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TERMS OF TENDER
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PART 1

TERMS OF TENDER

Tenderers shall read this Tender Document carefully prior to submitting their tenders. Any tender which fails to comply with the requirements contained herein may render the tender invalid.

1. Invitation to Tender

Tenders are invited for the provision of the whole of the Services on the terms and conditions set out in the Contract.

2. Tender

- (a). This is an Invitation to Tender for the provision of all of the Services throughout the Contract Period.
- (b). By submitting a tender, a Tenderer agrees to all terms and conditions set out in the Tender Document. No modification to the terms set out in the Tender Document may be submitted or proposed by a Tenderer. Any modification proposal submitted in contravention of this requirement will be ignored and will not be treated as part of the tender being submitted.
- (c). Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (d). Tenders are to be submitted in triplicate and are to be completed in ink or typescript, tenders not so completed may not be considered.
- (e). Tenders may not be considered if false or incorrect information is given.
- (f). All proposals, information and responses from Tenderers shall be submitted in writing.
- (g). The Government reserves the right to disqualify any Tenderer who submits a tender that directly or indirectly attempts to preclude or limit the effect of the above requirements.
- (h). All supplementary information to this invitation to tender will be in writing with content and number of pages described and forwarded to all Tenderers known to be in receipt of the Tender Document by post. Tenderers shall acknowledge receipt of all such supplementary information.
- (i). A tender submitted by an unincorporated joint venture will not be considered.

3. Tender Preparation

- (a). All Tender Documents must be completed and submitted in accordance with the “Lodging of Tender” of the Tender Form.
- (b). Tender must be completed in English and in ink or typescript and in **TRIPLICATE** with all necessary information including documentary evidence which are necessary for tender evaluation.

- (c). A tender submitted by a Tenderer shall comprise the Technical Proposal in one envelope and the Price Proposal in another envelope. For the Technical Proposal, it shall comprise the following in triplicate:
- (i). Part 4 of the Tender Form Offer To Be Bound;
 - (ii). Schedule 3 Management Plan, Work Plan, Contingency Plan, Quality Assurance Plan and Transition Plan;
 - (iii). Annex C Working Background and Status of Tenderer;
 - (iv). Annex D Information of and Proposal by Tenderer;
 - (v). Annex F Qualifications and Experience of Nominated Supervisors; and
 - (vi). The financial documents and information required in Clause 13 below

The Price Proposal shall comprise Schedule 2 – Rates for the Provision of Services in triplicate.

- (d). When completing Part 4 - Offer to be Bound of the Tender Form, Tenderer should note that:
- (i). Where the Tenderer is a company, the name of the Tenderer should be the same as appearing on the name of Certificate of Incorporation or the latest Certificate Change of Name (where there has been a change of name), or on the Business Registration Certificate (in the case of the Tenderer having a trading name) or other equivalent document in the case if the Tenderer is incorporated elsewhere; and
 - (ii). the form is duly signed by Tenderer's authorised person.
- (e). Tenders may be excluded from consideration if complete information is not given with the tender or if any particulars and data asked for in sub-Clauses 3(a) to 3(c) above are not furnished in full.
- (f). Tenderers should check the numbers of pages of this Tender Document. If they find any missing or indistinct pages, they shall inform the Government Representative immediately so that the same can be rectified. Any addition or removal of any page of the Tender Document may render the tender invalid.
- (g). Subject to (i) below a tender may not be considered if any item required in Clause 3(c) above is missing at the time of opening of tenders. Alternatively, a Tenderer who has failed to provide certain item required for a Technical Proposal under Clause 3(c) above (including those identified in Annex D) at the time of opening of tenders may be requested to submit the missing item pursuant to Clause 11 below. Failure to comply with such request will be disqualified. To avoid any potential disqualification or delay, Tenderers are urged to ensure that complete set of items required in Clause 3(c) is submitted at the time of submission of their tenders.
- (h). Notwithstanding anything in these Terms of Tender to the contrary, a Tenderer's failure to submit Schedule 2, or the plans required in Schedule 3, or Annex F will be disqualified and no request for late submission will be made during the evaluation stage.**

4. Use of Two Envelopes in Submission of Tender

Completed tender document shall be submitted separately in two sealed envelopes as follows:

