

**CUSTOMER CONTRACT REQUIREMENTS  
PERSONAL LOCATOR BEACON REPLACEMENT PROJECT  
CUSTOMER CONTRACT RFT NO. ASD 015/2009**

**CUSTOMER CONTRACT REQUIREMENTS**

The following customer contract requirements apply to this contract to the extent indicated below. If this contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, see Section 3 below.

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

**RFT No 015/2009 #1 PERSONAL LOCATOR BEACON REPLACEMENT PROJECT (PLB) .**

**1. Language and Measurement**

All information delivered as part of the Supplies under the Contract shall be written in English. Measurements of physical quantity shall be in Australian legal units as prescribed under the *National Measurement Act 1960*, or, if Supplies are imported, units of measurement as agreed by the Commonwealth Representative.

**2. Export Approvals and Imported Supplies**

2.1 The Contractor shall obtain all necessary valid export licences or other approvals to meet the requirements of the Contract. The Contractor shall provide, on request by the Boeing Representative, a copy of any licence or other approval, or proof that such licence or approval has been obtained.

2.2 The Contractor shall notify the Boeing Representative in writing within 10 days of becoming aware of the refusal, revocation, or any qualification of an export licence or other approval.

2.3 The Contractor shall provide the Boeing Representative with notice in writing, including supporting evidence, of any variation to the rate of customs duty applicable to the Supplies between the Base Date and the date of entry of the item and;

a. in the case of an increase, the Contractor may claim reimbursement in the amount of such increase; or

b. in the case of a decrease, the Commonwealth may recover such money as a debt due.

**2. INTELLECTUAL PROPERTY**

**2.1 Ownership of Intellectual Property**

2.1.1 Nothing in the Contract affects the ownership of Background IP or Third Party IP.

2.1.2 Ownership of all Foreground IP vests on its creation in the Contractor.

## **2.2 Intellectual Property Licence**

2.2.1 The Contractor grants to the Commonwealth a royalty-free, irrevocable, world-wide, perpetual, non-exclusive licence in respect of all Background IP and Foreground IP that is owned by the Contractor, including the right to sub-licence:

1. a. to use, maintain and dispose of the Supplies;
2. b. to complete the Supplies upon termination of the Contract; and
3. c. to remedy defects or omissions in the Supplies.

2.2.2 The Contractor shall ensure that the Commonwealth is granted a licence to exercise all Third Party IP on the best available commercial terms.

2.2.3 The Contractor shall, no later than the submission of the final claim for payment, provide a list of all Background IP, Foreground IP and Third Party IP to the Commonwealth through Boeing. The Commonwealth reserves the right to withhold payment through Boeing of the final claim for payment until the Contractor complies with its obligations under this clause 4.

## **2.3 Provision of Technical Data**

2.3.1 The Contractor shall provide with the Supplies all TD necessary for the Commonwealth to exercise its IP rights, including to use, maintain and dispose of, the Supplies.

2.3.2 The Contractor shall ensure that all TD delivered to the Commonwealth will enable a reasonably skilled person to efficiently and effectively do the things permitted to be done by the Commonwealth in the exercise of its IP rights.

## **2.4 Release to Third Parties**

2.4.1 If the Commonwealth makes available to another person any IP rights that are owned by the Contractor and which is Foreground IP or Background IP, the Commonwealth shall obtain from that person a deed of confidentiality.

## **2.5 Moral Rights**

2.5.1 The Contractor represents and warrants that the use of the Supplies for Defence Purposes or other purposes permitted by the Contract will not infringe the Moral Rights of the officers, employees or agents of the Contractor or its Subcontractors.

2.5.2 The Contractor shall ensure that none of it's:

- a. officers, employees or agents;
- b. Subcontractors;
- c. Subcontractors' officers, employees or agents;

institute, maintain or support any claim or proceeding against the Commonwealth or its officers, employees or agents for infringement of any of their Moral Rights.

### **3. INSURANCE AND LIABILITY**

#### **3.1 Contractor's Employees**

3.1.1 The Contractor shall indemnify the Commonwealth and Boeing, its officers, employees and agents against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), and expenses arising out of or as a consequence of a default or unlawful or negligent act or omission on the part of the Contractor, its officers, employees, agents or Subcontractors. The Contractor's liability to indemnify the Commonwealth and Boeing shall be reduced proportionally to the extent that any unlawful or negligent act or omission on the part of the Commonwealth and Boeing or any person through whom the Commonwealth and Boeing is acting (but not including the Contractor, its officers, employees, agents or Subcontractors) contributed to the liability, loss, damage, costs or expense.

