



Australian Government

AusAID

29 November 2008

<p>Request for Tender</p> <p>Capability Statement</p>

Provincial Road Management Facility

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REQUEST FOR TENDER

Provincial Road Management Facility

AusAID is seeking statements from organisations interested in providing services for the **Provincial Road Management Facility** (the “**Project**”). If your organisation (the “**Organisation**”) chooses to lodge a statement (the “**Capability Statement**”) setting out the Organisation’s capability to provide services required for the Project (the “**Services**”) it must be submitted on the terms of this document and the attached parts (together referred to as the “**Request for Tender**” or “**RFT**”).

No pricing information should be included in the Capability Statement as no price assessment will be made at this stage.

STRUCTURE OF THE RFT

The RFT is separated into two (2) parts. **Part 1** details the Project Specific Capability Statement Conditions. **Part 2** details the Standard Capability Statement Conditions.

Organisations submitting Capability Statements are encouraged to fully inform themselves of the Capability Statement Conditions (both Project Specific and Standard) when preparing their statements and to make any enquiries before the enquiry closing time, referred to in **Clause 2, Part 2**.

AusAID will select from those Organisations submitting Capability Statements a shortlist of Organisations that will be asked to provide detailed proposals for the Services. Your Organisation will be advised by AusAID whether it has been shortlisted.

AusAID's preference is to negotiate hybrid contracts. Hybrid contracts allow for a stream of regular payments made on the basis of a proportion of the inputs expended on the Project, while also providing a stream of payments that are performance based, that is, made on the achievement of milestones and delivery of outputs.

This RFT supersedes any other information or advice provided by AusAID in relation to the Services.

AusAID Contracts Charter

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

PART 1 – PROJECT SPECIFIC CAPABILITY STATEMENT CONDITIONS

1. CAPABILITY STATEMENT PARTICULARS

Closing Time:

(Clauses 6.9 and 6.12, Part 2)

2.00pm Canberra time, **Thursday, 22 January 2009**

Mode of Submission:

(Clause 6.1, Part 2)

Either:

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

or

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

Electronic Tender Lodgement

Address:

(Clause 6.9, Part 2)

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

Canberra Tender Box Address:

(Clause 1.4, Part 2)

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

File Format for Electronic Tenders:

(Clause 4.3, Annex C to Part 2)

PDF (Portable Document Format)

Business Hours:

(Clause 1.12, Part 2)

Monday to Friday, 8.30 am to 5.00 pm. Excluding
Public holidays.

Number of Copies of Capability Statement:

(Clause 1.6 and 1.7, Part 2)

For electronic lodgement

- One (1) electronic copy; and
- One (1) electronic copy of the Tenderer's Capability Statement Declaration.

For hard copy lodgement:

- One (1) Original (marked "Original") plus 4 copies; and
- One (1) Original of the Tenderer's Capability Statement Declaration.
- One (1) CD containing PDF files of the Tenderer's Capability Statement and the Tenderer's Capability Statement Declaration.

Endorsement of Hard Copy Capability Statements:

(Clause 1.14, Part 2)

**"Capability Statement for the Provincial Road
Management Facility."**

Contact Person:
(Clause 2.1, Part 2)

Ruth Megirian
Contact fax: +61 2 6206 4885
Email address: Ruth.Megirian@ausaid.gov.au

Page limits:
(Clause 7.1(e), Part 2)

Capability Statement – **12** pages plus annexes.

Information:

The following documents are attached:

1. Facility Design Document (FDD)
2. FDD – Annexes 1, 2, 7 and 9
3. FDD – Annex 3
4. FDD – Annex 4
5. FDD – Annex 6

(Annexes 5 and 8 of the Facility Design Document will be made available to short-listed tenderers only.)