- (a). The price information (i.e. Schedule 2 “Rates for Provision of Services”) shall be enclosed in a sealed envelope clearly marked “**Tender Reference: AFCD/SQ/05/08 - Tender for the Provision of Services on Ticket Selling and Fees Collection at Ticket Office of the Hong Kong Wetland Park – Price Information**”;
- (b). The technical information (i.e. all other remaining documents required by this invitation to tender namely all the information and documents specified in Clause 3(c) above under the heading “Technical Information”) shall be enclosed in another sealed envelope clearly marked “**Tender Reference: AFCD/SQ/05/08 - Tender for the Provision of Services on Ticket Selling and Fees Collection at Ticket Office of the Hong Kong Wetland Park - Technical Information**”; and
- (c). The Technical Proposal and the Price Proposal shall then be put into one single large sealed envelop clearly marked “**Tender Reference: AFCD/SQ/05/08 - Tender for the Provision of Services on Ticket Selling and Fees Collection at Ticket Office of the Hong Kong Wetland Park**” without bearing any references to the identity of the Tenderer, and addressed to the Chairman, Government Logistics Department Tender Opening Committee. Tender must be deposited in the Tender Box of the Government Logistics Department situated at the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong **before 12:00 noon on 17 December 2008.**

Incomplete tenders or tenders submitted in a form otherwise than in the manner described above may not be accepted.

5. Tender Evaluation

The Government will use the Marking Scheme as set out in **Annex B** of this Tender Document to assess the tenders. The weightings of Technical Score and Price Score are 30% and 70% respectively. Before submitting their tenders, Tenderers are advised to note the following steps to be adopted for tender evaluation:

- (a). Stage 1 Evaluation
Completeness check of all tender will be conducted by checking whether the Tenderer has submitted all items required for the tender as specified in Clause 3(c) above. **A Tenderer who has failed to submit Schedule 2 or Schedule 3 or Annex F will not be considered further.** In addition, the tenders will be checked to determine whether or not it should be rejected pursuant to any of the applicable provisions of the Tender Document, including for example but without limitation, Clause 4 of the Notes to Tenderers, Clause 3(h), Clause 6(b) or Clause 8(a) of these Terms of Tender. Only those tenders which have not been rejected will be considered further for the next stage.

- (b). Stage 2 Evaluation
The tenders will be checked against the mandatory requirements as set out in the Marking Scheme. **Only those conforming to the mandatory requirements set out in the Marking Scheme will enter into Stage 3 evaluation.**
- (c). Stage 3 Evaluation
The Technical Score of conforming tenders will be assessed in accordance with the criteria set out in the Marking Scheme. Tenderers should note the overall passing mark for this stage of evaluation. Any tender failing to score the passing mark in this stage will not be considered or evaluated further.
- (d). Stage 4 Evaluation
The price information of tenders that have passed Stage 3 evaluation will be assessed according to the formula stated under “Stage 4 – Price Assessment” of the Marking Scheme.
- (e). Stage 5 Evaluation
The combined technical and price score of each Tenderer will be calculated. Subject to other provisions in these Terms of Tender, the tender that has achieved the highest total score will normally be recommended for acceptance.

6. Tenders to Remain Open

- (a). Tenders shall remain open for acceptance within a period of not less than one hundred and twenty (120) days after the Tender Closing Date. If before the expiry of the agreed validity period, their offer is withdrawn, they are advised that due notice will be taken of their action and this may well prejudice their future standing as a Government supplier.
- (b). All tenders must be submitted before the Tender Closing Date. Subject to Clause 11, late tenders will not be considered.
- (c). In case of a rainstorm black warning or typhoon signal No. 8 or above is valid for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time), the Tender Closing Date and time will be extended to 12:00 noon (Hong Kong time) on the next working day.

