



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

**TENDER NO. 27431.300**

Tenders must be lodged electronically at:  
Tenders ACT [www.tenders.act.gov.au](http://www.tenders.act.gov.au)  
Tel:(02) 6207 7377

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**SHORT FORM REQUEST FOR TENDER & CONTRACT SCHEDULE**

Tenders are invited for the execution of the Works described below, subject to the attached request for tender conditions (Part 1), proposed Conditions of Contract and Specifications, if any.

**CONTRACT SCHEDULE**

TIMING OF THE TENDER LODGEMENT AND THE WORKS	
Tenders close at Tenders ACT at 2.00 pm on	22/12/2015
Time for commencement of the Works	January 2016
Time for completion of the Works	Five months
Consolidation/Defects Liability Period	Six months
For further information contact the Principal's Representative	Richard Binks
Phone	02 6207 6472

LOCATION OF WORK AND PARTICULARS OF WORK (‘the Works’)	PRICE
Project No 27512	
Project Title Isaacs Ridge Trails Network Upgrade	
Contract No	
<b>Description: To undertake the upgrade of existing mountain bike trails within the pines at Isaacs Ridge.</b>	
<b>Tenderer’s Checklist:</b>	
<input type="checkbox"/> Completed & Signed Form of Tender (pages 1-2)	
<input type="checkbox"/> Written response to Assessable Criteria (pages 8-9)	\$
<input type="checkbox"/> Schedule of rates (incl. Tenderer’s rates) (page 3)	
<input type="checkbox"/> Completed Ethical Suppliers Declaration (p23)	
<input type="checkbox"/> Completed Statutory Declaration (p34)	
<input type="checkbox"/> Current IRE certificate	

WORK HEALTH AND SAFETY MATTERS	
1. Where the project value exceeds \$250,000 (GST exclusive) - Is the successful Tenderer to be appointed principal contractor for the purpose of the WHS Legislation (only applicable if Project value (as opposed to contract value) exceeds \$250,000 (GST exclusive).	<b>Yes/No/not applicable</b> (Default is “Yes” if not completed) if not applicable see next box If Yes Part 5A applies If No Part 5B applies

2. Where the project value is less than \$250,000 (GST exclusive) will the successful Tenderer be given control of the site on which the Works are being conducted?	<b>Yes/No</b> (Default is "Yes" if not completed)
3. If 2 is yes then does the successful tenderer have to prepare and submit a WHS Management Plan (see Part 5B)	<b>Yes/No</b> (Default is "Yes" if not completed)
<b>PRINCIPAL'S DETAILS</b>	
Principal	The TERRITORY represented by Procurement and Capital Works, of Chief Minister, Treasury and Economic Development Directorate.
Address for the service of notices	Level 2 Annex, Macarthur House, 12 Wattle Street, Lyneham ACT 2602
Telephone	02 6207 6472
Facsimile	
Email Address	Richard.binks@act.gov.au
Principal's Representative	Richard Binks

By submitting this Schedule you authorise the Principal to provide it to any Territory, State or Commonwealth government agency (including any regulatory or law enforcement body, which includes, without limitation, WorkSafe ACT) as evidence of your consent to allow that agency to release information as requested by the Principal to the Principal.

<b>TENDERER'S DETAILS</b>	
Tenderer's Name (including ABN or ACN if a company)	
	ACN/ABN
Address for the service of notices	
Telephone	
Facsimile	
Email Address	
I/we accept the attached RFT Conditions and Conditions of Contract and tender for the execution of the Works for the above total tendered price.	Signature of 2 directors or a director and a secretary (if a company) or Tenderer if not a company
	Date

<b>ACCEPTANCE OF TENDER</b>	
Signed for and on behalf of the Australian Capital Territory represented by Richard Binks. ("Principal") in acceptance of this Tender.	Signature
	Date



## PART 1. REQUEST FOR TENDER ("RFT") CONDITIONS

### 1.1. DEFINITIONS

In this document:

- a) **"Conditions of Contract"** means the conditions of contract set out in Part 2, Part 4, Part 5A and 5B of the Tender Documents and the Specifications.
- b) **"Ethical Suppliers Declaration - Tender"** or **"Ethical Suppliers Declaration"** means a declaration in the same form as that at Part 3 (or such other form as approved by the Principal from time to time and advised to You), which forms part of the Tender Documents.
- c) **"IRE Certificate"** has the same meaning as in the IRE Strategy.
- d) **"IRE Strategy"** means the Territory's *Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects* as amended from time to time and any substituted policy or strategy of the Territory.
- e) **"Principal"** means the Territory or Territory authority named in the Schedule;
- f) **"Principal's Representative"** means the Territory officer or representative named in the Schedule;
- g) **"Schedule"** or **"Contract Schedule"** means the information set out under the heading "Contract Schedule".
- h) **"Specifications"** means the specifications, including any plans or drawings, for the Works attached to these Tender Documents;
- i) **"Tender"** means your tender for the carrying out of the Works including the Schedule and Ethical Suppliers Declaration – Tender as completed by you;
- j) **"Tender Documents"** means the Schedule, these RFT Conditions (Part 1), the proposed Conditions of Contract, the Ethical Suppliers Declaration and any Specifications;
- k) **"Territory"** means
  - i) when used in a geographical sense, the Australian Capital Territory; and
  - ii) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
- l) **"WHS Active Certification Policy"** means the Territory's WHS Active Certification Policy as amended from time to time and any substituted policy of the Territory;
- l) **"Works"** means the works specified in the Schedule; and
- m) **"you and your"** refers to the tenderer named in the Schedule.

### 1.2. **RESERVED**

- 1.3. By submitting your Tender **you acknowledge that you have read the proposed Conditions of Contract**. If the Principal accepts your Tender a legally binding contract will come into effect comprising the Conditions of Contract. Pay particular attention to the clauses dealing with insurance.
- 1.4. You must keep confidential all Tender Documents clearly identified as confidential and you must not copy the Tender Documents except for tendering purposes. Any **material submitted** as part of your Tender will remain or become the property of the Principal.
- 1.5. **Tenders must be lodged** electronically via Tenders ACT before the closing time in accordance with the lodgement procedures set out in this document, and the Tenders ACT Terms of Use available [www.tenders.act.gov.au](http://www.tenders.act.gov.au). A Tender lodged by any other means including by hand, facsimile or email will be considered non-conforming.
- 1.6. Tenderers must **register on Tenders ACT** in order to lodge a Tender.
- 1.7. Following the closing date for Tenders, the Territory will **list names of Tenderers** on the Tenders ACT web page at [www.tenders.act.gov.au](http://www.tenders.act.gov.au). Late Tenders may not be included on the list.
- 1.8. Tendered files must be lodged, as applicable, in the following **formats**: PDF.

- 1.9. Tenders ACT will accept up to a maximum of **15 files in any one upload**. Each upload must not exceed the size limit of 100 MB per upload. If an upload would otherwise exceed the specified size limit, Tenderers should either:
- a) transmit the Tender file(s) as a compressed (zip) file not exceeding the size limit; and/or
  - b) lodge the Tender in multiple uploads ensuring that each upload does not exceed the size limit and clearly identify each upload as part of the Tender.
- 1.10. Tenderers should use a **structured file naming convention** to ensure clear identification of Tendered documents and their contents including the RFT number, a shortened Tenderer name and file description (for example: RFT\_50094\_MYTENDER\_Pricing).
- 1.11. **Tender file names** must not:
- a) use special characters, including but not limited to \ / : \* ? " < > | ; or
  - b) exceed 80 characters in length.
- 1.12. **Tendered files** should:
- a) be uploaded from a high level directory on the Tenderer's desktop to ensure the file name does not exceed 100 characters in total;
  - b) not be selected from a secure or password protected location or from portable media such as, but not limited to, CD, DVD or USB; and
  - c) be zipped (compressed) together for transmission to Tenders ACT.
- 1.13. Tenderers must ensure the **transmission of all files is complete** before the closing time (including where a Tender consists of multiple uploads).
- 1.14. Tenders must be completely **self contained**. No hyperlinked or other material may be incorporated by reference.
- 1.15. **All enquiries in relation to this RFT** must be directed in writing to the Principal's representative Richard Binks – [Richard.binks@act.gov.au](mailto:Richard.binks@act.gov.au)
- 1.16. **All queries and requests for technical or operational support** should be directed to:
- Tenders ACT Team  
Telephone: 02 6207 7377  
  
