

## Endeavour Energy's General Conditions of Tender

### 1.1 Invitation to treat

This RFT is an invitation to Tenderers to make offers to Endeavour. It will not be construed, interpreted or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, quasi-contractual, restitutionary or other grounds for claims by any Tenderer.

### 1.2 Subject to formal written Contract

- (a) Subject to the terms and conditions of this RFT, and subject to paragraph (b) of this clause 1.2, no binding contract or other understanding (including, without limitation, quasi-contractual rights, promissory estoppel, or rights with a similar legal basis) will exist between Endeavour and a Tenderer unless and until a formal written contract is executed by both parties.
- (b) If the RFT is for the procurement of construction-related Services or Works:
  - (i) Endeavour will send the Letter of Contract to the preferred Tenderer. The Letter of Contract will incorporate all the Contract documents including, without limitation, the terms and conditions by reference. The preferred Tenderer will be required to sign, date and return the Letter of Contract to Endeavour within a specified date, thereby completing formation of the Contract; and
  - (ii) the final Contract documents will be sent with the Letter of Contract in an enclosed compact disk to the preferred Tenderer. If the preferred Tenderer considers that the Contract documents contained in the compact disc are incorrect or not up-to-date, the preferred Tenderer must notify Endeavour promptly.

### 1.3 Other Endeavour rights

- (a) Endeavour may, in its sole discretion and at any stage of the RFT process, do all or any of the following:
  - (i) require additional information from any Tenderer;
  - (ii) change the structure of the RFT process;
  - (iii) terminate further participation in the RFT process by any Tenderer for any reason, regardless of whether the Tender submitted conforms with the requirements in this RFT;

- (iv) terminate any negotiations being conducted at any time with any Tenderer for any reason;
  - (v) negotiate with one or more Tenderers and enter into an agreement without prior notice to any other Tenderer;
  - (vi) change the scope of the Services or other requirements of this RFT;
  - (vii) vary, amend (including by replacement) or terminate the RFT process;
  - (viii) consider any non-conforming or late Tender; and
  - (ix) consider Tenders submitted by two or more Tenderers on a “consortium” basis or similar (provided that one party must undertake the role of prime contractor).
- (b) Any time or date in this RFT is for the sole convenience of Endeavour. The establishment of a time or date in this RFT does not create an obligation on the part of Endeavour to take any action or any right in any Tenderer that any action be taken on the date established. Endeavour may vary any time or date in this RFT in its sole discretion.
- (c) Endeavour may in its sole discretion elect to notify or not to notify affected Tenderers if it does any of the above, but will not be obliged to provide any reasons for its actions.

#### **1.4 Responsibility for tendering costs**

Participation in any stage of this Tender process, or in relation to any matter concerning the RFT, will be at the Tenderer’s sole risk, cost and expense. Endeavour will not be responsible in any circumstance for any costs or expenses incurred by any Tenderer in preparing or lodging a Tender or in taking part in the Tender process or taking any action related to the Tender process.

#### **1.5 Information provided**

- (a) This RFT contains statements derived from information which is believed to be reliable at the date obtained but does not purport to provide all of the information which may be necessary or desirable to enable any organisation to determine whether or not to submit a Tender or enter into a Contract or arrangement with Endeavour in relation to the Services.
- (b) Neither Endeavour nor any of its employees, agents, contractors or advisers gives any representation or warranty, express or implied, as to the accuracy or completeness of any information or statement given or made in this RFT. Neither Endeavour nor any of its employees, agents, contractors or advisers has carried out or will carry out an independent audit or verification exercise in relation to any part of this RFT (including any information to which reference is made).

## 1.6 No reliance

- (a) Tenderers must form independent judgements about any information and performance or other figures in this RFT, and make their own enquiries. Endeavour has no liability to any person who acts or fails to act in reliance on any information or figures in this RFT.
- (b) The Tenderer acknowledges that it has not relied on any other information not contained in this RFT (including without limitation any expression of interest or similar document in relation to the Services).

## 1.7 Liability

To the maximum extent permitted by law, Endeavour will not be liable to any Tenderer on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual, tortious (including negligence), statutory or restitutionary grounds whatsoever as a consequence of any matter or thing relating or incidental to a Tenderer's participation in the Tender process, including, without limitation, instances where:

- (a) a Tenderer is not engaged to provide the Services;
- (b) Endeavour varies or terminates the Tender process or any negotiations with a Tenderer;
- (c) Endeavour decides not to proceed with acquiring the Services in whole or in part;
- (d) Endeavour exercises any of its other rights under or in relation to this RFT; or
- (e) data is lost, corrupted or not received through Tenders being lodged by email.

