

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT
TENDER FOR THE PROVISION OF SERVICES**

Tender Ref. : AFCD/Cap3532024

TENDER FORM

Contract No. :

LODGING OF TENDER

To be acceptable as a Tender, this form, properly completed in triplicate and enclosed in a sealed plain envelope marked

“Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532024)”

and addressed to the Chairman, Tender Opening Committee, Government Logistics Department

must be deposited in the Government Logistics Department

Tender Box situated on Ground Floor, North Point Government Offices,
333 Java Road, North Point, Hong Kong.

before **12:00 noon** (time) on **20 January 2025** (date) (Hong Kong time). Late Tenders will not be accepted.

**PART I — INTERPRETATION
PART II — TERMS OF TENDER
PART III — CONDITIONS OF CONTRACT
PART IV — SERVICES SPECIFICATIONS
PART V — SCHEDULES
ANNEXES
PART VI — OFFER TO BE BOUND
PART VII — MEMORANDUM OF ACCEPTANCE**

This Invitation to Tender is covered by the WTO GPA.

Dated this 6 day of December 20 24
the day of



(MAK Chu-wa)
Government Representative

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

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PART I INTERPRETATION

1. In the documents issued by the Government in connection with this Invitation to Tender and the Contract that is made pursuant to this Invitation to Tender, unless otherwise defined or the context otherwise requires, the following expressions shall bear the same meanings as set out below:-

“Accepted Innovative Suggestion”	means those Innovative Suggestions proposed by the Tenderer and accepted by the Government in the version attached to the Memorandum of Acceptance for identification purposes;
“AFCD”	means the Agriculture, Fisheries and Conservation Department of the Government;
“Appendix”	means an appendix attached to the Tender Form;
“Assessment Criteria”	means the assessment criteria set out in Appendix to the Marking Scheme; and “Assessment Criterion” shall be constructed accordingly;
“Certificate of Survey”	means a document issued under Section 24(1) of Merchant Shipping (Local Vessels)(Safety and Survey) Regulation (Cap. 548 subsidiary legislation G) that verifies the Workboat is fit for the provision of Services intended and in good conditions,
“Commencement Date”	means such date as may be specified by the Government in the Memorandum of Acceptance ;
“Condition of Contract”	means the Conditions of Contract referred to in Part III of the Tender, and in the form attached to, the Tender Form;
“Conditional Acceptance of Tender”	has the meaning given to it in Clause 12.1 of the Terms of Tender;
“Contract”	means the contract between the Government and the Contractor for the supply of the Services on the terms and conditions set out in the Tender Documents, the Tender submitted by Contractor (to the extent accepted by the Government), the Memorandum of Acceptance issued by the Government to that Contractor, and the attachments to any of the above;
“Contract Deposit”	means the sum of money deposited by the Contractor by cash or in the form of banker’s guarantee referred to in Clause 19 of the Terms of Tender and Clause 30 of the Conditions of Contract;

“Contract Manager”	means the contract manager appointed by the Contractor in Clause 6 of the Conditions of Contract and approved by the Government to be the duly authorized representative of the Contractor and to liaise with the Government for all purpose connected with the Contractor;
“Contract Period”	has the meaning given to it in Clause 1.1 of the Conditions of Contract;
“Contractor Personnel”	means the Contractor’s employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors, or any of them;
“Contractor Personnel Management Plan”	means the Contractor Personnel management plan to be proposed by the Tenderer in Schedule 3 and accepted (and modified where appropriate) by the Government;
“Contract Price”	has the meaning given to it in Clause 13.1 of the Conditions of Contract;
“Contractor”	means the Tenderer whose Tender has been accepted by the Government;
“Electronic Tendering”	means the making and submission of a Tender through the e-Tender Box whether through the use of a digital certificate or through the use of an Identification Code;
“Equipment”	means machinery, tools, devices, appliances used or installed for the provision of the Services;
“Estimated Contract Value”	means in relation to a Work Order, the Rates for that Work Order as quoted by the Tenderer multiplied by the estimated frequency of Work Order required by the Government in Schedule 1;
“Estimated Total Contract Value”	means the estimated amount as quoted by Tenderer in Schedule 1 being the summation of the Estimated Contract Value for all Work Orders;
“ESG Proposal”	means a proposed measure or arrangement that will improve environmental protection, sustainability or social responsibility or governance which may but need not be directly relevant to the procurement covered by this Invitation to Tender, but which can bring about positive value(s) and/or benefit(s) to the Government or the public at large;

