- 9.7 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>

ANNEX 1 to SCHEDULE 2 – MILESTONE PAYMENTS

TABLE 1 – MILESTONE PAYMENT TABLE

No.	Deliverable Output	Verifiable Indicator	Completion Date <i>(indicative, subject to contract negotiation)</i>	\$A
1	M&E framework completed	Accepted by AusAID in writing	31 September 2009	
2	First Annual Plan	Accepted by AusAID in writing	1 November 2009	
3	6-month update to First Annual Plan	Accepted by AusAID in writing	1 April 2010	
4	Second Annual Plan	Accepted by AusAID in writing	1 November 2010	
5	6-month update to Second Annual Plan	Accepted by AusAID in writing	1 April 2011	
6	Third Annual Plan	Accepted by AusAID in writing	1 November 2011	
7	6-month update to Third Annual Plan	Accepted by AusAID in writing	1 April 2012	
8	Fourth Annual Plan	Accepted by AusAID in writing	1 November 2012	
9	6-month update to Fourth Annual Plan	Accepted by AusAID in writing	1 April 2013	
10	Fifth Annual Plan	Accepted by AusAID in writing	1 November 2013	
11	Completion Report	Accepted by AusAID in writing	30 June 2014	
TOTAL				

ANNEX 2 to SCHEDULE 2 – LONG TERM PERSONNEL FEE RATES

Position	Name	Monthly Fee (A\$)	Inputs (Months)	Mobilisation (A\$)	Demobilisation (A\$)	Financial Limitation (A\$)
Team Leader			60			
Provincial Coordinators (up to 10)	<i>Tenderers are not required to nominate personnel for the Provincial Coordinator positions.</i>		maximum of 600 person months in total			Up to maximum of \$4,400,000
Road Engineer Coordinator			60			
Human Resource Management and Development / Capacity Building Coordinator			60			
Monitoring and Evaluation Coordinator			60			
Procurement Coordinator			60			
Administrative staff (<i>Tenderers to specify</i>)						
TOTAL						

**ANNEX 3 to SCHEDULE 2 – REIMBURSABLE ADMINISTRATION,
EQUIPMENT AND OPERATIONAL COSTS**

Item	Unit	No. of Units	Cost per Unit (A\$)	Financial Limitation (A\$)
Office Rent	Month	60	5,500	330,000
Utilities	Quarter	20	5,000	100,000
Furniture and Fittings	Lump Sum	1	140,000	140,000
Equipment	Lump Sum	1	215,000	215,000
Office materials and supplies	Quarter	20	5,000	100,000
Mobile Phones	Lump sum	1	12,000	12,000
Vehicles	Vehicle	12	50,000	600,000
Motorcycles	Motorcycle	40	4,000	160,000
Communications	Quarter	20	5,000	100,000
Office and Equipment Maintenance	Quarter	20	2,500	50,000
Vehicle hire	Quarter	20	1,000	20,000
Vehicle maintenance and running costs	Month	60	12,000	720,000
Local travel costs (Long Term and Short Term Personnel)	Quarter	20	25,000	500,000
Report production and publications	Quarter	20	5,000	100,000
Provincial Coordinator field operational costs	Quarter	20	11,000	220,000
Project Steering Committee costs	6-monthly	10	2,000	20,000
TOTAL				\$3,387,000

ANNEX 4 to SCHEDULE 2 – ASSET REGISTER

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SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

PART 5 – STANDARD TENDER CONDITIONS

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STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

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

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

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

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

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

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

1.6 The Tenderer must submit the number of copies specified in the Tender Particulars (**Part 1 Clause 1** of this RFT). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.

- 1.7 Tenders submitted by facsimile or email will not be considered.
- 1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in 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 C of this Part** and on AusTender.
- 1.12 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 1.13 Tenders not submitted in accordance with **Clause 1.11** 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 C of this Part**. Late tenders that have been lodged electronically will be excluded from evaluation.
- 3.2 For tenders submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which AusAID will determine whether Tenders lodged electronically have been lodged by the **Closing Time**.
- 3.3 The judgement of AusAID as to the time a Tender has been lodged electronically will be final.

Conditions Applying to Tenders Lodged in Hard Copy

- 3.4 A hard copy Tender lodged after the **Closing Time** is a late Tender.
- 3.5 AusAID will admit to evaluation a Tender that was received late solely due to AusAID mishandling. AusAID mishandling does not include mishandling by a courier or mail service provider engaged by a Tenderer to deliver their Tender. It is the responsibility of tenderers to ensure that their Tender is dispatched in sufficient time for it to be received by AusAID by the **Closing Time**.
- 3.6 Late Tenders that are rejected by AusAID will be returned to tenderers unopened, except in cases where a Tender must be opened to identify the return address of the Tenderer or to establish which tender process the Tender was for.
- 3.7 If a Tender is taken to be late, the Tenderer may be asked to provide explanatory evidence in an appropriate form to the **Contact Person** specified in the Tender Particulars.

4. **NON-CONFORMING TENDERS**

- 4.1 Subject to **Clause 3 (Late Tenders) of this Part**, Tenders will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.
- 4.2 AusAID reserves the right to seek clarification of non-conforming Tenders in accordance with **Clause 5 of this Part**.

4.3 Subject to **Clause 3 (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**.

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.

Project Vehicles

- 7.12 For the purposes of this clause, “Project Vehicles” are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided primarily for Contractor Personnel use for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.
- 7.13 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor’s invoices.
- 7.14 The Contractor must abide by the following requirements with regards to Project Vehicles:
- (a) Project demands must always take precedence over private use;
 - (b) the Contractor must ensure that any persons driving the Project Vehicle must have a current valid international or Partner Country drivers license for the class of Project Vehicle;
 - (c) the Contractor is responsible for ensuring Project Vehicles are appropriately insured;
 - (d) the Contractor is responsible for ensuring that seat belts are fitted and must make every effort to ensure that they are worn at all times by drivers and all passengers;
 - (e) the Contractor is responsible for any costs incurred in the event of an accident while the Project Vehicle is being privately used; and
 - (f) the Contractor must ensure that Project Vehicles are serviced in accordance with manufacturer’s requirements.

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

Technical proposal format

- 7.15 The technical proposal must:
- (a) indicate the Tenderer’s nominated contact person and contact details on the cover page;
 - (b) be in a type font of no less than 12 point on A4 paper;

- (c) have left and right page margins of no less than 2.5 cm, and top and bottom page margins of no less than 3 cm, excluding headers, footers and page numbers;
- (d) not have the AusAID logo or any other representation or mark which may indicate that the Tenderer is in any way related to or connected with AusAID; and
- (e) be no longer than the page limit detailed in the Tender Particulars (inclusive of tables, diagrams or graphs), but exclusive of required annexes.

Curricula vitae

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

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

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

“I, **[insert name]**, declare that:

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

While an original signature on CVs is preferred, copies are allowed. However, Tenderers are reminded of their warranties (**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

7.18 Tenderers must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by the organisation (if the Annex titled Past Experience Forms is used) or the proposed team member (regarding Tender Schedule B). Referees who can supply character references only are not sufficient.

7.19 Tenderers must ensure that nominated referees do not have an actual or potential conflict of interest when acting as a referee. In particular, Tenderers must ensure that referees:

- (a) are not an employee of, or the holder of a current executive office (or similar position) within the organisation of, or do not have a business in association with, the Tenderer or a subsidiary organisation of the Tenderer;
- (b) are not included in the Tender as proposed team members; and
- (c) are not AusAID employees.

