Australian Government

AusAID

4 July 2009

Request for Tender

Technical and Financial Audit Consultant (TFAC)

REQUEST FOR TENDER

Technical and Financial Audit Consultant

AusAID is seeking proposals from organisations interested in providing services as **Technical and Financial Audit Consultants** (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**);
- Project Specific Contract Conditions (**Part 2**);
- Scope of Services (**Part 3**); and
- Basis of Payments (**Part 4**).

Section 2 details the:

- Standard Tender Conditions (**Part 5**); and
- Standard Contract Conditions (**Part 6**).

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

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

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

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

AusAID Contracts Charter

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

SECTION 1 – PROJECT SPECIFIC TENDER AND CONTRACT CONDITIONS

PART 1 – PROJECT SPECIFIC TENDER CONDITIONS

1. TENDER PARTICULARS

Closing Time: (Clauses 1.11 and 1.14, Part 5)	2.00pm local time in Canberra, Australian Capital Territory **Monday 10 August 2009**
Mode of submission: (Clause 1.1, Part 5)	**<u>Either</u>:** - Electronically, via AusTender at https://tenders.gov.au before the tender **Closing Time**; **<u>or</u>** - in hard copy, by depositing by hand in the Canberra Tender Box before the tender **Closing Time**.
Electronic Tender Lodgement Address: (Clause 1.11, Part 5)	Via AusTender at https://tenders.gov.au
Canberra Tender Box Address: (Clause 1.15, Part 5)	Tender Box, Ground Floor, AusAID 255 London Circuit, Canberra ACT 2601, Australia
Business Hours for hard copy lodgement: (Clause 1.15, Part 5)	Monday to Friday, 8.30am to 5.00pm local time in Canberra, Australia Territory Capital 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>** **Technical Proposal**: One (1) electronic copy. **Financial Proposal**: One (1) electronic copy in a separate file. **Financial Assessment material**: One (1) electronic copy in a separate file. **<u>For hard copy tender lodgement</u>** **Technical Proposal:** One (1) printed Original and three (3) copies. **Financial Proposal:** One (1) printed Original, in a separate, sealed envelope. **Financial Assessment material**: One (1) printed Original copy in a separate sealed envelope.

	CD: Tenderers are to provide one CD which includes the Technical Proposal, Financial Proposal and Financial Assessment material as three (3) separate files in PDF format.
Endorsement of hard copy Tenders: (Clause 1.16, Part 5)	"**Tender for the Technical and Financial Audit Consultant**."
Tender Validity Period: (Clause 1.8, Part 5)	180 days
Contact Person: (Clause 2.1, Part 5)	Nina Yulianti Fax: +62 21 2550 5582 Email address: tfac@ausaid.gov.au
Page limits: (Clauses 7.15 and 7.17, Part 5)	**Tender Schedule A - Technical Proposal** Corporate Arrangements Statement (no more then three (3) A4 pages) Corporate Experience Statement (no more then three (3) A4 pages) Statement of Approach (no more then ten (10) A4 pages) Annex 1 – Past Experience Form (no more then five examples/one(1) A4 page each) Annex 2 – Letters of Associate (no more then 1 page per Association or Sub-Contractor) Annex 3 – Commonwealth Government Policies Compliance **Tender Schedule B – Specified Personnel** Proposed Team Members (CVs – up to four (4) A4 pages per CV per personnel) Specified Personnel Table **Tender Schedule C – Financial Proposal** Table 1: Personnel Costs Table 2: Tenderer's Bid Price Attachment A – Insurance Costs **Tender Schedule D – Financial Assessment** Option 1 or Option 2 **Tenderer Declaration**
Information:	The Request for Tender is available from the AusTender website https://tenders.gov.au

2. PRE-TENDER BRIEFING

2.1 AusAID intends to hold the pre-tender briefings at **Monday 13 July 2009, 10.00am at the Cemara Hotel, Jl. Cemara No. 1 Jakarta, Indonesia.**

2.2 Tenderers planning to attend the pre-tender briefing are requested to send advanced notification by email, indicating the name of the organisation and the number of people planning to attend, to **tfac@ausaid.gov.au**, by **16.00 (Jakarta Time) Friday 10 July 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. ELIGIBILITY TO TENDER

4.1 For the purpose of this Tender, eligibility to tender has been restricted to require Tenderers to be:

(a) an organisation carrying on business in Australia or New Zealand (ANZ firms); or

(b) an Indonesian firm (an entity carrying on business in Indonesia, established in accordance with Indonesian laws and regulations, which, in the case of an incorporated company, has majority Indonesian local ownership/shareholding).

AusAID recognises that there may be organisational configurations between Australian, New Zealand and Indonesian entities which do not meet the above eligibility criteria.

Any organisation which does not meet the eligibility criteria, but which believes it is constituted in a way that reflects a spirit of partnership between Australia, New Zealand and Indonesia parties, must contact AusAID to establish eligibility on a case by case basis and AusAID may permit an organisation which does not meet the above eligibility criteria to submit a proposal.

5. SCORE WEIGHTINGS

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

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

5.2 The financial assessment of the proposal will account for **15**% of the overall score, using the following formula:

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

5.3 The aggregate combined score for each bidder will be the sum of the Technical and Financial Scores.

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

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

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

(a) a technical proposal that substantively and individually addresses the selection criteria provided in **Clause 6.2 of this Part** taking into consideration "other factors" under **Clause 7.8, Part 5**; and

(b) the required annexes included in **Clause 0 of this Part**.

6.2 **Selection Criteria**

(A) CORPORATE ARRANGEMENTS (Weighting 15%)

A *Corporate Arrangements Statement* of not more than **three (3) A4 pages** detailing the tenderer's ability to:

(i) provide and manage appropriately qualified staff on the project;

(ii) manage logistics for effective service delivery; and

(iii) effectively manage financial and administrative requirements of the project.

(B) CORPORATE EXPERIENCE (Weighting 35%)

A *Corporate Experience Statement* which describes in not more than **three (3) A4 pages**, how the information about corporate experience provided in Annex 1 demonstrates the capacity of the tenderer to undertake projects of a similar nature to the Technical and Financial Audit Consultants project.

(Note that Annex 1 will assist the TAP in assessing this Selection Criteria (B))

(C) APPROACH (Weighting 20%)

A *Statement of Approach* which clearly and concisely responses to the Scope of Services, of no more than **ten (10) A4 pages**, detailing the tenderer's understanding of the:

(i) objectives for the Services;

(ii) methodology and approach required for technical audits of road and bridge works; and

(iii) methodology and approach required to financial audits that is appropriate to the context.

(D) PERSONNEL (Weighting 30%)

For the nominated positions below, a curriculum vitae of no more than **four (4) pages** per position in accordance with Clauses 7.16-7.17 of Part 5 (Standard Tender Conditions) to demonstrate nominated individuals have the relevant experience and qualifications to undertake the position descriptions as detailed in **Annex 3 of Part 3 of this RFT**.

	Position	Score (Total = 30)
1	Team Leader	9
2	Senior Materials/Pavement Engineer	6
3	Co-Team Leader	6
4	Accountant Auditor	6
5	Engineer	3

(Note that Tender Schedule B will assist the TAP in assessing this Selection Criteria (D))

6.3 Annexes

Annex 1 – Past Experience Form

Details of relevant activities or projects in which the Tenderer has been involved which demonstrate the Tenderer's ability to fulfil the objectives of the Project must be presented in the format outlined below. This annex must not contain more than **5 examples**, and details of each must not exceed **one (1) A4 page**.

Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with **Clauses 7.18 – 7.21**, **Part 5** of the RFT.

PAST EXPERIENCE FORM

Activity Name:	
Activity Value:	
Activity Location(s):	
Activity Duration	
Client/Donor:	
Year Completed:	
Brief description of the activity and the Organisation's role:	
Brief description of activity outcomes:	
Statement of the similarities between this activity and the requirements of the activity currently being tendered and how this activity supports your statements addressing the Selection Criteria:	
Nominated Activity Referee:	
Name:	
Address:	
Email:	
Phone:	

Annex 2 – Letters of Association and other details of proposed Associates

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 3 – 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**.

7. TENDER SCHEDULE B – SPECIFIED PERSONNEL

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

(a) a list of proposed team members in the table (in landscape) format provided and in accordance with the instructions included in **Clauses 7.2-7.3** below;

(b) a curriculum vitae for each proposed team member of no more then **four (4) A4 pages** that conforms with the requirements outlined in **Clauses 7.16 and 7.17, Part 5**.

7.2 Tenderers must provide the information in the Referees column of the Specified Personnel table in accordance with **Clauses 7.18 - 7.21, Part 5**.

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

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

7.5 AusAID's strong preference is that individuals with conflicting commitments are not included in Tenders. Where team members with conflicting commitments are nominated, AusAID will assess on a case-by-case basis the impacts of the personnel changes and may require further information from the Tenderer in relation to managing the transition.

7.6 Tenderers are reminded of the requirements of **Clause 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.

SPECIFIED PERSONNEL TABLE

Position	Name	Referee Contact Details		Commitments
		#1	#2	
Key Personnel *				
Team Leader				
Senior Materials/ Pavement Engineer				
Co-Team Leader				
Accountant Auditor				
Engineer				

Note to Tenderers: * None of the above positions have been identified as working directly with children.

8. TENDER SCHEDULE C - FINANCIAL PROPOSAL

8.1 **Tender Schedule C** - the financial proposal must contain the information required and in the format detailed in this **Clause 8**:

(a) Table 1: Personnel Costs;

(b) Table 2: Tenderer's Bid Price; and

(c) Attachment A – Insurance Costs

8.2 It must:

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

(i) escalation and any allowance for foreign exchange rate variations;

(ii) necessary insurances required by the Contract Conditions and for the performance of the Services;

(b) be expressed in Australian dollars; and

(c) include detailed information on assumptions used in preparing the pricing.

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

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

Personnel Costs

8.3 Table 1 below provides for personnel costs who may be engaged on audit activities or for the provision of advice as requested by AusAID on a case by case basis.

Table 1: Personnel Costs

Position	**Name**	**Daily Rate (A$)**		
		2009	**2010**	**2011**
Key Personnel				
Team Leader				
Senior Materials/ Pavement Engineer				
Co-Team Leader – Senior Materials/ Pavement Engineer				
Accountant Auditor				
Engineer				
Sub-Total		*[Value A]*	*[Value B]*	*[Value C]*
Other Personnel				
Assistant Engineer				
[add/delete rows as required]				

8.4 Notes and instructions to Financial Proposal **Table 1**:

(a) The Key Personnel Costs shown in **Table 1** is a daily rate fixed for the duration of the contract and is **FULLY INCLUSIVE OF** but not limited to,

(i) all personnel related taxes and levies incurred in Indonesia and Australia;

(ii) superannuation levy if, and as, appropriate;

(iii) all escalators for the Term of the Contract;

(iv) any profit including commercial margins, overheads, administration or management fee, or any other mark-up on the part of the Contractor; and

(v) health, medivac, worker's compensation, liability and indemnity insurances;

(vi) financial management costs and financing costs, if any required to deliver the Services;

(vii) all administrative support costs, including head office costs required to deliver the audits;

(viii) allowances for risk and contingencies.

(ix) taxation, as applicable;

(x) costs of complying with the reporting obligations under the Contract;

(xi) insurance, as required by the Contract;

(xii) costs associated with all personnel briefings in Australia or in Indonesia;

BUT EXCLUSIVE OF

(xiii) any Australian Goods and Services Tax (GST).

8.5 **Financial Proposal Summary**

8.6 Tenderers must complete the Summary table below inserting Value A, B, and C from Table 1 above.

Table 2 – Tenderer's Bid Price

Item	**Maximum Amount Payable (AUD)**
Personnel Costs 2009	*[VALUE A]*
Personnel Costs 2010	*[VALUE B]*
Personnel Costs 2011	*[VALUE C]*
TOTAL	*[Value A+B+C]*

8.7 **Insurances**

8.8 The Tenderer is also required to separately disclose **(as Attachment A to Tender Schedule C)** the type and cost of the required Project and personnel related insurances (which are to be included in the Reimbursable Personnel Costs).

8.9 AusAID acknowledges that Tenderers may encounter difficulties in obtaining insurance to cover any Contract Material, Supplies and the reinstatement of any Data while in the care, custody or control of the Contractor for its full replacement value (Property Insurance). AusAID expects Tenderers to use their best endeavours to obtain appropriate cover. In the event that a Tenderer is unable to obtain appropriate Property Insurance it must:

(a) Submit evidence of its attempts to obtain appropriate Property Insurance; and

(b) Submit a risk management strategy which addresses how the Tenderer will mitigate the potential risks to the Program property detailed above, where insurance is not available.

8.10 Tenderers who are able to obtain Property Insurance must include the costs of this cover as a separate line item in the Insurance attachment to **Tender Schedule C**.

8.11 In the event that the preferred Tenderer is unable to obtain the appropriate Property Insurance, an additional clause will be included in the final contract.

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.

<u>Option 1</u>
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.

<u>Option 2</u>

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.

PART 2 - PROJECT SPECIFIC CONTRACT CONDITIONS

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

CONTRACT

BETWEEN

COMMONWEALTH OF AUSTRALIA

represented by the Australian Agency for International Development

and

CONTRACTOR'S NAME

ABN XX XXX XXX XXX

FOR

TECHNICAL AND FINANCIAL AUDIT CONSULTANT (TFAC)

AusAID AGREEMENT NUMBER XXXX

CONTRACT made day of [ ]

BETWEEN:

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

AND

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

RECITALS:

A. AusAID requires the provision of certain Services for the purposes of **Technical and Financial Audit Consultant** (the "**Project**").

B. The Contractor has expertise in the provision of the Services and has offered to provide the Services to AusAID subject to the terms and conditions specified in this Contract.

OPERATIVE:

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

SIGNED for and on behalf of	)	
COMMONWEALTH OF AUSTRALIA	)	……………………………………..
represented by the Australian Agency for	)	Signature of ***Print Name Here***
International Development by:	)	FMA Act s44 Delegate
		Position No…………………………..

