

Ref. : AFCD-TERMS-2
(August 2014)

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

**QUOTATION FOR SERVICES
STANDARD TERMS AND CONDITIONS
Document Ref.: AFCD-TERMS-2**

FOREWORD

Agriculture, Fisheries and Conservation Department (AFCD) issues the document ref. AFCD-TERMS-2 containing the standard terms and conditions used for inviting quotations for services for the Government of the Hong Kong Special Administrative Region. AFCD may issue addenda to these terms and conditions whenever necessary.

In the invitation to quotation, these terms and conditions will not be re-issued in order to reduce the documentation. However, suppliers who respond to the invitation will be asked to confirm compliance with these terms and conditions, and those issued under the addendum.

The Chinese translation is for reference only. In the event of any conflict or ambiguity between the English text and the Chinese translation, the English text will prevail.

INTERPRETATION

In this document and the invitation to quotation, unless the context otherwise requires:

- “Contract” means the contract hereunder and reference to the terms thereof shall include the terms of quotation in PART 1 hereof unless inconsistent with the context of such reference;
- “Contractor” means the Supplier whose Quotation is accepted;
- “Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
- “Government Representative” means the Director of Agriculture, Fisheries and Conservation or any officer authorized to act on his behalf for the purposes of the Contract;
- “Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;
- “Inspecting Officer” means the officer appointed by the Government Representative for the purpose of inspecting the services performed in pursuance of the Contract;
- “Quotation Closing Date” means the latest date (Hong Kong time) by which quotations must be lodged;
- “Schedule” means the schedule attached to the invitation to quotation;
- “Services” means the work referred to in the Schedule;
- “Supplier” means the firm or the organization referred to in the “Offer to be Bound” section of the invitation to quotation;

PART 1
TERMS OF QUOTATION

1. Invitation to Quotation

Suppliers are invited to submit quotations for the execution of the whole (or any part) of the Services more particularly set out in the Schedule subject to and in accordance with these Terms of Quotation, the General Conditions set out in Part 2 hereof and the Special Conditions if any, set out in the invitation to quotation.

2. Quotation

- (a) The invitation to quotation relates to the execution of all (or any part) of the Services during the Contract period as specified in the Schedule.
- (b) The Schedule issued with the invitation to quotation must not be altered by the Supplier. Any modification of the Schedule considered necessary by the Supplier should be the subject of a separate letter accompanying the quotation. 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 Supplier in ink.
- (c) Quotations are to be submitted in duplicate. Quotations not so submitted may not be considered.
- (d) Quotations may not be considered if complete information is not given with the quotation or if any particulars and data asked for in the Schedule are not furnished in full.

3. Quotations to Remain Open

- (a) Quotations shall, unless otherwise indicated by the Supplier, remain open for not less than 90 days after the Quotation Closing Date. If Suppliers are unable to comply with this requirement, they must clearly state the period for which their quotation is valid for acceptance in the space provided in the invitation to quotation. If their offer is withdrawn before the expiry of the agreed validity period, they are advised that due notice will be taken of their action and this may well prejudice their future status as a Government supplier.

(b) Quotation Closing Date and Time

All quotations must be submitted before the Quotation Closing Date and time (Hong Kong time). Late quotations will not be considered. All quotations must be deposited in the quotation box as specified in the invitation to quotation.

(c) Quotation Closing Date and Time Extension in case of Rainstorm/Typhoon

In case a black rainstorm warning or typhoon signal No. 8 or above is in force for any duration between 9:00 a.m. (Hong Kong time) and 2:00 p.m. (Hong Kong time), the quotation closing time will be extended to 2:00 p.m. (Hong Kong time) on the next weekday (i.e. except Saturday and Sunday) other than public holidays.

4. Charges

(a) The charges to be quoted by Suppliers 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, Sundays and public holidays excluded) the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

(c) Prices quoted

It will be assumed, unless Suppliers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. Therefore no request for price variation will be considered. If, however, a Supplier wishes to submit a conditional offer which contains a price variation clause, he may do so, on 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 and accepted by the Government in writing.

(d) Accuracy of Quotation Prices

Suppliers should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances will the Government accept any request for price adjustment on grounds that a mistake has been made in the quotation prices.

5. Acceptance

(a) The successful Supplier 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. Suppliers who do not receive any notification within the validity period of their offer should assume that their quotations have not been accepted.

(b) Schedule of Compliance

Suppliers shall complete the ‘Schedule of Compliance’ provided in respect of the offer. Should alternative offer(s) be included, separate ‘Schedule of Compliance’ should be completed accordingly. Failure to complete the ‘Schedule of Compliance’ will invalidate the quotation. Suppliers are requested to confirm in the ‘Schedule of Compliance’ that offers submitted comply with the required specification in every respect. If an offer does not conform to the quotation specification, Suppliers should provide full details of their alternative offer, but the Government reserves the right to accept or reject any such offer.

6. Alternative Proposals and Negotiation

Alternative proposals which improve the value of the offer may be submitted. The Government reserves the right to negotiate with any Supplier the terms of the offer.

7. Consideration of Offers

The Government is not bound to consider an offer in the event of a claim being received by the Government alleging or the Government having grounds to believe that the Goods to be supplied by the Supplier in the quotation are infringing copyrights or have otherwise infringed the intellectual property rights in the goods or product of a third party.

8. Saving

The Government Representative is not bound to accept the lowest or any quotation and reserves the right to accept all or any part of any quotation at any time within the period mentioned in clause 3 hereof.

