



WILEY STANDARD CONDITIONS OF TENDERING – V4.0 11/16

Operative provisions

1 Subject and basis of tender

The Project

1.1 Wiley's representative for the purposes of this tender is stated in the invitation to tender letter and all communication in respect of the tender must be with that Wiley representative.

1.1.1 Wiley wishes to call tenders for the subcontract package described in schedule 2 to the general conditions of subcontract.

Tender documents

1.2 The agreement for the subcontract package is to be in the form of the subcontract stated in the invitation to tender letter.

1.2.1 The tender is to be made on the basis of the following invitation to tender documents, each of which remains the property of Wiley:

- Invitation to tender letter.
- These conditions of tendering.
- Tender form available for download at: <http://www.wiley.com.au/tcs/>.
- General conditions of subcontract V4.0 11/16 in the form stated in the invitation to tender letter.
- Schedules 1-5 (inclusive) attached to the invitation to tender letter.
- Schedules 6-11 (inclusive) as stated in the invitation to tender letter.
- Schedule 12, if the project is in Queensland.

Tenderer may request clarification or elaboration

1.3 The tenderer may request, in writing, clarification or elaboration from Wiley's representative of any of the invitation to tender documents. Any clarification or elaboration may also be given to any other tenderers.

Wiley is not responsible for inaccurate or inadequate information

1.4 All the tender information that Wiley provides to a tenderer, whether in the invitation to tender documents or not, is provided in good faith to assist tenderers to assess the tender. None of the information is guaranteed. It is the tenderer's responsibility to interpret and assess the relevance of the information provided to tenderers. Wiley is not liable for any loss, damage or expense suffered by a tenderer as a result of any inaccuracy or inadequacy in the information it provides.

Tenderer must inform itself

1.5 It is the tenderer's responsibility to make all the necessary investigations for it to become thoroughly informed about the subject matter of the tender, the project, and the nature and location of the subcontract works.

1.5.1 The tenderer must, if required by Wiley, conduct an inspection of the site in accordance with clause 3.4.

Site information

1.6 The site information [if included with this invitation to, and conditions of, tender], which will not form part of the subcontract documents, is contained in the site information documents stated in the invitation to tender letter.

Rates of pay and conditions of employment

1.7 A successful tenderer must give its tender based on strict compliance with all relevant industrial relations legislation, including all industrial agreements to which it is party.

1.7.1 If the tenderer is unsure of the requirements of any applicable industrial legislation, agreements or instruments, it must seek the advice of its employer organisation regarding the application of awards, certified agreements and enterprise flexibility agreements.

Customs duty

1.8 A successful tenderer must arrange and pay for Australian Customs clearance and pay the customs duty if either of the following apply:

- The successful tenderer supplies Wiley with imported goods or parts of imported goods.
- The successful tenderer is responsible for replacing or correcting any work that is destroyed, damaged, defective, stolen or lost and that replacement or correction requires importation.
- Wiley will not reimburse a successful tenderer for any customs duties or associated charges or penalties imposed by the Australian Customs which result from not properly complying with Australian Customs procedures.

Wiley may vary scope of work

1.9 Wiley may vary the scope of the work being tendered for, or the conditions of tendering, by giving written notice of the variation to all tenderers at any time before the closing date for submission of tenders.

Prices quoted exclude GST

1.10 The prices quoted by tenderers in their respective tenders must exclude GST. GST will be calculated and paid on the basis set out in the contract.

1.10.1 For the purposes of this condition, GST means tax levied under the GST law, which shall have the meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

Governing law

- 1.11 The invitation to tender documents and the tender are governed by the laws applicable in Queensland.
- 1.11.1 The performance of any subcontract works, if Wiley accepts your tender, will be subject to the laws applicable in the jurisdiction stated in item 23 of schedule 1 to the general conditions of subcontract.

2 The tender**Tender to comply with tender requirements**

- 2.1 A tender must comply with each of the following requirements:
- 2.1.1 The tender must be submitted in the form and to the person stated in the invitation to tender letter.
- 2.1.2 The tenderer must state, in its tender, the names of key personnel who it intends to appoint to the project.
- 2.1.3 Any other written statement or information required by the invitation to tender letter must be delivered to Wiley by the closing date.
- 2.1.4 The tender must be signed by the tenderer or by an authorised representative of the tenderer.