In the presence of:

……………………………………..	……………………………………..
Signature of witness	Name of witness ***(Print)***

SIGNED for and on behalf of
[Contractor's Name] by:

……………………………………..	……………………………………..
Signature of director ***or Contractor***	Signature of director/secretary ***or witness***
……………………………………..	……………………………………..
Name of director ***or Contractor*** ***(Print)***	Name of director/secretary ***or witness*** ***(Print)***

STRUCTURE OF THE CONTRACT

This contract will have two parts and five schedules as follows:

Part A	Project specific contract conditions (Part 2 of this RFT)
Part B	Standard contract conditions (Part 6 of this RFT)
Schedule 1	Scope of Services (Part 3 of this RFT)
Schedule 2	Basis of Payment (Part 4 of this RFT)
Schedule 3	Deed of confidentiality (Attached to Part 6 of this RFT)
Schedule 4A	Variation order pro forma (Attached to Part 6 of this RFT)
Schedule 4B	Variation summary schedule (Attached to Part 6 of this RFT)
Schedule 5	Deed of Novation and Substitution (Attached to Part 6 of this RFT)

CONTENTS

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.

"**Partner Country**" means Indonesia in which the Services are to be delivered in, as specified in Schedule 1.

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

"**Schedule of Rates**" means the rates in Schedule 2.

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

"**Tender**" means the tender submitted by the Contractor together with accompanying documentation as an offer to undertake the Services.

"**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 *[AusAID to insert date]*, 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.

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 ***6 monthly*** basis and must indicate:

(a) total expenditure of the Project to date;

(b) disaggregated expenditure for the Project to date identifying all categories of expenditure including the Fees component and Reimbursable items;

(c) total expenditure for the period of ***6 months***; and

(d) forward expenditure and expenses by category for the period of ***6 months***.

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

To:	Activity Manager - EINRIP
Postal Address:	Australian Agency for International Development Jl. H.R. Rasuna Said Kav. C15-16 JAKARTA 12940 INDONESIA
Street Address:	Australian Agency for International Development Jl. H.R. Rasuna Said Kav. C15-16 JAKARTA 12940 INDONESIA
Facsimile:	+62 21 2550 5582

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 for example security, medical/health situation, cultural environment, detail on project objectives, and relevant contract obligations.

(b) decision-making within the Contractor's organisation and the advising of AusAID of decisions required by AusAID;

(c) pro-actively identifying and rectifying problems or recommending strategies to AusAID on how to rectify problems, which may arise in, or during the performance of, the Services;

(d) managing those risks which are the Contractor's responsibility under the Contract in accordance with the Risk Management Plan, if required, 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. SUB-CONTRACTING

6.1 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$50,000** 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.

6.2 Standard Conditions **Clauses 11.1** (Sub-contracting) **(d)** and **(e) (with respect to Deeds of Novation and Substitution)** will only apply to sub-contracts valued at **A$50,000** or more.

6.3 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.

7. MEETINGS

7.1 The **Team Leader** must attend meetings in Jakarta at times determined by AusAID, to review or discuss the Contract including the following matters:

(a) the general progress of the Project;

(b) matters arising from the Contractors reports to AusAID;

(c) any issues arising as a result of communication by either Party with Stakeholders;

(d) any other Third Party Issues and the Contractor's proposal for resolution of any issue referred to in **(c) above**;

(e) any variations proposed to the Project including in relation to timing, whether or not any such variations have been agreed to by AusAID;

(f) Contract performance matters;

(g) the accuracy of invoices; and

(h) such other matters in relation to which either Party provides five (5) Business Days' notice in writing to the other Party.

7.2 AusAID may require an implementation briefing in Canberra prior to mobilisation. The Project Director and the Team Leader who are included in the Specified Personnel 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.

7.3 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).

8. RIGHT OF AusAID TO RECOVER MONEY

8.1 Without limiting AusAID's rights under any provision of the Contract, any payment or debt owed by the Contractor to AusAID in relation to the Contract may be deducted by AusAID from the amount of payment of any claim for Fees, including Reimbursable Costs or from any other moneys payable or due to the Contractor or may be recovered in any court of competent jurisdiction.

8.2 AusAID may review any payments made to the Contractor at any time and:

(a) if the total of the amount paid to the Contractor is greater than AusAID determines by review to be payable under the Contract, then AusAID must notify the Contractor in writing of the amount of refund it has determined to be repayable;

(b) the Contractor must within 28 days after receipt of AusAID's notification:

(i) refund the excess to AusAID; or

(ii) provide AusAID with evidence supporting the Contractor's opinion concerning the amount of the refund;

(c) failure by the Contractor to provide evidence as required in **Clause 8.2(b)(ii) above** will, in the absence of payment in full of the refund claimed, be deemed to be evidence of the Contractor's acceptance that the amount of refund is correct and payable to AusAID on demand or deductible from subsequent payments due under the Contract; and

(d) AusAID must, within 28 days of receipt after the Contractor's evidence supporting its opinion concerning the amount of the refund, consider the Contractor's evidence and give the Contractor written notice either:

(i) calling for payment within 28 days of the refund determined by AusAID's review; or

(ii) calling for payment within 28 days of the refund as re-determined following its consideration of the Contractor's evidence; or

(iii) of AusAID's agreement that there is no refund payable.

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

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

9. GOVERNMENT TAXES, DUTIES AND CHARGES

9.1 Except to the extent referred to in this clause and Standard Conditions **Clause 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.

9.2 Except where the Contract, the Treaty between Australia and the Partner Country or the MOU provides otherwise, all taxes:

(a) imposed or levied in Australia or overseas during the term of the Contract in connection with the performance of the Contract; and

(b) which are not already included in the Fees payable by AusAID under the Contract,

must be paid by the Contractor.

9.3 The Contractor must bear and is responsible for all stamp duty and other fees, whether levied in Australia or in the Partner Country, on or in respect of:

(a) the Contract, the Project, and any sub-contracts entered into for the performance of the Services;

(b) the sale, purchase, lease, assignment, licence or transfer of any property under the Contract;

(c) the obtaining of any approvals, consents or authorisations in respect of the Project; and

(d) any instrument or transaction contemplated by or necessary to give effect to the Contract.

9.4 Subject to **Clause 9.8 below** if any new or existing government tax, duty or charge ("Changed Tax") levied in Australia or the Partner Country in connection with the performance of the Services under this Contract is introduced, increases, decreases or is removed in its entirety and this affects the cost to the Contractor of providing the Services, the Contractor must give AusAID:

(a) written notice of the increase, decrease or removal;

(b) written notice of the net effect of the Changed Tax on the cost of supplying the Services; and

(c) in the case of a decrease or a removal, any supporting evidence of the change and an explanation of its effect on the Fees, as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the increase, decrease or removal.

9.5 An increase in the Fees under **Clause 9.4 above** shall not be approved and AusAID is not obliged to pay the amount claimed to be attributable to the change in the Changed Tax unless and until the Contractor provides AusAID with evidence of the net effect of the change in the Changed Tax on the cost of supplying the Services and AusAID is satisfied that:

(a) the claimed increase is actually attributable to that Changed Tax and takes into account reductions in any other Changed Tax; and

(b) the net change in the Changed Tax has affected the Fees for supplying the Services,

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

9.6 A decrease in Fees under **Clause 9.4 above** shall take effect from the date on which the change in the Changed Tax becomes effective.

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

9.8 **Clause 9.4 above** does not apply to income tax, taxes on turnover or revenue or similar taxes imposed on or in respect of income, turnover or revenue.

10. INSURANCES

10.1 In addition to the Contractor’s obligations regarding insurance detailed in Standard Conditions **Clause 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.

10.2 The Contractor undertakes that it shall use its best endeavours to ensure that it commits no act or omission which renders any of the insurances required by this Contract to be effected by it, null and void or of less value.

10.3 In respect of the public liability insurance, Standard Conditions **Clause 34.1(a)** is amended as follows: the Contractor must ensure that the limit for each and every claim is $20 million.

PART 3 - SCOPE OF SERVICES

Technical and Financial Audit Consultant (TFAC)

***Note to Tenderers**: This Scope of Services is presented as **Part 3** of this RFT, and will appear as Schedule 1 in the consolidated Contract. It reflects the most current version of the Services required of the Contractor but may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.*

SCHEDULE 1 - SCOPE OF SERVICES

Technical and Financial Audit Consultant (TFAC)

1. ACRONYMS

ACAP	Anti-Corruption Action Plan
ADB	Asian Development Bank
AIP, AIPRD	Australia-Indonesia Partnership for Reconstruction and Development
AMDAL	*Analisa Mengenai Dampak Lingkungan* - Environmental Impact Assessment Process
AMP	Asphalt mixing plant
ANDAL	*Analisa Dampak Lingkungan* - Environmental Impact Report resulting from AMDAL study
APBN	*Anggaran Pendapatan dan Belanja Nasional* - National Revenue and Expenditure Budget
Audit Consultant	refers to the Contractor.
AusAID	Australian Agency for International Development which administers AIP, AIPRD
AWP	Annual Works Programme; AWP1 = first batch of works, which may take more than 1 year to build
Balai	*Balai Pelaksanaan Jalan Nasional* - DGH Regional Implementation Agencies
Bappenas	*Badan Perencanaan Pembangunan Nasional* - National Development Planning Board
BI	Bank Indonesia
Bina Marga	Directorate General of Highways within the Ministry of Public Works
BPK	*Badan Pemeriksa Keuangan* - Supreme Audit Agency
BPKP	*Badan Pemeriksa Keuangan Pembangunan* - Development Finance Audit Agency
BPKSDM	Construction Industry and Human Resources Board, MPW
Client	refers to the Directorate General of Highways (DGH)
CTC	Core Team Consultant - consultant supporting PMU under EIRTP2
CWC	Civil Works Contractor – contractors responsible for construction of EINRIP sub-projects
DGH	Directorate General of Highways within the Ministry of Public Works
DIPA	*Daftar Isian Pelaksanaan Anggaran* - detailed Budget Document prepared annually
Dit Bintek	Directorate of Technical Affairs within DGH
Dit Bipram	Directorate of Planning within DGH
DJJWT	Directorate of Eastern Region Roads and Bridges within DGH
EIA	Environmental Impact Assessment (AMDAL)
EINRIP	Eastern Indonesia National Roads Improvement Project
EIRR	Economic Internal Rate of Return (%)
EIRTP1	Eastern Indonesia Region Transport Project 1 - IBRD Loan 4643-IND signed 22 Jan 2002
EIRTP2	Eastern Indonesia Region Transport Project 2 - IBRD Loan 4744-IND signed 23 July 2004
EMiP	Environmental Mitigation Plan
EMoP	Environmental Monitoring Plan
EMP	Environmental Management Plan under EIRTP2
ESAMP	Environmental and Social Assessment Management Plan under SRIP

ESC	Environmental Special Clauses (previously SOP - Standard Operating Procedures)
ESS	Environmental and Social Safeguards
FAC	EINRIP Financial Audit Consultant
FHO	Final Handover of works under a contract, indicated by issue of Performance Certificate
FMR	Financial Monitoring Report - quarterly expenditure report and cash forecast for six months
GOA	Government of Australia, also known as the Commonwealth, represented by AusAID
GOI	Government of Indonesia
IBMS	Integrated Bridge Management System
IBRD, WB	International Bank for Reconstruction and Development - World Bank
ICB, NCB	International Competitive Bidding, National Competitive Bidding
IIRMS	Indonesian Integrated Road Management System
IRMS	Interurban Road Management System
JMF	Job Mix Formula
JVCA	Joint Venture, Consortium or Association (also includes JO, Joint Operations, Sub-contract)
KepMen 369	Public Works decree No. 369/2005 *(Jaringan Jalan Nasional)* - list of National Roads
KPPN	*Kantor Pelayanan Perbendaharaan Negara* - MOF Treasury Office in a Province or District
LAK	*Laporan Arus Kas* - Cash Flow Report
LARAP	Land Acquisition and Resettlement Action Plan
LARF	Land Acquisition and Resettlement Framework
LRA	*Laporan Realisasi Anggaran* – Budget Realisation Report
MC	Monthly Certificate - known as Interim Payment Certificate in the SBD
MDB	Multilateral Development Banks
MOF	Ministry of Finance
MPW	Ministry of Public Works
N8K, Nat8K	The 8000 km of New National Road added under *KepMen PU 369/2005*
NOL	No Objection Letter from AusAID
NPV	Net Present Value
NTB	*Nusa Tenggara Barat* - West Nusa Tenggara
NTT	*Nusa Tenggara Timur* - East Nusa Tenggara
P2JJ	*Perencanaan dan Pengawasan Jalan dan Jembatan* - Road and Bridge Design and Supervision Unit
PAS	EINRIP Procurement Advisory Services
PHO	Provisional Handover of works under a contract, also called Takeover of Works
PIP	Project Implementation Plan
PMM	Project Management Manual
PMSC	EINRIP Project Management Support Consultant
PMU	Project Management Unit (to be qualified by Project name, e.g. PMU-EINRIP)
PPC	EINRIP Project Preparation Consultant
PPK	Contract Officer in Satker (*Pejabat Pembuat Komitmen*) - the 'Employer' (previously Project Manager)
PPU	Project Preparation Unit (for EINRIP, established on 21 February 2006)
PUSJATAN	Road & Bridge Research and Development Centre, MPW
QCBS	Quality and Cost Based Selection procedure for consultant services
RDSC	Regional Design and Supervision Consultant under EIRTP2
RFP	Request for Proposals

ROW	Right of Way (*Ruang Milik Jalan*)
RSC	EINRIP Regional Supervision Consultant
SatKer	*Satuan Kerja* - Work Unit that is responsible for a budget
SBD	Standard Bidding Documents
SEC; SpEC	Standard Environmental Clauses; Special Environmental Clauses
SLARAP	Simplified LARAP
SOE	Statement of Expenditures (in EINRIP, replaced by Forms 3-C and 3-D in the FMR)
SP2D	*Surat Perintah Pencairan Dana* - Payment Order issued by KPPN
SPP, SPM	*Surat Perintah Membayar* - Payment Request issued by Work Unit
SRIP	Strategic Roads Infrastructure Project - IBRD Loan 4834-IND
TFAC	EINRIP Technical and Financial Audit Consultant
TOR	Terms of Reference
UKL	*Upaya Pengelolaan Lingkungan* - site-specific Environmental Mitigation Plan (same as EMiP)
UPL	*Upaya Pemantauan Lingkungan* - site-specific Environmental Monitoring Plan (same as EMoP)
WA	Withdrawal Application

2. BACKGROUND

Overview

2.1 Implementation of the Eastern Indonesia National Road Improvement Project (EINRIP), supported by a loan from AusAID to GOI, began in late 2008, and is expected to continue until 2012.