The documents are available from the AusTender website: <https://www.tenders.gov.au/>

2. CAPABILITY STATEMENTS

2.1 The Capability Statement must contain all information

- (a) that substantively and individually addresses the selection criteria provided in **Clause 3 of this Part**; and
- (b) includes the required annex(es) described in **Clause 4 of this Part**

3. SELECTION CRITERIA

3.1 The following criteria will be used to establish the short list on the basis of technical merit:

	Selection Criteria	Weighting
A	Ability to provide appropriate management and administrative support, including financial administration, for the facility.	15%
B	Demonstrated experience in designing, planning and managing road development programs at the sub-national level with a focus on public expenditure management, public sector planning and road maintenance.	30%
C	Strategy for identifying and engaging long and short-term expertise in public administration, public expenditure management, and roads engineering, design and planning.	25%
D	Demonstrated understanding of key issues and risks in the sub-national political economy and roads sector in the Philippines.	30%
	TOTAL	100%

4. ANNEXES

Annex 1 – Past Experience Forms

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

PAST EXPERIENCE FORM

Activity Name:	
Activity Value:	
Activity Location(s):	

Activity Duration			
Client/Donor:			
Year Completed:			
Brief description of the activity and the Organisation's role:			
Brief description of activity outcomes:			
Statement of the similarities between this activity and the requirements of the activity currently being tendered and how this activity supports your statements addressing the Statement of Service Capabilities:			
Nominated Activity Referees:			
1. Name:		2. Name:	
Address:		Address:	
Email:		Email:	
Phone:		Phone:	

AusAID reserves the right to verify the accuracy of information with such persons as AusAID may choose.

Tenderers must provide information in the Referees section of the Past Experience Forms in accordance with **Clause 8, Part 2**.

Annex 2 – Commonwealth Government Policies Compliance

Clause 14 and 15, Part 2 may require Organisations to provide information in response to Commonwealth Government policies.

PART 2 – STANDARD CAPABILITY STATEMENT CONDITIONS

Bolded words are defined in the **Clause 1, Part 1** (Capability Statement Particulars) of this RFT.

1. LODGEMENT OF CAPABILITY STATEMENTS

1.1 Capability Statements must be lodged either:

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

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

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

1.4 All documentation submitted in the Capability Statement must be in English.

1.5 Capability Statements submitted by email or facsimile will not be considered

1.6 Organisations must submit the number of copies specified in the Capability Statement Particulars (**Clause 1 of Part 1**). Different numbers of copies may be required for hard copy lodgement and for electronic lodgement.

1.7 A person or persons having authority to lodge the Capability Statement and enter into a contract on behalf of the Organisation must sign the Capability Statement Declaration (**Annex B of this Part**) and submit the completed form along with the Capability Statement.

1.8 AusAID may extend the **Closing Time** at its sole and absolute discretion, and will issue an Addendum accordingly.

Conditions Applying to Electronic Capability Statement Lodgement

1.9 Electronic Capability Statements must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the **Closing Time** and in accordance with the tender lodgement procedures set out in **Annex C of this Part** and on AusTender.

1.10 Capability Statements not submitted in accordance with **Clause 1.9** will be excluded from evaluation.

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

Conditions Applying to Hard Copy Capability Statement Lodgement

- 1.12 For hard copy lodgement, the Organisations is responsible for the delivery of their Capability Statement. The Capability Statement must be placed in AusAID's **Canberra Tender Box**. The Capability Statement must be delivered during **Business Hours** by the **Closing Time**. Failure to submit a Capability Statement in accordance with this clause may render the Capability Statement liable to rejection.
- 1.13 The Original Capability Statement document and any copies requested should be bound using a plastic comb binding, and should contain no plastic page separators.
- 1.14 The Capability Statements should be endorsed with the name of the Project and marked: "Tender Box: Attention **Contact Person**."

2. ENQUIRIES

- 2.1 Any enquiries that Organisations may have must only be directed to the **Contact Person**.
- 2.2 If an Organisation:
- (a) finds any discrepancy, error or omission in the terms and conditions of the RFT; or
 - (b) wishes to make any enquiry, including seeking clarification, of the RFT,
- the Organisation must notify the **Contact Person** in writing, which notice may be sent by means of facsimile transmission or email, as soon as possible and not later than 14 days prior to the **Closing Time**.
- 2.3 AusAID will respond to any Organisation enquiries no later than 7 days prior to the **Closing Time**.
- 2.4 AusAID reserves the right to issue or publish answers to any Organisation's enquiries to all Organisations.