#### **3.2 Insurance**

3.2.1 Before commencing work under the Contract, the Contractor shall:

- a. be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Contractor, including liability under statute and common law;
- b. have Public Liability insurance for an amount of not less than \$AUD 10,000,000.00 per occurrence; and
- c. have Professional Indemnity insurance for an amount not less than \$AUD 2,000,000.00 per occurrence.

3.2.2 The Contractor shall ensure each Subcontractor is insured against the Subcontractor's corresponding liabilities.

3.2.3 The Contractor shall maintain the insurance or registration required under this clause for the duration of the work under the Contract and for the obligations that survive expiry or termination of the Contract, or as otherwise specified in writing by the Commonwealth through Boeing.

3.2.4 The Contractor shall:

- a. on the Effective Date;
- b. on each anniversary of the Effective Date; and
- c. on request by the Commonwealth at any time, including after expiry or termination of the Contract;

produce satisfactory evidence of the insurance or registration to the Boeing Representative.

3.2.5 The evidence required shall include details of:

- a. name of the insurance provider;
- b. type of insurance;
- c. terms of the insurance including any specific exclusions;
- d. limits of liability per claim or occurrence and details of any aggregate limits or relevant sub-limits that apply;
- e. whether any past or current claims made under the policy have been materially affected, or are likely to materially affect, the amount of cover available under the policy;
- f. deductible amounts; and
- g. period of insurance.

3.2.6 The Contractor shall immediately notify Boeing if any policy or policies of insurance relevant to the Contract.

#### **4.3 Intellectual Property Indemnity**

4.3.1 The Contractor shall indemnify Boeing and the Commonwealth and its officers, employees, agents, licensees and sub-licensees against any liability, loss, damage, cost (including the cost of any settlement and legal

costs and expenses on a solicitor and own client basis), compensation or expense sustained or incurred by Boeing or the Commonwealth which arises out of any action, claim, dispute, suit or proceeding brought by any third party in respect of any:

- a. infringement or alleged infringement of that third party's IP including Moral Rights if the infringement or alleged infringement arises out of any activity permitted under any licence or assignment under the Contract; or
- b. breach or alleged breach of any duty of confidentiality owed to that third party, when the breach is caused by any act or omission on the part of the Contractor or any of its officers, employees, agents or Subcontractors (whether or not such act or omission constitutes a breach of the Contract).

## 5. WARRANTIES

### 5.1 Fitness for Purpose

5.1.1 The Contractor shall ensure and warrants that any Supplies provided under the Contract shall be fit for the purpose or purposes for which Supplies of that kind would be reasonably expected to be applied by the Commonwealth.

### 5.2 Warranty

5.2.1 The Contractor warrants that the design, materials and workmanship in the Supplies conform with, and that the Supplies meet the requirements of the Contract. The Contractor shall remedy by repair, replacement or modification, defects in design, materials and workmanship in the Supplies if the defect is notified to the Contractor by the Boeing Representative during the period of 12 months starting from Acceptance of the Supplies. (

5.2.2 The Contractor shall remedy by repair, replacement or modification any other Supplies which are affected by the corrective actions taken by the Contractor to address a warranty claim notified to the Contractor.

5.2.3 The liability of the Contractor to remedy defects under the warranty provided by the Contractor shall not apply to the extent that the defect arises from the Commonwealth's or Boeing's negligent or wilful damage of the Supplies.

5.2.4 The Contractor, unless the Boeing Representative otherwise allows, shall meet all costs of, and incidental to, the performance of remedial work, including any packing, freight (not exceeding the freight cost between the Contract delivery point and the Contractor's nominated repair facility and return), disassembly and re-assembly costs.

5.2.5 If the Contractor fails, within the period of 30 days after notification by the Boeing Representative, to rectify a defect, Boeing may, without limiting the Contractor's warranties and obligations under this clause, perform or have performed the necessary remedial work at the expense of the Contractor, and may recover such expense as a debt.

5.2.6 The rights and remedies provided are in addition to, and shall not limit, any other rights of the

Boeing or Commonwealth under the Contract or otherwise.

### **5.3 Notification of Defects**

5.3.1 If during the period of 10 years commencing on the Effective Date, the Contractor becomes aware of any defect (including Latent Defects) in the Supplies which adversely affects, or is likely to adversely affect, the operation of the Supplies or the safety of personnel, the Contractor shall immediately give notice of the defect to the Boeing Representative. The Contractor shall within 28 days of the initial notice provide a written statement of the nature of the defect, its cause and effect, and proposed remedial action.

### **5.4 Latent Defects**

5.4.1 The Contractor shall, within the Contract Price, diagnose and correct any Latent Defects in Supplies if those Latent Defects are notified to it in writing by the Boeing Representative within the period of 10 years commencing on Acceptance.