“e-Tender Box” or “ETB”	means the electronic tendering platform of the information technology system known as “Procurement and Contract Management System” or “PCMS” of the GLD for ETB Users to view Tender notices and Tender documents, and prepare and submit Tenders electronically whether through the use of a digital certificate or an Identification Code;
“ETB User”	means a person who has registered with the PCMS whether as a GLD supplier, or a GLD subscriber, or a person who is for the time being just an applicant to become a GLD supplier up to the time of the notification of the result of its application;
“Execution Plan”	means the plan for execution of the Services to be proposed by the Tenderer in Schedule 3 and accepted (and modified where appropriate) by the Government;
“Fish Culture Zones” or FCZs	means Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones for the purpose of mariculture operation;
“Force Majeure Event”	means: <ul style="list-style-type: none"> (a) any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution affecting Hong Kong, overthrow (whether by external or internal means) of the Government; or (b) any event which is not caused or contributed to by, and is beyond the control of, the Contractor, its related persons (as defined in Clauses 15.6 and 15.7 of the Terms of Tender) or any employee or agent or ex-employee or ex-agent of the Contractor and none of them can prevent the consequences of such event from happening; <p>and which, in any case of (a) and (b) above, materially prevents the performance of the duties and obligations of any party hereunder; for the avoidance of doubt, any change of law and regulation of whichever jurisdiction shall not be treated as a Force Majeure Event;</p>
“Good Industry Practice”	means the standard, practices, methods and procedures conforming to law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
“Government”	means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;

“Government Logistics Department” or “GLD”	means the Government Logistics Department of the Government;
“Government Property”	means all property, equipment, data, documents, information, text, drawings, pictures, diagrams, images, sound or music, and any other materials of whatsoever nature (tangible or intangible) stored, presented or embodied in any medium, and which are provided or to be provided by the Government to the Contractor under or for the purposes of or in relation to the Contract or otherwise the Contractor has access;
“Government Representative”	<p>means the Director of Agriculture, Fisheries and Conservation acting for and on behalf of Government or any officer authorized by the Director of Agriculture, Fisheries and Conservation to act on his behalf for the purposes of the Contract.</p> <p>The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;</p>
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Hong Kong dollars” or “HK\$”	means the lawful currency of Hong Kong;
“Hong Kong Waters” or “waters of Hong Kong”	has the meaning given it in Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
“Identification Code”	means a unique 8-character code generated by the ETB and sent to the email account registered by the ETB User with the PCMS (viz., “registered email account”) upon the request of the ETB User for the submission of a Tender through the use of such code;
“Innovative Suggestion”	means a Pro-innovation Proposal or an ESG Proposal;
“Intellectual Property Rights”	means patents, trademarks, service marks, trade names, design rights, copy right, domain names, database rights, rights in know-how, new inventions, designs, processes, and other intellectual property rights of whatever nature and wheresoever arising, whether now known or created in the future, in each case whether registered or unregistered, and include applications for the grant of any such rights;
“Invitation to Tender”	means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents;

“Materials”		means any and all works and materials (including their drafts and uncompleted versions) developed, written or prepared by the Contractor, its employees, agents or sub-contractors in relation to the Services (whether individually or collectively or jointly with the Government) including without limitation, any reports, summaries, models, questionnaires, analyses, papers, documents, records, plans, drawings, formula, tables, charts, data or information collected, compiled, produced or created by the Contractor in relation to the Services recorded or stored by whatever means;
“Marking Scheme”		means a scheme which collectively contain those procedures requirement and Assessment Criteria for the evaluation of Technical Proposal and the Price Proposal separately;
“Non-collusive Tendering Certificate”		means a document known as such and in the form attached to the Tender Form for completion and submission by the Tenderer as part of its Tender under Clause 27.2 of the Terms of Tender;
“Working Time”		means a continuous nine (9) hours duration on irregular hours from Monday to Sunday, except any period during which Strong Monsoon Signal, Black Rainstorm Warning Signal and Tropical Cyclone Warning Signals No. 3 are valid;
“Original Closing Date”	Tender	means the latest date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, regardless of whether the date and time has been extended subsequently;
“Paper-based Tendering”		means the making and submission of a Tender in paper form in the “Lodging of Tender” section of the Tender Form;
“Price Proposal”		means the Schedule 1 to be completed by the Tenderer;
“Pro-innovation Proposal”		means a proposal that adopts any one or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the Goods and Services;
“Rates”		means the rates/unit price quoted by the Tenderer in Schedule 1;