7.20 Tenderers must further ensure that nominated referees:

- (a) are available to be contacted in the 3 week period after the **Closing Time**; and
- (b) are able to provide comments in English.

7.21 AusAID reserves the right to check with nominated referees and with other persons as AusAID chooses, the accuracy of the information and quality of work performed.

8. **JOINT VENTURES AND CONSORTIUMS**

8.1 AusAID intends to contract with a single legal entity.

8.2 In the case of a joint venture or consortium that does not constitute a single legal entity, AusAID will contract with the lead joint venture or consortium member that is required to be nominated by the tenderer.

8.3 Tenders by a joint venture or consortium must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the joint venture or consortium must be clearly specified in the body of the text in **Tender Schedule A**.

8.4 AusAID may require parent company guarantees from the parent companies of parties to a joint venture or consortium.

9. **ASSOCIATES AND OTHER SUB-CONTRACTORS**

9.1 Tenders involving two or more parties who have not formed a single legal entity will only be accepted if the Tender is submitted on the basis that one party, the Tenderer, is intended to act as the prime contractor and any other party becomes a sub-contractor known as an “Associate”.

9.2 Tenders involving Associates will be assessed on the basis of that arrangement. Tenders must include:

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

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

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

10. **OWNERSHIP OF TENDERS AND RFT**

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

11. **CONFLICT OF INTEREST**

- 11.1 Tenderers must:

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

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

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

12. TENDERING CONDUCT

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

13. INELIGIBILITY TO TENDER

- 13.1 A Tenderer is ineligible to tender where the Tenderer or any subcontractor of the Tenderer is listed by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at www.worldbank.org (the “**World Bank List**”).
- 13.2 Tenderers warrant by submitting a tender that the Tenderer, and any subcontractor of the Tenderer, are not listed on a World Bank List. Tenderers must also state in their tender whether the Tenderer or any subcontractor of the Tenderer is listed on any similar list maintained by any other donor of development funding (“**Relevant List**”) or are subject to any proceedings which could lead to listing on a World Bank List or listing on any Relevant List. Tenderers must also immediately notify AusAID where the Tenderer or any of their subcontractors becomes listed on a World Bank List or Relevant List, or subject to proceedings which may lead to such a listing, after the tender is submitted to AusAID.
- 13.3 AusAID will exclude any tender where the Tenderer is in breach of the warranty, or does not disclose any circumstance required under **Clause 13.2**. AusAID also reserves the right to exclude any tender, where the Tenderer or a subcontractor of the Tenderer becomes listed on a World Bank List or Relevant List, or is subject to proceedings which could lead to such a listing.
- 13.4 Tenderers should note that if they tender in breach of this **Clause 13**, or are subsequently listed on a World Bank List or Relevant List, AusAID may terminate any contract subsequently entered into with that Tenderer.
- 13.5 For the purpose of this **Clause 13**, a reference to a Tenderer or a subcontractor of a Tenderer, includes any company in the same group as the Tenderer or the subcontractor (including but not limited to, related bodies corporate of the Tenderer or subcontractor within the meaning of the *Corporations Act 2001*) and parties with whom the Tenderer or subcontractor is associated in respect of this Tender.

14. AusAID’s RIGHTS

- 14.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 14.2 AusAID reserves the right to:
 - (a) seek Tenders from any organisation;
 - (b) accept or reject any Tender;

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

15. **TENDERER'S ACKNOWLEDGEMENT**

15.1 A Tender is submitted on the following basis:

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

16. **DEBRIEFING OF TENDERERS**

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

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

17. **AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES**

17.1 Freedom of Information

- (a) The *Freedom of Information Act 1982* gives members of the public rights of access to official documents of the Australian Government and its agencies. The *Freedom of Information Act 1982* extends, as far as possible, the right of the Australian community to access information (generally documents) in the possession of the Australian Government, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom information is collected and held by departments and public authorities.

- (b) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Freedom of Information Act 1982* on their participation in this RFT process and any subsequent contract.

17.2 Privacy

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

17.3 Access by Australian National Audit Office

- (a) Attention of Tenderers is drawn to the *Auditor-General Act 1997* which provides the Auditor-General, or an authorised person, with a right to have, at all reasonable times, access to information, documents and records.
- (b) In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, the Draft Contract provides that the Contractor will provide the Auditor-General, or an authorised person, access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.
- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT process and any subsequent contract.

17.4 Access by Ombudsman

- (a) Attention of Tenderers is drawn to the *Ombudsman Act 1976* which gives Australians access to a government officer, known as an ombudsman, who investigates complaints from the public about government agencies and their operations and decisions, and reports on ways in which they may be resolved.
- (b) In addition to the ombudsman's powers under the *Ombudsman Act 1976*, the Draft Contract provides that the Contractor will provide the ombudsman, access to information, documents, records and agency assets, including those on the

Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

- (c) Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Ombudsman Act 1976* on their participation in the RFT process and any subsequent contract.

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

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

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

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

17.7 Other Australian Government and AusAID Policies

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

18. **FURTHER REQUIREMENTS**

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

19. **CONTRACT NEGOTIATIONS**

- 19.1 AusAID may select, as preferred Tenderer, the Tenderer(s) who best meet the requirements of the RFT on the basis of the tender assessment process.
- 19.2 The preferred Tenderer(s) must within 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;

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

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

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

2. BASIS OF DECLARATION

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

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

3. THE OFFER

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

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

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

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

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

- 3.6 I agree:
- (a) that the Tenderer will be bound by this Tender for the Tender Validity Period of 180 days after the **Closing Time**; and
 - (b) that this Tender may be accepted by AusAID at any time before the expiration of that period or any additional period to which we may agree.
- 3.7 I acknowledge that this Tender will not be deemed to have been accepted except as specified in the RFT.
- 3.8 I understand that AusAID is not bound to accept the lowest priced or any Tender.
- 3.9 I warrant that in preparing the Tender for the Services the Tenderer did not act in any way which did or could have had the effect of reducing the competitiveness of the tender process for the Services. In particular I warrant that the Tenderer did not engage in:
- (a) any discussion or correspondence with other tenderers concerning the amount of the Tender;
 - (b) any collusive tendering or other anti-competitive practices with any of the other Tenderers or any other person; or
 - (c) any conduct or have any arrangement or arrive at any understanding with any of the other Tenderers.
- 3.10 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:
- (a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of this RFT;
 - (b) listed on any similar list maintained by any donor of development funding (Relevant List), or;
 - (c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.
- 3.11 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.
- 3.12 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.
- 3.13 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.
- 3.14 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

- 3.15 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.
- 3.16 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**.
- 3.17 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.
- 3.18 The Tenderer is genuinely competing for the Contract and its Tender is not a “cover bid”.
- 3.19 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.
- 3.20 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. **ADDENDA TO TENDER DOCUMENTS**

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

Number _____ Dated _____ Number _____ Dated _____

Number _____ Dated _____ Number _____ Dated _____

5. **ADDRESS OF TENDERER**

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

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

2. REGISTERED TENDERERS AND NOTICES

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

3. **AUSTENDER HELP DESK**

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

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

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

4. **PREPARING TO LODGE A TENDER ELECTRONICALLY**

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

- 4.2 Tenderers must lodge their tender in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.
- 4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Tenders** specified in the Tender Particulars (**Clause 1 of Part 1** of this RFT).
- 4.4 The tender file name/s must:
- (a) incorporate the tenderer's company name
 - (b) reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
 - (d) not exceed 100 characters.
- 4.5 Tender files:
- (a) must not exceed a combined file size of 5 megabytes per upload;
 - (b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and
 - (c) should be zipped (compressed) together for transmission to AusTender.