5.4.2 The Contractor shall, at its own expense:

- a. when the Latent Defect is the result of a design deficiency, redesign the Supplies (including provision of effective test procedures to demonstrate the rectification of the deficiency);
- b. correct the Supplies notified by the Boeing Representative and all similar items of Supplies by repair, modification or replacement of the Supplies or by any other means acceptable to the Commonwealth Representative; and
- c. make any necessary correction, modification or replacement of any other Supplies which are affected by the Latent Defect, whether or not those Supplies have already been Accepted or delivered.

5.4.3 If the Contractor fails to rectify a Latent Defect in the Supplies within the time specified by the Boeing Representative in the notice referred to above, Boeing may, without limiting the Contractor's warranties and obligations under the Contract, perform or have performed at the expense of the Contractor any rectification work, and may recover such expense as a debt.

### **5.5 Spare Parts and Support Equipment**

5.5.1 The Contractor shall for the period of 10 years commencing immediately after delivery of the Supplies provide facilities for the supply of sufficient quantities of spare parts and support equipment to maintain the Supplies.

5.5.2 If during the period set in clause 5.5.1 the Contractor becomes aware that its ability to provide spare parts or support equipment may be adversely affected it shall provide Boeing with advance notice being not less than 28 days of that event. If there will be a final production run of spare parts or support equipment the Contractor shall nominate in the notice the date by which Boeing may place final orders.

5.5.3 The Contractor shall include the rights of the Commonwealth and Boeing contained in this clause in all Approved Subcontracts.

5.5.4 Boeing shall not be bound to order any, or any particular quantity of, spare parts or support equipment from the Contractor.

## 6. Commonwealth Access

6.1 During the performance of the Contract, the Contractor shall permit the Boeing or Commonwealth Representative or any person authorised by the Boeing or Commonwealth Representative access to its premises, and access to any of its records or accounts relevant to or impacting on the performance of work under the Contract. The Commonwealth or Boeing may copy any records or accounts for the purposes of the Contract.

6.2 Without limiting the generality of clause 6.1, the purposes for which the Commonwealth Representative may require access include:

- a. inspecting CMCA, attending, checking or conducting stocktakes of CMCA, including viewing and assessing the Contractor's inventory control and stocktaking systems and any data stored or recorded in the Contractor's inventory control and stocktaking systems, or removing CMCA that are no longer required for the performance of the Contract;
- b. conducting audits under the *Auditor-General Act 1997*;
- c. performing Audit and Surveillance activities in relation to Quality in accordance with clause 12 of the SOW;
- d. investigating the reasonableness of proposed prices or costs in any CCP submitted; and
- e. determining whether, and to what extent steps should be taken to register or otherwise protect Boeing or Commonwealth IP.

6.3 If the Contractor enters into a Subcontract, the Contractor shall ensure that Subcontracts require Subcontractors to give the Commonwealth or Boeing Representative access to Subcontractors' premises, and to records and accounts in connection with the performance of work under the Subcontract, including the right to copy.

6.4 The Commonwealth and Boeing shall comply with, and shall require any delegate or person authorised by the Commonwealth Representative to comply with, any reasonable Contractor or Subcontractor safety and security requirements or codes of behaviour for the premises.

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**TBD NOTIFICATION OF DEBARMENT/SUSPENSION AND EXPORT DATA CONTROL (AUG 2009).** Seller shall provide immediate notice to Buyer in the event of being debarred suspended, or proposed for debarment by any Federal Agency during the performance of this contract.

(1) For the purpose of this clause,

(A) Foreign person is any person who is not a citizen of the or lawfully admitted to the for permanent residence under the Immigration and Nationality Act, and includes foreign corporations, foreign organizations, and foreign governments;

(B) Foreign representative is anyone, regardless of nationality or citizenship, acting as an agent, representative, official, or employee of a foreign government, a foreign-owned or influenced firm, corporation, or person; and

(C) Foreign sources are those sources (vendors, subcontractors, and suppliers) owned and controlled by a foreign person.

(2) Seller shall place a clause in subcontracts containing appropriate export control restrictions, set forth in this clause.

(3) Nothing in this clause waives any requirement imposed by any other U.S. Government agency with respect to employment of foreign nationals or export-controlled data and information.

(4) Equipment and technical data generated or delivered in the performance of this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before assigning any foreign source to perform work under this contract or before granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125). Seller shall notify Buyer and obtain the written approval of Buyer prior to assigning or granting access to any work, equipment, or technical data generated or delivered in the performance of this contract to foreign persons or their representatives. This notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