2.2 The EINRIP project includes around 24 civil works sub-projects with an average value of A$10 million, located in nine different provinces – North Sulawesi, Central Sulawesi, South East Sulawesi, South Sulawesi, West Kalimantan, South Kalimantan, Bali, NTB and NTT. The Directorate General of Highways (DGH) is the “Client” for the construction of these sub-projects.

2.3 **Annex 1** provides a concise overview of the EINRIP program and content. A website (www.pmueinrip-binamarga.com) provides access to a number of important documents describing the project.

2.4 The EINRIP project design provides for independent Technical and Financial Audit(s) of the overall project, to be funded and contracted by AusAID. The Contractor will carry out a series of audits of selected civil works contracts to identify whether the parties involved in the contract have delivered what the Client paid for. Audits will require checks of the adequacy of all the processes employed during project implementation (by the Client, the Project Manager, Construction Supervision Consultants, Civil Works Contractors and related agencies); the adequacy of invoices and invoicing procedures; and quality checks on the works to ensure their compliance with contract, specifications and design drawings.

2.5 The Audit Services are being provided as part of AusAID’s obligations to oversight the performance of all parties to the Loan, and results will be conveyed to GOI through the EINRIP six-monthly meeting of all parties.

2.6 The Services defined below are to be carried out over a **three (3) year period**. It is anticipated that the audit exercises will be undertaken during **four (4) separate assignments.** There will be an initial preliminary assignment of four weeks for planning and scope development, followed by three (3) auditing assignments expected to be of two (2) months, three (3) months and three (3) months, giving an anticipated total of nine (9) months for the four (4) assignments. This schedule may be modified to suit the actual works schedule, and circumstances encountered during the audit activity.

Introduction to Audit

2.7 Road construction involves delivery of a physical end product by a Civil Works Contractor (CWC). The works are to be constructed to an agreed standard and specification and the CWC is to be paid the contract rates for delivery. The works are a physical entity that can be measured and tested in place to confirm the quality of the works and conformance with requirements. This is done on an ongoing basis by the CWC and the Supervision Consultant. Nevertheless it is important to check that this process is effective in delivering works to the specified standards. This is done by technical audit.

2.8 Audit is an essential part of conformity assessment activities. It is an important management tool for monitoring and verifying the effective implementation of a program by the quality of its output.

2.9 Audit should include a systematic, independent and documented process for obtaining "audit evidence". The audit evidence is evaluated to determine the extent of compliance with audit criteria, which gives audit findings. These are reported as the audit conclusion in the audit report. This report should indicate the need for corrective, preventative or improvement actions. The audit report may specify follow up activities, possibly including verification of the completion and effectiveness of corrective actions.

2.10 The audits will be conducted by an external audit – a third party audit (i.e. not directly connected with any of the contract parties – the Directorate General of Highways (DGH) (Employer), or the CWC, or the Supervision Consultant). The audit will be independent and objective with an evidence-based approach applying basic audit principles of ethical conduct, fair presentation and due professional care.

2.11 It is intended at this stage that technical and financial audits will be applied to selected civil works sub-projects, so as to produce conclusions about the overall performance of the EINRIP program as a whole. However, the audit approach can also be directed towards projects found to be poorly performing, and can be intensified beyond initial terms of reference should the need arise.

2.12 The primary function of the Contractor, therefore, is to provide audit oversight of the overall EINRIP program, of CWC performance, and of the performance of GOI agencies and their consultants. The objectives of these audits are to assess whether:

(a) project management, invoicing, project supervision, quality control and project construction procedures conform with proper professional standards and contract requirements;

(b) the quality of materials and standards of works comply with the specifications, design drawings and contract requirements;

(c) the invoices presented by the CWC and approved by the Engineer have been prepared and approved in accordance with the requirements of the relevant contracts; and

(d) improvements to project management and supervision systems and procedures can be made as a result of the findings of the Audit.

2.13 As noted above, in the event that problems are found on a particular project, additional audit activities may be directed by AusAID, which will have the effect of adding a further objective:

(a) Use independent technical audit capacity to determine the extent of serious non-compliance with project/contract requirements identified at a particular site, to identify the need for appropriate remedial action or determine whether funding should be suspended.

Routine GOI audits

2.14 The audits to be conducted by the Contractor will be in addition to the audits that are carried out routinely for all government projects by the Inspectorate General of the MPW, and by BPKP. The Loan Agreement also has a requirement for GOI to have the project financial statements audited annually, and this will be done by BPKP.

2.15 The Contractor should be aware of recently published Ministerial regulations on audit:

(a) **Peraturan Mentri PU No. 06/PRT/M/2008 (Permen 06);** This focuses on the implementation of works by DPU and their audit by Inspectorate General; and

(b) **Peraturan Mentri PU No. 07/PRT/M/2008 (Perman 07):** This focuses on the audit by Inspectorate General of financial and administrative aspects of works contracts.

2.16 **Permen 06** covers the audit of the design and procurement processes as well as implementation whereas the Contractor (the TFAC) will focus primarily on implementation. The regulations set out the scope of work for audits, which for implementation includes many of the same aspects that are targeted in this audit. Although the Permen 06 scope refers to “audit of compliance with technical requirement” it is not clear on materials sampling and testing regimes and resources.

2.17 **N**evertheless it is clear that both sets of auditors would benefit from access to the others’ reports. Because of the similarities of some activities it may be unnecessary to schedule audits of the same packages by Inspectorate General and the Contractor at around the same time.

2.18 **Permen 07** is focussed on administrative and financial audit to be undertaken by Inspectorate General and to detect any loss to the state of APBN funds. This type of audit would supplement the more limited financial audit to be conducted by the Contractor, and again access to the others' audit reports would benefit both sets of auditors.

2.19 Careful co-ordination with the Inspectorate General will be required to ensure the most effective audit program and to avoid unnecessary duplication of government audits.

3. AUDIT APPROACH

Focus of Audit

3.1 The audits will be directed at a number of different project aspects, each involving the use of different procedures. These aspects include the:

(a) processes and procedures being applied;

(b) determination, certification and payment of contract monies;

(c) material and mechanical inputs; and

(d) end product – the physical works.

Method of Work and Process Review

3.2 This is a review of "how" works are being carried out, with an assessment of the appropriateness and effectiveness of the systems employed. The audit will review the processes being applied for construction, quality control, measurement and quality assurance. It will also check record keeping, rectification of non-compliances, programming, etc. This is to be done for both the CWC and the Supervision Consultant.

Determination, Certification and Payments under the Contract

3.3 This is concerned with the financial aspects of the project. It will review how payments are calculated, certified and disbursed. It will require an initial review of the overall project Financial Management Report (FMR) for accuracy followed by assessment of the financial reporting from individual contracts. This should include a check of the track of specific contract payments from claim to disbursement.

Review Materials Testing procedures, facilities and staff

3.4 This review of the adequacy of facilities, competence of staff and effectiveness of procedures will focus on the materials testing laboratories on site but will also include review and inspection of Asphalt Mixing Plants, concrete batching plants, borrow pits, quarries, aggregate crushers and screening plants. Procedures for checking the quality of commercial material inputs such as bitumen, cement and pre-cast units will also be reviewed.

End Product Review

3.5 This audit will include the inspection of the physical works and checks on the:

(a) line and level of road-works, drainage and bridge works (check accuracy and tolerances);

(b) General dimensions - thickness, width (check tolerances); and

(c) Material qualities: gradation, plasticity index, CBR, density, composition, asphalt content etc of materials in place; specific chemical qualities of materials such as Bitumen, probably from storage

3.6 This aspect of the audit will involve inspection, measurement, survey and sampling and testing of materials.

3.7 Whilst the audit is to be conducted to the highest standard it is important to recognise that implementation and construction standards in a middle income country such as Indonesia will not always reach the levels that may routinely be expected in more developed countries. The EINRIP project introduces some new work methods (e.g. using FIDIC contracts with the supervision consultant delegated as the Engineer) and the audits will be targeted at identifying corrective actions and improvements rather than sanction.

The Selection of Sub-Projects to be Audited

3.8 The Contractor will select a number of projects to be audited during an assignment. The selection will be agreed with AusAID and shared with PMU.

3.9 In the first instance the selection of sub-projects to be audited will be on a sampling basis. It is anticipated that the Contractor will carry out the field services in three separate assignments. It is planned that between four and six sub-projects will be audited during each "assignment", and these will be selected based on physical progress, location and size. A project will have to be sufficiently advanced, with part of the works already completed to a stage that auditing is appropriate. Selected projects should be in different locations where possible to give a reasonable geographic spread and the contract sizes/values should vary to cover a reasonable spread of contract sizes.

3.10 In the first instance, is intended to reflect the overall project performance and as such locations should be selected on a random basis. However, it may be that in some instances, an audit will be instructed by AusAID based on prior knowledge or outcomes of the audit program, and internal and external GOI audits, reported concerns or other observations. The selection of projects should also take account of other audit activities by GOI auditors and seek to avoid duplication.

Selection of type, frequency and location of tests

3.11 A general scope of work for the overall audit program is to be determined by the Contractor at the beginning of the initial assignment and will provide the basis for determining a project-specific audit plan for each individual audit. The General Audit Plan shall indicate the type of test and general frequency expected while the Project Audit Plan shall indicate the type, number and location of sampling and testing to be carried out on that particular project. **Annex 2** provides a listing of potential audit targets, and an indicative list of tests that might be appropriate for each. The Project Audit Plan to be prepared by the Contractor will identify the program of sampling, testing, frequency, etc., appropriate to each project.

3.12 The Project Audit Plan will establish the scope of materials sampling and testing and the logistics and costs, including:

(a) What samples are to be taken?;

(b) How samples are to be taken, and by whom?;

(c) How many samples are to be taken?;

(d) Where they are to be tested?;

(e) How they are to be transported?; and

(f) The level of supervision to be applied?

Program Logistics

3.13 Because of concerns about the sampling and testing process being compromised by external interference or incompetence, the Contractor is to be fully responsible for all aspects of the field sampling and testing program from start to finish, including its logistics. This will require the Contractor to undertake and manage all necessary travel, accommodation and other necessary arrangements, including liaison and coordination with other parties such as the relevant sections of DGH, the Regional Supervision Consultant (RSC) and the CWC.

Supervision of testing processes

3.14 The availability of reliable testing facilities at project locations is extremely limited. In addition the integrity and accuracy of many of the commercial testing laboratories that are available is questionable. It is not unknown for samples to be tampered with, tests to be improperly done and/or results to be fabricated. Also it is not unknown for the Auditees to attempt to influence the selection of samples or the testing results. Therefore it is likely that in order to get reliable results the Contractor will have to closely supervise all sampling, transporting and testing, using relatively senior staff. The Contractor must ensure that the taking, transporting and testing of samples uses a system (continuous supervision) that allows a suitable degree of confidence in the results. The Contractor may have to directly employ staff to take samples on site and accompany samples as they are transported to the laboratory. This may require truck hire and air freight. A suitably qualified materials technician will have to supervise all laboratory testing wherever it is done.

Sampling and on-site testing

3.15 If the Contractor adopts a 'hands on approach' as a means of ensuring reliability and accuracy they may require their own equipment for sampling and some on-site testing. This might include a set of sieves for simple gradations (on site); a core cutter for asphalt samples; a Stihl (circular cut-off) saw; a cover meter; a Schmidt hammer (rebound hammer for testing concrete compressive strength); a nuclear density meter; an auger, etc that require AusAID prior approval before purchase. This type of equipment may be procured using the budget for sampling and testing.

Institutional Arrangements

3.16 While the Contractor is to remain fully independent in their manner of working from all other parties associated with the contracts to be audited, there will be a need for ongoing liaison and coordination with all involved parties. These parties include the CWC, the Supervision Consultant, the Inspectorate General of the Ministry of Public Works (MPW), and the relevant sections within the Directorate General of Highways (DGH). For some aspects of the audit, liaison with relevant local government agencies may also be required.

3.17 It will be essential to the smooth conduct of the audit program, for the Contractor to establish an effective working relationship with all involved agencies, from the outset of the project. The Contractor needs to be aware of GOI audit activities in order not to duplicate audits and avoid subjecting any particular project to excessive audit scrutiny.

Dealing with Audit Findings

3.18 While the Contractor will report directly to AusAID, it is important to understand how the audit findings will be addressed. It is the intention of GOI that the audit will be used to provide guidance to DGH implementation and project management.

3.19 Audit findings that can be satisfactorily addressed based on a corrective and preventative action plan agreed with the auditees will require no additional action other than agreed future review of the adequacy of remedial measures.

3.20 Audit findings that are disputed will require corrective action, to be initiated by DGH. This may include:

(a) further investigative activities;

(b) appropriate contractual remedies;

(c) appropriate GOI sanctions; and/or

(d) withdrawal of funding.

3.21 The approach to be taken to address the findings will be agreed between DGH and AusAID. Where AusAID is not satisfied that the appropriate measures are being taken, it will raise the issue with MOF in high level meetings to be held for that purpose.

3.22 The Contractor will not participate directly in this activity, but may be asked by AusAID to provide independent advice throughout the project, including both technical advice as well as additional field audits.

4. SERVICES

Key Task Area 1: Inception Report and General Audit Plan

4.1 During the Preliminary Assignment AusAID will task the Contractor to prepare an **Inception Report and a General Audit Plan**, describing how the Contractor proposes to address the key tasks required within the timeframe available, with particular attention being given to the following:

(a) Description of the systems and procedures to be used to carry out the audit;

(b) Critical review of the range and quality of independent testing laboratories available in the region; the range, quality and cost of testing services available, including the costs of ensuring the independence and probity of test results; and determine the location and likely costs of all testing to be conducted;

(c) Development of a General Audit Plan setting out the basic scope of work and criteria to be applied. This plan will be used as the basis for establishing the Project Audit Plan for each individual audit;

(d) Preparation of a schedule of materials sampling and testing costs based on local suppliers identified and verified for quality (including all the required logistics for storage and transportation etc.);

(e) Review of the Quality Assurance Plan prepared by the RSC; and

(f) Identification and scheduling the initial audit program.