“Recognised entities”	means organizations, including classification societies and members of the International Association of Classification Societies, specified by the Director of Marine for appointing class surveyors as competent examiners to perform testing, examination and certification of lifting appliances, including but not limited to Setup, and lifting gear on local vessels and ocean-going ships under the Merchant Shipping (Works) Regulations (Cap. 548I) and Shipping and Port Control (Works) Regulations (Cap 313X);
“Service Plan”	means the service plan for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys to be proposed by the Tenderer in Schedule 3 and accepted (and modified where appropriate) by the Government;
“Services”	means the Work Order to be carried out by the Contractor for the Government acting through the AFCD and includes all other duties, tasks and obligations ancillary or incidental thereto in Service Specifications and Schedule 1 and subject to all the terms and conditions of the Contract;
“Service Specifications”	means the specifications referred to in Part IV of the Tender , and in the form attached to, the Tender Form; references to Service Specifications include those specifications offered by the Tenderer and accepted by the Government (if any);
“Setup”	means the combination of one (1) boundary buoy, one (1) mooring chain and (1) mooring block as specified per unit;
“Technical Proposal”	means all proposals, information and documents required to be submitted as part of the Tender apart from the Price Proposal;
“Tender”	means an offer to provide the Services as submitted by a Tenderer in response to this Invitation to Tender;
“Tender Closing Date”	means the date and time specified in the Lodging of Tender as the latest date and time before which Tenders must be deposited with the Government, as the same may be extended by the Government from time to time pursuant to any applicable provision in the Tender Documents;
“Tender Documents”	means the documents as specified in Clause 1 of the Terms of Tender and any addendum issued by the Government for the purpose of the Invitation to Tender prior to the Tender Closing Date;

“Tender Form”	means:
	(a) in the case of a Tender submitted in paper form, the tender form issued for the Invitation to Tender; and
	(b) in the case of a Tender submitted electronically, the tender form available on the e-Tender Box for completion electronically;
“Tenderer”	means a person which or who has capacity to contract and has submitted a Tender in response to the Invitation to Tender; and
“Tender Validity Period”	has the meaning given to it in Clause 5.2 of the Terms of Tender;
“Terms of Tender”	means the Terms of Tender referred to in Part II of the Tender, and in the form attached to, the Tender Form;
“Warranty”	has the meaning given to it Clause 4.2 of the Conditions of Contract;
“Work Boat”	means a vessel equipped with sufficient lifting appliances or other facilities for the deployment and overhaul of the Setup and associated Equipment;
“Work Order” or “WO”	means the different kinds of work to be carried out by the Contractor as set out in the column headed “Description of Work Order” in the table in Schedule 1;
“WTO GPA”	means the Agreement on Government Procurement of the World Trade Organization.

2. In this document, unless the context otherwise requires, the following rules of interpretation shall apply:-
- 2.1 references to statutes or statutory provisions shall be construed as references to those statutes or statutory provisions as replaced, amended, modified or re-enacted from time to time, and shall include all subordinate legislation made under those statutes;
 - 2.2 words importing the singular includes the plural and vice versa; words importing a gender shall include all other genders; references to any person shall include any individual, firm, body corporate or unincorporate (wherever established or incorporated);
 - 2.3 headings are inserted for ease of reference only and shall not affect the construction of the Tender Documents or the Contract;
 - 2.4 references to a document shall:
 - (a) include all schedules, appendices, annexes and other materials attached to

such document; and

(b) mean the same as from time to time amended or supplemented in the terms of the Tender Documents or the Contract;

