[Sample for NEC ECC contracts]

**JV Proforma for Proposed Value of Works to be Undertaken by Each Participant / Shareholder in the Joint Venture (JV)**

[To be submitted in the “Tender Price Document” only (for tenders using marking scheme)]

[To be submitted with the tender (for tenders using formula approach)]

**Name of Tenderer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Category of works1** | | **Proposed value of works (in Hong Kong dollar ($))2** | | | |
| **A** | **B3** | **C3&4** | **D3&5** |
| **{Name of the lead participant / major shareholder}**  (to be inserted by the tenderer) | **{Name of the other JV participant / shareholder}**  (to be inserted by the tenderer) | **{Name of the other JV participant / shareholder}**  (to be inserted by the tenderer) | **{Name of the other JV participant / shareholder}**  (to be inserted by the tenderer) |
| **Proposed value of works** | Type I (Mandatory)  [The relevant category of the **Approved List / Approved Specialist List** if it is required in SCT 5(2)(a) (i.e. condition of participation).] |  |  |  |  |
| Type II (Optional)  [The relevant categories of the **Approved List** selected as appropriate by the project team.] |  |  |  |  |
| Type III (Optional)  [If ACC Clause V:5 on Specialist Contractor is included, select from the list thereof as appropriate by the project team]6&7 (add the reference to footnote 6 & 7 after each Type III category) |  |  |  |  |
| **Sub-Total** |  |  |  |  |
| **Tendered total of the Prices8** | | {Summation of the totals of **A, B, C and D** to be inserted by the tenderer} | | | |
| **Percentage Participation9** | | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } |
| **Forecast value of works10** | Type I  (Same as above) | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } |
| Type II  (Same as above) | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } |
| Type III  (Same as above) | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } |
| **Sub-Total** | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } | { to be inserted by the *PM* designate after receipt of tender } |
| **Forecast total of the Prices11** | | {to be inserted by the *PM* designate after receipt of tender} | | | |

**Notes:**

The tenderer shall not add any additional category of works to, or amend or delete any category of works in the list of categories set out in this JV Proforma.

Each proposed value of works to be undertaken by each participant / shareholder shall be inserted as a figure in the unit of Hong Kong dollar, **otherwise the tender shall be rendered invalid**. Any other descriptions, such as **“jointly”, “fully integrated” etc. are not acceptable**.

The tenderer’s attention is drawn to SCT 5(6). For a participant / shareholder other than the lead participant or major shareholder, even if it is not enlisted in the relevant category of the Approved List / Approved Specialist List as required under SCT 5(6)(a), it may nonetheless be considered technically capable if it satisfies the requirement as stated in other sub-clauses of SCT 5(6).

Delete as appropriate or add additional column(s) as necessary.

Delete as appropriate or add additional column(s) as necessary.

This category of works is included in ACC Clause V:5 which stipulates that the specified part(s) of the *works* must be undertaken by a contractor listed on the respective category of the Approved Specialist List. In case the tenderer intends to subcontract this category of works, the space for the proposed value of this category of works shall be left blank and the tenderer shall distribute the value of this category of works among other categories of works. In case a value is inserted in the space for this category of works for any participant / shareholder, it is presumed that the part of the *works* will be undertaken by that participant / shareholder. The relevant participant / shareholder needs to satisfy the requirement as stated in SCT 5(5) or SCT 5(6), as the case may be.

Correction Rules no. 1(c) and 1(f) do not apply to this category of works.

The “tendered total of the Prices” in the JV Proforma shall tally with the “tendered total of the Prices” inserted in the Form of Tender.***[Internal note (not to be included in the tender documents)****: This note serves as a general reminder to the tenderer and gives an indication of what is expected to be filled in. In case there is discrepancy with the Form of Tender, it does not render the tender invalid and the relevant correction rules shall apply.****]*** The tenderer shall ensure that there are no uncategorised works. The value of those parts of the works that are not directly related to any category of works, e.g. preliminaries, personnel, insurance, safety etc. shall be distributed among the categories of works set out in the JV Proforma by the tenderer. For the avoidance of doubt, the value of those parts of works that are intended to be subcontracted out shall be included / distributed among the categories of works set out in the JV Proforma by the tenderer.

The percentage participation of each participant / shareholder shall be calculated by reference to the corrected sub-total of proposed value of works to be undertaken by such participant / shareholder against the corrected tendered total of the Prices, and inserted by the *Project Manager* designate in this JV Proforma. In case the percentage participation stated elsewhere in the tenderer’s submission does not tally with this JV Proforma, the percentage participation calculated as per this JV Proforma shall prevail.

The forecast value(s) of works to be undertaken by each participant / shareholder shall be calculated by multiplying the proposed value(s) of works by the ratio of the forecast total of the Prices in the Grand Summary of *\*activity schedule / \*bills of quantities* to the tendered total of the Prices (both after correction if applicable), and be inserted by the *Project Manager* designate.

