

**CUSTOMER CONTRACT REQUIREMENTS**  
**JDAM**  
**CUSTOMER CONTRACT CASG-JSD-DEED918-2017**

## CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this contract to the extent indicated below.

### **1. Prime Contract Special Provisions** The following prime contract special provisions apply to this purchase order

#### **Definitions:**

Contractor Managed Commonwealth Assets means any item owned by Buyer's Customer which is in the care, custody or control of the Seller, its officers, employees, agents or Subcontractors.

Authorisation means a licence, accreditation, permit, registration, regulatory approval, Export Approval or other documented authority (however described), required by law and necessary for the delivery of the Supplies or work to be performed under this Contract.

#### **Authorisations**

Seller shall:

- a. obtain and maintain in full force all Authorisations (other than Export Approvals) required to perform all of the work under this Contract and for the provision of the Goods/Services;
- b. take all reasonable steps to obtain and maintain in full force all Export Approvals required for the provision of the Supplies;
- c. provide a copy of any Authorisations (other than Export Approvals) to Buyer within 5 Working Days of request by Buyer; and
- d. ensure that all work under this Contract is performed and the Goods/Services are provided in accordance with all Authorisations.

#### **Intellectual Property Licence**

Seller warrants that it has all intellectual property (IP) rights and moral rights necessary to provide the Goods/Services to Buyer and Buyer's Customer and to allow Buyer and Buyer's Customer to have the full benefit of the Goods/Services in accordance with this Contract. Seller also warrants that the provision of the Goods/Services in accordance with this Contract will not infringe any third party's IP or moral rights.

#### **Conflict of Interest**

Seller undertakes that, to the best of its knowledge, no conflict of interest exists which is likely to affect the performance of its obligations under this Contract by itself, or by any of its employees, officers, agents or Subcontractors and shall notify Buyer in writing immediately if such a conflict or risk of such a conflict of interest occurs.

#### **Confidential Information**

Seller shall, if required by Buyer's Customer, ensure that Its officers, employees, agents, and Subcontractors engaged in the performance of a Contract give a written undertaking in a form required by Buyer's Customer prior to the disclosure of Confidential Information by Buyer's Customer.

Seller agrees to deliver to Buyer, as required by Buyer; all documents in its possession, power or control which contain or relate to any information that is Confidential Information of Buyer's Customer on the later of:

- a. fifteen (15) days after demand by Buyer; or
- b. the time the documents and other material are no longer required for the purposes of this Contract.

If Buyer makes a demand under this clause, and Seller has placed or is aware that documents containing the Confidential Information are beyond its possession or control, then Seller shall provide full particulars of the whereabouts of the documents containing the Confidential Information of Buyer's Customer, and the identity of the person in whose custody or control they lie.

Seller, when directed by Buyer in writing, agrees to destroy any document in its possession, power or control which contain or relate to

any Confidential Information of Buyer's Customer.

### **Subcontracts**

Seller is hereby notified that Buyer's Customer may be required to publicly disclose Seller's participation in the performance of the Prime Contract.

### **Defence Security**

If Seller requires access to any premises owned or controlled by Buyer's Customer, Seller shall:

- a. comply with any security requirements (Including those contained in the DSM) notified to Seller by Buyer's Customer or Buyer from time to time; and
- b. ensure that its officers, employees, agents and Subcontractors are aware of and comply with the security requirements of Buyer's Customer.

Seller shall:

- a. ensure that its officers, employees, agents and Subcontractors, undertake any security checks, clearances or accreditations as required by Buyer's Customer;
- b. notify Buyer and Buyer's Customer of any changes to circumstances which may affect Seller's capacity to provide the Goods/ Services in accordance with the security requirements; and
- c. provide any written undertakings in respect of security or access to the premises owned or controlled by Buyer's Customer in the form required by Buyer's Customer. The security classification of work to be performed under this Contract will be up to and including Australian Confidential level, or the United States equivalent.

Seller shall:

- a. possess a facility accreditation to meet the requirements of storage of classified material, or equivalent up to and including Confidential level, or equivalent;
- b. possess a facility accreditation and an ICT system accreditation to meet the requirements of document storage, information systems and equipment up to and including Confidential level or equivalent; and
- c. comply with the relevant overseas government Industry security policy.

For the purposes of this clause, accreditations shall be issued by the relevant overseas government security authority, and shall be verified by the Defence Security Authority (DSA) (through a bilateral security instrument or otherwise).

No security classified information furnished or generated under this Contract shall be released to a third party, including a representative of another country, without prior written approval of the originator through Buyer.

Seller shall promptly report to Buyer and Buyer's Customer any instance in which it is known or suspected that security classified information furnished or generated under this Contract has been lost or disclosed to unauthorised parties, including a representative of another country.

All security classified information transmitted between the parties or a party and a Subcontractor, in Australia, whether generated in Australia or overseas, shall be subject to the terms of Part 2:33 of the eDSM, as amended from time to time.

All security classified information transmitted between the parties or a party and a Subcontractor located overseas, whether generated in Australia or by another country, shall be subject to the laws of the overseas country regarding the custody and protection of security classified information, and to any bilateral security instrument between Australia and the overseas country.

If there has been a breach by Seller, a Subcontractor, or any of their officers, employees or agents, of this clause, Buyer may terminate this Contract for default in accordance with the default provision of this Contract.

Seller shall include the substance of this clause, including this flowdown requirement, in all Subcontracts awarded by Seller for work under this Contract.

Seller will bear the cost of complying with the security requirements associated with this Contract.