4.2 The Inception Report and General Audit Plan will be reviewed and agreed with AusAID. AusAID will make arrangements for the Inception Report and General Audit Plan to be discussed with DGH.

Key Task Area 2: Initiating the Audit

4.3 It is expected that each individual audit to be conducted may be slightly different in terms of scope and extent, depending on the particular site and circumstances prior to and at time of audit, and therefore a project-specific audit plan is to be prepared.

Project Familiarisation

4.4 Prior to going to site the Contractor must familiarise themselves fully with the background to the sub-project to be audited, noting the pavement design, material types, qualities and quantities (from materials reports) and specific issues relevant to the project. Special attention should be given to any unusual characteristics such as extreme sub-grade conditions, unusual pavement designs or layer thicknesses, water tables, etc.

Review Contract Documents

4.5 Relevant contract documents for the specified sub-projects should be assessed by the Contractor and notes made of:

(a) Alternatives from bid incorporated into contract;

(b) Unusually high or low unit rates; and

(c) Provisions in the Special Conditions of Contract.

4.6 The Contractor is not required to evaluate tender processes, but should highlight any aspects of the sub-project contract that might influence project management or quality of construction.

Prepare Project Audit Plan

4.7 Immediately upon arriving on site the Contractor will prepare a Project Audit Plan for the audit to be conducted. The plan, based on the General Audit Plan, will set out the schedule, nature and extent of audit testing and investigation to be undertaken. This will include an estimate of anticipated external costs (storage and transportation of samples and materials testing etc).

4.8 In order to develop an appropriate plan the Contractor shall first review the site, including:

(a) Inspect the works: At the start of any audit the work in progress should be carefully observed. The audit should include a visual examination of the entire site including CWCs/consultants offices, laboratory, base camp, asphalt mixing plant, crusher, screening plant, quarries, stock piles, materials on site. The Contractor shall note general impressions and any indications of non compliance.

(b) A good indicator of the quality of the road construction is the “appearance of the road and works completed to date”. These sections should be assessed for overall riding quality, noting areas already patched or repaired. Evidence of distress – bleeding, ravelling, rutting, cracking, shear failures, potholes etc. may indicate quality problems.

(c) *Interview with site staff from Supervision Consultant and CWCs:* It is expected that the audit will include, where possible, interviews with site staff to gather information on construction operations and quality control. It is not intended to catch staff out nor lay blame with individuals.

However the general indications of competence must be recorded in the report.

4.9 This review process will provide necessary information to assist the design of the Project Audit Plan, which will detail how the audit is to proceed. After a review of the site and performance of works already constructed a plan for sampling and testing must be devised. This will detail a sampling and testing regime for each audit that reflects the actual works completed and ongoing at time of audit and is also prompted by indicators from the visual inspection and other audit issues. The test regime (to be specified in the Project Audit Plan) will set out what particular tests are to be done at what frequency in what location. This will establish what sampling is required and will also direct where samples are to be tested.

4.10 Based on the inspection above the Project Audit Plan will identify what aspects are to be inspected, what will be the focus of assessments and what materials sampling and testing shall be carried out. The plan shall be used for liaison with the CWC and consultants to facilitate the access to areas and materials required.

4.11 The Project Audit Plan should include a complete logistics schedule for handling of samples from when they are taken on site until test results are achieved indicating all modes of transport and storage with appropriate measures to protect the integrity of all samples and tests. The cost effectiveness of the proposed schedule will need to be demonstrated.

4.12 A cost estimate for the proposed Audit Plan should be prepared, and the Audit Plan and cost estimate are to be approved by AusAID before the audit is started. Since the plan will be prepared on site the Contractor will need to adopt appropriate forms of communication to ensure that this can happen with minimum delay.

Key Task Area 3: Site Records and Documentation

4.13 The Contractor will check availability of contract and technical documents on site for both the CWC and Supervision Consultant, including contract documents, drawings, specifications (standard and special), Conditions of Contract (COC) (Part I and Part II), Bills of Quantities, Testing Standards, etc. The Contractor should also assess the apparent familiarity of staff with these documents, and the frequency with which they are consulted.

4.14 The audit should include a review and check of available site records, from each of the entities below, as selected by the Contractor. The Contractor will:

(a) Civil Works Contractor (CWC)

Review the CWC's documentation: daily diaries, requests for inspection, sampling and test results, QA Plan (COC Cl. 4.9) and record sheets, formal correspondence, measurement records, minutes of meetings, monthly progress reports (COC Cl. 4.21), claims for payment and payment certificates, works programs and plans, survey books, test results, plant and staff returns, orders and delivery notes should all be inspected sufficiently closely to determine the manner and professionalism that is being applied for implementation. The audit should also include, among other things:

(A) adherence to Quality Assurance (QA) plans;

(B) consistency in all records e.g. volume of work v. number of tests, rate of progress v. plant on site;

(C) a review of the general quality of written records;

(D) an assessment of the competence and capability of the Work CWC's staff;

(E) compliance with FIDIC contractual requirements, including:

(I) Submission of notices and response (dates);

(II) Provision of insurances and certification; and

(III) Compliance with Environmental Safeguards.

(F) compliance with Environmental safeguards (UKL/UPL); and

(G) compliance with relevant health and safety standards; and

(b) Supervision Consultant (Engineer)

Review the Supervision Consultant's documentation, including daily diaries, requests for inspection, sampling and test results, QA Plan and record sheets, inspectors records, formal correspondence, measurement records, minutes of meetings, monthly reports, claims for payment and payment certificates, work programs and plans. These should all be inspected sufficiently closely to determine the manner of working and level of professionalism that is being applied by the supervision team. In particular the audit should include, among other things:

(A) effectiveness of inspectors;

(B) adherence to QA plan;

(C) a review of contract changes – addenda and extensions of time;

(D) a review of the general quality of written records;

(E) an assessment of the competence and capability of the Supervisions Consultant's staff;

(F) compliance with FIDIC contractual requirements, including issuance and submission of notices and responses (dates). Also confirmation of the Employers compliance;

(G) compliance with monitoring of environmental and social safeguards; and

(H) compliance with relevant health and safety standards.

(c) Materials Testing Laboratory

Check the certification of equipment, requests for testing, test results, sampling data, reports, QA sheets, water quality testing, certification of purchased materials (bitumen, cement, etc.) All of this documentation should be inspected sufficiently closely to determine the manner of work and level of professionalism that is being applied by the laboratory. The audit should include an assessment of the knowledgeability of staff and their familiarity with testing procedures. The audit should include, among other things:

(A) the consistency of all records e.g. volume of work v. number of tests;

(B) the plausibility of results (no. of fail tests, etc.);

(C) general quality of written records;

(D) the capabilities of laboratory staff; and

(E) compliance with relevant health and safety standards.

(d) PMSC and the Employer

Check the inputs of other relevant parties to the progress and quality of the implementation. That will include the participation of Bina Marga, as the Employer, and the contribution of the Project Management Support Consultant (PMSC) who are tasked with monitoring RSC performance:

(A) the consistency and quality of records;

(B) the Employers compliance with contractual requirements (handing over the site, promptness of payments, etc.);

(C) review PMSC monitoring the RSC Quality Assurance Plan and its implementation;

4.15 Information obtained on the above plus any additional information required by the Contractor should provide a good indication of the expected quality of the final project

Key Task Area 4: Review calculation, certification and disbursement of contract payments

4.16 This part of the audit is particularly focused on the financial aspects of implementation. The Contractor should include a check on both the process and the numbers. The audit to be conducted will involve, among other things:

(a) an inspection of site records related to measurement and payment;

(b) a check of quantities approved for payment for consistency with other records;

(c) a review of rates applied for calculation of payments for consistency with the contract;

(d) a review of quantities used for payment for consistency with physical progress;

(e) a review of the payment process after certification to verify disbursement of both loan funds and APBN (GOI funds) in the correct value and proportions; and

(f) a check for undue delays or discrepancies in the payment process.

4.17 The financial progress of the contract is often a good indicator of other issues that may impact on implementation or be of concern with regard to quality.

Key Task Area 5: Review Plant and Equipment on Site

4.18 The quantity and quality of plant and equipment on site may give an indication of the capabilities of the contracting and consulting companies on site. Past experience indicates that maintenance of equipment is usually neglected and often plant on site is in such poor condition that it cannot perform sufficiently well to meet production outputs and required tolerances.

(a) CWC

(i) Given the above, the Contractor will inspect and record the construction plant and equipment on site (trucks, rollers, loaders, excavators, small compactors, paving machine, water trucks, graders, concrete mixers, pokers and vibrators). The Contractor will do this by, among other things:

(A) Noting the condition, make, age, utilisation of equipment;

(B) Inspecting and reporting on the asphalt mixing plant, crushing plant, quarries and screening plant; and

(C) Reviewing small/hand tools, survey equipment and setting out materials (stakes, pins etc.). Comparing results of inspection with the QA Plan and site record sheets as well as the CWC's Plant and Equipment returns.

(b) Supervision Consultant

(i) To ensure the Supervision Consultant’s staff are properly equipped to carry out routine checks and measurements, the Contractor will, among other things:

(A) Inspect the Consultant’s tools and equipment including survey equipment : theodolite, level, staff, tapes and straight edge, asphalt thermometer, speedy moisture meter, string lines (gut), road chalk/paint and road nails;

(B) Review survey books, notebooks, diaries, contract documents to gauge the utilisation of tools and equipment; and

(C) Determine if they are sufficient for all quality control responsibilities.

(ii) The availability, condition and use of this equipment can demonstrate the supervision team’s approach and ability to properly supervise the works.

(c) Materials Testing Laboratory

(i) The effectiveness and efficiency of the laboratory is totally dependent on the staff and equipment. An absence of equipment or an inability to use it are clear indications of problems with the quality control process. The Contractor will therefore conduct an audit of the following:

(A) all testing equipment – checking condition and certifications;

(B) List testing standards (BS, ASSHTO, SI, etc.), specifications and other technical documentation present; and

(C) availability of storage space, sampling equipment and consumables, QA sheets.

Key Task Area 6: End Product Audit

4.19 The Audit carried out under this assignment will include testing of the works in-situ in order to confirm the adequacy and accuracy of on site quality control and/or get early identification of quality deficiencies that can be addressed before completion. For the purposes of audit the permanent works as constructed are divided into six components:

(a) Drainage;

(b) Earthworks;

(c) Granular pavement;

(d) Asphalt pavement;

(e) Structures; and

(f) Miscellaneous.

4.20 The Contractor will measure or test materials or items of work from each component to indicate compliance with specified parameters. **Annex 2** provides an indicative guide to the selection and frequency of site measurements and testing to be undertaken.

(a) Checking Line, Level and Physical Properties

(i) Although the audit has previously included a thorough examination of construction quality by an inspection of site records and quality control systems the Contractor is still required to establish that:

(A) The finished line and level of the works is correct and within specified tolerances;

(B) All the layers are the specific thickness indicated on the drawings;

(C) All the materials meet the specified requirements; and/or

(D) All specified construction standards have been met.

(b) Materials sampling and Testing

(i) Although the checks of dimensions and location can generally be surveyed without disruption of the subject materials, the construction of the specified pavement structure can only truly be confirmed by excavating/drilling through the pavement. There are various options for this type of testing set out below. Whichever type of testing is undertaken it will be necessary for the CWC to reinstate the works to their condition prior to sampling and such reinstatement approved by the Engineer (the reinstatement work will be instructed and paid for under the civil works contract).

<u>Coring of Asphalt Layers</u>

(A) For asphalt layers the thickness, compaction and mix characteristics should be confirmed and this requires destructive sampling and testing – this can be limited to purpose drilled cores or done as part of observation hole/test pit investigation.

Observation Holes

(B) For all pavement layers below the asphalt layers the primary aspects to be considered are the grading, CBR, final layer thickness and the degree of compaction achieved. These can only be measured and sampled by destructive testing.

In order to check the top 200-300mm of construction below any exposed surface then an observation hole is sufficient. The size of the hole is related to the depth but should be kept to a minimum (approx. 300mm square) They are useful for inspecting materials and thicknesses of surfacing and base.

Test pits

(C) These are generally bigger and deeper than observation holes. Test pits allow a close examination of the pavement materials and structure, with detailed in-situ testing such as density, moisture content and allow access for extracting regulation samples of each construction layer. The test pit should be carefully logged and fully characterised using a standard visual classification. It is essential to ensure that proper sampling techniques are used and contamination of samples is avoided with as little breakage as possible of aggregates that are to be checked for grading. After sampling the thickness of each layer should be measured and the test pit should be profiled. A full photographic record should be made before backfilling and reinstatement.

(c) Selection of test locations and frequency of testing

(i) Materials sampling and testing as described above requires significant resources so it is important to apply the sampling and testing to good effect. **Annex 2** provides an indicative guide to the frequency of testing. The audit plan will indicate the anticipated location, type and frequency of sampling and testing. Initially test locations should be selected on a statistical basis to provide representative results although the Contractor may choose to locate some tests at “suspect” locations. Samples will be tested at a selected laboratory and the results duly provided to the Contractor.

(d) Safety and Reinstatement

(i) The Contractor must ensure that the sampling and testing procedures include adequate provision for safety and traffic control. Working in the existing roadway requires proper planning and the provision of appropriate signs, etc.

(ii) The Contractor must ensure that any destructive testing is properly repaired and reinstated to the appropriate standard. The use of cold mixes will be allowed to repair sealed surfaces and cemented gravel mixes to compensate for uncompacted fill/gravel layers.

Key Task Area 7: Audit Closing Meeting

4.21 At the conclusion of the audit activities the Contractor shall collate all of the information gathered. Although it is unlikely that laboratory test results will be available at this time the Contractor will prepare a draft audit report indicating the extent of the audit and the initial findings and indications.

4.22 The Contractor will review the draft audit report and findings with the auditee to obtain acknowledgement that the findings are accurate and that non-conformities are understood. The Contractor will hold a closing meeting at the end of each audit to present the audit findings and conclusions in such a manner that they are understood and acknowledged by the auditee. At a minimum, the Audit Closing Meeting will be held on site and include the CWC, Supervision Consultant and Employer (DGH). In addition to the Satker, representatives of the Balai and Directorate of Technical Affairs, Eastern Region will be invited to these meetings.