The “forecast total of the Prices” in the JV Proforma shall tally with the forecast total of the Prices in the Grand Summary of \**activity schedule* / \**bills of quantities* (after correction if applicable), and be inserted by the *Project Manager* designate.

**Correction Rules for JV Proforma**

***For lump sum contracts***

***[Internal note (not to be included in the tender documents)****: This set of rules shall apply to both bill of quantities and activity schedule. In choosing which set of rules to be adopted, reference shall be made to paragraphs A5.2.1 & A5.2.2 of NEC Practice Notes and it shall be consistent with the correction rules for tender errors under GCT 11.****]***

1. Where:

1. no value or an illegible entry is inserted in the space for any proposed value of works in the JV Proforma, the proposed value of works shall be marked as zero;
2. all entries for the proposed values of works of any particular participant / shareholder (i.e. the whole column in the table) have no value or deemed zero as per sub-paragraph (a) above, the tenderer shall be considered as having failed to comply with the essential requirement in GCT 21(xii) and **its tender shall be rendered invalid**;
3. all entries for a category of works set out in this JV Proforma (i.e. the whole row in the table) have no value or deemed zero as per sub-paragraph (a) above, the tenderer shall be considered as having failed to comply with the essential requirement in GCT21(xii) and **its tender shall be rendered invalid**;
4. an additional category of works has been added by the tenderer, the value inserted to the additional category shall be distributed to all categories of works set out in this JV Proforma in proportion according to the values of those categories inserted in the JV Proforma by the tenderer. The additional category of works shall then be discarded;
5. any category of works in the list of categories set out in the JV Proforma has been amended by the tenderer, such amendment shall be discarded and any proposed value of works inserted in the relevant space shall be deemed to refer to the original category;
6. any category of works in the list of categories set out in the JV Proforma is deleted, the proposed value of works for such category shall be marked as zero. In such a case, the tenderer shall be considered as having failed to comply with the essential requirement in GCT21(xii) and **its tender shall be rendered invalid**.

2. Errors in the casting of any proposed value of works in the JV Proforma (after correction under paragraph 1 above, if any) shall be corrected. Thereafter, the sub-total of proposed value of works to be undertaken by each participant / shareholder and the tendered total of the Prices in the JV Proforma shall be corrected.

3. The tendered total of the Prices inserted in the Form of Tender shall take precedence over the tendered total of the Prices inserted in the JV Proforma. In case of discrepancy, the tendered total of the Prices in the JV Proforma shall be corrected to match the one inserted in the Form of Tender in the manner set out in paragraph 4 below.

4. After correcting all the errors in accordance with paragraphs 1 and 2 above, the difference between:

(i) the tendered total of the Prices inserted in the Form of Tender, and

(ii) the tendered total of the Prices inserted in the JV Proforma

shall be calculated as a plus percentage if 4(i) is greater than 4(ii), or as a minus percentage if 4(i) is less than 4(ii). The plus or minus percentage shall then be applied to the proposed value of works of each category of each participant / shareholder inserted in the JV Proforma. The sub-total of proposed value of works of each participant / shareholder shall also be corrected accordingly.

5. After correcting all the errors in accordance with paragraphs 1 to 4 above, the percentage participation of each participant / shareholder shall be calculated by reference to the corrected sub-total of proposed value of works to be undertaken by such participant / shareholder against the corrected tendered total of the Prices.

***For re-measurement contracts***

***[Internal note (not to be included in the tender documents)****: This set of rules shall apply to both bill of quantities and activity schedule. In choosing which set of rules to be adopted, reference shall be made to paragraphs A5.2.1 & A5.2.2 of NEC Practice Notes and it shall be consistent with the correction rules for tender errors under GCT 11.****]***

1. Where

1. no value or an illegible entry is inserted in the space for any proposed value of works in the JV Proforma, the proposed value of works shall be marked as zero;
2. all entries for the proposed values of works of any particular participant / shareholder (i.e. the whole column in the table) have no value or deemed zero as per sub-paragraph (a) above, the tenderer shall be considered as having failed to comply with the essential requirement in GCT 21(xii) and **its tender shall be rendered invalid**;
3. all entries for a category of works set out in this JV Proforma (i.e. the whole row in the table) have no value or deemed zero as per sub-paragraph (a) above, the tenderer shall be considered as having failed to comply with the essential requirement in GCT21(xii) and **its tender shall be rendered invalid**;
4. an additional category of works has been added by the tenderer, the value inserted to the additional category shall be distributed to all categories of works set out in this JV Proforma in proportion according to the values of those categories inserted in the JV Proforma by the tenderer. The additional category of works shall then be discarded;
5. any category of works in the list of categories set out in the JV Proforma has been amended by the tenderer, such amendment shall be discarded and any proposed value of works inserted in the relevant space shall be deemed to refer to the original category;
6. any category of works in the list of categories set out in the JV Proforma is deleted, the proposed value of works for such category shall be marked as zero. In such a case, the tenderer shall be considered as having failed to comply with the essential requirement in GCT21(xii) and **its tender shall be rendered invalid**.

