

## 1. Definitions and interpretation

Unless the context otherwise requires the following terms have the following meaning:

<i>Addenda</i>	means documents issued by EPSA to amend or clarify the RFQ.
<i>Conditions of Quotation</i>	these terms and conditions
<i>Contract</i>	means the contract to be entered into between the parties for the supply of Goods / Services.
<i>Contract Conditions</i>	the summary terms and conditions of the Contract as detailed in this RFQ.
<i>Goods/Services</i>	means the products to be supplied by the Respondent and/or the services (including works) to be performed by the Respondent, which are the subject of and described in this RFQ.
<i>Head Contract</i>	the contract entered or to be entered into between EPSA and a third party in relation to Goods / Services.
<i>Personal Information</i>	has the meaning defined in the <i>Privacy Act 1988 (Cth)</i> .
<i>Price</i>	means the price offered by the Respondent to complete the Goods/Services described in this RFQ.
<i>Quotation</i>	means the offer submitted by a Respondent to supply the Goods/Services pursuant to this RFQ.
<i>Respondent</i>	means any person who submits a Quotation.
<i>RFQ</i>	means this request for Price/Quotation for the supply of the Goods/Services (and includes any other parts of and attachments to it).
<i>RFQ Closing Date</i>	means the date noted in this RFQ as being the date by which a Respondent must submit its Quotation.
<i>EPSA</i>	means Energy Power Systems Australia Pty Ltd (ABN 80 055 274 514) and <i>EPSA's Associates</i> means its employees, agents, consultants and advisers.

It is the responsibility of the Respondent to ensure that it has received all documentation detailed or referred to in the RFQ. If the Respondent identifies any discrepancy or inconsistency between the RFQ documents, the Respondent must notify EPSA in writing of the details of the discrepancy or inconsistency, and EPSA may issue Addenda to amend or clarify the RFQ, in whole or in part, if required.

## 2. Communications

A prospective Respondent must direct all communication and enquiries concerning this RFQ to the EPSA contact person named in this RFQ. The unauthorised communication by a prospective Respondent with any other employee or agent of EPSA may lead to a Quotation being rejected.

## 3. Amendment, suspension or discontinuation of this RFQ

EPSA may change this RFQ by issuing Addenda in writing. Any

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Addenda becomes part of the RFQ. This RFQ may only be amended through Addenda issued by EPSA

Additionally, EPSA may in its discretion and at any time (without prior notice to the Respondent) suspend or discontinue this RFQ and not procure the Goods/Services or procure the Goods/Services through other means or and proceed to negotiate with any one or more of the Respondents.

## 4. Agreement to be bound

By lodging a Quotation, a prospective Respondent agrees to be bound by the Conditions of Quotation.

## 5. Use of RFQ and information

This RFQ and any information provided by EPSA to a prospective Respondent as part of the RFQ process remain the property of EPSA and may only be used by a prospective Respondent to prepare a Quotation. Only persons to whom this RFQ is issued may submit a Quotation. EPSA collects any Personal Information sought in this RFQ for the purpose of determining a Respondent's suitability to provide the Goods/Services. Only EPSA's Associates who are responsible for evaluating Quotations will have access to Personal Information and may use the Personal Information to verify information provided by Respondents and to identify any adverse information not disclosed in a Quotation or that may affect a Respondent's ability to meet its contractual obligations in connection with the Goods / Services. To this end, EPSA may also use the Personal Information to obtain further information about a Respondent and/or any named individuals from publicly available records. EPSA will not disclose Personal Information to any other third party without a Respondent's consent, unless authorised or required by law. It is the responsibility of the Respondent to notify EPSA if their Personal Information requires updating.

## 6. Preparation and lodgment of Quotations

Respondents must ensure that Quotations are in English; the RFQ instructions are complied with; the Quotation is submitted by no later than the RFQ Closing Date, and all requested information is provided. Failure to comply with these requirements may render a Quotation invalid. All Quotations become the property of EPSA on submission. EPSA may copy, amend, extract or otherwise deal with all or any part of a Quotation for the purpose of conducting the RFQ process and related procurement processes. EPSA will not be responsible, nor pay for any cost, expense or loss which may be incurred by any person in connection with the preparation or presentation of a Quotation. Late Quotations will not be considered unless EPSA is of the view (and its decision will be absolute and final) that circumstances beyond the prospective Respondent's control were the cause of the lateness and the consideration of the late Quotation will not compromise the integrity of the procurement process or provide any unfair advantage to the prospective Respondent lodging the late Quotation. Late Quotations which are not accepted will be marked with the time and date of receipt and returned to the prospective Respondent.