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

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

- 5.5 If tenderers have any problem in accessing the AusTender website or uploading a tender they must contact AusAID via the nominated **Contact Person (Clause 1 of Part 1)** or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time**. Failure to do so will exclude a tender from consideration.
6. **LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES**
- 6.1 Any attempt to lodge a tender electronically after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.
- 6.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.
- 6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.
- 6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.
7. **PROOF OF LODGEMENT**
- 7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.
- 7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 5.2 and 5.5** above.
8. **AUSTENDER SECURITY**
- 8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 8.2 Tenderers acknowledge that:
- (a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

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

PART 6 – STANDARD CONTRACT CONDITIONS

Note to Tenderers: These Standard Contract Conditions are presented as **Part 6** of this RFT and will appear as Part B in the consolidated contract.

STANDARD CONTRACT CONDITIONS

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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/contracting/eligibility.cfm>.

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

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

"Commonwealth Procurement Guidelines" means the guidelines issued by the Minister for Finance and Administration that governs purchasing by Commonwealth agencies and

departments. Details are available at:

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

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

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

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

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

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

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

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

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

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

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

"Document" includes:

- (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 Conditions" means Contract Conditions in Part A of this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

General

In this Contract, including the recitals, unless the context otherwise requires:

- (e) the contractual obligations of the Parties must be interpreted and performed in accordance with the Contract as a whole;
- (f) Contract clause headings are for convenience only and shall not be taken into consideration in the interpretation or construction of the Contract;

- (g) 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;
- (h) a word denoting the singular number includes the plural number and vice versa;
- (i) a word denoting an individual or person includes a corporation, firm, authority, body politic, government or governmental authority and vice versa;
- (j) a word denoting a gender includes all genders;
- (k) a reference to a recital, clause, Schedule or annexure is to a recital, clause, Schedule or annexure of or to this Contract;
- (l) 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);
- (m) 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;
- (n) “shall” and “must” denote an equivalent positive obligation;
- (o) 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
- (p) 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 Conditions and the Standard Conditions, the Project Specific Conditions are to be read subject to the Standard Conditions and the Standard Conditions prevail to the extent of the inconsistency, unless explicitly amended in the Project Specific Conditions.

2. **SCOPE OF CONTRACT**

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

3. **AUSAID'S OBLIGATIONS**

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

4. **NON-EXCLUSIVITY**

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

5. **PROVISION OF SERVICES**

- 5.1 In providing the Services, the Contractor must:
 - (a) perform the Services as described in **Schedule 1** for the term of the Contract, unless the Contract is terminated earlier;
 - (b) accept and implement AusAID's reasonable directions in relation to the management of the Project;
 - (c) use its best endeavours to ensure the spirit and intent of the Project are fully met by the Services, including acting within the spirit and intent of the Treaty, MOU or Subsidiary Arrangement;
 - (d) liaise and cooperate with AusAID, with the stakeholders, and the Australian Diplomatic Mission in or having responsibility for the Partner Country especially in relation to security, personal safety and welfare matters;
 - (e) subject to any flexibility permitted in the Contract, ensure all timing obligations included in the Contract are fully met;

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

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

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

6. EARLY NOTIFICATION

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

7. CONTRACTOR PERSONNEL

- 7.1 The Contractor must ensure that Contractor Personnel are aware of, and must use its best endeavours to ensure Contractor Personnel comply with, the requirements of the Contract.
- 7.2 The Contractor must use its best endeavours to ensure that all Contractor Personnel conduct themselves in a manner consistent with the *Public Service Act 1999*, and in accordance with *APS Values* and the *APS Code of Conduct*.
- 7.3 The Contractor must use its best endeavours to ensure that no Contractor Personnel or their accompanying family members:
- (a) become involved in the political affairs of the Partner Country (unless citizens of the Partner Country);
 - (b) interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or
 - (c) share information known as a result of their work on, or relationship to, the Project, in a way that a reasonable person could foresee may be detrimental to the relationship between the Australian and Partner Governments.
- 7.4 The Contractor must not employ a currently serving Commonwealth employee in any capacity in connection with the Services without the prior written approval of AusAID.
- 7.5 The Contractor must ensure that media advertisements placed by the Contractor for personnel to fill a Project position acknowledge that the Project is funded by AusAID as part of the Australian Government's official overseas aid program.
- 7.6 AusAID may give notice to the Contractor requiring the Contractor to remove any Contractor Personnel from work in respect of the Services. The Contractor must promptly arrange for the removal of such Contractor Personnel from work in respect of the Services and their replacement (if required) with Contractor Personnel acceptable to AusAID.
- 7.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Contractor Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 7.8 The Contractor must advise AusAID immediately in writing if any Contractor Personnel is arrested for, or convicted of, criminal offences relating to child abuse, or for accessing or possessing child pornography. AusAID may require Contractor Personnel under formal investigation in relation to such criminal offences to be suspended from duty or transferred to other duties during the investigation.
- 7.9 AusAID may give notice to the Contractor requiring the Contractor to temporarily suspend from duty, or transfer to other duties, any Contractor Personnel who are under criminal or internal investigation in relation to child abuse or accessing or possessing child pornography. The Contractor must comply promptly with any such notice.

8. SPECIFIED PERSONNEL

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

- 8.2 During the minimum periods specified in **Schedule 1**, the Long Term Advisers included in the Specified Personnel must be exclusively dedicated to the Project and only perform the duties required under this Contract unless otherwise agreed in writing by AusAID.
- 8.3 The Contractor must use its best endeavours to ensure that persons nominated as Specified Personnel:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform;
 - (c) are certified as fit and healthy by a legally qualified medical practitioner to work in the Partner Country, and have received the necessary medical advice, including that on vaccinations and other preventive medical assistance allowing them to undertake work in-country in a safe manner;
 - (d) are adequately briefed and understand the environment and culture of the Partner Country; and
 - (e) act in a fit and proper manner while they are carrying out work or performing duties under the Contract.
- 8.4 The Contractor must use its best endeavours to secure the availability of Specified Personnel for the term of the Contract. If a change to Specified Personnel is required the Contractor must provide AusAID with not less than 3 months prior written notice of such change except where circumstances beyond the reasonable control of the Contractor make the giving of such notice impracticable. Any proposed change to the Specified Personnel must only be made after written consent from AusAID and in accordance with the procedure set out in **Clause 8.8 below**.
- 8.5 Subject to **Clause 8.4 above**, Specified Personnel may be temporarily absent from the Project. Where Specified Personnel are unavailable for work in respect of the Contract, for any period in excess of 2 weeks, the Contractor must notify AusAID in writing immediately and, if requested, must provide replacement personnel acceptable to AusAID and the Partner Government at no additional charge and at the earliest opportunity and for the duration of the absence.
- 8.6 The costs incurred by the Contractors in providing temporary substitute personnel due to the absence of Specified Personnel are the responsibility of the Contractor.
- 8.7 The Contractor must advise AusAID promptly in writing of any change in the circumstances of any Specified Personnel that, in the Contractor's reasonable opinion, is likely to affect AusAID's assessment of the person under the Contract.
- 8.8 Before appointing Specified Personnel to the Project, the Contractor must obtain AusAID's written approval. In seeking approval of proposed Specified Personnel the Contractor must provide to AusAID:
- (a) the full names, dates of birth, and nationalities of proposed personnel and their accompanying dependants;
 - (b) a statement demonstrating that the proposed personnel has the demonstrated skills and capacity to undertake the job specification of the position and duration of the proposed appointment;

- (c) a copy of the proposed person's curriculum vitae certified as accurate by the person and showing recent and relevant experience and formal qualifications including dates of award; and
- (d) assurances that the nominated personnel has no existing commitments (defined in relation to the commitments of the position and not the individual's commitment to a particular organisation), to other AusAID projects that will suffer detriment if accepted on this Project. If this is not the case AusAID may require further information before assessing the individual's suitability.