2. Errors in the casting of any proposed value of works in the JV Proforma (after correction under paragraph 1 above, if any) shall be corrected. Thereafter, the sub-total of proposed value of works to be undertaken by each participant / shareholder and the tendered total of the Prices in the JV Proforma shall be corrected.

3. If the tendered total of the Prices inserted in the Grand Summary of [\**bills of quantities / activities schedule*], or the corrected one if it is corrected in accordance with the correction rules as stated in [\**ETWB TC(W) No. 41/2002 / Appendix [X] to the GCT*], is different from that inserted in the JV Proforma, the Grand Summary shall take precedence and the JV Proforma shall be corrected to match the one inserted / corrected in the Grand Summary in the manner set out in paragraph 4 below.

4. After correcting all the errors in accordance with paragraphs 1 and 2 above, the difference between:

(i) the tendered total of the Prices inserted in the Grand Summary, or the corrected one, and

(ii) the tendered total of the Prices inserted in the JV Proforma

shall be calculated as a plus percentage if 4(i) is greater than 4(ii), or as a minus percentage if 4(i) is less than 4(ii). The plus or minus percentage shall then be applied to the proposed value of works of each category of each participant / shareholder inserted in the JV Proforma. The sub-total of proposed value of works of each participant / shareholder shall also be corrected accordingly.

5. After correcting all the errors in accordance with paragraphs 1 to 4 above, the percentage participation of each participant / shareholder shall be calculated by reference to the corrected sub-total of proposed value of works to be undertaken by such participant / shareholder against the corrected tendered total of the Prices.

**Internal Notes *(for internal use only, not to be included in the tender documents issued to the tenderers)***

1. This JV proforma is a standalone document for evaluating the technical capability of each participant *(for simplicity, “participant” in these notes refers to “participant / shareholder”)*. The proposed value of each category need **NOT** tally with the activity schedule or bill of quantities that involve pricing strategy of the JV which is not the *Client’s* concern.
2. The project team shall select the relevant categories in accordance with the nature of works and list them all out in the JV Proforma.
3. The categories of works must refer to the relevant categories listed in the List of Approved Contractors for Public Works (“**The Approved List**”) and/or the List of Approved Suppliers of Materials and Specialist Contractor for Public Works (“**The Approved Specialist List**”) which consist of 5 numbers and 51 numbers of categories respectively. The project team shall not come up with new category that does not exist in the Approved List or Approved Specialist List. Categories like “uncategorised category”, “other”, “miscellaneous” etc. are not allowed.
4. There are three types of category of works:

Type I: The listing requirement of the tenderer, i.e. the condition of participation. The category of the Approved List / Approved Specialist List that the tenderer is required to be listed on as stipulated in the SCT 5(2)(a) or tender notice.

Type II: Having considered the scope of works, apart from Type I above, project team has discretion to select additional relevant categories from the five categories of the Approved List, i.e. Buildings, Port Works, Roads and Drainage, Site Formation and / or Waterworks.

Type III: Having considered the scope of works, apart from Type I above, project team has discretion to select other relevant categories from the 51 numbers of categories of the Approved Specialist List, The project team needs to be cautious about the inclusion of Type III because there is a risk that the tenderer may inadvertently state a figure to which the tenderer could not satisfy the requirement stated in SCT 5(5) or SCT 5(6), as the case may be, and as a result is considered technically incapable. This type is only applicable for special cases where relevant optional ACC Clause V:5 on Specialist Contractor is included in the contract and there is a high chance that one of the JV participants would only undertake that part of the specialist works.

ACC Clause V:5 stipulates that the specified part(s) of the works must be undertaken by a contractor listed on the respective category of the Approved Specialist List. It is not necessary to include all categories provided in ACC Clause V:5. Having considered the scope of works and the circumstances, the project team has discretion to include such relevant categories as appropriate. For instance, “***Landscaping***” is not included in the example below because it is very likely subcontracted out by one of the participants, and such value would be included in other categories undertaken by that participant. On the contrary, if there is a high chance that one of the JV participants would only undertake one part of the specialized works, like “***Structural Steelwork***” in the example below, then “***Structural Steelwork***” should be included in the JV Proforma because for that participant, it has no other category to fill in.

Even if the participant inserts a figure in this type of categories which shows the participant’s intention to undertake that part of the works by itself, it is not obliged to do so. The contractor still could subcontract that part of works and ACC Clause V:5 requiring either the contractor or the subcontractor to be listed on the Approved Specialist List still applies.

