



Fortescue
The New Force in Iron Ore

Conditions of Tender

100-FR-PC-0039_Rev 7

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1 Definitions

Addenda has the meaning given in clause 6.

Alternative Proposal has the meaning given in clause 7.2.

Ariba System means the Inviter's system for issuing and administering Request for Tenders, known within the Inviter's business as Fort-e-buy.

Conditions of Tender means these conditions of tender.

Departure means any condition of sale, quotation, offer or proposal of any nature appearing on any documents submitted with or within the Tender which constitutes any variation of, or omission from or addition to the Request for Tender.

Draft Contract means the terms and conditions that will be entered into between the Inviter and the successful Tenderer as set out in the Request for Tender.

Due Date means the time and date specified in the Request for Tender for submission of Tenders.

Inviter means the Fortescue entity specified as being the Inviter in the Request for Tender.

Request for Tender means documents issued by the Inviter through the Ariba System to source Works from the Tenderer, as updated and amended from time to time.

Scope of Works means the information titled as the "Scope of Works" within the Request for Tender.

Statement of Compliance/Departures means the tender schedule of this name in the Request for Tender, to be completed by the Tenderer to confirm compliance with, or detail Departures from Request for Tender.

Tender means the offer to be submitted by the Tenderer in accordance with the Request for Tender via the Ariba System.

Tenderer means an entity or, if applicable, a person to whom or organisation to which this Request for Tender has been issued.

Tender Process means the process of issuing and administering Requests for Tender and evaluating Tenders through the Ariba System as described in the Request for Tender.

Validity Period has the meaning given in clause 2.3.

Works means the goods and/or services the subject of the Request for Tender.

2 Lodgement of Tenders

2.1 Submission

- (a) The Tender must be submitted:
 - (i) by the Due Date;
 - (ii) in electronic form via the Ariba System with any attachments to be in Microsoft Office (or compatible) format or other format specified by the Inviter; and
 - (iii) if required in the Request for Tender, in hard copy with the Inviter at the address specified in the Request for Tender and marked to the attention of the contact person specified in the Request for Tender.
- (b) A Tenderer who submits a Tender will be deemed to have warranted to the Inviter that:
 - (i) the Tenderer has the necessary resources, experience, expertise and capacity to deliver the Works;
 - (ii) the statements, representations, claims and assertions made in the Tender are true and correct; and
 - (iii) it accepts all of the terms and conditions contained in these Conditions of Tender and Draft Contract, and any other terms and conditions stipulated in the Request for Tender except as indicated in the Statement of Compliance/Departures.
- (c) the Tenderer has obtained the required corporate authorisations and approvals to issue and commit to the Tender.

2.2 Late Tenders

Any Tender not submitted through the Ariba System by the Due Date will not be accepted by the Inviter.

2.3 Validity Period

The Tender must remain valid for a minimum period of 120 calendar days from the Due Date, or for such longer period as agreed in writing by the Tenderer and the Inviter (Validity Period) and will remain binding and be capable of acceptance at any time up to the expiration of that period.

2.4 Tenderer Capacity

- (a) The Tenderer's parent company, if any, may be required to provide a guarantee and indemnity to the Inviter in the form specified in the Draft Contract.
- (b) The Inviter will not consider a joint Tender, except to the extent that such a Tender is submitted by a formally constituted joint venture or an alliance specifically formed to bid for the Works. However, the Inviter will only communicate with one point of contact nominated in the Tender during the Validity Period.

2.5 Information to be Supplied with Tender

- (a) The Tender must be accompanied by all documentation and information required in the Request for Tender, and any additional information required by the Inviter from time to time.
- (b) The Tender and any associated documentation and information provided to the Inviter to substantiate the Tender will be the Inviter's intellectual property, and will not be returned to the Tenderer irrespective of the outcome of the Tender Process. The Inviter is permitted to reproduce, transfer, assign or otherwise use this intellectual property in its sole discretion. The following should be adhered to by the Tenderer when preparing and submitting the Tender:
 - (i) all documentation must be in the English language and all tendered rates must be in Australian currency, or as specified in the Request for Tender;

- (ii) measurements and quantities must be in units consistent with the *National Measurement Act 1960*, or in the absence of any specification therein must be in accordance with the Australian Metric Tables and Australian Standard AS1000 – "The International System of Units (SI) and its application"; and
- (iii) all information required to be supplied must be typewritten or legibly hand-written in ink without alterations or erasures (including whiting or blanking out), unless each alteration or erasure is signed in ink.