International: +61 2 6207 7377  
Email: [TendersACT@act.gov.au](mailto:TendersACT@act.gov.au)
- 1.17. The **Tenders ACT team is available** between 9 am and 5pm ACT local time, Monday to Friday (excluding ACT and national public holidays).
- 1.18. The Tenderer warrants that, when it lodges its Tender electronically, it has taken reasonable steps to ensure that the electronic files lodged are **free of viruses**, malicious code or other disabling features which may affect Tenders ACT and/or the Territory's ICT environment. Any Tender found to contain viruses, malicious code or other disabling features will be excluded from the evaluation process.
- 1.19. **Before lodging a Tender**, it is strongly recommended that Tenderers:
- a) ensure their technology platform meets the minimum requirements identified, if any, on Tenders ACT;
  - b) ensure their internet connection is working correctly and in the case of wireless internet connection that the signal is strong and stable;
  - c) refer to Tenders ACT user manual, if required, on uploading a submission;
  - d) take all steps to ensure that the submission is free from anything that might reasonably affect useability or the security or operation of Tenders ACT and/or the Territory's ICT environment;

- e) ensure that the submission does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Territory; and
  - f) ensure that the submission complies with all file type, format, naming conventions, size limitations or other requirements specified in the RFT.
- 1.20. It is the responsibility of Tenderers to **allow sufficient time for lodgement**, including time that may be required for any problem analysis and resolution prior to the closing time.
- 1.21. Tenderers should be aware that holding the "Submit Electronic Response" page open in the web browser will not hold the electronic tender box open beyond the closing time.
- 1.22. If Tenderers have any **problem in accessing Tenders ACT** or uploading a Tender they must contact the Tenders ACT Team prior to the closing time for technical and operational assistance.
- 1.23. The Tenders ACT system will not permit electronic lodgement of Tenders **after the closing time**. Tenderers wishing to lodge a Tender after the closing time must contact the Tenders ACT team to obtain instructions on how a late Tender can be lodged.
- 1.24. **Late Tenders** will be registered separately and may be admitted to evaluation at the absolute discretion of the Territory. In deciding whether to admit a late Tender to evaluation, factors that may be considered include:
- a) whether the Tenderer is likely to have had an opportunity to obtain some unfair advantage from late submission of the Tender;
  - b) how late the Tender is, the reasons and evidence given for lateness;
  - c) whether the Tender was mishandled by the Territory; and
  - d) evidence of unfair practices.
- 1.25. The Territory may **investigate the reasons provided for lateness**. The investigation process may include reviewing the system's audit trail to identify if the Tenderer attempted to lodge the Tender prior to the closing time and if assistance was sought from the Tenders ACT team.
- 1.26. Where the **lodgement of (all files of) a Tender has commenced** prior to the closing time but concluded after the closing time, and upload of all of the Tender file/s has completed successfully, as confirmed by Tenders ACT logs, the Tender will be considered to have been received prior to closing time.
- 1.27. **When a lodgement has successfully been completed**, an official receipt is provided on screen. The on-screen receipt will record the time and date the submission was received by Tenders ACT and will be conclusive evidence of successful lodgement of a submission. It is essential that Tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the submission will also be automatically dispatched to the email address registered with Tenders ACT.
- 1.28. **Failure to receive a receipt** means that lodgement has not completed successfully. In these circumstances, Tenderers should lodge the Tender again or, if electronic lodgement has closed, contact the Tenders ACT team to obtain instructions on how to lodge a late Tender.
- 1.29. You must **submit your Tender** by using the Schedule and you must include a completed copy of the Ethical Suppliers Declaration - Tender.
- 1.30. **Your Tender must address** the requirements set out in the Schedule; the Specifications for the Works; the proposed Conditions of Contract; and any other condition or requirement that forms part of this Tender Document.
- 1.31. **You must satisfy yourself that:**
- a) information in and the requirements of this Tender Document are correct and sufficient for you to properly prepare and submit your Tender, including the tendered price; and

- b) your tendered price includes all the costs of complying with all obligations under the proposed Conditions of Contract.
- 1.32. All fees and prices quoted in your Tender must be **inclusive of GST** and you must identify the value of any GST-free input. Your Tender must **remain open for at least 90 days** from the closing date specified on the Schedule. You are responsible for all **costs, losses and expenses** incurred by you in preparing your Tender.
- 1.33. You must hold and maintain all appropriate **licences, permits, approvals and certificates including an IRE Certificate** to carry out the provision of the Works, you must produce evidence of those licences, permits, approvals and certificates as requested by the Principal.
- 1.34. You must, if required by the Principal, provide **additional information** to allow full consideration of your Tender. The Principal reserves the right to negotiate variations to the Conditions of Contract and/or Specifications with the preferred tenderer after Tenders have been lodged.
- 1.35. **Tenders will be assessed** on the basis of best value for money and not necessarily the lowest priced tender. The Principal is not obliged to select any Tender and may accept part of your Tender. In assessing your Tender the Principal may consider information from any Commonwealth, State or Territory agency, any referee or other reputable source in addition to all information supplied by you in support of your Tender. The mandatory criteria below outlines the methodology and relative weightings that will be used to assess the tender.
- 1.36. In determining the **'value for money'** of your Tender the Principal may consider the following: your ability to undertake the Works; your past performance; your tendered price, your Work Health and Safety record and any other matters set out in the *Government Procurement Act 2001* (ACT) and any associated ACT Government policies.

ASSESSABLE CRITERIA	WEIGHTING
<p>1. Appreciation and understanding of the scope, requirements and tasks for this project and ability to undertake the works, including:</p> <ul style="list-style-type: none"> <li>• Project risks and project tasks identified and methodology proposed to properly manage the risks and tasks.</li> <li>• Project program showing key milestones and dates.</li> <li>• Tenderer to provide confirmation on the availability of all key personnel (internal staff and sub-consultants) nominated for the duration of the project. Include a list of any other projects or responsibilities that are being undertaken at the same time as the contract period for this project.</li> <li>• Confirm ability to undertake and/or comment on RFT project program dates. Provide a statement and project program to demonstrate how the tenderer can commence and complete works within the required timeframe.</li> </ul>	30%
<p>2. Demonstration of Past Performance</p> <ul style="list-style-type: none"> <li>• List and briefly describe similar projects they have successfully undertaken in the last five years. Provide information on key team members (roles), project values, timeframes for project delivery and contact details of referees involved in referenced projects.</li> </ul> <p>Tenderer is to limit each project to 1 A4 page maximum</p> <p>Note: The Tender Evaluation Team may also use records of performance, claims, and compliance of Codes provided by other ACT Government Agencies, Departments or Consultants engaged by the ACT Government to</p>	25%

determine the Tenderers past performance on similar types of projects.	
<p>3. Work Health Safety Record</p> <ul style="list-style-type: none"> <li>• Provide and describe records of any fines or other penalties (including Prohibition Notices) issued by WorkSafe ACT in the past 5 years.</li> <li>• Provide example WHS&amp;R site management plan (from a similar project) suitable for implementation on this project.</li> </ul>	25%
<p>4. Tender Price (Financial)</p> <ul style="list-style-type: none"> <li>• Provide the completed Pricing Schedule and the completed Short Form Request and Contract Schedule.</li> </ul> <p>Method of Assessment of financial offer:  If the lowest financial offer quoted in a tender is lower than 0.8Favg (where Favg is the average financial offer of all qualifying tenders), then  Financial Offer Score = <math>((0.8 \times F_{avg}) / \text{Tenderer's Financial Offer}) \times 10</math>  with the maximum Financial Offer Score capped at 10  If the lowest financial offer quoted in a tender is higher than 0.8Favg, then  Financial Offer Score = <math>(\text{Lowest quoted fee} / \text{Financial Offer}) \times 10</math></p> <p>The financial offer score may be adjusted if the financial proposal is seen as a high risk to the Territory, e.g. very low offer, substantial departure from the average offer, or much higher than the budget.</p> <p><b>Note:</b>  Analysis of the financial offer, including rates in the Bill of Quantities may be undertaken by the Tender Evaluation Team to assist in determining the preferred Tenderer. This may include a sensitivity analysis of costs involving the extension of provisional quantities and/or foreseeable variations.  (No additional information is required for submission by the Tenderer)</p>	20%

**Risk Rating Table for use in Tender Evaluation**

Descriptor	Sample Commentary	Rating
Superior	Highly convincing and credible. Response demonstrates superior capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Comprehensively documented with all claims fully substantiated. Insignificant risk.	10
Outstanding	Highly convincing and credible. Response demonstrates outstanding capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Documentation provides complete details. All claims adequately demonstrated and substantiated. Insignificant risk.	9
Excellent	Response complies, is convincing and credible. Response demonstrates excellent capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Some minor lack of substantiation but the Tenderer's overall claim is supported. Low risk.	8
Very Good	Response complies, is convincing and credible. Response demonstrates very good capability, capacity and experience, relevant to, or understanding of, the requirements of the Evaluation Criterion. Minor uncertainties and shortcomings in the Tenderer's claims or documentation. Low risk.	7
Good	Response complies and is credible but not completely convincing. Response demonstrates adequate capability, capacity and experience, relevant to, or understanding of, the requirements of the Evaluation Criterion. Tenderer's claims have some gaps. Low risk.	6
Adequate	Response has minor omissions. Credible but barely convincing. Response demonstrates only a marginal capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Medium risk.	5
Reservations	Barely convincing. Response has shortcomings and deficiencies in demonstrating the Tenderer's capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Medium risk.	4
Poor	Unconvincing. Response has significant flaws in demonstrating the Tenderer's capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. Medium risk.	3
Very Poor	Unconvincing. Response is significantly flawed and fundamental details are lacking. Minimal information has been provided to demonstrate the Tenderer's capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. High risk.	2
Inadequate	Response is totally unconvincing and requirements have not been met. Response has inadequate information to demonstrate the Tenderer's capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criterion. High risk.	1
Not Acceptable	Tenderer was not evaluated as it did not provide any requested information and/or contravened nominated restrictions. High risk.	0