- 2.5 references to “Tenderer” or “Contractor” shall include its permitted assigns, successors-in-title, or any persons deriving title under them;
- 2.6 references to “Government” include its assigns, successors-in-title and persons deriving title under them, regardless of whether or not any of these persons are mentioned separately in the relevant provisions;
- 2.7 references to a Clause, Sub-clause, Section or Paragraph in or a Schedule, Appendix or any other attachment to a document are to a clause, sub-clause, section or paragraph in or a schedule, appendix or attachment to that document;
- 2.8 references to “law” and “regulation” shall include any constitutional provisions, treaties, conventions, ordinances, subsidiary legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity, regardless of the jurisdiction;
- 2.9 any word or expression to which a specific meaning has been attached in any part of the Tender Documents shall bear such meaning whenever it appears in the same and other parts of the Tender Documents;
- 2.10 references to time and dates in the Tender Documents shall be construed as Hong Kong time and dates;
- 2.11 references to a day refers to calendar day; and reference to a working day means any day other than Saturdays and Public Holidays as defined in the Interpretation and General Clauses Ordinance (Cap. 1);
- 2.12 references to a month or a monthly period mean a calendar month;
- 2.13 any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question, and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done;
- 2.14 any act, default, neglect or omission of any employee, licensee, agent or sub-contractor of the Contractor is deemed to be the act, default, neglect or omission of the Contractor;
- 2.15 words importing the whole shall be treated as including a reference to any part of the whole;
- 2.16 the expressions “include” and “including” shall be construed without limitation to the words following;
- 2.17 words and expressions extend to their grammatical variations and cognate expressions where those words and expressions are defined in the Tender Documents or by reference to any other definition;

- 2.18 references to “in writing” include manuscript, typewriting, printing, lithography, photography, facsimile and the printed out version of a communication by electronic mail and other modes of representing and reproducing words in a legible form;
 - 2.19 reference to “original signature” or “originally signed” includes a digital image of a hand-written signature (viz., a scanned signature); and
 - 2.20 where a general obligation in the Tender Documents or the Contract is followed by more specific obligations, the general obligation shall not be construed restrictively by reference to the specific obligations or deemed to be fully performed by reason only that the specific obligations have been performed.
- 3. Nothing in the Contract shall be taken to restrict, derogate from or otherwise interfere with any power or duty, or the exercise or performance of any power or duty conferred or imposed by or under any law upon the Government or any person in the service of the Government.
 - 4. All rights and powers of the Government under the Contract may be exercised by the Government. If any provision of the Contract provides for a determination of any matter by the Government, the determination made by the Government shall, in the absence of manifest error, final and conclusive.
 - 5. Unless otherwise expressly stated, all provisions of the Tender Documents shall apply regardless of whether Paper-based Tendering or Electronic Tendering is used for the submission of the Tender or formation of the Contract.

PART II TERMS OF TENDER

1. Tender Documents

1.1 These Tender Documents consist of one complete set of the documents in a bound booklet comprising:

1. Tender Form;
2. Part I – Interpretation;
3. Part II – Terms of Tender;
4. Part III – Conditions of Contract;
5. Part IV – Services Specifications;
6. Part V – Schedules
 - (i) Schedule 1 – Price Schedule;
 - (ii) Schedule 2 – Details of Tenderer (Section A), Details of Work Boat and Equipment (Section B), Details of the Tenderer's Experience for Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys (Section C), Details of the Contract's Manager's Experience for Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys (Section D) and Information Required under Clause 15.1 of the Terms of Tender (Section E);
 - (iii) Schedule 3 – Execution Plan;
 - (iv) Schedule 4 – Election of Mode of Payment of Contract Deposit; and
 - (v) Schedule 5 – Service Specifications for the Setup, its Associated Equipment and Workboat
7. Annexes
 - (i) Annex 1 – Marking Scheme and Assessment Criteria;
 - (ii) Annex 2 – Form of Bank Guarantee;
 - (iii) Annex 3 – Non-collusive Tendering Certificate;
 - (iv) Annex 4 – Registration Form for the Tender Briefing;
8. Part VI – Offer to be Bound; and
9. Part VII – Memorandum of Acceptance.

1.2 Unless otherwise defined, each of the above documents constituting the Tender Documents or the Contract (as the case may be) shall be referred to in the Tender Documents or Contract using the terms of references appearing in quotation marks.

2. Invitation to Tender

- 2.1 Tenders are invited for the execution of all Work Orders, including but not limited to the supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones, subject to the terms and conditions set out in the Contract.
- 2.2 Each Tenderer should read the Tender Documents carefully prior to submitting a Tender and ensure that it understands all requirements of the Tender Documents.
- 2.3 Each Tenderer should obtain such independent advice from its own advisers as it considers appropriate.