3. LATE CAPABILITY STATEMENTS

Conditions Applying to Capability Statements Lodged Electronically

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

- 3.2 For Capability Statements submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which AusAID will determine whether Capability Statements lodged electronically have been lodged by the Closing Time.
- 3.3 The judgement of AusAID as to the time a Capability Statement has been lodged electronically will be final.

Conditions Applying to Capability Statements Lodged in Hard Copy

- 3.4 A hard copy Capability Statement lodged after the **Closing Time** is a late Capability Statement. Late Capability Statements lodged in hard copy will be registered and returned unopened.
- 3.5 AusAID will reject a late Capability Statement lodged in hard copy, unless the delay in receipt of the Capability Statement is solely due to mishandling by AusAID.
- 3.6 AusAID will not enter into correspondence about the treatment of a late Capability Statement lodged in hard copy.

4. NON-CONFORMING CAPABILITY STATEMENTS

- 4.1 Capability Statements will be regarded as non-conforming if they fail to conform with one or more of the requirements of the RFT.
- 4.2 AusAID reserves the right to seek clarification of non-conforming Capability Statements.
- 4.3 AusAID may, at its absolute discretion, assess a non-conforming Capability Statement.
- 4.4 AusAID will not enter into correspondence about a decision to assess or reject a non-conforming Capability Statement.

5. AMENDMENT OF THE RFT

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

6. ASSESSMENT OF CAPABILITY STATEMENTS

- 6.1 Capability Statements will be assessed by a Technical Assessment Panel (the “**TAP**”). The TAP comprises AusAID representative(s) and independent specialists appointed at AusAID’s sole discretion. Representatives of the Partner Government may also participate. The TAP will assess Capability Statements based on the selection criteria and information provided in the annexes specified in **Part 1**.
- 6.2 TAP members are required to maintain the “commercial-in-confidence” nature of the proceedings of the TAP meeting. TAP members must not discuss matters relating to the technical assessment of any Capability Statement with any party.

- 6.3 AusAID reserves the right to take into account in the assessment of Capability Statements the past performance of the Organisation or any proposed personnel contained in the Capability Statement in accordance with the **Annex(es) of this Part**. TAP members may adjust technical scores as a consequence of past performance.

7. CAPABILITY STATEMENT FORMAT

7.1 The Capability Statement must:

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

8. REFEREES

- 8.1 Organisations must nominate at least two (2) referees who can provide an objective assessment of the quality of relevant and recent work performed by proposed key management and administrative personnel and the organisation. Referees who can supply character references only are not sufficient.

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

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

- 8.3 Organisations must further ensure that nominated referees:

- (a) are available to be contacted in the 4 week period after the Closing Time; and
- (b) are able to provide comments in English.

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

9. **JOINT VENTURES**

- 9.1 AusAID intends to contract with a single legal entity which may comprise either of:
- (a) a single company; or
 - (b) two (2) or more organisations who have formed a legally constituted “Joint Venture” for the purpose of undertaking the Contract.
- 9.2 Tenders by a Joint Venture must be submitted on the basis that details on the activities to be performed and responsibility assumed by each party of the Joint Venture must be clearly specified in the body of the text of the Capability Statement.
- 9.3 AusAID may require parent company guarantees from the parent companies of parties to a Joint Venture.

10. **OWNERSHIP OF CAPABILITY STATEMENTS AND RFT**

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

11. **AusAID’S RIGHTS**

- 11.1 As a Commonwealth Government agency, all AusAID procurement is subject to the Commonwealth Procurement Guidelines. The core principle of Commonwealth procurement is to achieve value for money. AusAID is also bound to conduct its procurement in an ethical, accountable, transparent, efficient and effective manner.
- 11.2 AusAID reserves the right to:
- (a) seek Capability Statements from any organisation;
 - (b) accept or reject any Capability Statement;
 - (c) terminate, extend or vary its procurement process for the Services;
 - (d) request clarification in relation to a Capability Statement;
 - (e) seek information or negotiate with any Organisation that has not submitted a Capability Statement;

- (f) terminate negotiations with the preferred Organisation and commence negotiations with any other Organisation;
- (g) evaluate Capability Statements as AusAID sees appropriate; and
- (h) negotiate with any one or more Organisations.

