



Guidelines for Vendor Viability Checking

Vendor Due Diligence Information

1. Essential Due Diligence

- a. Is the Vendor is an entity controlled from an offshore jurisdiction?
- b. Are there any identifiable prospects of merger or acquisition (takeover) by or of the Vendor?
- c. Have any of the Directors or key partners of the Vendor been bankrupt, or accused or convicted of business related offences?
- d. Are there any known breaches of non-compliance with Corporations law or Trade Practices legislation in the last 5 years or pending against the Offeror or its Directors or officers?
- e. Have there been any offences/charges whether or not prosecuted successfully under the Criminal Code?
- f. Is the Offeror's safety record incident free, if not what are the circumstances?
- g. Is the Offeror's industrial relations record without incident, if not what are the circumstances? Provide details of all industrial issues that has been lodged with or investigated by any industrial commission, workplace regulator, or anti-discrimination regulatory body involving the entity, its parent, trust, or subsidiary.
- h. Which of the key staff of the Offeror are critical to the contract; and what is the level of surety of continuity of those staff?
- i. What training and professional development framework does the vendor have to ensure training, certification, and qualifications of the key personnel to current professional standards and technologies?
- j. What supply chain partners of the Vendor are critical to the solution and hence the success of the contract? Provide details of what related contractual arrangements are in place with these supply chain partners.
- k. Does the Vendor have Compliance and Risk Management Policies in place which comply to the AS/NZS standards for both Compliance and Risk Management? Provide details of the systems, procedures and processes used to comply with legislative requirements, including trade practices, privacy and environmental legislation. *(There are ISO and Australian Standards [AS4360] for risk management and [AS 3806] for compliance. You want them to tell you their processes to comply with these standards.)*
- l. Are there any identifiable contracts with the Vendor with the last 5 years which have had early termination?
- m. Is the Vendor in any current contract dispute? Provide details of any contract disputes involving the company which have been unresolved to date, or if resolved, was as a result of a court order, arbitration, or alternative dispute resolution process, irrespective of the determination.
- n. Are there any insurance claims against the company?
- o. Can the vendor provide the last 3 Company Annual Financial Reports? (An appropriately skilled person needs to analyse these returns).
- p. Can the vendor provide the last 3 company annual returns to ASIC (if a corporation)?
- q. Does the Vendor have an internal audit unit, and to whom does it report?
- r. What is the Vendor's projected financial position and forecast growth for the next 5 years?
- s. Is a Dun & Bradstreet Company Report obtained and analysed for business risk?
- t. Are you aware of any conflicts of interest which may result from entering into a contract with you?
- u. What level of debt (Financial Charges) are held against the Vendor or a parent company underwriting the financing? (see a Dun & Bradstreet Report)
- v. Is the vendor likely to be more than 40% financially dependent on this contract for its financial viability?
- w. Is the vendor more than 40% dependent on any one customer or other contract?

2. Company Profiling

- a. Obtain a complete profile of the vendor - specifically provide evidence under each of the following headings: *(some of the information may already be in tender response schedules)*
- ⇒ full name and ABN of the vendor (Offeror) company; *(the offering legal entity)*
 - ⇒ strengths and experience in this industry; *(only of the offering entity, not the parent or subsidiaries. Also see comments below in b. on other contracts.)*
 - ⇒ financial stability; *(This is a subjective point).*
 - *(The financial stability should be assessed by someone with the appropriate skills.*
 - *Use the analysis of more than one recent financial report of **the Vendor's business** (not a related entity), which should come from the tender responses, or otherwise obtained from the ASIC for Australian reporting companies.*
 - *If the Vendor is a proprietary company, it may not have lodged their financials with ASIC. Despite harmonised international financial reporting standards on companies, it requires a professional assessment of the financial reports to ensure that the reports are directly relevant to the offering entity, that entity is not exposed to financial impacts of a parent, trust, or subsidiary.*
 - *The financials of a non-Australian entity need to be comparatively and equitably assessed against local entities.)*
 - ⇒ dependency on overseas related companies; *(there may be legal risk or continuity risk if controlled by an offshore corporation)*
 - ⇒ company strategic direction locally and, where relevant, overseas; *(could be found in a company annual report, otherwise does the vendor have a corporate plan or Quality manual)*
 - ⇒ key partners; *(Directors and key personnel of the offering entity)*
 - ⇒ depth of local base in terms of resources, skills, etc, and whether the staff numbers have increased or decreased over the last 3 years. *(relative to capacity to provide support)*
 - ⇒ support resources and/or arrangements, *(either internal or within the vendor's supply chain)*
 - ⇒ details of any recognised awards; *(of the offering entity)* and
 - ⇒ local and international organisation structure and size. *(if not already answered)*
- b. Obtain any clauses of the draft Contract/ Agreement that the Offeror is likely to find unacceptable or seeks departures/ derogation, and the nature of commercial or technical risk of any changes, and any induced inequity in the tender process. *(If subject to Information Technology Conditions, this should be dealt with in the government IT form of contract if public sector IT, and you should have asked in the Request for Tender for any proposed departures from that contract form. You and your legal and technical advisers will need to understand the implications of each variation, including careful consideration for cost and equity.)*
- c. Seek answers to the questions in 1 above: *(mandatory questions)*
- d. You may ask for information on some of the above questions about the entity from the referees nominated by the Vendor. However that does not prevent you from doing your own investigations of the clients of the offering entity, particularly those not nominated as referees, and those using the vendor in contracts of a similar size and nature to yours. *(Do not be put off of doing this as it is sound commercial 'caveat emptor' if you can obtain objective responses. It requires skill to educate and assess the responses, but the information can be very valuable. Therefore you may consider asking the entity for a list of all clients of the entity over say the last 3 years and the indicative nature and value of the contracts with those companies.)*