- 2.4 Each Tenderer should check the numbers of pages of the Tender Documents. If it finds any missing or indistinct pages, it should inform the Government immediately so that the same can be rectified.
- 2.5 Each Tenderer will be regarded to be thoroughly conversant with all aspects of the Tender Documents (including the Contract) and in general to have obtained all necessary information of any circumstances which may influence or affect its Tender or its performance of the Contract. The Government does not assume any liability in respect of any errors or mistakes made by a Tenderer or any neglect or failure of a Tenderer to obtain any information or clarification relating to the provision of the Services to the Government in the Contract.
- 2.6 No error, mistake, neglect or failure by a Tenderer shall affect any provision of the Tender Documents (including the Contract) or relieve the Tenderer from any of its obligations or liabilities under the Tender Documents (including the Contract). For the avoidance of doubt, a successful Tenderer shall not be entitled to any additional payment, compensation, exemption from compliance or observance, or allowance by reason of any such error, mistake, neglect or failure. If a Tenderer is awarded the Contract, it shall not be excused from any obligation or liability under the Contract as a consequence of any misinterpretation by it of any provision in the Tender Documents or the Contract.
- 2.7 Information, statistics and forecasts set out in the Tender Documents are provided for a Tenderer's reference only. The Government does not warrant or represent that the information, statistics and forecasts are complete, true or accurate. The Government does not bind itself to adhere to such information, statistics and forecasts.
- 2.8 Without prejudice to Clause 2.7 above, the estimated requirement of the Services specified in Schedule 1 or Service Specifications is/are estimate(s) of the quantity of the Services that may be required by the Government. They are given for a Tenderer's reference only and are not figures to which the Government binds itself to adhere. The Government's actual requirements may vary depending on the actual need of the Government and the successful Tenderer must accept any increase or decrease of the stated estimates.
- 2.9 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Tender and a Tender submitted by a Tenderer in response to this Invitation to Tender.

3. Tender Preparation and Submission

- 3.1 Unless otherwise specified in the Terms of Tender, the Tenderer must bid for all Work Orders specified in Schedule 1 by submitting the Rates for each such Work Order. **Where a Tenderer fails to do so, its Tender will not be considered further.**
- 3.2 The Government is not responsible for Tenderer's costs for preparing the bids.
- 3.3 The Tenderer must submit all of the followings with its Tender before the Tender Closing Date, otherwise its Tender will **not** be considered further:

- (a) (i) (for Paper-based Tendering) a duly signed Part VI “Offer to be Bound” of the Tender Form in English or Chinese containing an original signature by or on behalf of the Tenderer. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part VI of the Tender Form or a printed copy from a softcopy of Part VI of the Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part VI of the Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further; or
 - (ii) (for Electronic Tendering) the box signifying the Tenderer’s agreement with Part VI “Offer to be Bound” of the Tender Form must have been checked;
 - (b) the price schedule for all Work Orders in Schedule 1; and
 - (c) execution plan in Schedule 3.
- 3.4 The Tenderer must submit all of the followings with its Tender before the Tender Closing Date or upon subsequent request after the Tender Closing Date, otherwise its Tender will **not** be considered further:
- (a) Sections A to E in Schedule 2;
 - (b) (i) (if the Tenderer is the registered owner of the Work Boat and Equipment) a copy of certificate of ownership issued in section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable laws shall be submitted for evidencing its ownership; or
 - (ii) (if the Tenderer is not the registered owner of the Work Boat and Equipment)
 - (1) a copy of the purchase agreement or lease agreement whereby the Tenderer is to acquire the property in or the right to use the Work Boat and Equipment for, inter alia, carrying out the Services during the Contract Period, or a legally binding agreement to enter into such purchase agreement or lease agreement; and
 - (2) a copy of the certificate of ownership issued in section 10 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) or other applicable Laws evidencing the ownership;
 - (c) Appendix to Schedule 5; or
 - (d) Non-collusive Tendering Certificate (Annex 3) duly completed and signed;

- 3.5 For all other proposals, documents and information which do not fall within Clause 3.3 or 3.4 above, the Government reserves the right to seek submission under Clause 7.1 below or evaluate the Tender on an “as is” basis.
- 3.6 The Tenderer shall complete and submit all Schedules in either English or Chinese and in accordance with other requirements of the Tender Documents. Where a supporting document in its original form is in a language other than English or Chinese, the Tenderer shall provide translation of that supporting document from the language into English.
- 3.7 A two (2)-envelope system shall be adopted for this Tender. The Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal. A Tenderer shall submit, in one of the following manners, its completed Tender. A Tender submitted through a method other than Paper-based Tendering or Electronic Tendering will **not** be considered.

