TENDERER’s Deed of UnDertaking (CORE)

Note to tenderers: Tenderers must provide a deed in the following format.

This deed poll is made on the **(INSERT DATE)**

1. BY:

|  |
| --- |
| 1. (INSERT NAME, ACN/ABN and ARBN If APPLICABLE) (‘Tenderer’) |

1. DECLARATIONS (CORE)
   1. This deed poll is for the benefit of the Commonwealth of Australia as represented by the Department of Defence ABN 68 706 814 312 (**‘Commonwealth’**).
   2. This deed poll is provided in connection with the Request for Tender **[INSERT RFT NUMBER]** (**RFT**) issued by the Commonwealth and the tender (**‘Tender’**) submitted by the Tenderer in response to the RFT. Terms defined in the RFT have the same meaning when used in this deed poll.
   3. For the avoidance of doubt, the RFT process includes any ODIA process conducted by the Commonwealth and a reference to a Tender in this deed poll includes a reference to a Tender, or part of a Tender, submitted to the Commonwealth pursuant to any ODIA process.
   4. Each representation and warranty in this deed poll is given:
      1. as at the date of this deed poll; and
      2. on each date that the Tenderer resubmits any part of its tender under the RFT.
   5. The Tenderer submits its Tender to provide the Supplies solicited by the RFT at the prices tendered and, subject to the Statement of Non-Compliance included as part of its Tender, in accordance with the draft Contract.
2. ACKNOWLEDGEMENTS (CORE)
   1. The Tenderer acknowledges and agrees:
      1. to the Commonwealth’s rights as set out in the RFT and this deed poll, including the Commonwealth's rights to exclude the Tender;
      2. that the Tender has been prepared in accordance with the RFT and is accurate, complete and not misleading;
      3. that the Commonwealth can utilise all relevant information about the Tenderer’s performance on Commonwealth procurement activities;
      4. that the Tenderer has conducted and will conduct itself during the RFT process in a manner that is at least consistent with the requirements set out in the ‘Promoting Confidence in Defence Procurement Processes’ section of the Defence publication *Defence and the Private Sector - Working with Integrity* which is available at <https://www.defence.gov.au/business-industry/industry-governance/industry-regulations/defence-and-private-sector-working-integrity>;
      5. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
      6. that the Tenderer has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct of the Commonwealth, as adding to or amending the RFT, except for any addendum issued by the Commonwealth that expressly add to or amend the RFT;
      7. that the Tenderer does not have any judicial decisions against it (including overseas jurisdictions but excluding decisions under appeal or instances where the period for appeal or payment/settlement has not expired) relating to unpaid employee entitlements where the entitlements remain unpaid;
      8. that Defence may provide any information collected or provided during the course of the RFT process (including regarding breaches of workplace relations law, work health and safety law or worker’s compensation law) to other Commonwealth entities or regulatory bodies; and
      9. that Defence, as a Commonwealth entity, is subject to legislative and administrative accountability and transparency requirements of the Commonwealth, including disclosures to Ministers and other Government representatives, Parliament and its Committees and the publication of information in respect of the RFT process on the successful Tenderer and information on any resultant Contract in the AusTender website.
   2. The Tenderer acknowledges and agrees that the RFT is an invitation to treat and to the extent permitted by law and subject to clause 2.3:
      1. no binding contract (including a process contract) or other understanding on any basis whatsoever will exist between the Commonwealth and the Tenderer unless and until a Contract is signed by the Commonwealth and the Tenderer; and
      2. the Commonwealth has no liability to the Tenderer for any compensation on any basis whatsoever in connection with the Tenderer’s participation in the RFT.
   3. Clause 2.2 does not apply to this Deed, any confidentiality deed executed by the Tenderer, or any other deed or contractual arrangement entered into by the Tenderer as required by the Commonwealth from time to time.
3. ACCEPTANCE (CORE)
   1. The Tender submitted by the Tenderer in response to the RFT shall remain open for the Tender Validity Period specified in the Tender Details Schedule (as extended under clause 2.8 of the Conditions of Tender, if applicable).
   2. The Tenderer acknowledges and agrees that the Tender is an unconditional offer and, to the extent reasonably possible, the Tenderer will obtain any necessary Authorisations to enable it to enter into any resultant Contract on an unconditional basis.
4. UNDERTAKINGS,REPRESENTATIONS AND WARRANTIES (CORE)
   1. The Tenderer represents and warrants that there has not been and will not be any collusive tendering, anti-competitive conduct, or any other similar conduct (including the exchange of information with other tenderers) by it or its Related Bodies Corporate, or any officer, employee, agent or advisor of any of them, in relation to:
      1. the preparation or lodgement of tenders;
      2. the evaluation and clarification of tenders; and
      3. the conduct and content of negotiations, including final Contract negotiations,

in respect of the RFT process.