137. Selection of Preferred Tenderer, on conclusion of the evaluation process, the Principal may:

- a) accept a Tender for the whole of the Works, or if the Works are specified in sections, for a section of the Works;
  - b) accept none of the Tenders;
  - c) commence contract negotiations with the preferred Tenderer(s); or
  - d) negotiate with other Tenderers if contract negotiations with the preferred Tenderer(s) are not successfully concluded.
- 1.38. At any time the Principal may:
- a) cease negotiations with any Tenderer; or
  - b) vary or discontinue the procurement process on giving written notice to the Tenderers.
- 1.39. The Principal is committed to ensuring that suppliers and their subcontractors meet all of their **employer and industrial obligations**, in the performance of any contract for works or services that will require the exertion of labour by employees. The Ethical Suppliers Declaration must be completed and returned with your Tender. The Principal must have regard to probity and ethical behaviour in pursuing value for money in accordance with the *Government Procurement Act 2001 (ACT)*.
- 1.40. Your Tender may not be considered further if you fail to provide a completed Ethical Suppliers Declaration. The Principal may choose not to consider your Tender further if you do not have a current IRE Certificate. In having regard to matters of probity and your ethical behaviour the Principal may provide your Ethical Suppliers Declaration to regulatory bodies and/or non government organisation (including Unions ACT) for comment, and have regard to the comments provided.
- 1.41. If your Tender is:
- a) at variance with or does not respond to or does not fully comply with any requirement of this RFT; or
  - b) incomplete, contains erasures or is illegible; or
  - c) in the Territory's opinion contains a virus, malicious code, or anything else that might compromise the integrity or security of Tenders ACT and/or the Territory's ICT environment,
- it may be deemed nonconforming.
- 1.42. The Principal may at its absolute discretion, in respect of your Tender if it is **nonconforming** or if it has been deemed nonconforming by the Principal:
- a) reject and not further consider the Tender;
  - b) ignore any non-conformance in the Tender; or
  - c) if it is possible to correct the non-conformance without affecting the probity of the tender process, permit you to do so.
- 1.43. The Principal will not enter into a contract with you if you are named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012 (Cth)*.
- 1.44. **Your Tender will only be accepted** if an officer of the Principal supplies you by facsimile, post email or hand with a notice in writing indicating acceptance of your Tender or provides you with a photocopy of your Schedule bearing the original signature of an officer of the Principal. No legal obligations will arise between the parties in respect of the Works unless your Tender is accepted in this manner.
- 1.45. You acknowledge the Principal may be required to **disclose information**, under the *Freedom of Information Act 1989 (ACT)*, the *Auditor-General Act 1996 (ACT)* , the *Government Procurement*

*Act 2001 (ACT) (Procurement Act)*, under other laws applicable in the Australian Capital Territory or by the responsible Minister in the Legislative Assembly.

- 1.46. In giving effect to the principles of open and accountable government, the Principal may disclose documents and information unless it has otherwise agreed, or is otherwise required under law, to keep the information confidential. In accordance with those principles, this Contract may be a notifiable contract under the Procurement Act and, if so, the Territory will be required to make the text of this Contract available to the public, including by publication on a public contracts register.
- 1.47. Your attention is drawn to Division 3 of the Procurement Act. You may request, as part of your Tender response, that certain information contained in your Tender or the Conditions of Contract be treated as confidential text for the purpose of the Procurement Act. If you wish to make such a request you should identify the text you seek to be identified as confidential and the relevant ground or grounds you propose the Principal may rely upon as set out in section 35 of the Procurement Act. If the Principal agrees to the identification of any of the proposed text as confidential text for the purpose of the Procurement Act clause 1.48. will apply.
- 1.48. Except as provided in the Contract, the Principal must not disclose any agreed confidential text to any person without your prior written consent (which consent will not be unreasonably withheld) except to the extent that confidential text:
- a) is required or authorised to be disclosed under law;
  - b) is reasonably necessary for the enforcement of the criminal law;
  - c) is disclosed to the Principal's solicitors, auditors, insurers or advisers;
  - d) is generally available to the public;
  - e) is in the possession of the Principal without restriction in relation to disclosure before the date of receipt from you;
  - f) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees; or
  - g) is disclosed to the ombudsman or for a purpose in relation to the protection of public revenue.
- 1.49. Tenders ACT features an **online forum** that enables Tenderers to seek clarification about an RFT. The forum can be accessed, and posts made, once an RFT has been downloaded.
- 1.50. All Tenderers who have downloaded the RFT will be able to **view all posts** and responses on the forum.
- 1.51. Posts made to the forum will not be immediately **displayed** to enable the Territory to review the clarification question and to develop a response.
- 1.52. **The Territory may choose**, in its absolute discretion, to:
- a) not publish a request for clarification on the forum and instead issue an addendum; or
  - b) publish the clarification question and a response on the forum, without issuing an addendum; or
  - c) at its discretion, not publish the clarification question.
- 1.53. The forum will not display details about the **source of any requests** for clarification, however Tenderers are solely responsible for the content of their posts.
- 1.54. **All information and notices** (including addenda) relating to an RFT (including clarifications or amendments) will be posted on the relevant RFT page on Tenders ACT.
- 1.55. **The Territory accepts no responsibility** if a Tenderer fails to become aware of any addendum, clarification or other information which would have been apparent from a visit to the relevant RFT page on Tenders ACT.

1.56. Tenderers who have downloaded the RFT will be notified by Tenders ACT via email of any **addenda** issued relating to the RFT.

## PART 2. CONDITIONS OF CONTRACT

If your Tender is accepted, the following conditions (and those in Parts 4, 5A and 5B) together with the Schedule and any Specifications and the requirements of all addenda issued will constitute the contract between you and the Principal.

2.1. In these Conditions of Contract:

“**Contract**” means and comprises the Schedule (as completed by you and signed by the Territory’s delegate), the conditions of contract set out in Parts 2, 4, 5A and 5B and any Specifications;

“**Contract Price**” means the total price specified in the Schedule;

“**Defects Liability Period**” means the period from the acceptance of the Works by the Principal as being satisfactorily completed until the end of the defects liability period specified in the Schedule;

“**Ethical Suppliers Declaration - Contract**” means a declaration in the same form as that set out in Part 4 and entitled “Ethical Suppliers Declaration –Contract” (or such other form as approved by the Principal from time to time and advised to You).

“**IRE Certificate**” has the same meaning as in the IRE Strategy.

“**IRE Strategy**” means the Territory’s *Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects* as amended from time to time and any substituted policy or strategy of the Territory.

“**WHS Legislation**” means:

- a) the *Work Health and Safety Act 2011 (ACT)*;
- b) the *Work Health and Safety Regulation 2011 (ACT)*;
- c) all instruments issued under the *Work Health and Safety Act 2011* or the *Work Health and Safety Regulation 2011*;
- d) all laws that replace the above laws; and
- e) all other laws applicable in the Australian Capital Territory dealing with work health and safety matters.

references to “you” includes your employees, agents or subcontractors;

words importing a gender include the others; words in the singular number include the plural and vice versa; and references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation; and

an obligation imposed by the Contract on more than one person binds them jointly and severally.

- 2.2. You must commence and complete the **Works** in accordance with the Specifications and the timeframes set out in the Schedule.
- 2.3. You must observe and comply with all **Acts, ordinances, regulations**, and other requirements of any law in force in the place where the Works are to be executed. You bear the whole risk of complying with all applicable legislation and law until the Works have been completed to the satisfaction of the Principal.
- 2.4. All **materials and workmanship** must be in accordance with the Specifications or if not fully described in the Specifications, in accordance with the recognised industry or trade standards. If the Principal is of the opinion that any materials or part of the Works, are unsatisfactory or are

defective during the Defects Liability Period, the Principal may direct you to remove, and/or correct those works or materials at your expense.