8.9 If the Contractor is unable to provide acceptable replacement Specified Personnel with equivalent qualifications and experience AusAID may seek a reduction in fees.

8.10 This clause is a fundamental term of the Contract, such that breach shall entitle AusAID to terminate the Contract in accordance with **Clause 31** and sue for damages.

9. PROJECT VEHICLE CONTRIBUTION

9.1 For the purposes of this clause, "Project Vehicles" are defined as vehicles paid for by AusAID, remain the responsibility of the Contractor for the term of the Project and that are provided for Project activities. Vehicles purchased by the Project, but handed over to the Partner Country immediately (where maintenance and insurance are Partner Country responsibilities and Contractor Personnel do not use the vehicles or only use them on an exceptional basis) are not considered Project Vehicles for the purposes of requiring a financial contribution by the Contractor.

9.2 In consideration of the Contractor being entitled to use Project Vehicles for non-project use the Contractor must contribute \$250.00 for each Project Vehicle for each month of the Project. The contribution will be deducted by the Contractor and must be clearly identified on the Contractor's invoices.

9.3 The Contractor must abide by the following requirements with regards to Project Vehicles:

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

10. PROCUREMENT SERVICES

10.1 In procuring all Supplies, the Contractor must:

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

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

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

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

10.5 The Register of Assets and associated documentation such as import documents, invoices and warranties shall be subject to audit by or on behalf of AusAID at any time and from time to time.

10.6 The Contractor must use the Supplies for purposes permitted under this Contract only and must ensure that the Supplies at all times remain free from any Encumbrance.

11. **SUB-CONTRACTING**

11.1 The Contractor may not sub-contract the whole of the Services. The sub-contracting of parts or elements of the performance of the Services is subject to compliance with the following requirements:

- (a) the sub-contracting of any of the Services shall not relieve the Contractor from any responsibility under this Contract;
- (b) the Contractor must implement procedures that are consistent with the principles of the Commonwealth Procurement Guidelines for the engagement of all sub-contracting of the Services, with the exception of Associates;
- (c) the Contractor must ensure that sub-contracts include equivalent provisions regarding the Contractor's relevant obligations under this Contract. In particular sub-contractors must:

- (i) comply with relevant and applicable laws, regulations and development policies, including AusAID's *Child protection policy* (<http://www.ausaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>) and child protection compliance standards (Attachment 1 to the policy), both in Australia and in the Partner Country;
 - (ii) be insured to at least the minimum of their statutory obligations and that they carry all commercially prudent insurances for the activities to be undertaken as part of the Services;
 - (iii) be bound by the same obligations regarding **Clauses 15** (Accounts and Records), **18** (Audits), **19** (Access to Premises), **26** (Privacy), and **35.4** (Anti-corruption) **below** and as required by Project Specific 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 5** (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 5** (Deed of Novation), to further novate the sub-contract to another contractor;
- (f) the Contractor must maintain up-to-date records of the names of all sub-contractors engaged by the Contractor to perform part of the Services. If requested by AusAID, the Contractor must, within five (5) working days, provide to AusAID a copy of the records of sub-contractors' names, in the format specified by AusAID. The sub-contract must include the right of AusAID to disclose the name of the sub-contractor, in accordance with **Clause 27 (AusAID Use of Contract Information) below**;
- (g) the Contractor must maintain records as to the performance of each of the sub-contractors engaged by the Contractor including details of any defects in such performance and the steps taken to ensure compliance with the Contract and provide to AusAID if requested; and
- (h) if requested by AusAID, the Contractor must provide to AusAID a copy of any proposed or executed sub-contract.

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

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

12. **CONTRACT AMENDMENTS AND VARIATION**

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

Contract Amendment

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

Contract Variation

- 12.3 AusAID or the Contractor may propose variations to the manner of providing the Services or changes to the Project, at any time for the purpose of improving the delivery of the Services or, the efficiency, cost-effectiveness and development impact of the Services. These changes shall be subject to a “Variation Order” as described below.
- 12.4 The Contractor must prepare a “Variation Proposal” for any variation sought by AusAID, or the Contractor, at no extra cost to AusAID and this must be submitted to AusAID in a timely manner.
- 12.5 The Variation Proposal must include specific identification of the proposed change, associated cost implications, a cost/benefit and risk analysis, including of developmental impact improvements, a general plan for implementation of the change and a projected time schedule.
- 12.6 No proposed variation must take effect unless it is in writing, titled a “Variation Order” and signed by AusAID. A summary of changes effected by Variation Orders will be maintained in the form set out in **Schedule 4B** (Variation Summary Schedule).

Costing Variations

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

Omission of Services

- 12.12 AusAID may issue a Variation Order omitting any part, though not the whole, of the Services. AusAID shall notify the Contractor in writing of its determination in respect of

the valuation of the omitted services. The value of the omitted Services will be determined in accordance with **Schedule 2** having regard to:

- (a) the Services omitted from the Contract;
- (b) any particular Payment Milestone affected by the omission;
- (c) other relevant payments; and
- (d) the extent of the work and/or inputs already performed or provided by the Contractor in respect of any such Payment Milestones.

12.13 AusAID will not be liable upon any claim by the Contractor as a result of any part of the Services being omitted, whether or not AusAID performs the omitted Services itself, or engages another service provider to carrying out the omitted Services.

12.14 If the Contractor disagrees with AusAID's determination of the value of the omitted Services, based on the rates included in **Schedule 2**, the Parties undertake to negotiate fair and reasonable amount within 20 Business Days.

12.15 In the event that the Parties cannot resolve a reasonable amount within 20 Business Days, either Party may seek to have an independent third party appointed pursuant to **Clause 39** (Resolution of Disputes), to determine a reasonable amount and the Parties agree that they shall be bound by that determination.

Suspension and rescheduling of Services

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

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

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

12.17 If the suspension or rescheduling is due to:

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

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

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

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

13. EXTENSION OF TIME

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

- (a) a Force Majeure Event;
- (b) a significant change in circumstances beyond the control of the Contractor;
- (c) an Australia-wide or Partner Country-wide industrial dispute; or
- (d) a change in the laws of Australia or the Partner Country that directly impacts on the provision of the Services.

13.2 Where in the Contractor’s reasonable opinion there is likely to be a delay in the Contractor’s discharging an obligation under the Contract because of a Relevant Cause the Contractor must:

- (a) immediately notify AusAID in writing when the Contractor considers any event or circumstance may cause a delay and the estimated period of delay or likely period of delay;
- (b) give details of the likely effect on the Project and any Contractual implications;
- (c) take all reasonable steps to mitigate the effects of any delay and make written recommendations of additional strategies to avoid or mitigate the effects of the event;
- (d) request in writing an extension of time which the Contractor considers reasonable in all the circumstances in the form of a Variation Proposal in accordance with **Clause 12.5 above**; and
- (e) use its best endeavours to continue to perform its obligations under the Contract.

13.3 AusAID must give consideration to the Contractor’s recommendations and request for an extension of time and as soon as practicable after receiving the request notify the Contractor in writing whether it has determined that a Relevant Cause has occurred and whether all or part of the request has been granted. AusAID’s approval of a request may be granted subject to conditions.