Tender Submission:

(a) Paper-based Tendering

The Technical Proposal and the Price Proposal shall be completed in writing on hardcopy and shall be placed inside two (2) separate envelopes clearly marked in the following manner and shall be submitted in **triplicate** (i.e. one (1) original and two (2) identical copies):-

- (i) Documents relating to the price information (i.e. “Schedule 1” fully completed, signed, chopped and dated in **triplicate** (i.e. one (1) original and two (2) identical copies) must be enclosed in a sealed envelope clearly marked “Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532024) - Price Proposal”; and
- (ii) Documents relating to the technical information (i.e. all other remaining information, forms, schedules and documents required by this Invitation to Tender but without any indication on the prices for Provision of Services) in **triplicate** (i.e. one (1) original and two (2) identical copies) must be enclosed in another sealed envelope clearly marked “Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532024) - Technical Proposal”.
- (iii) The Tender comprising both “Price Proposal” and “Technical Proposal” shall be enclosed in a sealed envelope marked “Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532024)” and addressed to the person specified in the “Lodging of Tender” section of the Tender Form and deposited to the Tender Box on or before the date and time stipulated in the Tender Form.

(b) Electronic Tendering

- (i) The Tenderer shall submit the Technical Proposal and the Price Proposal as separate attachment files through e-Tender Box before the Tender Closing Date.
- (ii) Transmission of a Tender through e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Date. Save as otherwise provided for in the Tender Documents, a Tender will **not** be considered if the relevant proposal, document or information is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Date.
- (iii) If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use and participation of the e-Tender Box and through the e-Tender Box through the use of any one type of digital certificates recognised by the e-Tendering System or through alternative authentication method.

3.8 The Government may **not** consider a Tender (or will **not** consider a Tender where it is expressly so stated) if:

- (a) false, inaccurate or incorrect information is given in the Tender; or
- (b) any proposal, document or information requested in the Tender Documents is not furnished in full in the Tender.

3.9 When completing the Tender Documents (including the Offer to be Bound section of the Tender Form), each Tenderer shall ensure that the name of the Tenderer is the same as the name shown in:

- (a) if the Tenderer is a company incorporated in Hong Kong:
 - (i) the Certificate of Incorporation of the Tenderer;
 - (ii) if there is a change of name of the Tenderer since the date of its Certificate of Incorporation, the latest Certificate of Change of Name of the Tenderer; or
 - (iii) its business name as shown in the current business registration certificate of the Tenderer;
- (b) if the Tenderer is a sole proprietorship or a partnership, the current business registration certificate of the Tenderer issued under the Business Registration Ordinance (Cap. 310); or
- (c) if the Tenderer is incorporated, formed or established outside Hong Kong, a document equivalent to that described in Clause 3.9(a)(i), (a)(ii), (a)(iii) or

3.9(b) above (as the case may be) issued by a governmental or competent authority of the place where the Tenderer is incorporated, formed or established.

3.10 Execution and Submission of Tenders

(a) Paper-based Tendering

- (i) A Tender submitted through Paper-based Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if the submitted Part VI “Offer to be Bound” of the Tender Form is signed in the following applicable manner:
 - (1) if the Tenderer is a sole proprietorship, the Tenderer signing the Tender in the name of the Tenderer (or of the sole proprietorship), or a person authorised by the Tenderer signing the Tender for and on behalf of the Tenderer;
 - (2) if the Tenderer is a partnership, one or more partner(s) of the Tenderer signing in the name of the partnership (and in the case of limited partnership, that partner must be a general partner); or a person authorised by the partnership, signing the Tender for and on behalf of the Tenderer; or
 - (3) if the Tenderer is a company, a director of the Tenderer or one or more persons who are duly authorised by the Tenderer signing the Tender for and on behalf of the Tenderer.