- 2.5. The Principal will only **pay** you the **Contract Price** by Electronic Funds Transfer (EFT) following its receipt of a correctly rendered tax invoice approved by the Principal.
- 2.6. **A tax invoice** is correctly rendered if it includes:
- a) the Principal 's reference number and the contract number;
  - b) the amount due to you and the basis for the calculation of that amount;
  - c) the amount of any GST paid or payable by you in respect of the Works;
  - d) the date of delivery and a description of the Works to which the invoice relates;
  - e) if a discount is applicable, the discounted price; and
  - f) your address for payment.
- 2.7. **During the Defects Liability Period** you must **make good at your expense** all defective work or materials, all damage to or destruction of the Works and all other loss caused by faulty work or materials.
- 2.8. Provided the Works are carried out in accordance with the Contract, the Principal will pay you **progress payments** representing 97.5% of the Contract Price for satisfactory work done at or before the commencement of the Defects Liability Period. The remaining 2.5% of the Contract Price will be paid to you when:
- a) the Defects Liability Period has ended; and
  - b) you have rectified any defects in the Works that have been identified before the end of the Defects Liability Period and all of your obligations in relation to the making good of defects have been fulfilled.
- Any payment by the Principal under this clause will not prejudice any other legal right the Principal may have against you for breach of the Contract.
- 2.9. The Principal may **vary the Works** specified or require the substitution of alternative materials for the Works. The Principal will adjust the Contract Price as a result of any variation. The amount of the variation of the Contract Price will be as agreed by the parties. If the parties do not agree on the amount of the variation, the Principal will determine the reasonable cost of the variation to the Works.
- 2.10. You will carry out the Works during the **customary working hours** Monday to Friday. All proposed work outside those hours must be approved in advance by the Principal.
- 2.11. The Principal may **terminate the Contract** at any time by written notice if you:
- (a) fail to commence the Works within the time specified in the Schedule, or within 14 days of the date the Principal notified acceptance of your Tender;
  - (b) fail to carry on the Works at a rate of progress satisfactory to the Principal;
  - (c) fail to carry out any instruction of the Principal in respect of the Works;
  - (d) fail to complete the whole of the Works within the time specified in the Schedule or such extended time as the Principal may approve;
  - (e) are or become bankrupt or insolvent, enter into voluntary administration or make any arrangement with your creditors or take advantage of any statute for the relief of insolvent debtors; or
  - (f) fail to remedy a breach of a term of the Contract within the period specified in a written notice by the Principal;
  - (g) fail to provide an Ethical Suppliers Declaration – Contract in accordance with Part 4;
  - (h) make a false declaration in an Ethical Suppliers Declaration - Contract supplied in accordance with Part 4; or
  - (i) become the subject of an Adverse Ruling (see Part 4).
- 2.12. If the **Principal terminates the Contract** under the clause above, it may by written notice:
- a) take over the Works; and

- b) take possession and ownership of all materials on or about the Works site which are your property and have been provided by you for the purpose of carrying out the Works,

then **all losses, costs, charges and expenses incurred** or sustained by the Principal in completing the Works will be recoverable from you and, without limiting any other right the Principal may have, may be offset against any amount subsequently due to you from the Principal. Nothing in this clause prejudices any other right or remedy of the Principal in respect of your breach of the Contract.

- 2.13. You must comply with all reasonable **directions** given by the Principal in relation to the Works. The Principal may nominate a third party to give directions in relation to the Works. The Principal will notify you of that person.
- 2.14. You must ensure that **all persons employed** in carrying out the Works, whether they are your employees or a subcontractor's, are paid at the rates and employed under conditions of employment not less favourable than those required by any law or certified agreement applicable to you or your subcontractor and those employees are paid their correct superannuation entitlements.
- 2.15. RESERVED.
- 2.16. RESERVED.
- 2.17. RESERVED.
- 2.18. You must take out and keep current **workers compensation insurance** for any person employed in respect of the Contract and you must produce evidence of the currency of any such policy if requested by the Principal.
- 2.19 The Principal has arranged policies ("Policies") for insurance of the Works and for \$20 million Public Liability insurance through Marsh Pty Ltd. The insurer is CGU Insurance Ltd and the details of the Policies are as follows:
- (a) Works insurance – policy number 01D1170889; and
  - (b) Public Liability insurance – policy number 10M6117587.

The Principal will maintain the Policies while the Contractor has an interest in them, and the Principal will pay all the premiums. A copy of the policy may be obtained from Procurement & Capital Works at Level 3 Annexe, 12 Wattle Street Lyneham, ACT. The Principal will maintain the Policy until you have completed your obligations under the Contract and the Principal will pay all the premiums. The policy insures the ACT Government, you and other relevant parties, including all contractors, subcontractors, construction managers and project managers. You will be liable for the excesses detailed in the policy.

- 2.19. You must, as soon as practicable, inform Marsh Pty Ltd in writing at either address given below of **any occurrence that may give rise to a claim** under the policy; Level 5, 60 Marcus Clarke Street Canberra ACT 2601 or GPO Box 306 Canberra ACT 2601 Telephone (02) 6279 3300, Facsimile (02) 6279 3320. You must ensure that subcontractors engaged in carrying out the Works similarly inform Marsh Pty Ltd.
- 2.20. You must ascertain whether you require any **additional insurance** in relation to the Contract. The existence of the policy does not relieve you of any obligation under the Contract or limit your liability to any third parties.
- 2.21. If requested by the Principal you must prepare and provide to the Principal an **Environmental Management Plan ("EMP")** before commencing the Works. The EMP must be to the reasonable satisfaction of the Principal. The Principal may require you to amend the EMP.
- 2.22. The **Works site** may be **occupied by other parties**. The Principal or other contractors may restrict your access to the Works site due to their occupation of the Works site.

You must:

- a) liaise with the Principal's Representative having primary control of any Works site or location to gain site access to carry out the Works; and
- b) take into account the occupants of the Works site and liaise with them in relation to site safety and the protection/exclusion of site occupants.

2.23. You must:

- a) comply with the WHS Legislation as well as all safety plans endorsed by the Principal for the Works;
- b) ensure that members of the general public at or near the Works site are not exposed to risk to their health or safety arising from your carrying out of the Works;
- c) comply with your obligation under the WHS Legislation to consult, cooperate and coordinate activities with all persons who have a work health and safety duty in relation to the same matter;
- d) institute and maintain systems to obtain regular written assurances from all subcontractors and other entities engaged to perform on the Works site about their ongoing compliance with the WHS Legislation including the due diligence obligation contained in the WHS Legislation;
- e) provide the written assurances obtained under paragraph d) of this clause together with written assurances from you about your ongoing compliance with WHS Legislation to the Principal;
- f) provide the Principal with a written report on all work health and safety matters, or any other relevant matters including a summary of your compliance with WHS Legislation, at least once per month, and at other times as requested;
- g) exercise a duty of utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
- h) ensure that if any law requires that a person:
  - i) be authorised or licensed (in accordance with WHS Legislation) to carry out any work at a workplace, the person is so authorised or licensed and complies with any conditions of such authorisation or licence; or
  - ii) has prescribed qualifications or experience, or if not, is supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised;
- i) ensure that if any law requires that a workplace, plant or substance, or work (or class of work) be authorised or licensed, that workplace, plant or substance, design or work is so authorised or licensed;
- j) not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the authorisation, licensing, prescribed qualifications or experience required by any law and paragraphs h) and i) of this clause are met;
- k) if requested by the Principal or required by WHS Legislation, produce evidence of any approvals including any authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before you or any subcontractors commence such work;
- l) systematically manage your work health and management processes in accordance with the systems, plans, standards and codes specified in the Contract and the WHS Legislation;
- m) demonstrate to the Principal, whenever requested, that you have met and are meeting at all times, your obligations under this Contract with regard to work, health and safety matters but such demonstration does not relieve you of your obligation to perform work safely;
- n) take all reasonable actions and comply with all reasonable requests of the Principal, or its authorised persons regarding any safety audits in respect of the site on which the Works are performed;

- o) Without limiting paragraph n), at all reasonable times, allow the Principal or any person authorised by the Principal:
  - i) to enter upon the site where the Works are being performed to conduct a safety audit;
  - ii) to enter upon the site where the Works are being performed or any premises occupied by you to inspect and copy any records relevant to a safety audit; and
  - iii) to enter upon the site where the Works are being performed or any premises occupied by you to interview any person as part of a safety audit; and
- p) provide reports on work health and safety matters to the Principal in such form and at such times as reasonably required by the Principal and advised to you.

2.24. If the Principal reasonably considers that a risk of injury to people or damage to property is arising or likely to arise from your activities (or any of your subcontractors) the Principal may direct you (or the relevant subcontractor) to change your (or its) manner of working or cease working and you or the subcontractor must comply.

2.25. The Principal may take any action necessary to protect the Works and other property or to prevent or minimise risk to health and safety of persons, which you must take but do not and the Principal may recover any costs associated with such action from you.

2.26. In this clause, "regulator" and "notifiable incident" have the same meaning as in the *Work Health and Safety Act 2011* (ACT).

In addition to any obligations under WHS Legislation, you must:

- a) notify the Principal of any notifiable incident immediately after you notify the regulator;
- b) provide the Principal with copies of all written notifications and/or details of any verbal notifications given to the regulator (as applicable) immediately after providing the same to the regulator.