## 7. Quotation validity period

Quotations must remain open and valid for acceptance by EPSA for the validity period stated in this RFQ. The validity period may be extended by written agreement between the Respondent and EPSA.

## **8. Evaluation of Quotations**

In evaluating Quotations, EPSA may require some clarification or elaboration of information supplied by the Respondent. Any information supplied by the Respondent in response to a request for information may, at EPSA's discretion, be treated as part of its Quotation.

## **9. Confidentiality**

Any information provided by EPSA to the Respondent as part of this RFQ must be kept confidential and must be used only for the purposes of submitting a quotation. The Respondent must also keep the information in its Quotation confidential. Nothing in this clause prevents a Respondent from disclosing information in its Quotation:

(a) that is available to the public generally otherwise than as a result of a breach of this clause 9; or (b) if the disclosure is to the Respondent's professional advisers or lenders (and subject to corresponding confidentiality obligations).

## **10. Monetary amounts**

All monetary amounts must be expressed in Australian dollars (exclusive of GST).

## **11. How a Contract for the supply of the Goods / Services is formed**

A Contract will be formed when EPSA and the successful Respondent enter into a formal instrument of agreement for the supply of the relevant Goods / Services. The Respondent acknowledges that under that contract (as the supplier of Goods / Services under the Contract) it may be required to match EPSA's liabilities and obligations as supplier under the Head Contract. The terms of that Contract are to be found at CORP-LEG-CON-002 Subcontract for Works.

## **12. Reservations**

EPSA, may at its absolute discretion: (a) reject any or all Quotations; or (b) waive any irregularity or non-conformance in a Quotation (including the late submission of a Quotation) and accept that Quotation. EPSA is not obliged to give reasons for the acceptance or rejection of a Quotation. Additionally, EPSA, in its discretion and without recourse from any other party, reserves the right to negotiate with any one or more Respondents while continuing with this RFQ, and without having to advise other Respondents of those negotiations. Respondents must be prepared to enter into such negotiations upon request from EPSA.

## **13. Respondents must not engage in bid rigging**

A Respondent must not engage in cartel conduct by entering into a contract, arrangement or understanding with competitors, which has the purpose of rigging bids in response to this RFQ or otherwise engage in conduct that will or is likely to breach the *Competition and Consumer Act 2020 (Cth)*. In particular, a Respondent must not agree with competitors that: (a) some competitors will not respond to this RFQ; (b) the Respondents will respond to this RFQ on the basis that one particular Quotation will be more likely to succeed; (c) the Respondent and/or its competitors will not proceed with their Quotations until the conclusion of the RFQ process; or (d) a material component of one or more Quotations will be responded to in a particular way.

## **14. Respondents must provide warranties**

In lodging a Quotation, the Respondent represents and warrants, for the benefit of EPSA, that:

- (a) the information contained in its Quotation is accurate and complete;
- (b) its Quotation makes allowance for all matters that might impact upon their ability to provide the Goods/Services in whole or in part, or within any particular time, or at any particular cost, and in particular that the Price covers all the costs of complying with all relevant requirements necessary for the due and proper provision of the Goods/Services in accordance with the Contract Conditions;
- (c) it has, and will maintain, the necessary skills, qualifications and experience to enable it to provide the Goods/Services in accordance with the Contract Conditions;
- (d) it has obtained, or will be able to obtain, all relevant insurances, consents, permits or authorities necessary for it to provide the Goods/Services;
- (e) it is not insolvent and there is no unfulfilled or unsatisfied judgement or court order outstanding against it;
- (f) it has read all the information and documents provided to it in connection with this RFQ (including any terms in the Head Contract and in particular provisions relating to liquidated damages payable by EPSA under the Head Contract);
- (g) it has not relied upon any warranty or representation made by or on behalf of EPSA except as expressly provided for within this RFQ; and
- (h) it will make no claim against EPSA or EPSA's Associates in relation to the selection of a Respondent or any other matter in connection with this RFQ or the process contemplated by this RFQ.

## **15. Respondents must indemnify EPSA for any breach of warranties**

In the event of a breach of the warranties given in clause 14, the Respondent will indemnify and keep indemnified EPSA in respect of any loss, damage, expense, suit, proceeding or cost which may be incurred by EPSA. The Respondent agree to irrevocably and unconditionally to release EPSA from any claim it may have, or would have had against EPSA in relation to or in connection with this RFQ, the consideration of Quotations or the awarding of the Contract (including any claim arising from any negligence, default or lack of care by the Respondent). The Respondent must indemnify EPSA against any claim which is the subject of the release provided for in this clause 15.