12. ORGANISATION'S ACKNOWLEDGEMENT

12.1 A Capability Statement is submitted on the following basis:

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

13. DEBRIEFING OF ORGANISATIONS

13.1 If requested, AusAID will provide non-shortlisted Organisations with a written debriefing on the results of the technical assessment of their Capability Statement, including reasons why the organisation was not shortlisted.

13.2 AusAID will not enter into discussion or communications on the content of the Capability Statement debrief once it has been completed.

14. AUSTRALIAN GOVERNMENT AND AUSAID LAWS AND POLICIES

14.1 Freedom of Information

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

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

14.2 Privacy

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

14.3 Access by Australian National Audit Office

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

14.4 Access by Ombudsman

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

access to information, documents, records and agency assets, including those on the Contractor's premises. Such access will apply for the term of the contract and for a period of seven years from the date of expiration or termination.

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

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

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

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

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

14.7 Other Australian Government and AusAID Policies

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

- (b) any other policies published from time to time on <http://www.aisaid.gov.au> or as otherwise notified to Tenderers.

15. FURTHER REQUIREMENTS

- 15.1 Organisations are reminded that Australian law prohibits the direct or indirect provision of support or resources to persons or entities listed by the Minister of Foreign Affairs under the *Charter of the United Nations Act 1945* and/or listed in regulations made under *Division 102 of the Commonwealth Criminal Code 2003*.

Further information about listed persons and entities is available from Department of Foreign Affairs and Trade at www.dfat.gov.au/icat/persons_entities/explanatory_note.html. The national security website includes the list of listed terrorist organisations at: www.nationalsecurity.gov.au.

- 15.2 Organisations should note that the Commonwealth Government has directed all Commonwealth agencies to give the fullest consideration in Commonwealth contracting to Australian or New Zealand goods, materials and associated Services where they represent value for money.
- 15.3 Organisations should be aware that current employees of AusAID cannot be included in Capability Statements for AusAID projects. Former AusAID employees may be included in Capability Statements if doing so does not represent a breach of conflict of interest. See AusAID's Frequently Asked Questions website for further information: www.aisaid.gov.au/business/frequent.cfm.
- 15.4 Tenderers' attention is drawn to AusAID's policy on the Environment as set out in the *Environmental Management Guide for Australia's Aid Program*. This document is available on AusAID's Internet site at <http://www.aisaid.gov.au/keyaid/envt.cfm>.
- 15.5 Organisations should note AusAID's policy on Gender and Development as contained in *Gender and Development – Australia's Aid Commitment* and AusAID's *Guide to Gender and Development*. These documents are available on AusAID's Internet site at www.aisaid.gov.au/keyaid/default.cfm.
- 15.6 AusAID policy requires Organisations to use less experienced professionals on projects where possible. The Organisation must demonstrate in its Capability Statement a commitment to this policy.
- 15.7 The Commonwealth Government has adopted a policy of not purchasing goods or services from suppliers who do not comply with their obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999* ("Act"). If you are currently named as non-compliant for the purposes of the Act you must include, as an annex to your Technical Proposal, a letter of compliance from the Equal Opportunity for Women in the Workplace Agency. Enquiries should be directed to the Equal Opportunity for Women in the Workplace Agency on (02) 9448 8500.
- 15.8 The attention of Organisations is drawn to Commonwealth Government policy to maximise employment opportunities for Aboriginal and Torres Strait Islander people through Commonwealth purchasing. Where opportunities exist, the Organisation

should indicate in its Capability Statement how it will provide employment opportunities for Aboriginal and Torres Strait Islander people, the nature and duration of the employment it proposes to provide and the number of Aboriginal and Torres Strait Islander people who would be involved.

