| Clause | | | Remarks/Guidelines |
| --- | --- | --- | --- |
| **GCT 26 Anti-collusion** | | | |
| (1) | (a) | Subject to sub-clause (2) of this Clause, the tenderer shall not communicate to any person other than the *Client* the amount of the tender price or any part thereof until the tenderer is notified by the *Client* of the outcome of the tender exercise. | DEVB memo ref. (02B6J-01-6) in DEVB(W)510/10/01 dated 24.3.2011. |
|  | (b) | Further to paragraph (a) of this sub-clause, the tenderer shall not fix the amount of the tender price or any part thereof by arrangement with any other person, make any arrangement with any person about whether or not it or that other person will or will not submit a tender or otherwise collude with any person in any manner whatsoever in the tendering process. |  |
|  | (c) | Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer’s liability for such breach or non-compliance, invalidate its tender. |  |
| (2) | Sub-clause (1)(a) of this Clause shall have no application to the tenderer’s communications in strict confidence with: | |  |
|  | (a) | its own insurers or brokers to obtain an insurance quotation for computation of tender price; |  |
|  | (b) | its consultants or subcontractors to solicit their assistance in preparation of tender submission; and |  |
|  | (c) | its bankers in relation to financial resources for the contract. |  |
| (3) | The tenderer shall submit with its tender a Digitally Signed and witnessed letter in the form set out in Appendix [*insert reference*]+ to the General Conditions of Tender. For the avoidance of doubt, the said letter must be Digitally Signed by both the tenderer and its witness, save that the witness does not have to be a person authorized to sign Government contract. | | + See below. It shall NOT be included as an essential submission under GCT 21. |
| (4) | The tenderer shall indemnify and keep indemnified the *Client* against all losses, damages, costs or expenses arising out of or in relation to any breach of or non-compliance with sub-clause (1) of this Clause by the tenderer, including but not limited to additional costs due to price escalation, costs and expenses of re-tendering and other costs incurred. | |  |
| Appendix [ ]  To: The Government of the Hong Kong Special Administrative Region ("**Government**")  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Dear Sir/Madam,  Contract No.: [ ]  Title: [                                                         ] | | |  |
| \*[I/We], [(name of the tenderer) of (address of the tenderer)]1, refer to \*[my/our]tender for the above contract. | | | \* Delete as appropriate.  1 Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.  2 Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign Government contracts on behalf of that person or as the case may be company. |
| \*[I/We] confirm that, before \*[I/we] sign this letter, \*[I/we] have read and fully understand this letter and the anti-collusion clause in General Conditions of Tender Clause GCT 26. | | |
| \*[I/We], represent and warrant that in relation to the tender for the above contract: | | |
| (i) \*[I/We], other than the Excepted Communications referred to in the last paragraph of this letter, have not communicated and will not communicate to any person other than the Government the amount of the tender price or any part thereof until \*[I/we] have been notified by the Government of the outcome of the tender exercise; | | |
| (ii) \*[I/We] have not fixed and will not fix the amount of the tender price or any part thereof by arrangement with any person; | | |  |
| (iii) \*[I/We] have not made and will not make any arrangement with any person as to whether \*[I/we] or that other person will or will not submit a tender; and | | |  |
| (iv) \*[I/We] have not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process. | | |  |
| \*[I/We] shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred. | | |  |
| In this letter, the expression “Excepted Communications” means \*[my/our] communications in strict confidence with:  (i) \*[my/our] own insurers or brokers to obtain an insurance quotation for computation of tender price;  (ii) \*[my/our] consultants or subcontractors to solicit their assistance in preparation of tender submission; and  (iii) \*[my/our] bankers in relation to financial resources for the contract. | | |  |
| Signed for and on behalf of [name of the tenderer] by [name and position of the signatory]2:    Name of Witness:  Signature of Witness:  Occupation: | | |  |