2.27. In addition to the obligations under the preceding clause, you must promptly notify the occurrence and furnish a written report to the Principal of:

- a) incidents resulting in damage to property;
- b) incidents resulting in significant delays to the Works;
- c) incidents resulting in injury or illness other than a notifiable incident; and
- d) incidents that may have resulted in or may result in any incident set out in paragraphs a), b), or c) above or a notifiable incident.

2.28. In this clause "improvement notice", "infringement notice", "non-disturbance notice", "notice of entry" and "prohibition notice" have the same meaning as in the *Work Health and Safety Act 2011* (ACT)

You must immediately notify the Principal upon becoming aware of the issue of any improvement notice, infringement notice, non-disturbance notice, notice of entry or prohibition notice referable to the site on which the Works are being performed and provide the Principal with a copy of the relevant notice if you have the same.

2.29. In this clause "provisional improvement notice" has the same meaning as in the *Work Health and Safety Act 2011* (ACT)

You must promptly notify the Principal upon becoming aware of the issue of any provisional improvement notice referable to the site on which the Works are being performed and provide the Principal with a copy of the relevant notice if you have the same.

2.30. a) In this clause, unless otherwise stated, capitalised words and phrases have the same meaning as in the Australian Capital Territory's WHS Active Certification Policy (as amended from time to time).

b) Without limiting any other part of this Contract where you:

- i) are prequalified under a Prequalification Scheme at the date of this Contract;
- ii) become prequalified under a Prequalification Scheme during the term of this Contract; or
- iii) have your prequalification status under a Prequalification Scheme cancelled, suspended or downgraded during the term of the Contract,

the WHS Active Certification Policy will apply. To the extent necessary to give effect to the WHS Active Certification Policy its provisions are incorporated by reference into this Contract.

c) You will pay to the Principal by way of reimbursement the Auditor's costs associated with the conduct of any Follow Up Audit (required as a result of your actions or inaction) and any Close Out Audit conducted under the WHS Active Certification Policy.

d) Unless otherwise agreed by the parties, the costs of the Auditor referred to in clause 2.31c) will be paid by you to the Principal by way of a deduction from an amount or amounts claimed by you in any claim for payment made under this Contract, at absolute discretion of the Principal.

e) Where all or part of the costs of the Auditor are not paid to the Principal in accordance with clause 2.31d) any amount outstanding will be a debt due and payable by you to the Principal.

2.32 Where you have been appointed as principal contractor for the purpose of the WHS Legislation Part 5A will also apply. Where you have not been appointed a principal contractor for the purpose of the WHS Legislation Part 5B will apply.

2.33 If requested by the Principal, you must arrange testing of any material or work comprising the Works. **All testing** under the Contract must be carried out by a laboratory which is registered with the National Association of Testing Authorities.

2.34 If at any time you become aware of the presence on the Works site of any loose fibrous matter which may contain **asbestos**, or any other potentially dangerous chemicals or articles, you must:

- a) not disturb the material or article and must immediately notify the Principal; and
- b) ensure that all employees, subcontractors and members of the public are protected from exposure to the material or article until the nature of the material has been assessed by the appropriate authority and directions issued to you in respect of further action to be taken.

2.35 You must make good at your expense all fencing, roads, footpaths and surfaces which may be disturbed by you in carrying out the Works leaving the Works site and adjacent areas in the same state of repair as they were in when you commenced the Works; and remove from the

Works site all rubbish, debris and waste resulting from you carrying out the Works, as directed by the Principal up to the end of the Defects Liability Period.

- 2.36 Despite any difference or dispute ("**Dispute**") between the parties arising in relation to the Contract or the Works, each party will continue to perform their obligations under the Contract. The parties agree that, following the issue of a dispute notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons who have authority to intervene and direct some form of resolution.
- 2.37 You **indemnify** the Principal, its employees and agents against all claims, costs and expenses and for all loss, damage, injury or death to persons or property caused or contributed to by you, your employees, agents or contractors in connection with carrying out the Works except to the extent that the Principal caused the relevant loss, damage or injury. This indemnity survives the expiration or earlier termination of the Contract.
- 2.38 You may not without the prior written approval of the Principal **assign the Contract**, or assign, mortgage, charge or encumber any of the moneys payable under the Contract or any other benefit whatsoever arising under the Contract.
- 2.39 Any **material provided by the Principal** to you for the purposes of the Contract ("**Material**") will remain the property of the Principal and you must use and be responsible for the safekeeping and maintenance of that Material only for carrying out the Works. You must return all Material at the expiry or early termination of the Contract.
- 2.40 You **warrant** that, at the date of entering into the Contract, no **conflict of interest** exists or is likely to arise in the carrying out of the Works and of your other obligations under the Contract. If, a conflict or risk of conflict of interest arises, you will notify the Principal immediately in writing and will comply with any requirement of the Principal to eliminate or otherwise deal with that conflict or risk of conflict.
- 2.41 You warrant that you have not entered into any **collusive arrangement** in relation to the Works or your Tender for the Works. You must comply with the National Code of Practice for the Construction Industry in relation to such arrangements and must comply with all other requirements of the Code.
- 2.42 You must not **represent** yourself as being employees, partners or agents of the Principal. Nothing in this Contract creates any employment, partnership or agency for any purpose.
- 2.43 You must, when using the Principal's premises or facilities, comply with all **security and office regulations** as notified by the Principal.
- 2.44 The Contract comprises the **entire agreement** between the parties in relation to the Works and supersedes any prior representations, negotiations, writings, memoranda and agreements. The Contract may only be varied by the written agreement of the parties.
- 2.45 Any **notice**, or other communication required or otherwise to be given or sent to the Principal or to you under the Contract must be in writing and will be deemed to have been given: if delivered by hand, upon delivery; if sent by prepaid mail, upon the expiration of two days after the date on which it was so sent; if sent by facsimile, upon the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; if sent by electronic mail, upon the sender's computer recording that the message has been successfully transmitted to the recipient's electronic mail address, to the persons and addresses, facsimile numbers or email addresses set out in the Schedule or on such other person, address, facsimile number or email address as may be notified by a party to the other from time to time.
- 2.46 Any **provision of the Contract** which is illegal, void or unenforceable will not affect the validity of the remaining provisions of the Contract.
- 2.47 The **Contract is governed by and construed** in accordance with the law for the time being in force in the Territory and the parties submit to the jurisdiction of the courts of the Australian

Capital Territory. You must ensure that you comply with the laws from time to time in force in the Territory in performing its obligations under the Contract.

2.48 Parts 4, 5A and 5B form part of the Conditions of Contract.

2.49 The Principal may from time to time advise you of the appointment of a Principal's representative who will act as the agent of the Principal under the Contract (subject to such limits as advised by the Principal to you).

## Attachments

### **Contractor Brief - Isaacs\_Ridge\_Trails\_upgrade-151127\_ContractorBrief**

#### **Attachments:**

ATTACHMENT\_A\_\_Isaacs\_Ridge\_Trails\_Management\_Plan

ATTACHMENT\_B\_\_Location\_Map

ATTACHMENT\_C\_\_General\_Site\_Controls\_for\_Contractors

ATTACHMENT\_D\_\_Downhill\_Mtn\_Bike\_Upgrade\_&\_Construction

### Part 3 Ethical Suppliers Declaration - Tender

#### STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
  - a. **“Adverse Ruling”** means a ruling by any court, tribunal, board, commission or other entity with jurisdiction to determine employee and industrial relations matters to the effect that the Tenderer has breached its Employee and Industrial Relations Obligations.
  - b. **“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the Tenderer with his or her labour.
  - c. **“Employee and Industrial Relations Obligations”** means compliance with:
    - (a) Prescribed Legislation;
    - (b) the orders, directions or decisions of any court, tribunal, board, commission or other entity with jurisdiction to consider the interpretation, breach or any other matter concerning any Prescribed Legislation;
    - (c) Industrial Instruments; and
    - (d) the IRE Strategy.’
  - d. **“Full Details”** means the details of:
    - (a) the nature of the breach or offence or alleged breach or offence;
    - (b) any conviction recorded or adverse finding made in respect of the breach or offence;
    - (c) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the breach or offence and the maximum penalty that could have been imposed under the Prescribed Legislation.
    - (d) the name of the court, tribunal, board, commission or other entity; the State or Territory in which the proceeding or prosecution is brought; the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity; and
  - e. the name of the person or other legal entity against which the finding or conviction was made or the proceeding or prosecution was initiated.
  - f. **“Industrial Instruments”** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
  - (b) concerns the relationship of an employer and the employer's employees.
- g. **"IRE Certificate"** has the same meaning as in the ACT Government's IRE Strategy;
- h. **"IRE Strategy"** means the ACT Government's *Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects*, as amended from time to time,
- i. **"Prescribed Legislation"** means each of the following:
- (a) Industrial Instruments applicable to the Tenderer;
  - (b) *Long Service Leave Act 1976* (ACT);
  - (c) *Work Safety Act 2008* (ACT);
  - (d) *Long Service Leave (Portable Schemes) Act 2009* (ACT);
  - (e) *Workers' Compensation Act 1951* (ACT);
  - (f) *Workplace Relations Act (1996)* (Cth);
  - (g) *Fair Work Act 2009* (Cth);
  - (h) *Superannuation Guarantee (Administration) Act 1992* (Cth);
  - (i) *Building and Construction Industry Improvement Act 2005* (Cth);
  - (j) *Workplace Gender Equality Act 2012* (Cth);
  - (k) *Paid Parental Leave Act 2010* (Cth);
  - (l) *Payroll Tax Act 1987* (ACT);
  - (m) *Work Health and Safety Act 2011* (ACT);
  - (n) *Fair Work (Building Industry) Act 2012* (Cth);
  - (n) any Regulations made under the above Acts;
  - (o) any laws of the Commonwealth or the Australian Capital Territory which vary or replace the above Acts or Regulations, or any part of them; and
  - (p) any other Acts or Regulations of the Commonwealth or the Australian Capital Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations.
- j. **"Prescribed Works or Services"** means works or services that require the exertion of labour by Employees.
- k. **"Project"** means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah]; and