## 1.8 Precedence of documents

If there is any inconsistency between Part A of this RFT and any other part of, attachment to or document referenced in this RFT, then the terms of this Part A will prevail to the extent of that inconsistency.

## 1.9 Ownership of Tenders

Without affecting any intellectual property rights which may exist in a Tender, all Tenders submitted in response to this RFT will become the property of Endeavour. Without limiting the foregoing, Endeavour may copy and reproduce Tenders for the purposes of evaluation, clarification, negotiation and/or Contract execution and anything else related to these purposes. In addition, Endeavour may retain electronic and hard copies of all Tenders, and any evaluation, negotiation or such other materials as are required for the discharge of its legal obligations and in order to efficiently and effectively manage any Contract entered into with a Tenderer.

### 1.10 Collusive tendering

Tenderers and their officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation or lodgement of Tenders. In addition to any other remedies available under any law or any contract, Endeavour may in its sole discretion immediately reject any Tender lodged by a Tenderer that engaged in any collusive tendering, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to the preparation or lodgement of Tenders.

### 1.11 Confidential information

- (a) This RFT and any other information provided by Endeavour during the RFT process is confidential information of Endeavour and Tenderers must not disclose the contents of this RFT or any other information provided by Endeavour during the RFT process, supply any information, make any statement or otherwise issue any document to any third party concerning this RFT, whether for publication or transmission in any form or otherwise, without the prior written consent of Endeavour.
- (b) Endeavour will treat all Tenders and any supporting material provided with Tenders as confidential information and will not disclose their contents to any third party except those employees, agents and advisers of Endeavour who have a need to know and access the confidential information for the purposes of evaluation of Tenders, negotiation of a Contract with any Tenderer and for any purposes reasonably ancillary to any products or services provided to Endeavour by the Tenderer.
- (c) If there is any inconsistency between the terms of any other confidentiality agreement between Endeavour and a Tenderer and this **section 1.11**, the terms of this **section 1.11** will prevail except where such other confidentiality agreement expressly states that it is to apply notwithstanding the terms of this RFT.

### 1.12 Return of information to Endeavour

- (a) Endeavour may in its sole discretion and at any stage require that all written information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any Tenderer including all copies of such information) be:
  - (i) returned to Endeavour, in which case the Tenderer must promptly return all such information to the address identified by Endeavour; or
  - (ii) destroyed by the Tenderer, in which case the Tenderer must promptly destroy all such information.

- (b) The Tenderer will promptly provide written confirmation to the RFT contact person that they have completely fulfilled their obligations under **paragraphs (a)(i) and (a)(ii)** if required by Endeavour.

### **1.13 Conflict of interest**

- (a) Tenderers and their respective officers, employees, agents and advisers must not be in a position which may, or does, give rise to an actual, potential or perceived conflict of interest between the interests of Endeavour and the interests of any other entity during the tender process.
- (b) Tenderers must state in their Tender any circumstances, arrangements, understandings or relationships which constitute, or may reasonably be considered to constitute, an actual or potential conflict of interest with the Tenderer's obligations under this RFT or under any Contract which may be negotiated or executed between the Tenderer and Endeavour.

### **1.14 Unlawful inducements**

A Tenderer and its respective officers, employees, agents or advisers must not have violated and must not violate any applicable laws or Endeavour policies regarding the offering of inducements in connection with the preparation of their Tender.

### **1.15 Improper assistance**

Tenders which, in the opinion of Endeavour, have been compiled with the improper assistance of employees of Endeavour, ex-employees of Endeavour and/or contractors or ex-contractors of Endeavour, or with the utilisation of information unlawfully obtained from Endeavour, will be excluded from further consideration.

### **1.16 False or misleading claims**

Endeavour may in its sole discretion exclude or reject any Tender which in the reasonable opinion of Endeavour contains any false or misleading claims or statements.

### **1.17 Compliance with Endeavour's Statement of Business Ethics**

All Tenderers must comply with Endeavour's Statement of Business Ethics (a copy of which can be downloaded from website [www.endeavourenergy.com.au](http://www.endeavourenergy.com.au)) in relation to this RFT and any Contract that the Tenderer may enter into with Endeavour arising out of this RFT.

### **1.18 Applicable law**



The laws applying in the State of New South Wales apply to this RFT, the Services and the Tender process. Each Tenderer must comply with all relevant laws and each Tenderer submits to the non-exclusive jurisdiction of the courts of New South Wales.