- (c) The Tenderer should pay particular attention to fully answering all the questions asked in the Request for Tender.
- (d) The Inviter reserves the right to seek clarification of any parts of a Tender.
- (e) The Inviter may undertake site visits to the Tenderer's premises and conduct interviews as part of the evaluation.
- (f) Any Tender which does not comply with the requirements of the Request for Tender including these Conditions of Tender may be rejected at the Inviter's sole discretion.

3 Site Inspections

- (a) An inspection of the site to which the Works may be required to be delivered or Works performed may be arranged by the Inviter. If the Inviter arranges such a site inspection, the Tenderer will be informed of the time and place of such inspection;
- (b) A Tenderer will not be permitted to ask any questions regarding the Tender Process during a site inspection. All queries must be provided in writing through the Ariba System in accordance with clause 5.3.

4 Opening of Tenders

The opening of Tenders will not be public.

5 Tenderer's obligations

5.1 Tenderer to Inform Itself

In submitting a Tender, the Tenderer will be deemed to have:

- (a) examined and informed itself in relation to all aspects of the Request for Tender including all documents included or referred to in them and any Addenda provided to the Tenderer;
- (b) formed its own assessment of the amount of work, materials, plant and equipment necessary to carry out the Scope of Works and the difficulties and hazards which affect the provision of the Works;
- (c) examined all further information relevant to the risks, contingencies and other circumstances having an effect on its Tender available on reasonable enquiry; and
- (d) satisfied itself as to the correctness and sufficiency of its Tender including tendered rates, or lump sums which will be deemed to cover the cost of complying with all obligations under the Draft Contract and of all matters and things necessary for the due and proper performance and provision of the Works as described in the Draft Contract (in each case, subject to the Statement of Compliance/Departures).

5.2 Tenderer responsible

- (a) The Inviter and its directors, employees and agents do not make any warranty (express or implied) as to the accuracy or completeness of the information provided to a Tenderer as part of the Request for Tender or otherwise.
- (b) If a Tenderer finds any error, discrepancy, ambiguity or omission in the Request for Tender, or any other information provided by the Inviter, the Tenderer must promptly notify the Inviter in writing through the Ariba System with full details of such errors, discrepancies, ambiguities or omissions.

5.3 Tenderer to seek clarification

- (a) If the Tenderer is in doubt as to the meaning of any part of the Request for Tender or has any questions in relation to the Request for Tender, the Tenderer may seek clarification from the Inviter within the Ariba System in writing at any time up to the date for final questions and clarifications as set out in the Request for Tender.

- (b) The Inviter may:
 - (i) provide a clarification to any of the issues identified in clause 5.3 before the Due Date through an Addenda; or
 - (ii) reject and not respond to any clarification made either within, or outside the Ariba System.

6 Addenda to Request for Tender

6.1 Inviter may issue Addenda

- (a) Addenda to the Request for Tender may be issued prior to the Due Date for the purpose of clarifying the Request for Tender or to effect modification to any terms of the Request for Tender. All Addenda will be issued via the Ariba System.
- (b) All Addenda when issued will become part of the Request for Tender.
- (c) No person has the authority to make any representation or explanation to the Tenderer as to the meaning of any of the Request for Tender documents, or as to anything to be done or not to be done by the successful Tenderer, or as to any other matter or thing so as to bind the Inviter in the exercise of its powers and duties under the Request for Tender unless such information is issued by Addenda.

7 Compliance

7.1 Treatment of non-compliance and Departures

The Inviter has the sole, unconditional right to consider a Tender which does not fully comply with the Request for Tender including the Draft Contract or Scope of Work. A Statement of Compliance/Departures must be submitted with the Tender and the Inviter reserves the right not to consider a Tender if a completed Statement of Compliance/Departures is not submitted.

7.2 Alternative Proposals

- (a) If the Tenderer wishes to make a proposal which it considers will result in cost reduction or other advantages to the Inviter, but which includes a Departure from the Inviter's requirements as stated in the Request for Tender, it may submit an alternative proposal (Alternative Proposal). Alternative Proposals may only be submitted if a complying Tender is also submitted. For an Alternative Proposal to be considered by the Inviter the Tender must:
 - (i) fully address the requirements as set out in the Request for Tender and be fully costed;
 - (ii) meet all the requirements of clause 2 for lodgement;
 - (iii) be marked "ALTERNATIVE PROPOSAL"; and
 - (iv) be accompanied by a Statement of Compliance/Departures describing clearly and in full detail the proposed Departures from the documents provided by the Inviter.
- (b) An Alternative Proposal may be evaluated at the discretion of the Inviter. The Inviter will have the sole discretion to accept or reject an Alternative Proposal.