13.4 If AusAID approves in writing a request, the approval should be titled a “Variation Order” and recorded in the Variation Schedule, **Schedule 4B** (Variation Summary Schedule). The Contract shall be deemed to have been varied accordingly.

- 13.5 Even if the Contractor has not given notice under **Clause 13.2 above**, where AusAID considers that a delay has arisen, in whole or in part, because of an act or omission on the part of AusAID, its employees or agents, AusAID may, by notice in writing to the Contractor, extend the time for performance of the relevant obligation of the Contractor.
- 13.6 Where AusAID has determined that a Relevant Cause has occurred, and the Contractor's inability to perform its obligations due to a Relevant Cause exceeds 45 Business Days, AusAID may:
- (a) notify the Contractor that the Contract is suspended for a specified period of time; or
 - (b) delete part of the Services; or
 - (c) immediately or thereafter terminate the Contract in whole or in part by providing notice in writing to the Contractor.
- 13.7 A notice of suspension, deletion or termination of the Contract under **Clause 13.6 above** takes effect on the date that the notification is received by the Contractor.
- 13.8 In the event of suspension, deletion or termination of Services or the Contract under **Clause 13.6 above** the Contractor may claim, Fees for Services performed as payable under **Schedule 2**, prior to the date of suspension, deletion or termination, on a pro rata basis and Costs that are reasonably and properly incurred by the Contractor in connection with the Contract to the extent to which those Costs are unavoidable as a direct consequence of the suspension, deletion or termination of the Contract in accordance with this clause. Any Cost must be substantiated to AusAID and must not include loss of profits or any other form of expectation loss.
14. **HANDOVER**
- 14.1 The Contractor must within 12 months of the Project Start Date draft a Handover Plan which includes all the functions to be performed to hand over the Project to the Partner Country in a manner which ensures the Partner Country is able to continue the Project and in particular to manage ongoing maintenance requirements as well as any other matters specified in **Schedule 1** and provide a copy to AusAID.
- 14.2 The Contractor must make changes to the Handover Plan as reasonably requested by AusAID and update the Handover Plan as necessary during the Project but at least annually and 6 months before the end of the Contract.
- 14.3 The Contractor must ensure that a finalised Handover Plan is provided to AusAID within seven (7) days of any early termination of the Project, or one month prior to the expected completion of the Project.
- 14.4 The Contractor must provide all reasonable assistance and cooperation necessary to, on expiration or termination of the Contract, facilitate the provision of the Services by AusAID or an alternative service provider. In particular the Contractor must:
- (a) deliver to AusAID or its nominee complete copies of all the Data, in a form and on a media approved by AusAID, and any other AusAID property including the Supplies held or used by the Contractor;
 - (b) either destroy or deliver to AusAID all copies of AusAID Confidential Information as required by AusAID;

- (c) if requested by the Partner Country, facilitate the assignment to the Partner Country of sub-contracts relating to Supplies, including for licensing and support of information technology and any construction work maintenance;
- (d) vacate the Project Office where this has been supplied by AusAID or the Partner Country;
- (e) co-operate with AusAID and, if requested, AusAID's nominee, and provide reasonable assistance relating to the transfer of any contracts to AusAID, its nominee or the Partner Country;
- (f) provide all information necessary for an alternative service provider to assume provision of the Services;
- (g) continue the provision of the Services for as long as reasonably requested by AusAID on the terms and conditions of the Contract;
- (h) cooperate with AusAID and any other service provider in the ongoing provision of services similar to the Services; and
- (i) allow AusAID to audit compliance with this clause.

15. ACCOUNTS AND RECORDS

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

16. REPORTS

- 16.1 The Contractor must ensure that all reports required in accordance with **Schedule 1**, provide the information required and conform with the quality and format requirements specified.

- 16.2 The Contractor is responsible for any extra costs occasioned by any clarifications, discrepancies, errors or omissions in reports provided to AusAID or other information supplied in writing by the Contractor, provided such discrepancies, errors or omissions are not due to inaccurate information supplied in writing to the Contractor by AusAID.
- 16.3 AusAID may reject and withhold payment of Fees for any report which does not conform to the requirements of the Contract until the Contractor rectifies the report.

17. **REVIEWS**

- 17.1 For the purpose of ensuring that this Contract is being properly performed, AusAID may itself, or may appoint an independent person or persons to assist in the performance of, or to perform, a review of this Contract at the frequency and in relation to any matter specified by AusAID.
- 17.2 The Contractor must participate cooperatively in any reviews conducted by AusAID or its nominees. In addition the Contractor must respond in writing to any draft review report within 28 days after the date of receipt by the Contractor of the draft report unless otherwise agreed in writing by AusAID.
- 17.3 Reviews may be conducted of:
- (a) the efficiency and effectiveness of the Contractor's operations in relation to the provision of the Services, including procurement and risk management procedures;
 - (b) the accuracy and reliability of the Contractor's financial management systems;
 - (c) the Contractor's compliance with their obligations under the Contract in relation to foreign exchange transactions;
 - (d) the accuracy of the Contractor's reports in relation to the provision of the Services;
 - (e) the Contractor's compliance with AusAID's *Child protection policy* and child protection compliance standards (Attachment 1 to the policy);
 - (f) the Contractor's compliance with its Contractor Personnel, confidentiality and privacy obligations; or
 - (g) any other matters relevant to the performance of any Services including user satisfaction.
- 17.4 Each Party must bear its own costs of any such reviews conducted by or on behalf of AusAID.
- 17.5 The requirement for, and participation in, reviews does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- ## 18. **AUDITS**
- 18.1 Where AusAID has reasonable concerns regarding the Contractor's financial management systems AusAID must provide the Contractor with written notification of those concerns and what action is required of the Contractor. This may include:

- (a) that the Company Director must provide a Statutory Declaration confirming that they have sighted the necessary supporting documentation and confirm the veracity of the claim for payment;
- (b) providing AusAID with additional documentation to support the claim for payment; or
- (c) a direction that the Contractor engage an independent, suitable organisation to undertake an audit of those financial management systems, including invoicing procedures and practices.

18.2 The Contractor must respond to any notice received under **Clause 18.1 above** within 14 days.

18.3 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 18.1(c) above**.

18.4 If AusAID directs the Contractor to undertake an independent audit under this clause:

- (a) the terms of reference must be agreed in writing by AusAID;
- (b) the audit must be undertaken according to the standards of the professional body relevant to the particular audit and those standards must be detailed in the terms of reference;
- (c) the Contractor will bear the total cost of the audit; and
- (d) AusAID will not make any further payments owed to the Contractor pending certification of the reliability of the Contractor's financial management systems and the veracity of the invoicing procedures and practices.

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

19.1 The Contractor must grant AusAID and/or its nominees (including the Auditor-General or the Privacy Commissioner or their delegates), access to the Contractor's premises, the Data, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying.

19.2 Such access must be available to AusAID and its nominees:

- (a) during the hours of 9 am and 5 pm on a Business Day;
- (b) except in the case of a breach of this Contract, subject to reasonable prior notice; and
- (c) at no additional charge to AusAID.

19.3 In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to AusAID.

19.4 This clause applies for the term of this Contract and for a period of seven (7) years from the date of its expiration or termination.

20. PAYMENT

20.1 AusAID must make payment of the Fees within 30 days of:

- (a) AusAID's acceptance of the satisfactory completion of the Services or relevant Payment Milestone as specified in **Schedule 2**; and
- (b) receipt of a correctly rendered invoice.