* 1. The Tenderer represents and warrants:
     1. that the Tender has not been compiled:
        1. with the improper assistance of current or former Commonwealth Personnel or Defence Service Providers;
        2. with the utilisation of information improperly obtained from the Commonwealth; or
        3. in breach of an obligation of confidentiality to the Commonwealth;
     2. that it and any Related Bodies Corporate, and their officers, employees, agents and advisers have and will, during the RFT process, comply with any applicable laws or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender; and
     3. without limiting clause 4.2a that it and any Related Bodies Corporate have not and will not, without prior written approval from the Commonwealth, permit any current or former Commonwealth Personnel, or Defence Service Provider to contribute to, or participate in, any process or activity relating to the preparation of the Tender or the RFT process, if:
        1. the person was involved at any time in the planning of the procurement to which this RFT relates, the preparation of this RFT, or the management of the RFT process; or
        2. the person was at any time during the 12 months immediately preceding the date of issue of the RFT involved in a Defence procurement process or activity relevant or related to the RFT; and
     4. it is aware of the provisions of the Schedule 2 to the *Competition and Consumer Act 2010* (Cth)and Division 137 of the *Criminal Code Act 1995* (Cth) and its tender does not contain any false, misleading or deceptive, claims or representations.
  2. The Tenderer represents and warrants that the following is a complete list of any offences relating to bribery, misuse of public information, false accounting or corruption or attempted corruption of a public official or similar offences that would tend to undermine public trust of which the Tenderer or its Related Bodies Corporate have been convicted of during the last 7 years, or of which the Tenderer or its Related Bodies Corporate are currently charged:

**[INSERT DETAILS OF ALL SUCH OFFENCES OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**

* 1. The Tenderer represents and warrants that it has no actual, potential or perceived conflict of interest relating to the RFT process, except as set out below: **[INSERT DETAILS OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**
  2. If in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed in connection with the RFT process, the Tenderer must notify the Commonwealth promptly in writing. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under this clause or which otherwise comes to the attention of the Commonwealth during the RFT process.
  3. The Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if in the opinion of the Commonwealth:
     1. the Tenderer fails to take any steps required by the Commonwealth to resolve or deal with a conflict of interest;
     2. the Tenderer fails to comply in any other respect with this clause 4; or
     3. any representation or warranty of the Tenderer under this clause 4 is incorrect or misleading in any material respect.
  4. The Tenderer represents and warrants that none of the Tenderer, its Related Bodies Corporate, or officers of either:
     1. have been found in the past three years to have committed a material breach; or
     2. are currently in material breach,

of any law, regulation or code that would be relevant to any resultant Contract, including those in relation to employment or workplace relations (including regulations relating to ethical employment practices), WHS or the environment, other than the following:

**[INSERT DETAILS OF PREVIOUS OR CURRENT BREACHES, OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE']**

and the following actions have been taken to remedy any such material breach:

**[INSERT DETAILS OF ACTIONS TAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT ‘NOT APPLICABLE’]**

Note to drafters: Include clause 4.8 if the Shadow Economy PCP applies to the RFT.

* 1. The Tenderer represents and warrants that if it enters into a resultant Contract with the Commonwealth in relation to the RFT, it shall comply with clauses 12.3.5 to 12.3.8 of the draft Contract.

Note to drafters: Include clause 4.9 if the PT PCP clauses are included in clause 11.9 of the COC.

Note to tenderers: Tenderers are to include the following clause if the tenderer is a Reporting Entity and clauses 11.9.15 – 11.9.19 have been included in the COC.

* 1. The Tenderer undertakes that if, in anticipation of entering into a resultant Contract with the Commonwealth, it enters into a Reporting Entity Subcontract, the tenderer shall include in that subcontract:
     1. an obligation to comply with the Payment Times Procurement Connected Policy (PT PCP); and
     2. using its reasonable endeavours, a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract shall include:
        1. obligations equivalent to those in clause 4.9a; and
        2. obligations equivalent to this clause 4.9b (such that the obligations in this clause 4.9b are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).

1. Survival (CORE)
   1. This deed poll survives the termination or expiry of the RFT.
2. Governing Law (CORE)

Note to drafters: Prior to release of the RFT drafters are to insert the same jurisdiction as selected under clause 12.1 of the draft COC and the Details Schedule.

* 1. The laws of **[INSERT JURISDICTION]** shall apply to this deed poll. The courts of that State or Territory shall have non-exclusive jurisdiction to decide any matter arising out of this deed poll or in connection with the RFT.

1. Termination and AMENDMENT (Core)
   1. This deed poll shall not be unilaterally terminated or amended unless such termination or amendment is reduced to writing and agreed in writing by the Commonwealth.
2. Contact Details (CORE)
   1. The Tenderer’s contact details for the purpose of the RFT and this deed poll are set out below.

|  |  |  |
| --- | --- | --- |
| 1. NAME (Block Letters): |  | 1. TELEPHONE NUMBER: |
|  |  |  |
|  |  | 1. EMAIL ADDRESS: |
|  |  |  |

Note for Deed Signature: Guidance on executing agreements, including some statutory requirements to ensure the execution is effective, are detailed in the ‘Executing Agreements Fact Sheet’, found on the Procurement and Contracting intranet page at:

* <http://ibss/PublishedWebsite/LatestFinal/%7B836F0CF2-84F0-43C2-8A34-6D34BD246B0D%7D/Item/EBDAF9B0-2B07-45D4-BC51-67963BAA2394>

This guidance is developed for Commonwealth Personnel and should be used to assess the Tenderer’s execution of the Deed. The Tenderer should seek its own independent legal advice on its execution of the Deed.

Executed as a Deed Poll

(INSERT APPROPRIATE TENDERER'S EXECUTION CLAUSE)