8 Evaluation and Acceptance of Tenders

8.1 Inviter to have Sole Discretion

- (a) The Inviter:
 - (i) will not be obliged to either proceed with the Tender Process, or to contract out any part of the Works;
 - (ii) has the sole discretion in determining the final outcome from the evaluation of Tenders, whether those Tenders meet all the requirements of clause 2 for lodgement, are Alternative Proposals, or otherwise; and
 - (iii) at its sole discretion may award the contract for the Works to multiple Tenderers or one Tenderer if it is deemed as best suited to the interests of the Inviter.
- (b) The determination of the Inviter in respect of each Tender will be final and binding. The Tenderer accepts that it cannot dispute or question the Inviter's decision.
- (c) Notwithstanding any other provision in the Request for Tender, the Inviter:
 - (i) is not bound to accept the lowest price Tender;
 - (ii) may reject or refuse to consider any or all of the Tenders; and
 - (iii) evaluation and comparison of Tenders is confidential to the Inviter and will not be disclosed to the Tenderer or any other persons not officially concerned with such process.

8.2 Negotiation Period

The Inviter can conduct negotiations in the Tender Process with one or more Tenderers either simultaneously or otherwise.

8.3 Acceptance of Tender

- (a) Any Departure will be deemed to be excluded from the acceptance of the Tender to which such condition relates unless that same Departure:
 - (i) has been specifically noted and described in a Statement of Compliance/Departures and has been expressly referred to and accepted by the Inviter in correspondence between the Inviter and the successful Tenderer; or
 - (ii) is submitted as part of an Alternative Proposal.
- (b) A Tender will not be deemed to have been accepted and no contract in respect of the Works will arise between any Tenderer and the Inviter unless and until a contract has been executed by the Inviter and the successful Tenderer.

8.4 Contract formation

- (a) The successful Tenderer will be required to enter into the Draft Contract. The Inviter reserves the right to alter or add to the provisions of the Draft Contract during negotiation with the Tenderer(s).
- (b) Tenderers must not directly or indirectly provide any form of inducement or reward to any representative of the Inviter or its employees, contractors and consultants in respect of a Request for Tender.

8.5 Inviter's Rights

- (a) Without prejudice to any other rights expressed in these Conditions of Tender, the Inviter may, in its sole discretion and at any stage of the Tender Process, do all or any of the following:
 - (i) require additional information from any Tenderer (including requiring the Tenderer to resubmit a Tender that conforms with the Request for Tender where the Tenderer has failed to do so);
 - (ii) change the structure of the Tender Process;
 - (iii) terminate further participation in the Tender Process by any Tenderer for any reason, regardless of whether any Tender submitted conforms with the requirements of the Request for Tender;
 - (iv) terminate at any time any negotiations being conducted with any Tenderer for any reason;
 - (v) change the scope of the required deliverables or any other elements of the Request for Tender; and
 - (vi) vary, amend (including by replacement) or terminate the Tender Process.

- (b) The Inviter may in its sole discretion elect to notify, or not to notify affected Tenderers when it takes any action with respect to the Request for Tender, but will not be obliged to provide any reasons to any Tenderer for any of its actions in relation to the Request for Tender.

9 Confidentiality

- (a) The Inviter will treat Tenders as confidential and undertakes to keep confidential any information provided by the Tenderer in responding to this Request for Tender unless disclosure of any part of it is required by law.
- (b) The Tenderer must:
 - (i) treat the Request for Tender, Tender and any additional information obtained from the Inviter or submitted by the Tenderer as confidential;
 - (ii) refrain from divulging any confidential information to any person not involved with the preparation of the Tender; and
 - (iii) ensure any person receiving confidential information is similarly bound.
- (c) The Tenderer must destroy any hard copies and delete any electronic copies of the Request for Tender within seven days of the Due Date if a Tender is not submitted.
- (d) Without limiting any other requirements of this clause, the Tenderer must not make or issue any announcement or statement (including to any third party) in relation to the Request for Tender or the Tender Process without the prior written consent of the Inviter.

10 Costs

The Inviter is not responsible for any costs and expenses incurred by the Tenderer in connection with the Tender Process including, but not limited to, providing any further documentation required by the Inviter, information or presentations to the Inviter, attending negotiations and interviews with the Inviter, any site visits or inspections and any Alternative Proposal which may or may not lead to the execution of the Draft Contract. All such costs will be borne entirely and exclusively by the Tenderers.

11 Liability

To the maximum extent permitted by law, the Inviter 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 instances where:

- (a) a Tenderer is not engaged to provide the Works;
- (b) the Inviter varies, or terminates the Tender Process or any negotiations with a Tenderer;
- (c) the Inviter decides not to proceed with the Tender Process or acquiring the Works in whole or in part; or
- (d) the Inviter exercises any of its other rights under or in relation to the Request for Tender.