20.2 It is AusAID corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted.

20.3 The Fees are fixed for the term of the Contract unless varied in accordance with the Contract.

20.4 The Contractor must make all foreign exchange transactions at arms length and at commercially competitive rates. Supporting documentation must be retained in accordance with Standard Conditions **Clause 15.1** (Accounts and Records) and may be audited by AusAID in accordance with Standard Conditions **Clause 17** (Reviews).

20.5 Where the Contractor is entitled to reimbursement for expenditure in a currency other than Australian dollars under this Contract, the Contractor must invoice AusAID for the equivalent Australian dollar amount as recorded by the Contractor in their general ledger converted at an exchange rate which is calculated in accordance with appropriate accounting standards.

20.6 No invoice for any period is to be submitted before the provision of any reports required by the Contract for the relevant period.

20.7 Subject to the Contract AusAID shall pay Reimbursable Costs within 30 days of receipt of a correctly-rendered invoice.

20.8 An invoice is correctly rendered if:

- (a) the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Contract;
- (b) the invoice details the Contractor's monthly contribution toward Project Vehicles in accordance with **Clause 9.2**;
- (c) the invoice is based upon the calculation of Fees referred to in **Schedule 2**; and
- (d) a company director of the Contractor, or their delegate has certified that the invoice:
 - (i) has been correctly calculated;
 - (ii) that the Services included in it have been performed in accordance with this Contract; and
 - (iii) in the case of Reimbursable Costs that these costs have been paid.

- 20.9 If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from AusAID to the Contractor.
- 20.10 A payment by AusAID is not an admission of liability. In the event that AusAID makes a payment for the completion of a Payment Milestone or the procurement of Supplies or inputs that AusAID subsequently learns have not been completed to the quality or performance specifications required or provided as required, the payment shall be deemed an overpayment and recoverable from the Contractor. Without limiting recourse to other available remedies, the overpayment may be offset against any amount subsequently due to the Contractor.
- 20.11 AusAID need not pay an amount that is disputed in good faith by AusAID until the dispute is resolved.
- 20.12 AusAID need not pay any amount due to the Contractor until the Contractor delivers to AusAID a written statement which satisfies the requirements of section 127 of the *Industrial Relations Act 1996* (NSW) or the requirements of similar State or Territory legislation, in relation to the payment of employees or sub-contractors of the Contractor who were engaged in the performance of the Contract.
- 20.13 Except as otherwise specified in this Contract, the Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.
- 20.14 If the Contractor does not have an Australian Business Number (ABN), AusAID, in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Contract, unless the exceptions under Division 12 of the PAYG legislation apply.
- 20.15 AusAID will make all amounts payable to the Contractor under this Contract into a bank account or accounts 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 accounts must be provided to AusAID with 45 days notice.

21. **GOODS AND SERVICES TAX**

- 21.1 Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Contract shall be borne by the Contractor or its sub-contractor(s), as the case requires.
- 21.2 The amount shown against each item in **Schedule 2** is the ‘value’ of the ‘periodic supplies’ to be made under this Contract, as these terms are used in the *A New Tax System Act 1999* (Cth).
- 21.3 The amount payable under the Contract for each supply listed in **Schedule 2** is the value of that supply plus any GST payable by the Contractor under the GST legislation. Payment by AusAID to the Contractor of the GST shall be subject to the Contractor providing AusAID with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations.

21.4 The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from AusAID, in respect of any supply shall be shown as a separate item on the Tax Invoice.

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

22. INTELLECTUAL PROPERTY RIGHTS

22.1 Subject to **Clause 22.2**, the title to all Intellectual Property rights in or in relation to Contract Material shall vest upon its creation in AusAID. If required by AusAID, the Contractor must bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of such title or rights in AusAID.

22.2 **Clause 22.1** does not affect the ownership of Intellectual Property in any Prior Material incorporated into the Contract Material, but the Contractor grants to AusAID a permanent, irrevocable, royalty-free worldwide, non-exclusive licence to use, reproduce, adapt and otherwise exploit such Prior Material in conjunction with the Contract Material. The licence granted under this **Clause 22.2** includes the right of AusAID to sub-licence any of its employees, agents or contractors to use, reproduce, adapt and otherwise exploit the Prior Material incorporated into the Contract Material for the purposes of performing functions, responsibilities, activities or services for, or on behalf of, AusAID.

22.3 The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract.

22.4 The Contractor must deliver all Contract Material to AusAID or to the Partner Government counterpart agency as may be directed in writing by AusAID.

23. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

24. MORAL RIGHTS

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

25. CONFIDENTIALITY

25.1 Subject to this clause, the Contractor must not, without the prior written approval of AusAID, make public or disclose to any person any AusAID Confidential Information. In giving written approval, AusAID may impose such terms and conditions as in AusAID's opinion are appropriate.

- 25.2 The Contractor must take all reasonable steps to ensure Contractor Personnel do not make public or disclose the AusAID Confidential Information and must promptly notify AusAID of any unauthorised possession, use or disclosure of AusAID Confidential Information.
- 25.3 The Contractor must ensure that any Contract Personnel who will have access to AusAID Confidential Information complete a written undertaking in the form set out at **Schedule 3**, relating to the non-disclosure of that information.
- 25.4 The Contractor may disclose AusAID Confidential Information:
- (a) to its legal advisers in order to obtain advice in relation to its rights under this Contract, but only to the extent necessary for that purpose;
 - (b) to the extent required by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the first-mentioned party; or
 - (c) if required in connection with legal proceedings,
- but in the case of (b) and/or (c) above, subject to the Contractor giving AusAID sufficient notice of any proposed disclosure to enable AusAID to seek a protective order or other remedy to prevent the disclosure.
- 25.5 The Contractor must not transfer AusAID Confidential Information outside Australia, except to the Partner Country, or allow parties outside Australia to have access to it, without the prior approval of AusAID.
- 25.6 The Contractor must use AusAID Confidential Information held, acquired or which the Contractor may have had access to in connection with this Contract only for the purposes of fulfilling its obligations under this Contract. Upon expiry or earlier termination of this Contract the Contractor must either destroy or deliver to AusAID all AusAID Confidential Information, as required by AusAID.
- 25.7 This clause shall survive expiration or termination of this Contract.
26. **PRIVACY**
- 26.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services.
- 26.2 In this clause, the terms ‘agency’, ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the *Privacy Act 1988*.
- 26.3 The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Services:
- (a) to use or disclose Personal Information obtained during the course of providing the Services, only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;

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

26.4 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-contractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to sub-contracts.

26.5 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a sub-contractor under the sub-contract provisions referred to in **Clause 26.4 above**.

26.6 This clause shall survive expiration or termination of this Contract.

27. **AusAID USE OF CONTRACT INFORMATION**

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

Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries.

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

28. **PUBLICITY**

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

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

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

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

29. **WARRANTIES**

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

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

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

29.3 The Contractor warrants that it shall have full corporate power and authority to enter into, perform and observe its obligations under this Contract and that the execution, delivery and

performance of this Contract shall be duly and validly authorised by all necessary corporate action.