- 15.9 The attention of Organisations is drawn to the *Auditor General Act 1997*, which provides the Auditor General or an authorised person with a right to have, at all reasonable times, access to information, documents and records. AusAID contracts contain an obligation for a Contractor to provide access to premises and records associated with the Contract, and to ensure sub-contractors also provide such access.
- 15.10 The attention of Organisations is drawn to the fact that AusAID contractors are bound to comply with the Information Privacy Principles under the *Privacy Act 1988* and to obligations under the *Privacy Amendment (Private Sector) Act 2000*, in particular to the National Privacy Principles contained in Schedule 3 of the Act.
- 15.11 Organisations should be aware that the *Freedom of Information Act 1982* gives members of the public rights of access to official documents and information in the possession of the Commonwealth Government and its agencies.
- 15.12 The attention of Organisations is drawn to AusAID's *Child projection policy* (<http://www.aisaid.gov.au/publications/pubs.cfm?Type=PubPolicyDocuments>), and in particular the child protection compliance requirements included at Attachment 1 to the policy.
- 15.13 Organisations must keep any discussions or contact with AusAID in connection with the Capability Statement, the RFT and any contract negotiations confidential. Any unauthorised approach by an Organisation to an AusAID officer or discussion of matters pertaining to the procurement process will be considered a breach of confidentiality.

16. APPLICABLE LAW

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

ANNEX A - AUSAID USE OF PERFORMANCE INFORMATION

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

including law enforcement agencies in relation to a person who is proposed for inclusion in a Capability Statement or a Organisation.

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

ANNEX B - CAPABILITY STATEMENT DECLARATION

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

1. DEFINITIONS

1.1 In this declaration:

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

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

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

2. BASIS OF DECLARATION

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

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

2.3 I declare as follows:

3. THE OFFER

3.1 The Capability Statement is accurate in every respect.

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

3.3 I acknowledge and agree to the matters specified in **Clause 11** (AusAID’s Rights) and **Clause 12** (Organisation’s Acknowledgement) of Part 2.

3.4 I acknowledge that each party constituting the Organisation is bound jointly and severally by this Capability Statement.

4. ADDENDA TO THE REQUEST FOR TENDER

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

Number _____ Dated _____ Number _____ Dated _____

5. ADDRESS OF ORGANISATION

Address or Registered Office of Organisation

Address for service of notices (NOT PO. BOX)

Telephone Number: Fax Number:

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

insert name and title

Signature

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

1. AUSTENDER, THE AUSTRALIAN GOVERNMENT ONLINE TENDER SYSTEM

- 1.1 AusTender is the online tendering system for Australian Government Agencies. AusTender allows tenderers to download tender documentation and upload tender responses. Organisations must first register with AusTender at <https://www.tenders.gov.au>.
- 1.2 Access to and use of AusTender is subject to terms and conditions. Organisations must agree to comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender.
- 1.3 It is the responsibility of Organisations to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither AusAID nor the Commonwealth take any responsibility for any problems arising from Organisations' infrastructure and/or Internet connectivity.
- 1.4 Organisations acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 1.5 Organisations must inform themselves concerning all security measures and other aspects of the AusTender technical environment. Organisations must make their own assessment of the AusTender system prior to using it for any matter related to this RFT and no responsibility will be accepted by AusAID arising in respect of any use or attempted use by any party of AusTender.

2. REGISTERED ORGANISATIONS AND NOTICES

- 2.1 In the event that AusAID elects to vary or supplement this RFT or change the conditions of tender, it will make reasonable efforts to inform tenderers in accordance with this **Clause 2**.
- 2.2 Organisations may be informed by notices and other information issued as addenda posted on the webpage for this RFT on AusTender.
- 2.3 Organisations who have registered and downloaded the tender documentation will be notified by AusTender via email of any addenda issuance. It is in the interest of tenderers to ensure they have correctly recorded their contact details prior to downloading tender documentation. If tenderers have not recorded their details correctly, they should amend their details and download the tender documentation again.
- 2.4 Organisations are required to log in to AusTender and collect addenda as notified.

- 2.5 The Commonwealth will accept no responsibility if an Organisation fails to become aware of any addendum notice which would have been apparent from a visit to the AusTender page for this RFT.
- 2.6 If an Organisation has obtained tender documentation other than from AusTender, they must visit AusTender, register as a user and download the tender documentation for this RFT.