Queensland Government Code of Practice for the Building and Construction Industry

- 2.2 If the project is in Queensland, the Queensland Code of Practice for the Building and Construction Industry applies to this project, the tenderer must comply with all of the following:
- 2.2.1 The Queensland Government's Code of Practice for the Building and Construction Industry.
- 2.2.2 The Queensland Governments' Implementation Guidelines to the Code of Practice for the Building and Construction Industry Implementation Guidelines.
- 2.2.3 Schedule 12.
- 2.2.4 It must complete and execute the form of declaration at schedule 1 to the tender form.

Departure from invitation to tender documents

- 2.3 The tenderer must give notice in writing at the time of tendering if its tender does not meet any of the requirements in the invitation to tender documents. If a tenderer does not comply with clause 2.2 when lodging a tender, the tender may not be considered. A tender may be considered if it is submitted after the closing date, but Wiley is under no obligation to do so.

Offer based on draft subcontract

- 2.4 The tenderer must deliver its tender on the basis that it will strictly comply with the general conditions of subcontract including schedules 1- 12 to those general conditions as set out in paragraph 1.2.1.

Financial checks

- 2.5 As part of the tender evaluation process, Wiley may require the tenderer to provide relevant financial information to an independent registered accountant to assess the tenderer's financial stability and capability to perform the proposed subcontract works.
- 2.5.1 The tenderer must comply with Wiley's requirements in accordance with clause 2.9 of the enclosed general conditions of subcontract.

Status of tenderer

- 2.6 A tenderer must indicate on the tender form whether it is tendering as owner or as an agent. If the tenderer is tendering as an agent, it must specify the name of the tenderer's Principal in the tender form.

Intellectual property

- 2.7 Copyright in all tender documents belongs to and remains the property of Wiley.

Conditions binding

- 2.8 By submitting a tender, the tenderer becomes bound by these conditions of tendering.

No contract

- 2.9 Submission of a tender does not in any way create a contract for the proposed subcontract works, nor does it create an obligation to award a subcontract package.

3 Tender procedure**Delivery of tenders**

- 3.1 The tender must be delivered as stated in clause 2.1 of these conditions of tendering.

Inspection of samples of investigations

- 3.2 Samples from the investigations referred to in the site information, trenches and other relevant information may be inspected during the tender period (by arrangement with Wiley's representative and on conditions imposed by Wiley).

Information available for inspection

- 3.3 The following information may be inspected by tenderers upon request:
- The head contract, excepting commercially confidential information.
 - The current project program.
 - Wiley's project safety plan.
 - Wiley's project environmental management plan.

Access for additional investigations

- 3.4 A tenderer may gain access to the site, with the approval of Wiley's representative and on conditions imposed by Wiley, for either of the following reasons:
- To carry out additional investigations.
 - To obtain samples for further testing.
 - To comply with its obligations under clause 1.7 of these conditions of tender.

Successful tenderer to provide copy of additional testing

- 3.5 A successful tenderer must give Wiley's representative, within 10 working days after the date of acceptance of tender, a complete copy of the results of any additional testing carried out.

Tenderer responsible for determining quantities

- 3.6 The tenderer is responsible for determining quantities for all items for which there are no provisional sums. For each item for which there is a provisional sum, the tenderer must adopt Wiley's estimated quantity.

Collusive tendering

- 3.7 The tenderer warrants, by submitting a tender under these conditions of tender, that it has not engaged in any collusive tendering practices.

Tender is an offer capable of acceptance

- 3.8 A tender that is submitted is an offer capable of acceptance by Wiley. A tender remains fixed and open for acceptance for 60 days from the closing time.

No change of tender after closing date

- 3.9 A tenderer may not change its tender after the closing date, unless Wiley invites it in writing to do so.

No right of recourse

- 3.10 A tenderer is not entitled, in any jurisdiction, to challenge any decision by Wiley, including the following decisions:
- To appoint one or more preferred tenderers or a successful tenderer.
 - To enter into a contract with a preferred tenderer or a successful tenderer.
 - To cancel a tender at any time.