30. PERSONNEL SECURITY

- 30.1 The Contractor is responsible for the security of Contractor Personnel and for taking out and maintaining appropriate insurances in respect of Contractor Personnel.
- 30.2 The Contractor is responsible for the immediate development and implementation of a Security Plan to ensure the safety and security of Contractor Personnel. The Security Plan should incorporate prevention strategies and response plans, including evacuation plans where appropriate. The Contractor shall submit a copy of the Security Plan to AusAID prior to mobilisation in the Partner Country. The Contractor shall review and update the Security Plan whenever considered necessary by the Contractor and shall submit the revised document to AusAID.
- 30.3 The Contractor must keep abreast of the security situation in the Partner Country including where relevant having regard to travel advisories and notices including those issued by the Australian Department of Foreign Affairs and Trade. The Australian advisories and notices are available at: www.dfat.gov.au
- 30.4 The Contractor acknowledges and confirms that, notwithstanding any other provisions of the Contract:
- (a) it is not the function or responsibility of AusAID or any person acting or purporting to act on behalf of AusAID, to comment on or approve the Contractor's Security Plans; and
 - (b) the Contractor has not entered the Contract based on any representation, statement or assurance by AusAID or any person acting or purporting to act on behalf of AusAID, in respect of the safety or security of the Contractor, Contractor Personnel or any person acting on behalf of the Contractor, in the Partner Country or in any other location.

31. TERMINATION FOR CONTRACTOR DEFAULT

- 31.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor terminate this Contract, with effect from the date in the notice, if the Contractor:
- (a) commits a breach of this Contract and:
 - (i) that breach is not capable of remedy;
 - (ii) fails to remedy that breach within **[10]** Business Days (or such further time as AusAID may, in its absolute discretion, specify), after receiving a notice from AusAID requiring the Contractor to remedy the breach; or
 - (iii) does not commence to remedy that breach, within a reasonable time (having regard to the nature of the breach) after being given notice by AusAID requiring the Contractor to remedy the breach;
 - (b) becomes, or in AusAID's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Contract;

- (c) becomes subject to one of the forms of external administration provided for in Chapter 5 of the *Corporations Act 2001*;
- (d) is wound up by resolution or an order of the court;
- (e) ceases to carry on business;
- (f) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver and manager appointed on behalf of debenture holders or creditors;
- (g) suffers any execution against its assets having, or which in AusAID's reasonable opinion is likely to have, an adverse effect on its ability to perform this Contract;
- (h) ceases to hold any licence, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Contract (except to the extent that this is outside the Contractor's reasonable control);
- (i) assigns its rights otherwise than in accordance with the requirements of this Contract;
- (j) suffers a change in Control which in AusAID's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Contract;
- (k) is in breach of the warranty, regarding listing on a World Bank List or Relevant List, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (l) is, during the term of this Contract, listed on a World Bank List or Relevant List;
- (m) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, bribery of a public official, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (n) is in breach of the warranty, regarding unsettled judicial decisions relating to employee entitlements, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract;
- (o) is, during the term of this Contract, convicted of an offence of, or relating to, bribery of a public official. In this paragraph (n) the Contractor includes Contractor Personnel; or
- (p) is in breach of the warranty, regarding convictions or proceedings relating to an offence of, or relating to, child abuse, given in the Tenderer Declaration submitted by the Contractor with its tender leading to this Contract.

31.2 If this Contract is terminated under this **Clause 31**:

- (a) subject to this Contract, the parties are relieved from future performance of this Contract, without prejudice to any right of action that has accrued at the date of termination;

- (b) subject to this Contract, all licences and authorisations granted to the Contractor by AusAID under this Contract terminate immediately despite anything to the contrary contained in the relevant licence or authorisation;
- (c) the AusAID Confidential Information, Supplies and any other property supplied or given to the Contractor by AusAID pursuant to this Contract must be immediately returned to AusAID;
- (d) AusAID is not obliged to make any further payments (including the payment of Fees) to the Contractor. However, AusAID may, in its absolute discretion, consider making a payment to the Contractor in such amount and upon such terms as AusAID determines is appropriate in the circumstances; and
- (e) the Contractor will indemnify and hold AusAID harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Contract by the Contractor (including those arising from affected sub-contracts).

32. TERMINATION FOR CONVENIENCE

- 32.1 In addition to any other rights or remedies it has at law or in equity or under this Contract, AusAID may, by notice in writing to the Contractor, terminate or reduce the scope of this Contract from the time specified in the notice (and without the need to give further notice) and, in that event, AusAID may give to the Contractor such directions as it thinks fit in relation to subsequent performance of this Contract.
- 32.2 Where notice is given under **Clause 32.1** the Contractor must:
- (a) comply with all directions given by AusAID;
 - (b) cease or reduce (as applicable) the performance of work under the Contract; and
 - (c) immediately do everything possible to mitigate its Losses, and all other loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination (including those arising from affected sub-contracts) arising in consequence of termination of this Contract under this **Clause 32**.
- 32.3 In the event of termination or reduction in scope under this **Clause 32**, subject to **Clause 32.4**, AusAID will only be liable to the Contractor for:
- (a) Fees, as payable under **Schedule 2**, for Services performed prior to the termination, on a pro rata basis; and
 - (b) Costs that are:
 - (i) directly attributable to the termination or reduction in scope of this Contract; and
 - (ii) in AusAID's opinion, reasonably and properly incurred by the Contractor in connection with the Contract,to the extent that such Costs are substantiated to AusAID.

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

33. **INDEMNITY**

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

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

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

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

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

34. **INSURANCE**

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

- (a) public liability insurance with a limit of at least \$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.

34.2 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.

34.3 Neither the effecting of insurance nor any failure to effect such insurance shall in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under the other provisions of this Contract or at law.

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

35. **CONFLICT OF INTEREST**

Conflict of Interest

35.1 The Contractor warrants that, at the date of signing this Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

35.2 The Contractor must use best endeavours to ensure that a situation does not arise which may result in a conflict of interest. The Contractor must not engage in any activity, subject to **Clause 35.3 below**, that may result in a conflict of interest arising or continuing.

35.3 Where a conflict of interest arises in the performance of the Contractor's obligations under this Contract, the Contractor must notify AusAID immediately, and may request permission from AusAID to undertake the work despite that conflict of interest.

Anti-Corruption

35.4 The Contractor warrants that the Contractor shall not make or cause to be made, nor shall the Contractor receive or seek to receive, any offer, gift or payment, consideration or benefit of any kind, which would or could be construed as an illegal or corrupt act, either directly or indirectly to any party, as an inducement or reward in relation to the execution of this Contract. In addition, the Contractor shall not bribe public officials and shall ensure that all

Contractor Personnel comply with this provision. Any breach of this clause shall be grounds for immediate termination of this Contract under Standard Conditions **Clause 31** (Termination for Contractor Default) by notice from AusAID.

36. FRAUD

- 36.1 For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means.
- 36.2 The Contractor and its sub-contractors must not engage in any fraudulent activity.
- 36.3 The Contractor must prepare a fraud risk assessment and zero tolerance fraud control strategy. These must contain appropriate fraud prevention, detection, investigation and reporting processes and procedures that comply with the *Commonwealth Fraud Control Guidelines*.
- 36.4 The Contractor is responsible for preventing and detecting fraud including fraud within those functions outsourced / performed by a sub-contractor or under any other arrangement established by the Contractor relating to the management or administration of AusAID provided funds. The Contractor is responsible for ensuring that its staff and its subcontractors' staff are responsible and accountable to the Contractor for preventing and reporting any fraud or suspected fraud as part of their routine responsibilities.
- 36.5 The Contractor must report in writing within 5 working days to AusAID any detected, suspected, or attempted fraudulent activity involving AusAID provided funds. Where a matter is reported in writing to AusAID by a Contractor, the advice must provide where known:
- (a) the name of the Project under which AusAID funding is being provided;
 - (b) name of any personnel or subcontractors involved;
 - (c) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (d) the names of the suspected offender(s) (where known);
 - (e) details of witnesses;
 - (f) copies of relevant documents;
 - (g) references to any relevant legislation;
 - (h) a nominated contact officer;
 - (i) any other relevant information (eg, political sensitivities, any other party or agency that has been informed, involved or that can assist with investigations); and
 - (j) the current status of any inquiries commenced by the Contractor.
- 36.6 The Contractor must, in consultation with AusAID, develop and implement a strategy to investigate the detected, suspected or attempted fraud based on the principles set out in the *Australian Government Investigations Standards* which are available from AusAID when a demonstrated need to distribute them exists. The Contractor will be responsible for the conduct of the investigation. Any investigator appointed by the Contractor should possess the minimum qualifications specified in the *Commonwealth Fraud Control Guidelines*. Before engaging a qualified investigator, the Contractor may consult with AusAID regarding the appointment and may request assistance from AusAID in meeting the actual costs of a qualified investigator. Provided that the Contractor has consulted with AusAID

before engaging an investigator, AusAID may in its absolute discretion agree to meet some or all of those costs.