7. Charges

- (a). The charges to be quoted by Tenderers are to be shown in Hong Kong dollars. Such charges shall be net and where applicable, they shall include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.
- (b). If, at the request of the Contractor, assistance of any Government staff is provided after normal working hours (i.e. Mondays to Fridays, inclusive, 9:00 a.m. to 5:00 p.m.; Saturdays, 9:00 a.m. to 12:00 noon; Sundays and public holidays excluded) the Contractor shall be responsible for all overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

- (c). It will be assumed, unless Tenderers clearly stipulate otherwise, that their offers shall remain valid for the duration of the Contract. Therefore no request for price variation will be considered. If however a Tenderer wishes to submit a conditional offer which contains a price variation clause, it may do so, with the clear understanding that such an offer may prejudice the award of the Contract. In any such case the basis of the price variation formula should be clearly stipulated in the tender. The formula is binding only if it is accepted by the Department in writing.
- (d). Tenderers should ensure that the charges quoted are accurate before submitting their quotations. Under no circumstances will the Department accept any request for price adjustment on grounds that a mistake has been made in the tender prices.

8. Basis of Acceptance

- (a). Tenderers should note that their offers will be considered on a complete overall basis. Tender with only partial offers will not be considered.
- (b). Subject to other provisions in these Terms of Tender, the tender that has achieved the highest total score after undergoing the tender evaluation mentioned in Clause 5 above will normally be recommended for acceptance.
- (c). The Government Representative is not bound to accept the lowest or any tender or to give any reasons for doing so. The Government reserves the right to accept all or any part of any tender at any time within the tender validity period specified in Clause 6(a).
- (d). Without prejudice to and in addition to the provisions of these terms and conditions, the Government will award the Contract to the Tenderer who meets the following criteria –
 - (i). the Government is of the opinion that the Tenderer is fully capable of undertaking the Contract; and
 - (ii). the Government considers that, in terms of the evaluation criteria specified in the Tender Documents, the tender is or appears to be the most advantageous one to the Government.

9. Award of Contract

- (a). The successful Tenderer will receive as an indication of acceptance a fax or a letter of acceptance prior to the receipt of the duplicate copy of the contract document with the "Memorandum of Acceptance" part duly completed. This fax or letter of acceptance shall constitute a binding Contract.
- (b). Tenderers who do not receive any notification within the validity period of their offer shall assume that their tenders have not been accepted.

10. Negotiations

The Government reserves the right to negotiate with all or any of the Tenderer(s) about the terms of their tenders.

11. Tenderer's Response to the Department's Enquiries

In the event that the Department determines that:

- (a). clarification of any tender is necessary; or
- (b). save for Schedule 2, Schedule 3 and Annex F, certain document or information or proposal is missing in the tender, and that such omission is merely an unintentional error,

it may, but not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the missing document or information or proposal. Each Tenderer shall thereafter within five (5) working days or such shorter period as specified in the request submit such clarification, information or document or proposal. Tenders may not be considered if the requested item is not provided as required by the deadline specified in the request. As an alternative to seeking clarification or submission, the Government may, depending whether or not the missing item is required to determine if the Tenderer complies with the Mandatory Requirements set out in Annex B, disqualify the tender, or proceed to evaluate the tender on and as is basis.

12. Complaints about Tendering Process or Award of Contract

The tendering process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that his offer has not been fairly evaluated may write to the Director of Agriculture, Fisheries and Conservation who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if it relates to the tendering system or procedures followed. Tenderers are to note that the Director of Agriculture, Fisheries and Conservation shall not consider a complaint that is lodged later than three (3) months after the award of contract.

13. Submission of Document for Financial Vetting and Contract Deposit

(a). Tenderers shall demonstrate their financial capability to undertake and fulfill the contractual obligations before they can be considered for the award of this Contract.

(b). The Tenderers shall submit the required documents and financial information including but not limiting to the following for financial vetting purposes:

(i). Financial statements:

- (1). The Tenderer shall submit audited financial statements for the past three (3) financial years of the Tenderer;
- (2). If the Tenderer is a subsidiary of another company, audited consolidated financial statements of the ultimate holding company for the past three (3) financial years shall be submitted in addition to the financial statements of the Tenderer as specified in sub-Clause (1) above;
- (3). If the latest financial statements submitted under sub-Clauses (1) to (2) above are made up to a date earlier than twelve (12) months before the tender submission date, the Tenderer shall also submit unaudited financial statements covering a period which commences on the date immediately following the last financial year end date and ends on a date not earlier than three (3) months before the tender submission date;