4.23 If appropriate, the Contractor should develop a corrective and preventative action plan to be agreed with the auditee based on the response to the audit report conclusions and recommendations. The conclusions of the audit may indicate the need for corrective, preventative or improvement actions which are to be undertaken by the auditee within an agreed timeframe. The completion and effectiveness of corrective action should be verified. This will normally be the role of the PMU and Supervision Consultant although, if appropriate, it can be included as part of future audit visits.

Key Task Area 8: Additional Audits and Ad Hoc Advice

4.24 It is expected that the Services will need to be extended beyond the provision made in the Key Task Area 1 – 7 to provide both additional audits, and to provide independent advice to AusAID in regard to matters resulting from the audit findings, as amplified below:

(a) In the event that the audit findings are disputed by any of the parties, additional testing may be undertaken by the parties involved or an external party (e.g. Inspectorate General). The results and proposed remedies will be provided to AusAID for evaluation. If any of the remedies proposed by DGH is at variance with the original audit report or is deemed by AusAID to require further technical evaluation the Contractor may be required to review the proposals and data, in the context of original findings and recommendations and in the light of any new data or information that has been provided. The Contractor must satisfy themselves as to the reliability and accuracy of data provide by third parties, and will make recommendations to AusAID on the appropriateness and effectiveness of the proposed remedies.

(b) The Contractor will be required to provide ongoing independent advice to AusAID throughout the length of the contract. This will be on an intermittent basis and may be able to be provided from the Contractor's home office.

4.25 In the event such additional audits and or advice is required, AusAID will issue a Tasking Note requesting a specifically costed Audit Plan based on the agreed costings in Schedule 2 and the particulars of the tasking note for AusAID approval. AusAID written approval is required prior to any additional audits and/or advice being provided.

Key Task Area 9: Reporting

4.26 The Contractor will:

(a) Submit an **Inception Report** and **General Audit Plan** (as described in **Key Task Area 1**) within **three (3) week** of the Contractor Start Date;

(b) Submit an **Audit Plan** (as described in **Key Task Area 2**)including an estimate of external costs for each audit carried out within **one (1) week** of the audit commencing;

(c) Submit a **Project Audit Report** (as described in **Clause 4.27 -4.32**) for each audit carried out, within **two (2) weeks** of the audit completion;

(d) Provide a **Draft Final Report** (as described in **Clause 4.33 – 4.35**) on all the audits undertaken **two (2) weeks** before the end of services;

(e) Prepare the **Final Report** (as described in **Clause 4.33 – 4.35**) by the end of Services based on comments received from AusAID and concerned agencies on the Draft Final Report; and

(f) Prepare an **Activity Completion Report** (ACR) for AusAID reporting on the assignment activities, inputs and outcomes and indicating lessons learned that AusAID may apply to future similar activities.

Project Audit Reports

4.27 The Project Audit Report will:

(a) Give a professional opinion on the quality, adequacy and cost effectiveness of the works as well as the quality of contract documentation and supervision;

(b) Report variances with specifications from any measurements, testing or observations;

(c) Make recommendations for rectification of non conformances or proposals of "how to proceed" in order for the contracted parties to resolve any issues, in the first instance through the respective contracts; and

(d) Suggest, where necessary, improvements to processes, documentation, staffing etc. that will benefit overall implementation and support a better end product.

4.28 In general the Project Audit Report refers to large amounts of data and related information and therefore needs to be carefully structured to ensure clarity and optimal utilisation. Background and supporting information should be included in Appendices or referred to as separate documentation while the Audit Report concentrates only on the critical issues and their implications. All reports should include a well considered and focussed Executive Summary.

4.29 It is important that the Audit Report is acted on as soon as possible and the Project Audit Report should be submitted within **2 weeks** of completion of the audit by the Contractor.

4.30 If appropriate, a corrective and preventative action plan should be agreed with the auditee based on the response to the audit report conclusions and recommendations. The record and results of these meetings and any agreed action plans should be included in the audit report for AusAID.

4.31 AusAID will review the reports and share with PMU. Appropriate actions will be agreed based on the audit findings.

4.32 PMU will share audit information with DGH and government auditors, (State Supreme Audit BPK, Inspectorate General (IG), the Internal Audit of Ministry of Public Works, regional Audit Units BPKP).

Final Report

4.33 The Contractor will prepare two separate reports at the conclusion of the Services.

4.34 In the final part of the services the Contractor shall prepare a project Final Report, initially in draft, which summarises all of the audit findings and reports and presents an overall conclusion that reflects the project performance as a whole. The report shall include recommendations and suggestions for improvements to the implementation and management processes encountered that will support achieving a better end product.

4.35 In addition the Contractor shall prepare an Activity Completion Report (ACR) for AusAID that as well as presenting the project technical data records the contact inputs and outputs and comments on the Services and how they could be improved for future similar assignments.

Presentation of Reports

4.36 The Contractor may be required to present the Final Report to a selected audience of AusAID and GOI officials. The presentation should include PowerPoint or similar graphics.

4.37 All reports must:

(a) be accurate and not misleading in any respect;

(b) be prepared as directed;

(c) allow AusAID to properly assess progress under the Contract;

(d) be provided in the format, number and on the media approved or requested by AusAID;

(e) not incorporate either the AusAID or the Contractor's logo; and

(f) be provided at the time specified in this Schedule

4.38 In addition to the above, all reports produced are to be to a high professional standard of preparation, in English and submitted in soft copy (PDF and MS Word) and 10 hard copies.

4.39 All reports and data collected or produced during the project, and all programs and other materials developed, prepared or obtained during the project, will be the property of AusAID, and are to be provided as requested, or handed over at the end of the Project.

5. CONFIDENTIALITY

5.1 Unless required by law, the Contractor and those responsible for managing the audit programme shall not disclose the contents of documents, any other information obtained during the audit, or the audit report, to any other party without the explicit approval of AusAID and where appropriate the auditee.

6. AUDIT INPUTS

Time Schedule

6.1 It is anticipated that the audit exercises will be undertaken during four separate assignments. An initial assignment of four (4) weeks to set up the audit scope and procedures followed by 3 auditing assignment of two (2) months, three (3) months and three (3) months each. The schedule will be modified to suit the actual works schedule, and circumstances encountered during the audit activity.

6.2 For the first 2 month audit assignment a minimum of 3 (and a maximum of 5) civil works sub-projects are expected to be audited. On subsequent assignments, this rate may need to be varied to suit emerging circumstances and to include revisiting previous sites to review remedies and corrective actions previously recommended.

Location of Services

6.3 The EINRIP project includes around twenty four (24) civil works sub-projects located in nine different provinces – South Sulawesi, South Kalimantan, Bali, NTB (Sumbawa), South East Sulawesi, North Sulawesi, Central Sulawesi, West Kalimantan and NTT.

6.4 It is expected that the team will base themselves in Jakarta for the duration of the services, although the auditors will spend most of their time on site. It is anticipated that an audit team will spend a maximum of two (2) weeks for any one inspection, including travel time from Jakarta and return.

Staffing

6.5 It is expected that an Audit Team may comprise all or a combination of the following positions:

(a) Professional Staff

(i) Team Leader;

(ii) Senior Materials/Pavement Engineer;

(iii) Co-Team Leader - Senior Materials/Pavement Engineer;

(iv) Accountant Auditor;

(v) Engineer; and

(vi) Assistant Engineer.

The first five positions above are considered to be **Key Personnel** for the project.

(b) Technical / Support Staff

(i) Materials Technician;

(ii) Laboratory Technician;

(iii) Surveyor;

(iv) Local labour - hired as needed.

6.6 Positions Descriptions and Requirements are contained in **Annex 3.**

6.7 Survey checks and materials sampling on site will require the assistance of labour. It is expected that such personnel will be hired on a casual basis at or near the location, paid for as part of Sampling and Testing costs. Utilising staff of the CWC is not permitted.

7. FACILITIES TO BE PROVIDED BY AUSAID

7.1 The Contractor will be afforded full access to all areas on site. AusAID through DGH will ensure that the CWC and Supervision Consultant allow the Contractor full access to any part of the physical works, all quarries, dumps, asphalt plants etc. This will also include all offices, stores and buildings used by the CWC and/or Supervision Consultant.

7.2 AusAID will provide all data, reports and information needed to support the Services, as promptly as possible upon request.

7.3 Upon completion of the contract any equipment or assets purchased under the contract shall become/remain the property of AusAID and shall be disposed of as directed by AusAID.

ANNEX 1: OVERVIEW OF THE EINRIP PROGRAM

1. Project Overview

EINRIP supports a Government of Indonesia program of National road and bridge improvement works throughout Eastern Indonesia (all of Indonesia, except the two large islands of Java and Sumatera). The main objective of the program is to improve selected national road links to an acceptable standard, suitable to their status and ensure that the National road network provides acceptable standards of service and accessibility, capable of supporting local and regional economic development. The total amount of the loan to be provided is A$300 million.

2. Project Content and Timing

EINRIP includes support for the following components:

i. Betterment treatments including minor widening, mainly on inter-urban roads;
ii. Bridge replacement or major repair as required for bridges on links for which betterment treatments have been identified;
iii. A capacity expansion (dualisation) project in Bali;
iv. A steel truss bridge replacement program, with existing selected deteriorated bridges to be replaced by steel truss bridges, and associated works.

Project Preparation Consultants (PPC) funded by Grant Funds from the AIPRD will continue until early 2009 to complete all final engineering design.

The EINRIP Loan provides for all civil works, and the procurement of steel truss bridges. It also provides for consulting services to support project management and administration, and construction supervision of all civil works.

Civil works are expected to commence in early 2009 and continue until mid 2012.

Consultancy Services are provided in three packages:

i. The Project Management Support Consultant (PMSC) provides ongoing support to the Project Management Unit for EINRIP (PMU), established within the Directorate General of Highways (DGH)
ii. A Regional Supervision Consultant (RSC) based in Makassar, with Field Supervision Teams for each project, is responsible for construction supervision of works.
iii. Procurement Advisory Services (PAS) provide support to regional Procurement Committees responsible for procuring the CWCs.

3. Major Features of EINRIP

Because EINRIP is AusAID’s first major infrastructure loan project, there is a strong interest in both ensuring a successful project outcome, as well as in adding value to road asset management practices used in the sector. To this end, the overall project design emphasises a number of features that are intended to significantly strengthen all aspects of current practice in road improvement projects in Indonesia. This includes:

i. Improved quality of project preparation processes - planning, FED and bid documents
ii. Strengthening procurement processes
iii. Strengthening implementation and supervision
iv. Strengthening project management
v. Continued reinforcement of GOI’s Anti Corruption Commitment

A major project objective is to ensure that all works are constructed to a high level of quality, and a high level of attention will be directed towards ensuring that construction supervision services are provided to proper professional standards, free of corrupt and collusive practices.

4. Institutional and Implementation arrangements

Organisations responsible for project implementation

The Directorate General of Highways (DGH) is the lead Implementing Agency for the Project. The Directorate of Planning (DoP) is responsible for planning, programming and budgeting of works on National roads. A Project Management Unit (PMU-EINRIP) has been established under DoP, and is responsible for coordination of all EINRIP activities.

Many agencies will be involved in the management and implementation of EINRIP. The roles and responsibilities of government agencies and implementation support services are described in detail in the Project Implementation Plan (PIP).

The Project Management Unit (PMU)

Project management is coordinated through a Project Management Unit (PMU-EINRIP).

The PMU-EINRIP, based in Jakarta, is responsible for day-to-day management and implementation of the Project. They are assisted by the PMSC.

Project Management Manual

A comprehensive Project Management Manual (PMM) describes the project management requirements and procedures to be followed by all parties, covering such areas as:

i. Procurement arrangements, procedures and requirements;

ii. Financial Management procedures, including the establishment of a financial management information system (FMIS), budgeting, disbursement, accounting and reporting of project finances, and auditing;
iii. Project reporting systems and procedures;
iv. Provisions of the Anti-Corruption Action Plan;
v. The Environmental and Social Safeguards (ESS) adopted for the project.

The PMM can be accessed on the project website at http://www.pmueinrip-binamarga.com/apl/ or through the Ministry of Public Works website at http://www.pu.go.id/# which has a link to http://pmu-binamarga.com/proyek.php which displays all loan projects.

The web site also provides access to important project documents including the Loan Agreement, the Anti Corruption Action Plan and the Project Implementation Plan.

Regional Supervision Consultant

The Regional Supervision Consultant (RSC) Team Leader is assigned as the Engineer for the contracts, appropriately delegated by the Employer with duties and authority as defined by FIDIC General Conditions of Contract, 2006 version, Each Chief Supervision Engineer, as an Assistant to the Engineer, shall be responsible for four to five works contracts at any one time (concurrently running works). The Field Supervision Teams (FST) staff for each project will be delegated "Engineers Assistants" with duties and authority specified by the Engineer. Nevertheless the Engineer will retain overall responsibility.

The Quality Assurance Plan (QAP) to be implemented by the Supervision Teams shall be used to demonstrate the performance of the site supervision teams.

The QA plan will also provide for the test types, the frequency of testing, conditions for acceptance and inspection at "Holding Points" defined by the General and Special Specifications.

All specified routine testing is carried out by the contractor in site laboratories or at commercial off site laboratories. The RSC will have a facility for independent laboratory testing, for audit of site materials quality.

Project Management Support Consultant (PMSC)

Project Management Support Consultants (PMSC) will provide ongoing support to the Project Management Unit for EINRIP (PMU), established within the Directorate of Planning of the Directorate General of Highways (DGH). Their tasks include financial and progress monitoring and reporting, information management and dissemination, quality assurance and performance review for the Regional Supervision Consultants, implementation and monitoring of the anti-corruption action plan, support for project monitoring and evaluation, and support for implementation of a training program to support project management and implementation.

PMSC will assist DGH by undertaking independent performance monitoring of the effectiveness of construction supervision, and the compliance of the RSCs with their stated QA standards.