3. **AUSTENDER HELP DESK**

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

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

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

4. **PREPARING TO LODGE A CAPABILITY STATEMENT ELECTRONICALLY**

Virus Checking

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

Capability Statement File Formats, Naming Conventions and Sizes

- 4.2 Organisations must lodge their Capability Statement in accordance with the requirements set out in this **Clause 4** for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the Capability Statement not uploading successfully and/or may eliminate the bid from consideration.
- 4.3 AusAID will accept tenders lodged in the **File Formats for Electronic Capability Statements** specified in the Capability Statement Particulars (**Clause 1 of Part 1**).
- 4.4 The Capability Statement file name/s must:
- (a) incorporate the Organisation's company name
 - (b) reflect the various parts of the Capability Statement they represent, where the Capability Statement comprises multiple files;
 - (c) not include spaces, non-alpha/numeric characters and symbols; and
 - (d) not exceed 20 characters.

4.5 Capability Statement files:

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

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

- (a) transmit the Capability Statement files as a compressed (zip) file not exceeding 5 megabytes; and/or
- (b) lodge the Capability Statement in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the Capability Statement.

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

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

Scanned or Imaged Material, including Statutory Declarations

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

5. ELECTRONIC LODGEMENT PROCESS

5.1 Before submitting an electronic Capability Statement, Organisations must:

- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
- (b) refer to AusTender's Help guidance, if required, on uploading tenders;
- (c) take all steps to ensure that the Capability Statement is free from anything that might reasonably affect useability or the security or operations of AusTender and/or AusAID computing environment;

- (d) ensure that the Capability Statement does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by AusAID; and
 - (e) ensure that the Capability Statement complies with all file type, format, naming conventions, size limitations or other requirements specified in **Clause 4** above or otherwise advised by AusAID or required by AusTender.
- 5.2 Organisations must allow sufficient time for Capability Statement lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Time.
- 5.3 Organisations should be aware that holding the “Lodge a Response” page in the web browser will not hold the electronic tender box open beyond the Closing Time. An error message will be issued if the lodgement process is attempted after the Closing Time.
- 5.4 Capability Statements lodged through AusTender will be deemed to be authorised by the Organisation.
- 5.5 If Organisations have any problem in accessing the AusTender website or uploading a Capability Statement they must contact AusAID via the nominated Contact Officer (**Clause 1 of Part 1**) or the AusTender Help Desk (**Clause 3.1** above) **prior to the Closing Time**. Failure to do so will exclude a Capability Statement from consideration.
- 6. **LATE CAPABILITY STATEMENTS, INCOMPLETE CAPABILITY STATEMENTS AND CORRUPTED FILES**
 - 6.1 Any attempt to lodge a Capability Statement electronically after the Closing Time will not be permitted by AusTender. Such a Capability Statement will be deemed to be a Late Capability Statement.
 - 6.2 Where electronic submission of a Capability Statement has commenced prior to the Closing Time but concluded after the Closing Time, and upload of the Capability Statement file/s has completed successfully, as confirmed by AusTender system logs, the tender will not be deemed to be a Late Capability Statement. Such Capability Statements will be identified by AusTender to AusAID as having commenced transmission prior to, but completed lodgement after, the Closing Time.
 - 6.3 Where a Capability Statement lodgement consists of multiple uploads, due to the number and/or size of the files, the Organisation must ensure that transmission of all files is completed and receipted before the Closing Time and **Clause 6.2** above will only apply to the final upload.
 - 6.4 Late Capability Statements, incomplete Capability Statements, including those with electronic files that cannot be read or decrypted, Capability Statements which AusAID believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or AusAID’s computing environment, will be excluded from evaluation.

7. **PROOF OF LODGEMENT**

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

8. **AUSTENDER SECURITY**

- 8.1 Organisations acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.
- 8.2 Organisations acknowledge that:
- (a) lodgement of their Capability Statement on time and in accordance with these conditions is entirely their responsibility; and
 - (b) AusAID will not be liable for any loss, damage, costs or expenses incurred by Organisations or any other person if, for any reason, a Capability Statement or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.