- (ii). Projected income statements and cash flow statements of the contract and of the Tenderer for each contract year during the contract period, showing the revenue, operating expenses, capital expenditure and the sources of finance (such as upfront investment and/or debt financing);
 - (iii). Original letter(s) from the Tenderer's bank(s) confirming:
 - (1). the credit facilities available to the Tenderer;
 - (2). the unutilised balances of the credit facilities as at a date not earlier than one week prior to the tender submission date; and
 - (3). any commitment to provide credit facilities for the Contract;
 - (iv). Information on any contingent liabilities and outstanding or pending litigations involving the Tenderer which could be material to the Tenderer's financial condition or ability to perform its obligations under this Contract;
 - (v). Description and amount of all Government contracts on hand;
 - (vi). Description and amount of any other tenders outstanding that have been submitted to the Government; and
 - (vii). Information on any commitments under other contracts which are relevant to the ability of Tenderer to undertake the obligations under this Contract.
- (c). The audited financial statements to be submitted under Clause 13(b)(i) above shall comply with the following requirements:
- (i). The financial statements shall have been audited by certified public accountants (practising) or, for a non-Hong Kong company, by auditors recognised in the jurisdiction in which the company is registered.
 - (ii). The financial statements shall contain the directors' report, auditors' report, balance sheet, income statement, statement of changes in equity, cash flow statement and notes to the accounts; and
 - (iii). The originals (or copies certified by the auditors) of the audited financial statements shall be submitted.
- (d). The unaudited financial statements, projected income statements and projected cash flow statements to be submitted under Clauses 13(b)(i) and (ii) above shall be certified by the chief executive officer of the Tenderer.
- (e). The Tenderer shall provide such further information and explanation within a reasonable period of time as may be required by the Government for the purposes of the financial vetting.
- (f). If the preferred Tenderer passes the financial vetting, it will be required to deposit with the Government a Contract Deposit equal to 2% of the Estimated Contract Sum pursuant to Clause 16 of the Special Conditions of Contract.
- (g). If a Tenderer fails the financial vetting, the Government may, at its sole and absolute discretion, refuse to award the Contract to the Tenderer. Alternatively, the Government may, at its absolute discretion but not obliged to, award the Contract to a Tenderer which has failed the financial vetting on condition that the Tenderer deposits with the Government a Contract Deposit as specified in sub-Clause (h) below.
- (h). The preferred Tenderer may be required to deposit with the Government a Contract Deposit equal to 5% of the Estimated Contract Sum pursuant to

Clause 16 of the Special Conditions of Contract in any one of the following situations:

- (i). where the Tenderer has failed the financial vetting;
- (ii). where the Tenderer is a newly established company;
- (iii). where the information available is inadequate for a meaningful financial vetting to be conducted; or
- (iv). in any other circumstances where the Government considers appropriate.

14. Consent to Disclosure

- (a). The Government shall have the right to disclose to the public whenever it considers appropriate or upon request by any member of the public (who may have been a Tenderer), without any further reference to the successful Tenderer or any other Tenderer, the Tender Documents, the Tender Closing Date, particulars of the Contract, the date of award, the name and address of the successful Tenderer, description of services and the contract amount.
- (b). Nothing in Clause 14(a) shall prejudice the Government's power to disclose any information of whatsoever nature whether or not specified in Clause 14(a) if the disclosure are under any one of the following circumstances:
 - (i). the disclosure of any information to any public officer or public body (as defined in the Interpretation and General Clauses Ordinance, Cap. 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including advisers and consultants);
 - (ii). the disclosure of any information already known to the recipient;
 - (iii). the disclosure of any information which is public knowledge;
 - (iv). the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong or an order of a court of Hong Kong or a tribunal with competent jurisdiction; or
 - (v). without prejudice to the power of the Government under Clause 14(a) and under the fore-going sub-Clauses, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.
- (c). The Tenderer shall consent to release, and shall procure each of its shareholders upon request of the Government will release, to the Government Representative or his authorized officer of information relating to the convictions, if any, in respect of the offences under the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Immigration Ordinance (Cap. 115) and Section 89 of the Criminal Procedure Ordinance (Cap. 221). The Tenderer authorises, and shall procure each of its shareholders will authorise, the Government Representative or his authorised officer to obtain such information from any person.