Implementation of the Environmental and Social Safeguards (ESS)

Environmental and social safeguards (ESS) have been prepared as a framework for assessment of environmental and social impacts, and the preparation of any mitigation, management and monitoring procedures required. This framework guides the activities required during project preparation and design; any land acquisition and/or resettlement activities (including the provision of any compensation required); and during contract implementation and construction supervision.

PMU, supported by the PMSC, retain a range of responsibilities for environmental and social monitoring and management throughout the project. The RSC will be responsible for supervising contractor's compliance with measures specified for environmental/social protection during construction and the PMSC will supervise the performance of the RSC in this regard.

ANNEX 2: TYPE AND FREQUENCY OF TESTING

1. Introduction

The audit requires specific checks to confirm compliance with the contract.

The Engineer (Regional Supervision Consultant) should already have established that everything incorporated into the works is in compliance with the contract. In each case some form of evidence is required to support the claim of compliance. This may be a measurable physical end product (appearance, dimensions, performance, etc.), or some form of reporting e.g. testing data, survey books. This evidence should have been recorded along with any pertinent comments and a statement of compliance / non-compliance.

As well as review of documentation and administrative checks on procedures the audit will include a selected amount of physical measurement and testing to verify report compliance. The information given below, setting out audit targets, is intend as guidance and is not an exhaustive list of potential aspects that need to be checked.

The suggested frequency of testing is indicative and should be reviewed based on the actual quantities of work done on the site as well as other factors, such as work in progress at time of audit, etc. Unless the audit is a post construction audit (after completion of the works) testing of materials and checking of dimensions and tolerances of works that are covered up and require some kind of destructive testing (holes, cores, etc.) should be carefully considered before being carried out. Frequency of testing of exposed works and works in progress may be increased to match the ease of access.

The type and frequency of tests will be specified in the Audit Plan for each site made up at the time of audit to suit the works. The plan will set out the type of tests, their number and location. The plan will include the logistics of materials sampling and reinstatement of any holes etc. The transporting and testing of samples must also be carefully planned to ensure the security and integrity of the process.

The guide below list the logical sequence of examination based on the contract and the specifications. A check of the QC/QA systems is followed by a review of the contractual aspects then a verification of compliance of the works with the specification as per the divisions in that document.

Focus should be placed on major pay items or components and materials that are significant in the quality, performance and life of the project.

Common failings include:

- poorly prepared sub-grade
- sub-standard aggregate base materials (not to specification)
- poorly compacted base
- asphalt mixes are not to specification
- Job Mix Formula (JMF) with high asphalt content
- poor quality asphalt (high softening point)

- poor quality asphalt mixing plant resulting in overheating of binder
- poor quality pavers resulting in segregated uneven layers of asphalt
- a general lack of attention to quality control
- poorly equipped and staffed laboratory
- a disregard for setting-out constraints
- a failure to work within tolerances for line and level.

The following pages set out possible audit targets/subjects under the various construction and management activities that comprise implementation. This is not an exhaustive list nor is it intended to be compulsory. Rather it is indicative of the types and frequency of testing and can be used as a basis for determining the contract audit plan.

Notes: In the following sections:

i. "Visual inspection" means a close up visual examination of physical works, and should be carried out on foot
ii. References to Spec. x.y are to the Specification Section x.y
iii. References to Cl. y.z are to the Conditions of Contract

2. Project Quality Systems

a. Check the quality control and quality assurance systems and facilities used by the following entities:

Contractor:

- Verify Contractor has quality plan (Spec. 1.21)
- Verify submission and acceptance of plan by employer
- Verify non-conformance register
- Verify N-C's are up to date
- Verify appointment of QA representative on site
- Verify the Contractor has a Construction Management Plan.
- Review the plan in general terms for adequacy.

Consultant:

- Verify Supervision Consultant has Quality Plan
- Verify submission and acceptance of plan by employer
- Verify non-conformance register
- Verify N-C's are up to date
- Verify appointment of QA representative on site

b. Check of Contractual Procedures and Documentation

Check that the appropriate contractual communications, activities and obligations are being carried out. Confirm that the Conditions of Contract are being followed:

- Review contract documents. (Cl. 1.5, Cl. 1.8)

- Were drawings and instructions provided to the contractor in a timely fashion (Cl. 1.9)
- Verify handing over of the site by the Employer. (Cl. 2.1)
- Review proof of insurances from Contractor (Cl. 18)
- Review Contractors Performance Security (Cl. 4.2)
- Confirm Employers finances are in place (Cl. 2.4)
- Review Works Programs (Cl. 8.3)
- Confirm Engineers Duties and Authority are delegated in writing (Cl. 3.1)
- Review Health and Safety provisions (Cl. 6.7)
- Check Measurement data (Cl. 12)
- Review contract payments (Cl. 14)

3. Specification Division 1 – General

Check compliance with requirements for mobilisation

- Review mobilisation requirements
- Check Minutes and Plans from Pre Construction Meeting
- Review the Mobilisation programme.
- Confirm that Contractors site offices and facilities are adequate and compliant (Spec. 1.3.)
- Confirm that the Contractors material Testing Laboratory is established and compliant (Spec. 1.4.)
- Check Traffic Management is properly addressed and implemented (Spec. 1.8)
- Check that appropriate documentation and records are maintained on site (Spec. 1.10 & 1.15)
- Confirm all parties are aware of and observing Environmental Safeguards (Spec. 1.17) [see also Section 10 of this Annex].

4. Specification Division 2 – Drainage

<u>Division 2A: Drainage - records and procedures</u>

Requirements

- Verify procedure and checklist for setting out exists
- Verify procedure and checklist have been used
- Verify Contractor’s Construction Management Plan includes processes and procedures for controls on drainage construction
- Review Construction Management Plan, review inspection records (request for inspection, inspectors diary, test records)
- Verify testing regime and approval of materials (stone for mortared stonework) is in accordance with the specification
- Check number of tests against quantity of material excavated / placed

- Verify test records indicate compliance with specification

- Verify laboratory has required Materials Standards (BSI, AASHTO, BS)

- Verify records indicate that drainage embankment materials were place and compacted in layers not exceeding 20cm thickness (Spec. 5.1.3.2)
- Review testing records, survey books, etc.
- Verify method of measurement used and consistency with site records and conditions

Reference:

2.1.1.4 - Dimensional tolerances, unlined drains, (invert +/- 3cm, alignment +/- 5cm)

2.2.1.4 - Dimensional tolerances, mortared stone work

7.1.1.5 - Dimensional tolerances, concrete lined drains.

<u>Division 2B: Drainage - materials and end product (including culverts)</u>

Reference: Specification Division 2 Drainage

Materials: Corrugated steel culvert, concrete pipe culvert, reinforced concrete

Works: Excavation, trimming, filling, mortared stonework.

Physical measurements:

- Verify line and level of drains
- Locations, lengths, inverts of drains and culverts,
- Cross section slopes and dimensions.

Frequency

- Visual inspection of at least 20% of constructed drainage
- Measured dimension check of at least 5%
- Check 1 in 10 culverts (minimum of 2 on any site).

5. Specification Division 3 – Earthworks

<u>Division 3A: Earthworks - records and procedures</u>

Requirements:

- Verify procedure and checklist for setting out exists
- Verify procedure and checklist have been used
- Verify Contractor's Construction Management Plan includes processes and procedures for controls on earthworks.
- Review Construction Management Plan, review inspection records (request for inspection, inspectors diary, test records)
- Verify testing regime is in accordance with the specification

- Check number of tests against quantity of material placed
- Verify test records indicate compliance with specification
- Verify sources of common embankment
- Verify testing demonstrating compliance with requirements
- Inspect borrow pits, review haul plans
- Review testing records
- Verify records indicate that embankment materials were place and compacted in layers not exceeding 20cm thickness
- Review testing records, survey books, etc.
- Verify sources of select embankment
- Verify testing demonstrating compliance with requirements. Inspect borrow pits, review haul plans
- Review testing records.

<u>Division 3B: Earthworks - materials and end product</u>

Reference: Specification Division 3 Earthworks: Materials – common embankment, select embankment.

Works:

i. Excavation – common, rock, structural, asphalt.
ii. Embankment – common, select.
iii. Grade preparation.
iv. Clearing and grubbing – rubber, jungle, sparse. Tree removal various sizes.

i. Excavation

Physical Measurements:

- Verify dimensions of excavation. Check survey records, measure on site.
- Check tolerances of cut surfaces (Spec. 3.1.1.3) – grade lines +2 cm / -3cm, side slopes +/- 10 cm
- Verify type of excavated material (common or rock) . Check on site, at spoil pits.
- If rock is being blasted check compliance with blasting requirements.

Frequency:

- Check one cross section per 1,000 m3 of excavation.

ii. Embankment

Physical Measurements:

- Verify actual thickness of constructed fill layers. Trial pit (Spec. 3.2.1.3) 10cm < t < 20cm

- Verify density of in-situ material using sand replacement test / Nuclear density meter
- Check tolerances of fill surfaces (Spec. 3.2.1.3) – grade lines +2 cm / -3cm, side slopes +/- 10 cm
- Verify CBR of in-situ material (Spec. 3.2.2.2/3.2.2.3) common CBR >6, select CBR>10
- Verify CBR of borrow / cut material -sample from test pit, from borrow pit or cutting
- Verify moisture content of in-situ material. Trial pit – speedy moisture meter (Spec. 3.2.3.3) optimum -3% to optimum+1%
- Verify levels of embankment are within tolerance for finished surface of embankment. Dip from profiles and use straight edge.

Frequency:

- One trial pit per 1,000 m3 of fill. One material sample CBR test per 5,000 m3 of fill.

iii. Grade preparation

Physical Measurements:

- Check compliance with Section 3.3 of grade preparation work, in particular proper full depth scarification of existing pavements, if so required by drawings.
- Verify in-situ density.

Frequency:

- One test per 5,000 m2.

iv. Clearing and Grubbing

Physical Measurements:

- Check clearing and grubbing complies with Section 3.4 – removal of trees topsoil etc and provision of temporary drains if required.
- Measure quantity and diameter of trees.

Frequency:

- As required / possible.

6. Specification Division 4 – Pavement Widening and Shoulders

<u>Division 4A: Pavement widening and shoulders - records and procedures</u>

Requirements:

- Verify procedure and checklist for setting out exists
- Verify procedure and checklist have been used

- Verify Contractor's Construction Management Plan includes processes and procedures for controls on pavement widening and shoulders
- Review Construction Management Plan, review inspection records (request for inspection, inspectors diary, test records)
- Verify testing regime is in accordance with the specification. Check number of tests against quantity of material placed
- Verify test records indicate compliance with specification
- Verify laboratory has required Materials Standards (BSI, AASHTO, BS)

- Verify sources of granular materials
- Check that the Engineer has required reference samples (Spec. 5.1.1.5)

- Inspect borrow pits, review haul plans
- Verify records indicate that granular pavement and shoulder materials were placed and compacted in layers (Spec. 4.1.4. and 4.2.3.)
- Review survey books, etc. Verify method of measurement used and consistency with site records and conditions

Division 4B: Granular Pavement - materials and end product

Reference: Specification Division 4 Granular Pavement:

Materials: Aggregate A, Aggregate B, Aggregate S

Works: Shoulders, base layers, pavement

Physical Tests:

- Verify actual thickness of constructed layers (<20cm Spec 5.1.3.2)
- Verify density of in-situ material by Sand replacement test / Nuclear density meter (100% MDD Spec 5.1.3.3)
- Verify CBR of in-situ material (Class A 90%, Class B 60% Class S 50% Spec 5.1.2.5)
- Verify CBR of borrow / cut material. Sample from test pit
- Verify moisture content of in-situ material. Trial pit – speedy moisture meter
- Verify levels are within tolerance for finished surface. Dip from profiles (Spec. 5.1.1.3), check with 3m straight edge – max deviation 1cm
- Verify gradation of embankment materials - Sieve analysis of sample (Spec. 5.1.2)
- Verify number of fractured faces - Test analysis of sample (Spec. 5.1.2.3)
- Verify P.I. and LL - Test analysis of sample (Spec. 5.1.2.5)
- Verify absence of organic matter, clay and deleterious materials - Visual inspection of materials: in-situ, samples, borrow pit.

Frequency:

- Trial pit – one per 750 m3 of material placed, or 1,000 linear metres (irrespective of width) – whichever is more frequent

7. Specification Division 5 – Granular pavement

Division 5A: Granular Pavement - records and procedures

Requirements:

- Verify procedure and checklist for setting out exists
- Verify procedure and checklist have been used
- Verify Contractor's Construction Management Plan includes processes and procedures for controls on granular pavement
- Review Construction Management Plan, review inspection records (request for inspection, inspectors diary, test records)
- Verify testing regime is in accordance with the specification. Check number of tests against quantity of material placed
- Verify test records indicate compliance with specification
- Verify laboratory has required Materials Standards (BSI, AASHTO, BS)

- Verify sources of granular materials
- Check that the Engineer has required reference samples (Spec. 5.1.1.5)

- Inspect borrow pits, review haul plans
- Verify records indicate that granular pavement materials were place and compacted in layers not exceeding 20cm thickness (Spec. 5.1.3.2)
- Review survey books, etc. Verify method of measurement used and consistency with site records and conditions

Division 5B: Granular Pavement - materials and end product

Reference: Specification Division 5 Granular Pavement

Materials: Aggregate A, Aggregate B, Aggregate S

Works: Shoulders, base layers, pavement

Physical Tests:

- Verify actual thickness of constructed layers (<20cm Spec 5.1.3.2)
- Verify density of in-situ material by Sand replacement test / Nuclear density meter (100% MDD Spec 5.1.3.3)
- Verify CBR of in-situ material (Class A 90%, Class B 60%, Class S 50% Spec 5.1.2.5)
- Verify CBR of borrow / cut material. Sample from test pit
- Verify moisture content of in-situ material. Trial pit – speedy moisture meter

- Verify levels are within tolerance for finished surface. Dip from profiles (Spec. 5.1.1.3), check with 3m straight edge – max deviation 1cm

- Verify gradation of embankment materials - Sieve analysis of sample (Spec. 5.1.2)
- Verify number of fractured faces - Test analysis of sample (Spec. 5.1.2.3)

- Verify P.I. and LL - Test analysis of sample (Spec. 5.1.2.5)
- Verify absence of organic matter, clay and deleterious materials - Visual inspection of materials: in-situ, samples, borrow pit.