1. "Tenderer" means [insert full legal name of Tenderer including the ACN/ABN as per that identified on the Tender].
2. I am authorised on behalf of the Tenderer to make this declaration.
3. The Tenderer holds a current IRE Certificate.
4. The Tenderer has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation
- True (delete 4A and initial)  Not true (answer 4A)
- 4A. The Tenderer has not complied with the following Prescribed Legislation.
- [Insert Full Details of the failure to comply with Prescribed Legislation]**
5. The Tenderer has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.
- True (delete 5A and initial)  Not true (answer 5A)
- 5A. The Tenderer has not recognised the rights of Employees to union membership and representation in the following respects.
- [Insert Full Details of how the Tenderer has not recognised the rights of Employees to union membership and representation]**
6. The Tenderer has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.
- True (delete 6A and initial)  Not true (answer 6A)
- 6A. The Tenderer has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:
- [Insert Full Details of how the Tenderer has failed to comply with all amendments to wages and conditions of employment]**
7. In the preceding 24 months of the date of this declaration there have been no findings against the Tenderer by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation, including a finding of a breach in a non-confidential consent order.
- True (delete 7A and initial)  Not true (answer 7A)
- 7A. There have been the following findings (Full Details of which are provided) against the Tenderer by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation:
- [Set out Full Details of findings]**

8. In the preceding 24 months of the date of this declaration there have been no convictions under the Prescribed Legislation against the Tenderer.

True (delete 8A and initial)  Not true (answer 8A)

8A. There have been the following convictions under the Prescribed Legislation against the Tenderer:

**[Set out Full Details of convictions]**

9. There are currently no proceedings or prosecutions against the Tenderer in respect of a breach of any Prescribed Legislation.

True (delete 9A and initial)  Not true (answer 9A)

9A. There are currently the following proceedings or prosecutions against the Tenderer in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

10. The Tenderer has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 10A and initial)  Not true (answer 10A)

10A. The Tenderer has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
[Signature of person making the declaration]]

\_\_\_\_\_  
[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

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[Full name, qualification and address of person before whom the declaration is made  
(in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before—**

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)  
Bailliff  
Bank officer with 5 or more continuous years of service  
Building society officer with 5 or more years of continuous service  
Chief executive officer of a Commonwealth court  
Clerk of a court  
Commissioner for Affidavits  
Commissioner for Declarations  
Credit union officer with 5 or more years of continuous service  
Employee of the Australian Trade Commission who is:
  - (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that placeEmployee of the Commonwealth who is:
  - (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that placeFellow of the National Tax Accountants' Association  
Finance company officer with 5 or more years of continuous service  
Holder of a statutory office not specified in another item in this list  
Judge of a court  
Justice of the Peace  
Magistrate  
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961  
Master of a court  
Member of Chartered Secretaries Australia  
Member of Engineers Australia, other than at the grade of student  
Member of the Association of Taxation and Management Accountants  
Member of the Australasian Institute of Mining and Metallurgy  
Member of the Australian Defence Force who is:
  - (a) an officer; or
  - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
  - (c) a warrant officer within the meaning of that ActMember of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
Member of:
  - (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) a Territory legislature; or
  - (d) a local government authority of a State or TerritoryMinister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961  
Notary public  
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
Permanent employee of:
  - (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority; or
  - (c) a local government authority;with 5 or more years of continuous service who is not specified in another item in this list  
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
Police officer  
Registrar, or Deputy Registrar, of a court  
Senior Executive Service employee of:
  - (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authoritySheriff  
Sheriff's officer  
Teacher employed on a full-time basis at a school or tertiary education institution

## Part 4

1.1 In these Conditions of Contract (including this Part 4) the following terms are defined:

**“Adverse Ruling”** means a ruling by any court, tribunal, board, commission or other entity with jurisdiction to determine employee and industrial relations matters to the effect that the You or any Subcontractor breached its Employee and Industrial Relations Obligations.

**“Employee”** means a natural person who is employed under a contract of service (excluding professional or information technology services) to provide the You or a Subcontractor with his or her labour.

**“Employee and Industrial Relations Obligations”** means compliance with:

- (a) Prescribed Legislation;
- (b) the orders, directions or decisions of any court, tribunal, board, commission or other entity with jurisdiction to consider the interpretation, breach or any other matter concerning any Prescribed Legislation;
- (c) Industrial instruments; and
- (d) the IRE Strategy.

*Note: Examples of Employee and Industrial Relations Obligations may include payment of remuneration; training; annual holidays; long service leave entitlements; occupational health and safety requirements; workers’ compensation; injury management, (including rehabilitation); legal age of employment; discrimination; freedom of association and superannuation. This list is non exhaustive.*

**“Ethical Suppliers Declaration - Contract** means a statutory declaration in the form set out in Part 4 (or such other modified form of statutory declaration as approved by the Principal and advised to You from time to time).

**“Full Details”** means the details of:

- (a) the nature of the breach or offence or alleged breach or offence;
- (b) any conviction recorded or adverse finding made in respect of the breach or offence;
- (c) any penalty or orders imposed by a court, tribunal, board, commission or other entity in respect of the breach or offence and the maximum penalty that could have been imposed under the Prescribed Legislation.
- (d) the name of the court, tribunal, board, commission or other entity; the State or Territory in which the proceeding or prosecution is brought; the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, board, commission or other entity; and
- (e) the name of the person or other legal entity against which the finding or conviction was made or the proceeding or prosecution was initiated.

**“Industrial Instruments”** means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; or
- (b) concerns the relationship of an employer and the employer’s employees.

**“IRE Certificate”** has the same meaning as set out in the IRE Strategy.

**“IRE Strategy”** means the Principal’s *“Compliance with Industrial Relations and Employment Obligations Strategy for ACT Government Capital Works Projects”* as amended from time to time, or such substituted policy or strategy of the Principal.

**“Prescribed Legislation”** means:

- (a) Industrial Instruments applicable to the Contractor, a supplier or Subcontractor;
- (b) *Long Service Leave Act 1976 (ACT)*;
- (c) *Work Safety Act 2008 (ACT)*;
- (d) *Long Service Leave (Portable Schemes) Act 2009 (ACT)*;
- (e) *Workers’ Compensation Act 1951 (ACT)*;
- (f) *Workplace Relations Act (1996) (Cth)*;
- (g) *Fair Work Act 2009 (Cth)*;
- (h) *Superannuation Guarantee (Administration) Act 1992 (Cth)*;
- (i) *Building and Construction industry Improvement Act 2005 (Cth)*;
- (j) *Workplace Gender Equality Act 2012 (Cth)*;
- (k) *Paid Parental Leave Act 2010 (Cth)*;
- (l) *Payroll Tax Act 1987 (ACT)*;
- (m) *Work Health and Safety Act 2011 (ACT)*;
- (n) *Fair Work (Building Industry) Act 2012 (Cth)*
- (o) Any Regulations made under the above Acts;
- (p) Any laws of the Commonwealth or the Australian Capital Territory which vary or replace the above Acts or Regulations, or any part of them; and
- (q) any other Acts or Regulations of the Commonwealth or the Australian Capital Territory, which deal with matters relating to industrial relations, employment and/or workplace safety obligations.

**“Prescribed Works or Services”** means works or services that require the exertion of labour by Employees.

**“Project Compliance Audit”** has the same meaning as in the IRE Strategy.

**"Subcontractor"** means any subcontractor engaged by You or sub-subcontractor engaged by your subcontractor.

- 1.2 This Part 4 applies to the extent that the Contract provides for the performance of Prescribed Works or Services.