Type I must be included in case there is such a condition of participation. Types II and III are optional and only be included if it is a material part of the contract. Considerations shall be made to the scope of works and the circumstances. For instance, the project team shall consider the relevancy of requiring the tenderer to differentiate the value of that specific part of the works and the difficulties of the participant to demonstrate its experience of that specific part of the works. So, for most of the straightforward contracts, there should be only one row showing one category, i.e. Type I.

1. There is no “uncategorised works”, “other”, “miscellaneous” etc., which means, the sum of the proposed value of all participants must tally with the “Tendered total of the Prices”. The value of the part of works that are not directly related to any category, e.g. preliminaries, personnel, insurance, safety etc. shall be distributed among the listed categories by the tenderer in such a way that the sum is tally with the “Tendered total of the Prices”.
2. The tenderers are not allowed to add any additional category to the list selected by the project team.
3. Correction Rules:
4. The Tendered total of the Prices provided in the Form of Tender or inserted / corrected in the Grand Summary as the case may be prevails. The Tendered total of the Prices in this JV Proforma will be corrected and the breakdown of each category will be corrected on pro rata basis.
5. The percentage participation on this JV Proforma will be inserted by the *Project Manager* designate based on the respective total of each participant and it prevails.
6. **Example**:

* The contract involves building a stadium with a structural steel roof. The contractor also needs to construct the connecting roads with landscaping works.
* The tenderers must be a Confirmed Group C contractor of the **Buildings Category** of the Approved List.
* In the contract, it is stipulated in ACC Clause V:5 that “**Structural Steelwork**” and “**Landscaping**” must be undertaken by a Specialist Contractor if the contractor is not on the respective lists.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Category of works** | | **Proposed value of works ($)** | | | |
| **A (lead participant)** | **B** | **C** | **D** |
| **Good Construction Company Limited** | **High Quality Construction Limited** | **{Name of the other JV participant / shareholder}**  (to be inserted by the tenderer) | **{Name of the other JV participant / shareholder}**  (to be inserted by the tenderer) |
| Proposed value of works | 1. Buildings | $1,200,000,000 | $300,000,000 |  |  |
| 1. Roads and Drainage | $24,000,000 | $30,000,000 |  |  |
| 1. Structural Steelwork | $150,000,000 | $168,000,000 |  |  |
| **Sub-Total** | **$1,374,000,000** | **$498,000,000** |  |  |
| **Tendered total of the Prices** | | **$1,872,000,000** | | | |
| **Percentage Participation** | | 73.4%  {Inserted by the *PM* designate } | 26.6%  {Inserted by the *PM* designate } |  |  |
| Forecast value of works | 1. Buildings | $1,538,461,538  { Inserted by the *PM* designate } | $384,615,385  { Inserted by the *PM* designate } |  |  |
| 1. Roads and Drainage | $30,769,231  { Inserted by the *PM* designate } | $38,461,538  { Inserted by the *PM* designate } |  |  |
| 1. Structural Steelwork | $192,307,692  { Inserted by the *PM* designate }  [ | $215,384,615  { Inserted by the *PM* designate }  ] |  |  |
| **Sub-Total** | **$1,761,538,462**  { Inserted by the *PM* designate } | **$638,461,538**  { Inserted by the *PM* designate } |  |  |
| **Forecast total of the Prices** | | **$2,400,000,000**  {Inserted by the *PM* designate } | | | |

***Explanatory notes:***

1. “**Buildings**” must be included because the tenderer need to be enlisted in the category, i.e. condition of participation.
2. “**Roads and Drainage**” and “**Structural Steelwork**” are included based on the project team’s judgment.
3. In checking the technical capability of each participant, the lead and non-leading participants are handled differently:

(i) The sub-total of forecast value of works to be undertaken by the lead participant, as included in the [square brackets] in the second last row of the table, is checked against its permitted limit. It is not necessary to check each category it proposed to undertake, because if it were a solo tenderer, it is not required to be checked for each of the categories it undertakes. The requirement should not be more stringent for it in a JV.

(ii) For the non-leading participants, there are two cases. Take participant B as an example. Case 1: If it is a confirmed Group C contractor of the Buildings Category, just like the lead participant, only the sub-total of forecast value of works, as included in the [square brackets] in the second last row of the table, is checked against its permitted limit. Case 2: If it is not a confirmed Group C contractor of the Buildings Category, the forecast values of works to be undertaken under each category, i.e. Buildings, Roads and Drainage & Structural Steelwork, as included in the (round brackets), shall be checked against the respective limits of that participant in accordance with the SCT5(6).

4. There are situations where the participants lump certain value of works not listed in this JV Proforma. It is not necessary to enquire about the buildup of any value. Check the value as inserted by the tenderer should suffice.