Frequency:

- Trial pit – one per 750 m3 of material placed, or 1,000 linear metres (irrespective of width) – whichever is more frequent

8. Specification Division 6 – Asphalt Pavement

Division 6A: Asphalt Pavement - records and procedures

Requirements:

- Verify procedure and checklist for setting exists
- Verify procedure and checklist have been used
- Verify Contractor's Construction Management Plan includes processes and procedures for controls of asphalt pavement
- Review Construction Management Plan, review inspection records (request for inspection, inspectors diary, test records)
- Verify testing regime is in accordance with the specification demonstrating compliance with requirements
- Check number of tests against quantity of material placed
- Verify test records indicate compliance with specification

- Review preparation, placing, spreading and compaction of the mixtures
- Verify records indicate that bitumens and asphalt materials were placed and compacted in accordance with requirements (Spec. 6.3.6)
- Verify method of measurement used and consistency with site records and conditions

Division 6B: Asphalt Pavement - materials and end product

Reference: Specification Division 6 Asphalt Pavement

Materials: Prime, Tack Coat, Asphalt Base, Asphalt base-course, Asphalt Wearing Course

Works: As above

Physical Tests:

- Measure layer thickness (Spec. 6.3.1.4)
- Surface regularity using 3m straight edge (Spec. 6.3.1.4)
- Asphalt content, gradation of asphalt mix
- Binder (bitumen) properties
- Measure dimensions of asphalt layers width and length
- check temperature as laid (if asphalt is being placed)
- Review placing and compacting equipment (Spec. 6.3.4.10, 6.3.4.11)

Frequency:

- Trial pits- one per 750 m3 of material placed, or 1,000 linear metres (irrespective of width), whichever is more frequent
- Cores - 2 per 1,000 lin. m (irrespective of width)
- Check width and length at least 5% of area.
- Measure layer thickness at least once per 200m (linear)

<u>Division 6C: Asphalt Pavement – Asphalt Mixing Plant - records, procedures, materials</u>

Reference: Specification Division 6 Asphalt Pavement

Requirements: (Spec. 6.3.4.1 – 6.3.4.8)

- Verify work plan and procedures for AMP
- Verify laboratory has required Materials Standards (BSI, AASHTO, BS)

- Verify sources of asphalt materials (Spec. 6.3.2.9)
- Check that the Engineer has required reference samples (Spec. 6.3.2.9)

- Review environmental safeguards for AMP

Inspect Asphalt Mixing Plant, review development of JMF and AMP equipment and manufacture of mixtures

Physical Tests:

- Verify integrity of cold bins and materials
- Verify properties of bitumen and arrangements for storage
- Verify temperature of mix materials
- Verify trial mix and actual mix consistency
- Verify gradation of aggregate materials
- Verify hardness and shape of aggregates
- Verify loading procedures and weighing
- Verify conditions of trucks (Spec. 6.3.4.9)
- Check temperature at bins and on trucks

Frequency:

- Samples from AMP – at least one of each material.
- If operational at least 2 (on different days).

9. Specification Division 7 – Structures

Works include:

- Reinforced concrete, pre-stressed concrete, steel bridges, piling,
- Cement mortar, stone masonry, rip rap,
- Expansion joints, bearings, bridge railings,
- Demolition of existing structures

Division 7A: Structures – records and procedures

Requirements:

- Verify procedure and checklist for structures exists
- Verify procedure and checklist have been used
- Verify Contractor's Construction Management Plan includes processes and procedures for controls of concrete and structures work
- Verify process for production of concrete on site
- Confirm required submittals are made (Spec. 7.3.1.7)
- Review test certificates for reinforcing steel (Spec. 7.3.1.7)
- Verify actual dimensions and thickness of constructed structures
- Review testing of concrete on site, verify frequency and compliance

- Verify concrete design mixes and on site records

Division 7B: Structures - materials and end product

Reference: Specification Division 7 Structures

Materials: Concrete, Reinforcing steel, pre / post stressed strand, pre-cast concrete

Works: Reinforced concrete for structures

Physical checks:

- Verify compressive strength of concrete -take cube samples
- Verify dimensions and tolerances of finished structures / faces (Spec. 7.1.1.5)
- Verify cover to reinforcement with Cover meter
- Check properties of cement
- Verify presence and condition of mixers, vibrators, spacer bars, formwork, etc.
- Check tools for assembly of steel bridges (torque wrench etc.)
- Inspect bearings – materials and dimensions

Frequency:

- Cubes – 1 per pour while on site
- Cores – 1 per 500m3 of poured structural concrete
- Cement – 1 sample for properties check.

Pre-stressed Concrete as per Section 7.2

10. Specification Division 8 – Miscellaneous

Miscellaneous: Traffic Management, Health and Safety, Child Labour, HIV awareness, Environmental Mitigation

The Specifications and Conditions of Contract set out various requirement in respect of the above issues. The Audit should include sufficient investigation to give a clear indication of whether or not there is compliance with these contract requirements.

Health and Safety:	General Conditions of Contract Sub-Clause 6.7
HIV /AIDS:	Particular Conditions of Contract Sub-Clause 6.7
Environmental Mitigation:	General Specification Section 1.20
	Project Specific UKL/UPL
Traffic Management:	General Specification Section 1.20

ANNEX 3 – POSITION DESCRIPTIONS AND REQUIREMENTS

The **Team Leader** will be a Senior Civil or Highway Engineer with previous international experience, including desirably experience in technical audits. He will lead the team, direct audit procedures and finalise audit reports. He will prepare the general audit plan and schedule and liaise with DGH and the parties to be audited. The Team Leader will have at least 15 years of relevant experience in the areas of highway engineering, construction supervision and project management. At least 5 years experience in developing countries essential, with experience in Indonesia desirable.

The **Senior Materials/Pavement Engineer** is expected to be a professional with an engineering background and extensive international experience of site supervision of highway works or other related disciplines. He will provide technical leadership on audit, contractual and quality assurance matters in the field, and provide direction and supervision of the Audit Team on site. A Civil Engineer or Highway Engineer with at least 12 years experience in highway engineering, construction supervision, quality assurance and desirably technical audit. Experience in developing countries essential, with experience in Indonesia desirable.

The **Co-Team Leader** is expected to be a Senior Engineer with extensive experience in Construction Supervision. He will work with the Team Leader providing advice on local factors and assisting liaison. Lead responsibility for ensuring liaison with DGH/PMU and the Inspectorate General (IG) in Jakarta and with Balai and Provincial agencies as well as Contractors and Consultants. A Civil Engineer with at least 12 years of relevant experience. Familiarity with quality control, quality assurance and audit desirable.

The **Accountant/Auditor** will be a suitably qualified professional with at least 12 years relevant experience, including at least 5 years experience in Financial Audits. The Accountant will be responsible for implementing the financial audit as directed by the Team Leader. Familiarity with government disbursement systems will be an advantage.

The **Engineer** as part of the audit team, will have sound experience in Quality Assurance systems and will work with and be directed by the Senior Engineer. He shall undertake inspections of site activities, site records and oversee sampling and testing as required providing liaison for the Audit Team on site. A qualified Civil Engineer with at least 8 years experience in highway engineering and construction supervision and materials testing / audit / quality assurance.

The **Assistant Engineer** should be a qualified Civil Engineer with at least 4 years relevant experience. He shall assist with review of site records and sampling and testing as required. .

The **Materials Technician** should be an experienced engineer, inspector or technician with at least 5 years site experience. He shall undertake the sampling activities, directing labour as necessary.

The **Laboratory Technician** should be fully conversant with the required testing regimes and be able to demonstrate a clear understanding of testing standards and procedures. He shall observe and ensure the integrity of samples testing in local laboratories.

The **Surveyor**, if required, shall be suitably experienced and competent in the appropriate survey techniques. He should be able to work to the required accuracy and provide a written record of measurements and a report of his work.

PART 4 - BASIS OF PAYMENT

Technical and Financial Audit Consultant (TFAC)

***Note to Tenderers**: This Basis of Payment is presented as **Part 4** of this RFT, and will appear as Schedule 2 in the consolidated Contract. It reflects the most current version of the Services required of the Contractor but may be updated by AusAID during contract negotiations, particularly in light of information included in the Tenderer's response to the RFT.*

SCHEDULE 2 - BASIS OF PAYMENT

Technical and Financial Audit Consultant (TFAC)

1. **TOTAL AMOUNT**

1.1 The total contract amount payable by AusAID to the Contractor shall not exceed the sum of **A$X,XXX,XXX** plus GST, if any to a maximum of **A$XXX,XXX.**

1.2 AusAID shall not be liable for any Costs or expenditure incurred by the Contractor in excess of this amount.

2. **PERSONNEL COSTS**

2.1 AusAID shall reimburse personnel costs on the basis of actual inputs in arrears for relevant personnel time expended on the AusAID prior approved audit activity in accordance with the rates in **Table 1** of this Schedule which are:

FULLY INCLUSIVE OF, but not limited to,

(a) all personnel related taxes and levies incurred in Indonesia and Australia;

(b) superannuation levy if, and as, appropriate;

(c) all escalators for the Term of the Contract;

(d) any profit including commercial margins, overheads, administration or management fee, or any other mark-up on the part of the Contractor; and

(e) health, medivac, worker's compensation, liability and indemnity insurances;

(f) financial management costs and financing costs, if any required to deliver the Services;

(g) all administrative support costs, including head office costs required to deliver the audits;

(h) allowances for risk and contingencies.

(i) taxation, as applicable;

(j) costs of complying with the reporting obligations under the Contract;

(k) insurance, as required by the Contract;

(l) costs associated with all personnel briefings in Australia or in Indonesia;

BUT EXCLUSIVE OF

(m) any Australian Goods and Services Tax (GST).

2.2 Although a daily rate has been requested in **Table 1** the Contractor will be required to bill for actual time spent on a pro rata basis where actual time undertaken is less than a whole day (which is deemed to consist of 8 working hours). Only one day can be billed for in any 24 hour period.

2.3 The Contractor will maintain and keep detailed reporting of all billable time spent by its personnel on an audit activity under this Contract. Such details shall be the basis for billing and form part of the invoicing requirements and as such may be subject to verification and review for audit purposes by AusAID.

Table 1: Key Personnel Costs

Position	**Name**	**Daily Rate (A$)**		
		2009	**2010**	**2011**
Key Personnel				
Team Leader				
Senior Materials/ Pavement Engineer				
Co-Team Leader – Senior Materials/ Pavement Engineer				
Accountant Auditor				
Engineer				
Other Personnel				
Assistant Engineer				
[rows will be added/deleted based on the preferred tenderer’s bid]				

3. REIMBURSABLE COSTS

3.1 The Contractor is entitled to claim, in arrears, all reasonable costs actually incurred for the delivery of approved audit activities up to the rates set in **Table 2**. The rates provided in **Table 2** are set for the duration of the Contract.

Table 2: Reimbursable Costs

Column 1 Item	Column 2 Clarifier	Column 3 Unit Type	Column 4 Unit Cost (A$)
Airfares	Reimbursed at Business Class for International travel, and at Economy Class for travel within Indonesia. 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	Business Class Economy Class	Best fare of the day
Compulsory Arrival and Departure Taxes, and Travel to and from Airport	Reimbursed at cost	per trip	At cost
Hotel Accommodation	Reimbursed at lesser of actual cost incurred or the unit cost in Column 4.	night(s)	Up to A$150
Per Diem Allowance, Jakarta	Agreed non acquittable daily rate towards the cost of meals and incidentals, for foreign consultants not residing in Jakarta	Daily rate	A$105
Travel Allowance	Agreed non acquittable daily rate towards the costs of meals and incidentals while travelling outside Jakarta, all staff	Daily rate	A$50
Hire of Ground Transport	For project purposes	per trip	At cost
Freight and Insurance of samples	Reimbursed at cost based on a value for money assessment of service providers	N/A	At cost
Sampling and Testing	Reimbursed at cost based on a value for money assessment of service providers	N/A	At cost
Hire of local labour	Reimbursed at cost based on a value for money assessment of service providers	Daily rate	At cost

4. PAYMENT OF PERSONNEL AND REIMBURSABLE COSTS

4.1 The Contractor must have AusAID prior approval to undertake any audit activities under this Contract. Such approval will be dependent on the provision of a Project Audit Plan and cost estimate as required by **Schedule 1 Clause 4.12**. The cost estimate should be based on the rates in **Tables 1 and 2** above.

4.2 The Contractor must not exceed the maximum amount specified in **Clause 1.1** above. The Contractor shall inform AusAID in writing when 80% of the total funds specified in **Clause 1.1** have been committed

5. CLAIMS FOR PAYMENT

5.1 The Contractor’s tax invoice must be submitted when due pursuant to this **Schedule** in a form identifiable with the Services.

5.2 All tax invoices must include a certification by a Company director of the Contractor, or their delegate:

(a) that the invoice has been correctly calculated; and

(b) that the Services included in it have been performed in accordance with the Contract.

5.3 All claims for payment must be **made out to:**

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

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

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

SECTION 2 – STANDARD TENDER AND CONTRACT CONDITIONS

CONTENTS

PART 5 – STANDARD TENDER CONDITIONS

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

1. DOCUMENTS THAT MUST BE LODGED

1.1 Tenders must be lodged either:

(a) Electronically, via AusTender at https://tenders.gov.au before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C to this Part** and on AusTender; or

(b) Physically, by depositing by hand in the Canberra Tender Box before the **Closing Time**.

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

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

(a) the technical proposal which includes:

(i) **Tender Schedule A** addressing the selection criteria and including the required annexes in the form specified in **Part 1**; and

(ii) **Tender Schedule B** providing details of Specified Personnel in the form specified in **Part 1**;

(b) The financial proposal in the form specified in **Part 1 Tender Schedule C**. For electronic submissions, **Tender Schedule C** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule C** must be submitted in a separate sealed envelope;

(c) The financial assessment material in the form specified in **Part 1** Tender Schedule D. For electronic submissions, **Tender Schedule D** must be submitted as a separate file, and for hard copy submissions, **Tender Schedule D** must be submitted in a separate sealed envelope; and

(d) The completed and signed Tenderer Declaration in the form specified in **Annex B of this Part**.