### **Conflict of Interest**

Seller warrants that, to the best of its knowledge after making diligent inquiries at the date of Contract award, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its officers, employees, agents or Subcontractors.

If during the Contract term a conflict of interest arises, or appears likely to rise, Seller shall notify Buyer promptly in writing and shall take such steps as Buyer may reasonably require to resolve or otherwise deal with the conflict if Seller fails to notify Buyer or is unable or unwilling to resolve or deal with the conflict as reasonably required, Buyer may terminate this Contract in accordance with the termination provisions of this Contract.

Seller shall not, and shall ensure that any officer, employee, agent or Subcontractor of Seller does not, engage in any activity or obtain any interest during the course of this Contract that conflicts with, or is likely to conflict with, or restrict Seller in providing the Goods/ Services to Buyer and Buyer's Customer fairly and independently.

### **Post Defence Separation Employment**

Except with the prior written approval of Buyer, Seller shall not permit any Defence Personnel or Defence Service Provider who, at any time during the preceding twelve (12) month period was engaged or involved in:

- a. the preparation or management of the Prime Contract
  - b. the assessment or selection of Seller; or
  - c. the planning or performance of the procurement or any activity relevant or related to the Prime Contract;
- to perform or contribute to the performance of this Contract.

To avoid doubt, the twelve (12) month period referred to in this clause applies from the date which is twelve (12) months before the date on which Seller proposes that the person start performing or contributing to the performance of this Contract.

Buyer shall not unreasonably withhold approval of a person under this clause and, in making a decision, shall consider:

- a. the character and duration of the engagement, services or work that was performed by the person during the relevant twelve (12) month period;
- b. any information provided by Seller about the character and duration of the services proposed to be performed by the person under the Prime Contract;
- c. the potential for real or perceived conflicts of interest or probity concerns to arise if the person performs or contributes to the performance of this Contract in the manner proposed under this clause, and the arrangements which Seller proposes to put in place to manage or reduce those conflicts of interest or probity concerns;
- d. any information provided by Seller concerning any significant effect that withholding approval will have on the person's employment or remuneration opportunities or the performance of this Contract; and
- e. the policy requirements set out in DI(G)PERS 25-4, as applicable.

Seller shall include the substance of this clause, including this flowdown requirement, in all Subcontracts awarded by Seller for work under this Contract.

### **Policy Requirements**

To the extent that the Contractor is performing work in Australia under the Contract, Seller shall comply with and require its officers, employees, agents and use its reasonable endeavors to ensure its Subcontractors performing work in Australia comply with the following Commonwealth policies of general application relevant or applicable to any Contract:

- a. Conflicts of Interest; Gifts, hospitality and sponsorship policies as detailed In DI(G) PERS 25-6 and DI(G) PERS 25-7
- b. Workplace Gender Equality policy as detailed in the OPPM;
- c. Public Interest Disclosure policy as detailed in the Commonwealth Ombudsman internet site ([www.ombudsman.gov.au](http://www.ombudsman.gov.au));
- d. Fraud Control policy as detailed In DI(G) FIN12-1;
- e. Hazardous Substances policy as detailed in the Defence Work Health and Safety Manual Volume 3, Part 3A, Chapter 1:
- f. Information Management policy as detailed in DIMPI 1/2004; DIMPI 5/2001; and DI(G) ADMIN 10-6;
- g. Ozone Depleting Substances and Synthetic Greenhouse Gases policy as detailed in the DI(G) LOG 4-3-022 and DEFLOGMAN Part 2 Volume 3.
- h. Work Health and Safety policy as detailed in the Defence Work Health and Safety Manual and DI(G) PERS 19-18;
- i. Defence Environmental policy as detailed in the DI(G) AOMIN 40-2 and DI(G) ADMIN 40-3; and
- j. The Defence Security Manual (DSM).

**Work, Health and Safety**

If Seller with access to premises owned or controlled by Buyer's Customer, Seller must comply with any security and safety requirements notified to Seller by Buyer or Buyer's Customer or of which Seller is aware and ensure that its officers, employees, agents and subcontractors are aware of and comply with such security and safety requirements.

Without limiting Seller's obligations under this Contract or at law (including but not limited to with respect to legal professional privilege), Seller shall provide, and shall use its best endeavours to ensure that a Subcontractor provides, to Buyer, within fifteen (15) Working Days (or such other period as agreed by the Parties in writing) of a request by Buyer any information or copies of documentation requested by the Buyer and held by Seller or Subcontractor (as the case may be) to enable Buyer's Customer to comply with its obligations under the WHS Legislation in relation to this Contract or the Prime Contract.

**Privacy**

Without limitation to the Privacy Act 1988 (Cth) and to the extent that as part of this Contract, Seller deals with any Personal Information (as that term is defined in the Privacy Act 1988 (Cth)) provided by Buyer's Customer, Seller shall:

- a. use or disclose that Personal Information only for the purposes of the Contract;
- b. comply with the Privacy Act 1988 (Cth): and
- c. as a contracted service provider, not do any act or engage in any practice which, if done or engaged in by Buyer's Customer, would be a breach of the Australian Privacy Principles.

Seller shall notify Buyer as soon as practicable if:

- a. it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause, whether by the Contractor, Subcontractor or any other person to whom the Personal Information has been disclosed for the purposes of this Contract; or
- b. in relation to Personal Information obtained in the course of performing this Contract:
  - (i) it becomes aware that a disclosure of such Personal Information may be required by law; or
  - (ii) it is approached by the Privacy Commissioner or by any Individual to whom such Personal Information relates.

Seller shall ensure that Its officers, employees and agents who deal with Personal Information for the purposes of this Contract are aware of, and comply with, this clause.