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)**

**BY:**

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

1. DECLARATIONS (CORE)
   1. The Tenderer declares that 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 will 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. To the extent applicable, each declaration, undertaking, acknowledgement and agreement of the Tenderer described in this deed poll is restated by the Tenderer at the time of any further submission to the Commonwealth by the Tenderer of the Tender, or part of the Tender, pursuant to any ODIA process.
   5. The Tenderer submits its Tender to provide the Services 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:
         1. the Commonwealth’s obligations to act in accordance with the applicable Commonwealth procurement framework, for example to ensure certainty of costs and value for money; and
         2. the requirements set out in the ‘Promoting Confidence in Defence Procurement Processes’ section of the Defence publication Defence and the Private Sector - An Ethical Relationship;
      5. that the Commonwealth can rely on the Tender in accurately assessing compliance with the RFT, risks and risk management options, and value for money in accordance with the RFT;
      6. that representations made in the Tender, when incorporated in any resultant Contract, will be fully complied with by the Tenderer;

* + 1. that the Tenderer has relied entirely upon its own inquiries and inspection in preparing its Tender;
    2. 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;
    3. that in any resultant Contract the Tenderer will not use ACM in providing the Services and no ACM will be taken onto Commonwealth Premises in connection with providing the Services;
    4. 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;
    5. 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 agencies or regulatory bodies;
    6. that Defence, as a Commonwealth agency, 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 on the AusTender website; and
    7. that the Tenderer is aware of the impact of the *Auditor-General Act 1997* (Cth) on its participation in the RFT and on any resultant Contract and any Subcontract under a resultant Contract.
  1. The Tenderer acknowledges and agrees that:
     1. the RFT and any communication or dealings of any kind in relation to the RFT (other than this deed poll) between the Commonwealth and the Tenderer, or between the Commonwealth and any other person with an interest in the RFT, do not constitute a contract between the Commonwealth and the Tenderer;
     2. to the extent permitted by law, 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
     3. to the extent permitted by law, the Commonwealth has no liability to the Tenderer, or any other person, for any compensation on any basis whatsoever in connection with the Tenderer’s participation in the RFT.

1. 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.
2. UNDERTAKINGS 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 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. For the purposes of clause 4.1, collusive tendering, anti-competitive conduct, or any other similar conduct may include the disclosure, exchange and clarification of information (in any form) whether or not such information is confidential to the Commonwealth or any other tenderer or any other person or entity.
  2. 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 (including foreign anti-corruption legislation) or Commonwealth policies regarding the offering of unlawful inducements in connection with their Tender;
     3. without limiting clause 4.3a 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. that the Tenderer is aware of the provisions of the *Australian Consumer Law* (Schedule 2 to the *Competition and Consumer Act 2010* (Cth))*,* and Division 137 of the *Criminal Code Act 1995* (Cth)and that its Tender does not contain any false, misleading or deceptive misrepresentations, claims or statements.
  3. Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and any Related Bodies Corporate, and their officers have not been convicted of bribery of Commonwealth, state, territory or foreign government officials during the last seven years.
  4. Except to the extent identified in clause 4.6, the Tenderer represents and warrants that it and its Related Bodies Corporate officers, employees, agents and advisers have no actual, potential or perceived conflict of interest between the interests of the Commonwealth and the Tenderer's interests in relation to the RFT process. The Tenderer agrees to take such steps as the Commonwealth may require to resolve or otherwise deal with a conflict notified under clause 4.6.
  5. The following conviction for bribery, or actual, potential or perceived conflict of interest currently exist:

**[INSERT ANY CONVICTION FOR BRIBERY OF COMMONWEALTH, STATE, TERRITORY OR FOREIGN GOVERNMENT OFFICIALS DURING THE LAST 7 YEARS; INSERT ANY ACTUAL, POTENTIAL OR PERCEIVED CONFLICT OF INTEREST; OR IF NONE EXIST INSERT THE WORDS ‘NOT APPLICABLE’]**

* 1. If in relation to the RFT a conflict of interest exists, arises, or appears likely to arise, that the Tenderer has not previously disclosed, 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.
  2. 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.
  3. In addition to clause 4.8, the Tenderer acknowledges and agrees that the Commonwealth may exclude the Tender from further consideration if the Tenderer, any of its Related Bodies Corporate, or any officer of any of them has been convicted of bribery of Commonwealth, State, Territory or foreign government officials during the last seven years.
  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 ACTIONSTAKEN (INCLUDING POLICIES IN PLACE) TO RESPOND TO EACH SUCH BREACH, OR IF NO BREACHES ARE LISTED ABOVE INSERT ‘NOT APPLICABLE’]**.

* 1. The Tenderer represents and warrants that, in accordance with clause 1.9.3 of the Conditions of Tender, it has obtained and holds as at the Closing Time all of the satisfactory and valid STRs required under Table A-1 (or an STR receipt confirming that the STRs required under Table A-1 were requested prior to the Closing Time) of any entity that the Tenderer proposes to engage as a direct Subcontractor, where the total value of the work under the Subcontract is expected to exceed $4 million (inc GST).

Note to drafters: Include clause 4.12 if the PT PCP clauses are included in clauses 11.9.11-11.9.15 of the COC.

Note to tenderers: Tenderers are to include the following clause if the tenderer is a Reporting Entity and clauses 11.9.11 – 11.9.15 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 ‎‎4.12a; and
        2. obligations equivalent to this clause ‎4.12b (such that the obligations in this clause ‎‎4.12b 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. Applicable 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 Tenderer agrees that the laws of **[INSERT JURISDICTION]** apply to this deed poll and the Tenderer submits to the non-exclusive jurisdiction of the courts of that State or Territory and of any court that may hear appeals from any of those courts, for any proceedings 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.

|  |  |  |
| --- | --- | --- |
| NAME (Block Letters): |  | TELEPHONE NUMBER: |
|  |  |  |
|  |  | FACSIMILE NUMBER: |
|  |  |  |
|  |  | 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://drnet.defence.gov.au/casg/commercial/CommercialPolicyFramework/Pages/Factsheets-and-Guidance.aspx>

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)**