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

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

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

1.7 Tenders submitted by facsimile or email will not be considered.

1.8 It is a condition of this RFT that each Tender must remain valid and available for acceptance by AusAID for the **Tender Validity Period** specified in 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 **[This clause applies to government owned Tenderers only.]** I warrant that in preparing the Tender, the Tenderer has complied with the principles of competitive neutrality**.**

3.11 I warrant that the Tenderer, and any subcontractor of the Tenderer are not:

(a) listed on a World Bank List as referred to in **Clause 13** (Ineligibility to Tender) of **Part 5** of this RFT;

(b) listed on any similar list maintained by any donor of development funding (Relevant List), or:

(c) subject to any proceedings which could lead to listing on a World Bank List or listing on a Relevant List.

3.12 Neither the Tenderer nor any of its employees, agents or contractors have been convicted of an offence of, or relating to bribery of a public official, nor are they subject to any proceedings which could lead to such a conviction.

3.13 I undertake that the Tenderer will not permit any of its employees, agents or contractors, to work with children if they pose an unacceptable risk to children's safety or well being.

3.14 No employees of the Tenderer, or its agents or contractors, who have been nominated in Project positions that involve working with children, have been convicted of a criminal offence relating to child abuse, nor are they subject to any proceedings which could lead to such a conviction.

3.15 Neither the Tenderer nor any of its agents or contractors has an unsettled judicial decision against it relating to employee entitlements.

3.16 Neither the Tenderer nor any of its employees, agents or contractors had knowledge of the technical proposal or the Tender Price for the Services of any other tenderer prior to the Tenderer submitting its Tender for the Services.

3.17 Neither the Tenderer nor any of its employees, agents or contractors disclosed the technical proposal or the Tender Price for the Services submitted by the Tenderer to any other tenderer who submitted a tender for the Services or to any other person or organisation prior to the **Closing Time**.

3.18 Neither the Tenderer nor any of its employees, agents or contractors provided information to any other tenderer, person or organisation, to assist another tenderer for the Services to prepare a tender known in the building and construction industry as a "cover bid", whereby the Tenderer was of the opinion or belief that another tenderer did not intend to genuinely compete for the Contract.

3.19 The Tenderer is genuinely competing for the Contract and its Tender is not a "cover bid".

3.20 Prior to the Tenderer submitting its Tender for the Services neither the Tenderer nor any of its employees, agents or contractors entered into any Contract, agreement, arrangement or understanding that the successful Tenderer for the Services would pay any money, or would provide any other benefit or other financial advantage, to or for the benefit of any other tenderer who unsuccessfully tendered for the Tender.

3.21 I acknowledge that each party constituting the Tenderer is bound jointly and severally by this Tender.

4. ADDENDA TO TENDER DOCUMENTS

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

Number _____ Dated _____ Number _____ Dated ____

Number _____ Dated ____ Number _____ Dated ____

5. ADDRESS OF TENDERER

Address or Registered Office of Tenderer

Address for service of notices (NOT PO. BOX)

Telephone Number: .... Fax Number: ....

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

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Tenderers must first register with AusTender at https://www.tenders.gov.au.

1.2 Access to and use of AusTender is subject to terms and conditions. Tenderers must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.

1.3 It is the responsibility of tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

1.4 Tenderers must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Tenderers must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED TENDERERS AND NOTICES

2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.

2.2 Tenderers may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.

2.3 Tenderers who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.

2.4 Tenderers are required to log in to AusTender and collect addenda as notified.

2.5 The Commonwealth will accept no responsibility if a tenderer fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.

2.6 If a tenderer has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. AUSTENDER HELP DESK

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

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

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

4. PREPARING TO LODGE A TENDER ELECTRONICALLY

Virus Checking

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

Tender File Formats, Naming Conventions and Sizes

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

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

4.4 The tender file name/s must:

(a) incorporate the tenderer's company name

(b) reflect the various parts of the bid they represent, where the tender comprises multiple files;

(c) not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and

(d) not exceed 100 characters.

4.5 Tender files:

(a) must not exceed a combined file size of 5 megabytes per upload;

(b) should be uploaded from a high level directory on a tenderer's desktop, so as not to impede the upload process; and

(c) should be zipped (compressed) together for transmission to AusTender.

4.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:

(a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or

(b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.

4.7 If a tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the **Closing Time**.

4.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

5.1 Before submitting an electronic tender, tenderers must:

(a) ensure their technology platform meets the minimum requirements identified on AusTender;

(b) refer to AusTender's Help guidance, if required, on uploading tenders;

(c) take all steps to ensure that the tender is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;

(d) ensure that the tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and

(e) ensure that the tender complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.

5.2 Tenderers must allow sufficient time for tender lodgement, including time that may be required for any problem analysis and resolution prior to the **Closing Time**.

5.3 Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the **Closing Time**. An error message will be issued if the lodgement process is attempted after the **Closing Time**.

5.4 Tenders lodged through AusTender will be deemed to be authorised by the tenderer.

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

6. LATE TENDERS, INCOMPLETE TENDERS AND CORRUPTED FILES

6.1 Any attempt to lodge a tender electronically after the **Closing Time** will not be permitted by AusTender. Such a tender will be deemed to be a Late Tender.

6.2 Where electronic submission of a tender has commenced prior to the **Closing Time** but concluded after the **Closing Time**, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, **Closing Time**.

6.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the **Closing Time** and **Clause 6.2** above will only apply to the final upload.

6.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID's computing environment, will be excluded from evaluation.

7. PROOF OF LODGEMENT

7.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the tender was received by AusTender and will be conclusive evidence of successful lodgement of a tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

7.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to **Clauses 5.2 and 5.5** above.

8. AUSTENDER SECURITY

8.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

8.2 Tenderers acknowledge that:

(a) lodgement of their tender on time and in accordance with these conditions of tender is entirely their responsibility; and

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

PART 6 - STANDARD CONTRACT CONDITIONS

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

PART B – STANDARD CONTRACT CONTRACT CONDITIONS

CONTENTS

PART B – STANDARD CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise requires:

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

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

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

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

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

(a) is designated by AusAID as confidential; or

(b) the Contractor knows or ought to know is confidential;

(c) is comprised in or relating to the Contract Material, the Data, any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID, or the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(d) is personal information under the *Privacy Act 1988*, but does not include this Contract or information which:

(e) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligation; or

(f) has been independently developed or acquired by the Contractor, as established by written evidence.

"**AusAID Eligibility Criteria**" means the criteria organisations wishing to tender for AusAID contracts must satisfy. Details are available at http://www.ausaid.gov.au/business/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 to10) 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.

SCHEDULE 3 - DEED OF CONFIDENTIALITY

THIS DEED POLL is made on the day of [ ]

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

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

RECITALS

A. AusAID and **Contractor's Name** (the "**Contractor**") have entered into a Contract for the purpose of a project in **Country**.

B. The Recipient has been engaged by the Contractor to work on the project.

C. The Recipient will, in carrying out that work, be given access to Confidential Information.

D. AusAID requires the Recipient to enter into this Deed in relation to use of Confidential Information.

THE RECIPIENT DECLARES AS FOLLOWS:

1. **INTERPRETATION**

In this Deed:

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

(a) is designated by AusAID as confidential; or

(b) the Recipient knows or ought to know is confidential,

and includes to the extent that it is confidential:

(c) information comprised in or relating to any Intellectual Property of AusAID or third parties where the third party Intellectual Property is made available by or on behalf of AusAID;

(d) information relating to the internal management and structure of the Department of Foreign Affairs and Trade, AusAID or the Commonwealth of Australia;

(e) the Data; and

(f) personal information under the *Privacy Act 1988*;

but does not include information which:

(g) is or becomes public knowledge other than by breach of this Deed or other obligation of confidentiality; or

(h) has been independently developed or acquired by the Recipient as established by written evidence.

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

2. **NON DISCLOSURE**

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

3. **RESTRICTION ON USE**

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

4. **DELIVERY UP OF DOCUMENTS**

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

5. **SURVIVAL OF OBLIGATIONS**

5.1 The obligations in this Deed are perpetual.

EXECUTED as a deed poll.

SIGNED, by the Recipient in the presence of:	))	…………………………………….. Signature of
…………………………………….. Signature of witness		…………………………………….. Name of witness ***(Print)***

SCHEDULE 4A – VARIATION ORDER PRO FORMA

VARIATION ORDER NO. #
FOR CONTRACT #

between

COMMONWEALTH OF AUSTRALIA
represented by
The Australian Agency for International Development
(AusAID)

and

CONTRACTOR'S NAME
ABN #

in relation to

CONTRACT TITLE

VARIATION ORDER No. # UNDER CLAUSE # OF CONTRACT #

TO:	CONTRACTOR – ***insert Name***

FROM:	AusAID

1. This Variation Order is given pursuant to Standard Condition clause headed **Amendments and Variation** in the Contract.

2. The Contract ***Schedule 1 and/or Schedule 2*** is varied as follows:

EITHER *detail here under the headings of:*

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

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

6. Delete Schedule 1, Scope of Services and replace with the attached Scope of Services.

7. Delete Schedule 2, Basis of Payment and replace with the attached Basis of Payment.

8. There will be an ***increase/decrease/no change*** of $x,xxx.xx in the financial limit of this Contract for the performance of these Services.

9. In all other regards you are required to carry out the Services as described in the Contract.

Yours sincerely

FMA Section 44 Delegate
Insert date

NOTE TO USER:
It is not necessary for the Contractor to sign the Variation Order. However, you must act in good faith by ensuring that the Contractor agrees to the changes before issuing the Variation Order. As with Amendments, Variation Orders must be cleared by Procurement Management Group (PMG) and AusAID's Senior Legal Adviser or AusAID's Legal Officer before being issued. See 'MINUTE Clearance (Variation Order)' on the Contract Templates Sharepoint.

The delegate must sign two originals of the Variation Order. One original is sent to the Contractor. One copy needs to be made. The copy must be retained by the Activity Manager (Canberra or Post). The AusAID original copy is sent to RMC for inclusion on the original Contract File. (DELETE this note before issuing the Variation Order).

SCHEDULE 4B - VARIATION SUMMARY SCHEDULE

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

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

SCHEDULE 5 – DEED OF NOVATION AND SUBSTITUTION

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

BETWEEN:

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

AND:

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

AND:

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

WHEREAS:

A. AusAID is concerned to ensure that the Services under the Contract are properly delivered.

B. The Subcontractor is a subcontractor to the Contractor for the Services.

C. The Subcontractor and Contractor have agreed with AusAID to novate the Subcontract to AusAID in the event that AusAID exercises its right under **Clause 31** and **32** of the Contract.

D. The Subcontractor agrees that AusAID may novate the Subcontract to another Contractor at its sole and absolute discretion in the event that AusAID has exercised its right under **Clause 31** and **32** of the Contract.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. **DEFINITIONS**

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

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

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

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

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

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

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

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

2. **APPLICATION OF DEED**

The Contractor and the Subcontractor agree that:

this Deed is entered into for the benefit of AusAID; and

AusAID may exercise the rights granted to it under this Deed.

This Deed commences on the Commencement Date of the Subcontract.

3. **NOVATION**

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

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

AusAID is substituted for the Contractor under the Subcontract in respect of the Subcontractor Services as if AusAID was originally the Party to the Subcontract instead of the Contractor, and all references in the Subcontract to the Contractor are to be read and construed as if they were references to AusAID;

AusAID is to pay any amount due to the Subcontractor under the Subcontract to the Subcontractor and the receipt of the Subcontractor shall be full and sufficient discharge for any such payments;

subject to paragraph (a), AusAID is bound by, and must fulfil, comply with and observe all the provisions of the Subcontract and enjoys all the rights and benefits of the Contractor under the Subcontract; and

the performance by the Subcontractor of services under the Subcontract, is instead of, and not in addition to, any performance by the Contractor of its obligations under that Subcontract.

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

4. **RELEASE**

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

5. **FURTHER ASSURANCES**

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

6. **DISCHARGE**

Neither the Subcontractor nor the Contractor are discharged or released or excused from this Deed by an arrangement made between the Contractor and the Subcontractor prior to the issue of a notice of substitution with, by any change to the Subcontract, or by any forbearance whether as to payment, time or otherwise.

The Contractor undertakes to notify AusAID of any alterations to the Subcontract or other matter referred to in **Clause 3** of this Schedule. A failure of the Contractor to notify AusAID under this clause does not alter the Subcontractor's obligations under this Deed.

This Deed by the Subcontractor for AusAID to assume the obligations of the Contractor is discharged in relation to the Subcontract only on completion by the Subcontractor of all its obligations under the Subcontract in respect of the Subcontractor Services, or, in the event of the issue of a notice of substitution, on the due and proper performance of the Subcontract by the Subcontractor.

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

7. NOTICES

A notice required or permitted to be given by one Party to another under this Deed must be in writing and is treated as being duly given and received:

when delivered (if left at that Party's address);

on the third Business Day after posting (if sent by pre-paid mail); or

on the Business Day of transmission (if given by facsimile and sent to the facsimile receiver number of that Party and the facsimile machine provides an affirmation of a successful transmission).

Address of Party

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

AusAID

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

Contractor

To:	**Contractor's Name**
Attention:	
Address:	**Contractor's Address**
Facsimile:	**Contractor's Fax**

Subcontractor

To:	
Attention:	
Address:	

Facsimile:

8. LAWS

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

9. WARRANTY

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

the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the Subcontractor and the Contractor respectively;

the Subcontractor and the Contractor respectively each has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or caused to be performed its obligations under this Deed;

this Deed constitutes a legal, valid and binding obligation of the Subcontractor and the Contractor respectively, enforceable in accordance with its terms by appropriate legal remedy; and

to the best of each of the Subcontractor's or the Contractor's knowledge, there are no actions, claims, proceedings or investigations pending or threatened against or by the Subcontractor or the Contractor respectively that may have a material effect on the ability of the Subcontractor or the Contractor respectively to perform its obligations under this Deed.

10. GENERAL

Counterparts

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

Attorneys

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

Further Assurance

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

Assignment

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

EXECUTED as a Deed.

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

……………………………………..
Signature

……………………………………..
Signature of witness

……………………………………..
Name of witness
(Print)

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

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

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

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