15. Personal Data Provided

- (a). A Tenderer's personal data and the personal data of any individual contained in the tender submitted by that Tenderer (collectively, "personal data") will be used for the purposes of this Invitation to Tender, and all other purposes arising from or incidental to this Invitation to Tender including without limitation for the purposes of tenders evaluation, contract award, and resolution of any dispute arising from this Invitation to Tender. If insufficient and inaccurate information is provided, the tender may not be considered.
- (b). A Tenderer acknowledges and consents and has ensured that the relevant individual to whom the personal data has acknowledged and consented that the personal data provided in the tender may be disclosed to other government departments or public bodies or such other person as the Government considers appropriate having due regard of the purposes mentioned in Clause 15(a) above.
- (c). Tenderers (or the individual to whom the personal data belongs) have the right of access and correction with respect to personal data as provided for in sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the tender.
- (d). Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and correction, should be addressed to Personal Data Privacy Officer (Deputy Secretary (General)) of the Department.

16. Contractors' Performance Monitoring

Tenderers are advised that should they be awarded the Contract their subsequent performance will be monitored and may be taken into account when their future tenders are evaluated.

17. Cancellation of Invitation to Tender

Without prejudice to the Government's rights to cancel this Invitation to Tender, where there are changes of requirement after the Tender Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming tender and reserves the right to cancel this Invitation to Tender or re-issue this Invitation to Tender on such other terms and conditions as the Government deems fit.

18. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers shall be retained for a period of not less than three (3) months after the Contract has been executed and may be destroyed thereafter.

19. Costs of Preparing the Tender

Under no circumstances whatsoever (including without limitation the cancellation of this Invitation to Tender by the Government) shall the Government be responsible for

or liable to any Tenderer for any cost or expense incurred by it in preparing and submitting the tender.

20. Offers to be Binding

(a). All parts of the Tender Documents submitted and offered by the Tenderer will be binding on the Tenderer. By submitting a tender, the Tenderer is deemed to have satisfied itself as to the correctness of its tender. In the event if before the Tender Closing Date, a Tenderer discovers an error in its tender after the tender has been deposited, the Tenderer may correct the same by a separate letter before the Tender Closing Date, but not thereafter. No request for amendment, adjustment or variation whatsoever will be allowed or entertained after the Tender Closing Date.

(b). Should it be found on examination by the Government after the Tender Closing Date that a Tenderer has made a genuine unintentional error in the figures stated in its tender that may have a significant effect on the tender, further clarification may be sought by the Government pursuant to Clause 11.

21. Offering Gratuities

The Tenderer shall not and shall ensure that his agents and employees shall not offer or give any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) to any agent or employee of the Government. Any breach of or non-compliance with this Clause by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate his tender.

22. Miscellaneous

The Government may issue addendum to the terms and conditions set out in the Tender Document before or after the Tender Closing Date. In the case of an addendum after the Tender Closing Date, Tenderers may be asked to confirm acceptance of the addendum, failing which their tenders may not be considered.

23. Enquiries

(a). Enquiries from Tenderers before the Tender Closing Date concerning the Tender Document, technical specification, Schedules, tender briefing and/or site visit shall be made in writing and be addressed to:

Wetland Park Manager (Ecological Monitoring)
Hong Kong Wetland Park
Agriculture, Fisheries and Conservation Department,
Wetland Park Road,
Tin Shui Wai, New Territories.
(Fax No. : 3152 2668)

(b). Tenderers shall note that after the Tender Closing Date and before the award of the contract, they shall not attempt to initiate any contact, whether direct or indirect, with the Government on matters relating to the Tender Document or their submitted tenders. Any Tenderer who fails to observe this requirement may render its tender being disqualified. The Government reserves the sole

right to initiate any contact with Tenderers and all such contacts and subsequent responses from Tenderers shall be made in writing.

- (c). Unless otherwise expressly stated by the Government, any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective Tenderer shall be for guidance and reference purposes only. The statement shall not be deemed to form part of these Terms of Tender and such statement or action shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as set out in these Terms of Tender or the General or Special Conditions of Contract.