Release of tender information

- 3.11 Wiley must maintain confidentiality in relation to information submitted by the tenderer. However, after the subcontract package is awarded, unsuccessful tenderers may be notified of the name of the successful tenderer.

4 Evaluation of tender**Evaluation of tenders**

- 4.1 The criteria that Wiley may use to evaluate a tender and the tenderer may include the following:
- Ability to meet Wiley's needs in accordance with this invitation to tender.
 - Overall price and rates.
 - Overall cost to Wiley.
 - Likely effect of variations or delays to the contract.
 - Likely effect of variations in Contract rate.
 - Financial stability.
 - Operational stability.
 - Track record in relation to safety and of compliance with the applicable Work Health and Safety legislation.

Wiley may request additional information

- 4.2 Wiley may request a tenderer to submit additional information concerning the tender before any tender is accepted.

Wiley has absolute discretion

- 4.3 Wiley has absolute discretion in relation to the evaluation of tenders and the selection of a preferred or successful tenderer.
- 4.3.1 Wiley is not bound to accept the lowest priced tender or any tender.
- 4.3.2 After evaluation of all tenders, Wiley may decide not to enter into any contract relating to the project.

5 Selection and appointment**Appointment of successful tenderer**

- 5.1 When Wiley has selected a successful tenderer, it may invite that tenderer to submit to Wiley a final offer in the form set out in attachment 1 of these conditions of tender.
- 5.1.1 Provided the tenderer's final offer is consistent with the tenderer's original tender and modifications to that tender subsequently agreed with Wiley, Wiley may at its option, in writing, accept that final offer. Only when the tenderer receives that written acceptance of the tenderer's final offer will a contract (in the form attached to the tenderer's final offer) arise between the successful tenderer and Wiley. If Wiley does

not provide a written acceptance of the tenderer's final offer, a contract will only arise when the subcontract documents are executed by both parties.

Appointment of one preferred tenderer

5.2 Alternatively, to clause 5.1, Wiley may select a preferred tenderer. That does not mean that Wiley has accepted its tender. It simply means that the preferred tenderer is entitled to negotiate with Wiley. Wiley may subsequently appoint the preferred tenderer as the successful tenderer. However, it does not have to do so.

Notification to preferred tenderer

5.3 Wiley must notify a preferred tenderer by email.

Preferred tenderer appointed as successful tenderer

5.4 If Wiley appoints a preferred tenderer as a successful tenderer, it may send that tenderer a letter of acceptance of the tenderer's offer or a letter of offer specifying the terms on which it will accept the tenderer's tender or modified tender.

Contract to be final

5.5 The subcontract formed between Wiley and a successful tenderer will govern exclusively the relationship between the parties during the period of the contract. A party cannot rely on any statement, promise or representation made during the negotiation process if it is not included in the subcontract.

Attachment 1 – Form of Subcontractor Final Offer Letter*To be settled by Wiley and then printed on your letterhead*

[Insert Name and Address]

Final offer to perform ___ on ___

We refer to our ___ (Post tender meeting or discussions etc) ___ on ___ (Date) ___ at which our tender proposal dated ___ (Date) ___ was discussed. We now make a final offer to perform the work required to complete the subcontract Works on the following terms:

1. The form of subcontract agreement received with the tender documents
2. Completed Schedules 1-5 (inclusive, attached to this letter, including all the documents referred to in those schedules.
3. Schedules 6-12 (inclusive): <http://www.wiley.com.au/tcs/>
4. The fixed lump sum price we offer, to be adjusted only as stated in the proposed subcontract documents mentioned in paragraphs 1, 2 & 3 of this letter, is \$ _____, constituted as follows:

Lump sum total:	\$ _____
Component for as-builts, manuals, warranties etc	\$#####
Total provisional sums:	\$#####

5. We warrant that, in making this offer, we have not relied on any representation made by any representative of Wiley, other than those stated in the invitation to tender and proposed subcontract documents.
6. We withdraw any qualification, clarification or condition submitted with any previous offer, other than those expressly stated in the proposed subcontract documents.
7. This offer remains open for acceptance by Wiley for [60] calendar days from the date of this offer and will not be withdrawn or altered by us during this period.

Yours sincerely

 PRINT FULL NAME