9. Documents of Unsuccessful Suppliers

Documents of unsuccessful Suppliers may be destroyed not less than three months after the date the Contract has been awarded and the agreement signed.

10. New Information Relevant to Qualified Status

Suppliers should inform the Government in writing immediately of any factor which might affect their qualified status as an enlisted supplier with the Government, or as a qualified supplier for a particular service. The Government reserves the right to review their qualified status in the light of any new information relevant to their qualification.

11. Latest Audited/Unaudited Accounts

The Suppliers shall upon request by the Government representatives whilst their quotations remain open submit the latest audited accounts or unaudited accounts as appropriate for checking within 14 days from the date of such request. Late submission will not be considered.

12. Complaints About Quotation Process or Contract Awards

The quotation process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Supplier 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. The Supplier shall lodge the complaint before disposal of documents of unsuccessful Suppliers which shall be within 3 months after the award of contract.

13. Personal Data Provided

- (a) A Supplier's personal data provided in the quotation will be used for quotation evaluation and contract award purposes. If insufficient and inaccurate information is provided, his quotation may not be considered.
- (b) A Supplier acknowledges and consents that his personal data provided in the quotation may be disclosed to other government departments and non-government organizations.

- (c) A Supplier has the right of access and correction with respect to personal data as provided for in Sections 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Supplier's personal data provided in the quotation.
- (d) Enquiries concerning the personal data collected by means of the quotation, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of AFCD.

14. Contractors' Performance Monitoring

Suppliers are advised that should they be awarded the contract their subsequent performance will be monitored and may be taken into account when their future quotations are evaluated. A quotation will be rejected if by the Quotation Closing Date, the supplier is under suspension from bidding for AFCD quotations.

15. Cancellation of Quotation

Without prejudice to the Government's right to cancel the quotation, where there are changes of requirement after the Quotation Closing Date for operational or whatever reasons, the Government is not bound to accept any conforming quotation and reserves the right to cancel the quotation.

PART 2
GENERAL CONDITIONS OF CONTRACT

1. Total Services and Variation

- (a) The Services to be performed under the Contract shall be as laid down in the Schedule and Special Conditions (if any) and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and Government will not be responsible for Services performed on oral instructions issued by any person whomsoever.

- (b) The Contractor shall not extend the Services beyond the requirements specified in the Schedule except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Schedule.

Provided that no such variation shall, except with the consent in writing of the Contractor, involve a net addition to or deduction from the Contract price of more than twenty per cent or the Contract period of more than six months, unless otherwise mutually agreed by the Contractor and Government.

- (c) Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the rates specified in the Schedule so far as the same may be applicable and where rates are not contained in the said Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

2. Assignment

The Contractor shall not, without the written consent of the Government Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to him.

3. Quality of Services

- (a) The Services shall be as specified in the Schedule and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.
- (b) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by Government free of charge but shall be returned on completion of the Contract.

4. Inspection and Acceptance

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:

- (a) The Government Representative shall so certify; or
- (b) The Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

5. Rejections

- (a) Without prejudice to any statutory rights, the Inspecting Officer or the Government Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of sub-clause (a) of clause 3 hereof.
- (b) Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

6. Government Property

When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

7. Government Premises/Contractor's Premises

- (a) The Contractor, shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative or Inspecting Officer at all reasonable times.
- (c) The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves.

8. Payment for Services

The Contractor shall render to the Government Representative:

- (a) an itemised account on or before the 10th or the 25th day of each month of the charges which he considers due to him for Services completed under the Contract; or
- (b) on completion of any separate portion of the Services (in respect of which a charge is laid down in the Schedule) an account for such portion.

All such accounts shall be signed by the Government Representative or the Inspecting Officer. Unless otherwise agreed by the Government Representative such accounts shall be paid within 30 days of the date upon which:

- (i) where the said accounts are signed by the Government Representative or Inspecting Officer, or
- (ii) where the Services have been accepted pursuant to clause 4 of the General Conditions herein,

whichever date is the earlier.

9. Illegal Workers

- (a) The Contractor undertakes not to employ illegal workers in the execution of any Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract.

10. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with clause 1(b) hereof, the Government may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by the Government for breach of Contract including but not limited to its right of Government to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

11. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other Government contracts.

12. Liability for Damages or Compensation

- (a) Government and its employees or agents shall not be under any liability whatsoever for or in respect of:
 - (i) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
 - (ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.

- (b) The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of :
 - (i) any loss, damage, injury or death referred to in sub-clause(a) of this clause (save and except injury or death caused by the Negligence of Government or any of its employees or agents).
 - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- (c) The Contractor shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- (d) For the purposes of this clause 'Negligence' shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance.

13. Policy of Insurance and Compensation

- (a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by Government (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Government Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.
- (b) If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

- (c) In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Contractor shall within 7 clear working days give notice in writing of such injury or death to the Government Representative.

14. Bankruptcy

The Government Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

- (a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) if the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitled the court or debenture holders to appoint a receiver or manager.

Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the Government.

15. Corrupt Gifts

- (a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the Government as the result of the termination of the Contract.

16. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the awarded contract, without any further reference to the successful supplier, the name and address of the successful supplier, description of services and the contract amount.

17. Publicity

The Contractor shall submit to the Government Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government Representative.

18. Governing Law

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

19. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a) Special Conditions of Contract
- (b) Specification
- (c) General Conditions of Contract
- (d) Contract Schedules