**(For Paper-based Tendering, to be inserted into the envelope of “Technical Proposal”)  
(For Electronic Tendering, to be stored in a file named “Technical.doc” or**

**in any other file name except “Price.doc”)**

**Appendix J - Non-collusive Tendering Certificate**

To: the Government

Dear Sir/ Madam,

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 1. | We, | (name of the Contractor) |  | of |
|  | (address(es) of the Contractor) | |  | |
|  |  | | | |

refer to the Government’s invitation to tender for the Contract (“**Invitation to Tender**”) and our Tender in response to the Invitation to Tender. Unless specified otherwise, capitalized terms used herein shall have the meaning as ascribed to them in the Tender Documents issued in respect of the Invitation to Tender

Non-collusion

2. We represent and warrant that in relation to the Invitation to Tender:

(a) Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;

(b) Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:

1. prices;
2. methods, factors or formulas used to calculate prices;
3. an intention or decision to submit, or not submit, any Tender;
4. an intention or decision to withdraw any Tender;
5. the submission of any Tender that does not conform with the requirements of the **Invitation to Tender**;
6. the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
7. the terms of our Tender,

and we undertake that we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:

(a) the Government;

(b) a joint venture partner with which we have submitted our Tender, and such joint venture arrangement has already been notified to the Government in our Tender;

(c) our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;

(d) our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to our Tender;

(e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;

(f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and

(g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of sub-contracting and beneficial ownership

4. Without prejudice to other requirements set out in the Tender Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government’s prior written approval before sub-contracting, we understand that we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in our Tender, including those which will be entered into after the Contract is awarded. We warrant that we have duly disclosed and will continue to disclose such arrangements to the Government.

5. We understand that we are required to disclose our beneficial ownership to the Government.

(please enter “✓” in the appropriate box)

* (For a company other than a listed company or exempted company[[1]](#footnote-1)) We will disclose the significant controllers register, as defined in the Companies Ordinance (Cap. 622).
* (For listed company) We are a listed company in Hong Kong and our corporate ownership has already been disclosed in the public domain.

1. We understand that the Government may request us to disclose further details regarding our shareholders or parent companies, or any other related, associated or controlling entities, to the Government. We agree to disclose such details to the Government if so requested, subject to such requests being reasonable in the circumstances.

Consequences of breach or non-compliance

7. We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 24.1 of the Terms of Tender, the Government may exercise any of the rights under Clauses 24.3 to 24.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against us.

8. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is a serious anti-competitive conduct. We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the “Commission”) and provide the Commission with any relevant information, including but not limited to information on our Tender and our personal information.

|  |  |  |
| --- | --- | --- |
| Signed by an authorised signatory/office-bearer for and on behalf of the Tenderer | : |  |
| Name of the authorised signatory/office-bearer | : |  |
| Title of the authorised signatory (where applicable) | : |  |
| Date | : |  |

- END of Appendix J -

1. An exempted company is one which is not required to keep a register of its significant controllers (see further Sections 653A (definition of “applicable company”) and 653H of the Companies Ordinance (Cap. 622).) [↑](#footnote-ref-1)