- 36.7 AusAID reserves the right to appoint its own investigator, conduct the investigation, conduct a concurrent investigation or refer the allegations to the appropriate law enforcement agencies or any other person or entity AusAID deems appropriate in Australia or in the partner countries for investigation. In this instance the Contractor shall provide all assistance that may be required at the Contractor's sole expense.
- 36.8 Following the conclusion of an investigation, where the investigation finds the Contractor, an employee of the Contractor or a subcontractor of the Contractor has acted in a fraudulent manner, the Contractor shall:
- (a) where money has been misappropriated, pay to AusAID or the project the full value of the AusAID funds that have been misappropriated; or
 - (b) where an item of property has been misappropriated, either return the item to AusAID or the project or if the item cannot be recovered or has been damaged so that it is no longer usable, replace the item with one of equal quality.
- 36.9 Following the conclusion of an investigation, where the investigation finds that a party other than the Contractor, an employee of the Contractor or a subcontractor of the Contractor, has acted in a fraudulent manner, the Contractor shall at the Contractor's cost:
- (a) make every effort to recover any AusAID funds or funded property acquired or distributed through fraudulent activity, including without limitation, one or both of the following:
 - (i) taking recovery action in accordance with recovery procedures, including civil litigation, available in the Partner Country. Before commencing any recovery action, the Contractor may consult with AusAID regarding the proposed course of action and may request assistance from AusAID in meeting the costs of the recovery action. Provided that the Contractor has consulted with AusAID before commencing recovery action, AusAID may in its absolute discretion agree to meet some or all of those costs.
 - (ii) referring the matter to the relevant Partner Country police or other authorities responsible for prosecution of fraudulent activity.
 - (b) keep AusAID informed, in writing, on a monthly basis, of the progress of the recovery action.
- 36.10 If the Contractor considers that after all reasonable action has been taken to recover the funds or funded property and full recovery has not been achieved or recovery has only been achieved in part, the Contractor may seek approval from AusAID that no further recovery action be taken. The Contractor must provide to AusAID all information, records and documents required by AusAID to enable the AusAID delegate to make a decision on whether to approve non-recovery of funds or funded property.
- 36.11 In the event that any investigation finds that the contractor, an employee of the Contractor or a subcontractor of the Contractor has been involved in any fraudulent activity, or in the event that AusAID discovers that a suspected, attempted or detected fraud has not been reported to AusAID, AusAID, at AusAID's sole discretion, reserves the right to:

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

37. COMPLIANCE WITH LAWS, GUIDELINES AND POLICIES

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

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

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

37.3 The Contractor and all Contractor Personnel must at all times have regard to and operate in accordance with relevant guidelines, as amended from time to time, and listed on the AusAID website: <http://www.ausaid.gov.au/business/contracting.cfm>.

37.4 The Contractor must notify AusAID of any material breach by the Contractor or Contractor Personnel of a law or guideline referred to in this **Clause 37**.

37.5 On becoming aware of a material breach by the Contractor or Contractor Personnel of a law or guideline, whether or not such a breach is notified to AusAID by the Contractor, AusAID may, in addition to any other rights available to AusAID, terminate this Contract under **Clause 31**.

37.6 The Contractor must in carrying out its obligations under this Contract comply with those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the *Criminal Code Act 1995 (Cth)* and listed in regulations made under that Act and regulations made under the *Charter of the UN Act 1945 (Cth)*. The Contractor must ensure that funds provided under this Contract do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Contract, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform AusAID immediately.

37.7 The Contractor must when providing any Services and procuring the Supplies have regard to and operate in accordance with Australian policies on developmental aid to foreign countries including:

- (a) the policy Gender Equality in Australia’s Aid Program – Why and How (March 2007);
- (b) Child protection, in particular the child protection compliance standards at Attachment 1 to AusAID’s *Child protection policy*;
- (c) Environment. AusAID is bound by the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999*, which applies to all aid activities. The Contractor must:
 - 1. ensure that environmental requirements specified in the Scope of Services are implemented, monitored and reported;
 - 2. comply with AusAID’s Environmental Management System outlined in the *Environmental Management Guide for Australia’s Aid Program*, including:
 - a. assess and manage all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - b. report regularly on any such impacts as required by the Scope of Services; and
 - 3. comply with all relevant environmental laws and regulations of the Partner Country.

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

38. INVESTIGATION BY THE OMBUDSMAN

- 38.1 In carrying out the Services, the Contractor, and an employee or subcontractor of the Contractor, may be a “Commonwealth service provider” under section 3BA of the Ombudsman Act 1976.
- 38.2 The Contractor must use its best endeavours, and must ensure that employees and subcontractors of the Contractor use their best endeavours, in undertaking the Services, not to engage in conduct that:
 - (a) would, if the Contractor or an employee or subcontractor were an officer of AusAID, amount to a breach of duty or to misconduct; or
 - (b) should be brought to the attention of the principal officer of AusAID.
- 38.3 If the Commonwealth Ombudsman commences an investigation of conduct of the Contractor, as a Commonwealth service provider, the Contractor, at the cost of the Contractor, must cooperate with the investigator including:
 - (a) providing all documentation required by the investigator,
 - (b) making Contractor Personnel available to assist the investigator and

- (c) allowing the investigator, at any reasonable time of the day, to enter a place occupied by the Contractor and carry on the investigation at that place.

- 38.4 If the Ombudsman brings evidence to the notice of AusAID concerning the conduct of the Contractor, or of an employee or subcontractor of the Contractor, the Contractor must, at the cost of the Contractor, take whatever remedial action is required by AusAID or by the Ombudsman to rectify the situation.
- 38.5 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including this requirement in relation to subcontracts.
- 38.6 The Contractor agrees to indemnify AusAID in respect of any loss, liability or expense suffered or incurred by AusAID, due to conduct of the Contractor or of an employee or subcontractor, which arise directly or indirectly, as a result of an investigation carried out by the Ombudsman.
- 38.7 This clause shall survive expiration or termination of this Contract.

39. **RESOLUTION OF DISPUTES**

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

40. **NOTICES**

- 40.1 A notice required or permitted to be given by one Party to another under this Contract must be in writing and is treated as having been duly given and received:
 - (a) when delivered (if left at that Party's address);
 - (b) on the third Business Day after posting (if sent by pre-paid mail); or

- (c) on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and no intimation having been received that the notice had not been received, whether that intimation comes from that Party or from the operation of facsimile machinery or otherwise).

41. MISCELLANEOUS

41.1 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.

41.2 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.

41.3 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.

41.4 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.

41.5 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.

41.6 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.

41.7 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.

41.8 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.