#### **Provision of Ethical Suppliers Declaration**

- 2.1 You must provide the Principal with an Ethical Suppliers Declaration - Contract:
- (a) If requested by the Principal, at the time you enter into this Contract; and
  - (b) If requested in writing by the Principal, at the time you request a progress payment; and
  - (c) Within 7 days of the date of a written request from the Principal to you to provide the same.
- 2.2 The failure by you to provide the Ethical Suppliers Declaration - Contract in accordance with this Part or the making of a false statement in a statutory declaration by the you or your representative making the declaration will constitute a ground for termination as set out in clause 2.11 of the Conditions of Contract.
- 2.3 If the you fail to provide the Ethical Suppliers Declaration in accordance with this Part the Principal may withhold payment of monies due to you until the statutory declaration is received.
- 2.4 The Principal may by written notice to you request you obtain a statutory declaration from any Subcontractor in substantially the same form of the Ethical Suppliers Declaration - Contract (and provide the same to the Principal within 21 days of the date of the written notice). You must use your reasonable endeavours to ensure the Subcontractor supplies the declaration to enable you to comply with the request of the Principal.
- 2.5 You must ensure terms are included in all agreements with Subcontractors requiring them to provide statutory declarations to you to enable you to satisfy your obligations under this Part.

#### **Compliance with Employee and Industrial Relations Obligations**

- 3.1 You (and all Subcontractors) must comply with all Employee and Industrial Relations Obligations.
- 3.2 Without limiting clause 3.1 Employees must be paid wages at rates and employed under conditions of employment not less favourable than those required by any Prescribed Legislation which applies to you (or a Subcontractor, as applicable).
- 3.3 You and all Subcontractors must keep proper records and documents evidencing:
- (a) the wages paid to Employees
  - (b) so far as practicable, the time worked by Employees;
  - (c) payments made to third parties on behalf of Employees; and

- (d) compliance with all Employee and Industrial Relations Obligations.
- 3.4 You must, at all reasonable times allow, and must require Subcontractors to allow, the Principal or any person authorised by the Principal (including any person conducting a Project Compliance Audit):
- (a) to enter upon the Site to inspect the conditions in which Employees are employed;
  - (b) to enter upon the Site or any premises occupied by you or a Subcontractor, to inspect and copy, as applicable, their:
    - (i) wage books;
    - (ii) time sheets;
    - (iii) records evidencing payment of superannuation entitlements;
    - (iv) records evidencing payment of long service leave entitlements; and
    - (v) other records relevant to establishing compliance with the Employee and Industrial Relations Obligations;
  - (c) to enter upon the Site or any premises occupied by you or a Subcontractor, to interview any persons as necessary to demonstrate the compliance or otherwise by you and/or the Subcontractor(s) with Employee and Industrial Relations Obligations.
- 3.5 You must, take all reasonable actions and comply with all reasonable requests of the Principal or its authorised persons, and must require Subcontractors to take all reasonable actions and comply with all reasonable requests to ensure compliance with this Part (or the equivalent condition in any agreement with a Subcontractor). You (and any of your Subcontractors) will have no claim against the Principal for costs incurred by you (or a Subcontractor) in responding to any requests of the Principal made in accordance with or under this Part 4.

#### **Disclosure regarding Employee and Industrial Relations Obligations**

- 4.1 If at any time during the term of the Contract, an Adverse Ruling is made regarding you, you must within 7 days of the making of the Adverse Ruling provide a statutory declaration by an authorised representative setting out:
- (a) the Full Details of the Adverse Ruling;
  - (b) If applicable, any additional information which in your opinion is relevant to the Adverse Ruling, including your grounds for any objection to the Adverse Ruling being relied upon as a ground for termination of this Contract;
  - (c) If applicable, details of any information on which the Adverse Ruling is based which in your opinion is incorrect, incomplete or otherwise unfairly prejudicial to you for purposes of your dealings with the Principal under this Contract; and
  - (d) If applicable, any existing or planned remedial measures which you have taken or will be taking to prevent a breach or offence similar to the non compliance, breach or offence on which the Adverse Ruling is based from recurring.
- 4.2 The:
- (a) failure by you to provide the statutory declaration in accordance with this Part;

- (b) the making of a false statement in a statutory declaration provided by you or your representative making the declaration; or
- (c) and Adverse Ruling being made against you,

will constitute a breach entitling the Principal to terminate the Contract.

4.3 In addition to any other rights set out in this Contract the Principal may take such action against you as provided for in the IRE Strategy in the event of an Adverse Ruling being made against you.

4.4 The remedies set out in this Part are in addition to and do not limit any other rights or remedies of the Principal under this contract or otherwise at law.

#### **Agreements with Subcontractors**

5.1 You must ensure all agreements with Subcontractors contain provisions:

- (a) requiring Subcontractors to comply with all Employee and Industrial Relations Obligations applicable to them and their employees; and
- (b) imposing obligations on the Subcontractor in the same form as those set out in this Part and imposed on you (subject to any necessary variation to reflect the different parties).

#### **IRE Strategy**

6.1 You must ensure all Subcontractors engaged to perform Prescribed Works or Services under an agreement entered into on or after 1 January 2012 (or such later date as may be advised by the Principal to you):

- (a) hold a current IRE Certificate;
- (b) maintain a current IRE Certificate during the term of their agreement; and
- (c) that the obligations set out in this Part are included in the relevant agreement with the Subcontractor.

#### **IRE Certificate**

7.1 Where this Contract is entered into on or after 1 January 2012 (or such later date as may be advised by the Principal to you) you must hold an IRE Certificate and must maintain a current IRE Certificate during the term of the Contract.

#### **Ethical Suppliers Declaration - Contract**

8.1 The form of Ethical Suppliers Declaration – Contract is as follows:

## STATUTORY DECLARATION

Statutory Declarations Act 1959 (Cth)

I, [Name, address and occupation of person making declaration] make the following declaration under the Statutory Declarations Act 1959 (Cth),

1. In this declaration a reference to:
  - a. "Contract" means an agreement which has or will shortly be entered into between the Australian Capital Territory and the Contractor for the provision of works in respect of the Project.
  - b. "Contractor" means [insert full legal name of Contractor including the ACN/ABN as per that identified on the Contract];
  - c. "Project" means Project No [insert ACT Government Project no] for [insert sufficient details to identify nature of project, e.g. for the construction of school at Block 11 Section 66 Kambah];
  - d. the words or terms "Adverse Ruling", "Employee", "Employee and Industrial Relations Obligations", "Industrial Instruments", "IRE Certificate", "Prescribed Legislation", "Prescribed Works or Services" and "Subcontractors" have the same meaning as defined in the Contract; and
  - e. all other capitalised words or terms have the same meaning as defined in the Contract.
2. I am authorised on behalf of the Contractor to make this declaration.
3. All Employees of the Contractor who have at any time been employed by the Contractor in respect of the Project have, at the date of this declaration, been paid all moneys due and payable to them in respect of their employment on the work under the Contract.
4. The Contractor has, at the date of this declaration paid all amounts it is required to pay to third parties on behalf of Employees as required by Prescribed Legislation.
5. All Subcontractors have been paid all moneys due and payable to them in respect of work under the Contract and any subcontract with the Subcontractor.
6. The Contractor holds a current IRE Certificate.
7. The Contractor has in the preceding 24 months of the date of this declaration complied with all Prescribed Legislation
  - True (delete 7A and initial)
  - Not true (answer 7A)
- 7A. The Contractor has not complied with the following Prescribed Legislation.

**[Insert Full Details of the failure to comply with Prescribed Legislation]**
8. The Contractor has in the preceding 24 months of the date of this declaration recognised the rights of its Employees to union membership and representation.

True (delete 8A and initial)  Not true (answer 8A)

- 8A. The Contractor has not recognised the rights of Employees to union membership and representation in the following respects.

**[Insert Full Details of how the Contractor has not recognised the rights of Employees to union membership and representation]**

9. The Contractor has in the preceding 24 months of the date of this declaration complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency.

True (delete 9A and initial)  Not true (answer 9A)

- 9A. The Contractor has not complied with all amendments to wages and conditions of employment for their Employees as decided by any authorised industrial or wage-setting agency in the following respects:

**[Insert Full Details of how the Contractor has failed to comply with all amendments to wages and conditions of employment]**

10. In the preceding 24 months of the date of this declaration there have been no findings against the Contractor by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation, including a finding of a breach in a non-confidential consent order.

True (delete 10A and initial)  Not true (answer 10A)

- 10A. There have been the following findings (Full Details of which are provided) against the Contractor by a court, tribunal, commission, board or other entity with jurisdiction of a breach of any Prescribed Legislation:

**[Set out Full Details of findings]**

11. In the preceding 24 months of the date of this declaration there have been no convictions under the Prescribed Legislation against the Contractor.

True (delete 11A and initial)  Not true (answer 11A)

- 11A. There have been the following convictions under the Prescribed Legislation against the Contractor:

**[Set out Full Details of convictions]**

12. There are currently no proceedings or prosecutions against the Contractor in respect of a breach of any Prescribed Legislation.

True (delete 12A and initial)  Not true (answer 12A)

- 12A. There are currently the following proceedings or prosecutions against the Contractor in respect of a breach of Prescribed Legislation.

**[Set out Full Details of proceedings or prosecutions]**

13. The Contractor has not been required to implement any remedial measures to ensure future compliance with the Prescribed Legislation.

True (delete 13A and initial)  Not true (answer 13A)

13A. The Contractor has been required to implement the following remedial measures to ensure future compliance with the Prescribed Legislation:

**[Set out Full Details of the remedial measures implemented]**

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
[Signature of person making the declaration]]

\_\_\_\_\_  
[Print name of person making the declaration]

Declared at [place] on [day] of [month] [year]

Before me:

\_\_\_\_\_  
[Signature of person before whom the declaration is made]

\_\_\_\_\_  
[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years – see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 – see section 5A of the Statutory Declarations Act 1959.

**A statutory declaration under the Statutory Declarations Act 1959 may be made before--**

- (1) A person who is currently licensed or registered under a law to practise in one of the following occupations:
- |                      |                      |                    |
|----------------------|----------------------|--------------------|
| Chiropractor         | Dentist              | Legal practitioner |
| Medical practitioner | Nurse                | Optometrist        |
| Patent attorney      | Pharmacist           | Physiotherapist    |
| Psychologist         | Trade marks attorney | Veterinary surgeon |
- (2) A person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
- (3) A person who is in the following list:
- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)  
Bailliff  
Bank officer with 5 or more continuous years of service  
Building society officer with 5 or more years of continuous service  
Chief executive officer of a Commonwealth court  
Clerk of a court  
Commissioner for Affidavits  
Commissioner for Declarations  
Credit union officer with 5 or more years of continuous service  
Employee of the Australian Trade Commission who is:
- (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that place
- Employee of the Commonwealth who is:
- (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
  - (c) exercising his or her function in that place
- Fellow of the National Tax Accountants' Association  
Finance company officer with 5 or more years of continuous service  
Holder of a statutory office not specified in another item in this list  
Judge of a court  
Justice of the Peace  
Magistrate  
Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the Marriage Act 1961  
Master of a court  
Member of Chartered Secretaries Australia  
Member of Engineers Australia, other than at the grade of student  
Member of the Association of Taxation and Management Accountants  
Member of the Australasian Institute of Mining and Metallurgy  
Member of the Australian Defence Force who is:
- (a) an officer; or
  - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1982 with 5 or more years of continuous service; or
  - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
Member of:
- (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) a Territory legislature; or
  - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1961  
Notary public  
Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
Permanent employee of:
- (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority; or
  - (c) a local government authority;
- with 5 or more years of continuous service who is not specified in another item in this list  
Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
Police officer  
Registrar, or Deputy Registrar, of a court  
Senior Executive Service employee of:
- (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority
- Sheriff  
Sheriff's officer  
Teacher employed on a full-time basis at a school or tertiary education institution

## **PART 5A APPOINTMENT OF PRINCIPAL CONTRACTOR**

### **5A.1 APPLICATION OF PART 5A**

This Part 5A applies if you have been appointed as principal contractor for the purpose of the WHS Legislation (refer to the Schedule). Part 5A.4 applies generally to the Contract.

### **5A.2 ENGAGEMENT AS PRINCIPAL CONTRACTOR**

The Principal:

- (a) engages you as principal contractor;
- (b) authorises you to have management or control of the Works site; and
- (c) engages you to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011 (ACT)*.

### **5A.3 PREPARATION OF AND COMPLIANCE WITH WHS MANAGEMENT PLAN**

5A.3.1 You must:

- (a) prepare and supply to the Principal a WHS Management Plan; and
- (b) provide the WHS Management Plan before beginning work under the Contract.

5A.3.2 The Principal will notify you as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 7 days.

5A.3.3 The acceptance by the Principal of your WHS Management Plan will not relieve you of your obligations to comply with and demonstrate compliance with this Contract and WHS Legislation.

5A.3.4 You must regularly review your WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Contract and WHS Legislation.

5A.3.5 You must ensure all your employees, subcontractors and suppliers comply with the WHS Management Plan and any directions, notices or other notifications issued by you referable to work health and safety matters

### **5A.4 WHS MANAGEMENT PLAN**

For the purpose of this Contract (including but not limited to this Part 5A) "WHS Management Plan" means a work health and safety management plan that addresses:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work under the Contract;
- (b) the arrangements in place, or to be implemented, between any persons conducting a business or undertaking at the workplace where the work under the Contract is being undertaken, for consultation, cooperation and coordination of activities in relation to compliance with their duties under work health and safety legislation;

- (c) the arrangements in place, or to be implemented, for managing any work health and safety incidents that occur, including incident reporting procedures, corrective action procedures, record-keeping and reporting requirements (including project-specific and general reporting and reporting to the Principal with respect to work health and safety matters), project-specific emergency plans and first aid procedures;
- (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
- (e) the arrangements for the collection and recording, and any assessment, monitoring and review of safe work method statements at the workplace;
- (f) ensuring that work health and safety is a compulsory agenda item at all monthly meetings (or equivalent) and ensuring that the outcomes of those agenda items are communicated to the Principal;
- (g) management of work health and safety generally, including any work health and safety policy, details of any work health and safety management system (including certification, inspection and audit programs), training and induction programs (including work health and safety generally, emergency procedures and use of emergency equipment), the process of communication and dispute resolution on work health and safety matters;
- (h) management of subcontractors, including induction, training, development of safe work method statements, job safety assessments or equivalent documentation, the obligation to consult, cooperate and coordinate activities, the process of communication and the process for ensuring subcontractor compliance with the WHS Management Plan;
- (i) management of project hazards and risks generally, including but not limited to work involving:
  - (i) fall hazards;
  - (ii) telecommunications towers;
  - (iii) demolition;
  - (iv) disturbance or removal of asbestos;
  - (v) structural alterations requiring temporary supports;
  - (vi) confined spaces;
  - (vii) excavation deeper than 1.5 metres;
  - (viii) tunnels;
  - (ix) use of explosives;
  - (x) pressurised gas distribution mains and consumer piping;
  - (xi) chemical, fuel and refrigerant lines;
  - (xii) electrical work, including involving energised electrical installations and services;
  - (xiii) hazardous atmospheres;
  - (xiv) tilt-up and precast concrete;

- (xv) roadways or railways used by road or rail traffic;
  - (xvi) movement of powered mobile plant;
  - (xvii) extremes of temperature;
  - (xviii) water or other liquids where there is a risk of drowning;
  - (xix) diving;
  - (xx) remote or isolated work;
  - (xxi) above-standard exposure to noise;
  - (xxii) other hazardous manual tasks;
  - (xxiii) exposure to falling objects;
  - (xxiv) abrasive blasting;
  - (xxv) hazardous chemicals and substances; and
  - (xxvi) working in the vicinity of electrical wires; and
- (j) if design forms part of the work under the Contract, proposed design risk assessments, purchasing policies for plant, materials and substances, the process for meeting statutory requirements regarding design and the process for addressing design changes relevant to work health and safety considerations.

## **PART 5B OBLIGATIONS IF NOT PRINCIPAL CONTRACTOR**

### **5B.1 APPLICATION OF PART 5B**

This Part 5B applies if you have not been appointed as principal contractor for the purpose of the WHS Legislation (refer to the Schedule).

### **5B.2 OBLIGATIONS IF NOT PRINCIPAL CONTRACTOR**

Where you are not appointed as the principal contractor (or as the person with control of the site on which the Works are being conducted) you must, and you must ensure all your employees, subcontractors and suppliers, comply with:

- (a) the WHS Management Plan (if any) of the principal contractor, if appointed (or the person appointed by the Principal to have control of the site on which the Works are being conducted, if no principal contractor is appointed); and
- (b) directions, notices and any other notifications issued for or on behalf of the principal contractor (or the person appointed by the Principal to have control of the site on which the Works are being conducted, if no principal contractor is appointed) referable to work health and safety matters.

### **5B.3 WHS MANAGEMENT PLAN**

5B.3.1 If you have been appointed to have control of the site on which the Works are being conducted (see Schedule), you must, unless advised otherwise by the Principal:

- (a) prepare and supply to the Principal a WHS Management Plan either as a discrete plan or as a component of the project plan;
- (b) provide the WHS Management Plan before beginning work under the Contract; and
- (c) ensure all your employees, subcontractors and suppliers comply with the WHS Management Plan and any directions, notices or other notifications issued by you referable to work health and safety matters.

5B.3.2 The Principal will notify you as to the suitability of the submitted WHS Management Plan. The WHS Management Plan will be taken as suitable if the Principal has not responded within 7 days.

5B.3.3 The acceptance by the Principal of your WHS Management Plan will not relieve you of your obligations to comply with and demonstrate compliance with this Contract and the WHS Legislation (if applicable).

5B.3.4 You must regularly review your WHS Management Plan and continue to update and amend it and submit it (as necessary) in accordance with this Contract and WHS Legislation (if applicable).