(b) Electronic Tendering

- (i) A Tender submitted through Electronic Tendering will be regarded to have been submitted by a Tenderer or authorised to have been submitted by a Tenderer (as the case may be) if it is submitted in any one of the following ways:
 - (1) submission of the Tender via the e-Tender Box through the use of an Identification Code; or
 - (2) submission of the Tender via the e-Tender Box through the use of such type of digital certificate recognised by the ETB, and uploaded by the Tenderer to the ETB. Save in the case where the Tenderer is a partnership, a Tenderer shall use a digital certificate which is issued in its name as appearing in the applicable document mentioned in Clause 3.9(a), (b) or (c) above; otherwise the Tender will **not** be considered further. In the case that the Tenderer is a partnership, the Tenderer may use a digital certificate issued in the name of one of its partners (or a general partner in the case of a limited partnership), or a digital certificate issued in the name of the partnership; otherwise the Tender will **not** be considered further.
- (ii) If any attachment to a Tender submitted by a Tenderer via the e-Tender

Box:

- (1) does not comply with the terms and conditions of use of the PCMS and the e-Tender Box;
- (2) is found to be contaminated with Virus; or
- (3) is corrupted or otherwise not readable or printable into readable text by the Government,

and such non-compliance of file format, Virus contamination, or file corruption has resulted in failure to submit the relevant proposal, document or information as described in Clause 3.3(a)(ii), 3.3(b) or 3.3(c) above by the Tender Closing Date, the Tender will **not** be considered further and its Tenderer will be notified of such.

- (iii) In the case where the Tenderer uses a digital certificate for the submission of Tender via the e-Tender Box, the Government will verify the validity of a Tenderer's digital certificate with the relevant certification authority which has issued such digital certificate. If the directory service or revocation list service of that certification authority or its contractor is/are not available for any reason, the Government may postpone the verification process until such time when the directory service or revocation list service (as the case may be) of the certification authority or its contractor is/are resumed or when the Tender is opened, whichever is the later. If the verification process is postponed, the Tenderer will be informed of this through an on-screen message and an on-line acknowledgement of the Tender.
- (iv) A Tender will **not** be considered further if the digital certificate used by a Tenderer for submission of Tender via the e-Tender Box is found invalid (i.e. expired, revoked, or it is not a digital certificate recognised in the e-Tender Box for submission of Tenders) upon verification.

3.11 Tender Closing Date

(a) (i) Paper-based Tendering

A Tender must be deposited in the Specified Tender Box before the Tender Closing Date. A Tender deposited in the Specified Tender Box at or after the Tender Closing Date, or a Tender not deposited in the Specified Tender Box, will **not** be considered.

(ii) Electronic Tendering

Transmission of a Tender through the e-Tender Box shall be successfully completed in accordance with the requirements of the e-Tender Box before the Tender Closing Date. Save as otherwise provided for **not** in the Tender Documents, a Tender will **not** be considered if the relevant proposal, document or information as described in Clause 3.3(a)(ii), 3.3(b) or 3.3(c) above is not successfully and completely transmitted through the e-Tender Box before the Tender Closing Date.

- (b) In case Tropical Cyclone Signal No. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between 0900 and 1200 noon (Hong Kong Time) on the date specified in the “Lodging of Tender” section of the Tender Form, the latest date and time before which Tenders are to be deposited in the Specified Tender Box and at the e-Tender Box will be postponed to 1200 noon (Hong Kong Time) on the first working day after the Tropical Cyclone Signal No. 8 is lowered or the Black Rainstorm Warning Signal or the “extreme conditions” announced by the Government has / have ceased to be in force.
 - (c) In case of blockage of the public access to the location of the Specified Tender Box at any time between 0900 and 1200 noon (Hong Kong Time) on the Tender Closing Date, the Government will announce extension of the Tender Closing Date until further notice. Following removal of the blockage, the Government will announce the extended Tender Closing Date as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- 3.12 The Government shall not have or accept any liability, obligation or responsibility whatsoever for any loss of, destruction of or damage to the Tender submission submitted and/or deposited by Tenderers in the Specified Tender Box if such loss, destruction or damage shall be caused by or directly or indirectly due to any outbreak of war, hostilities (whether war be declared or not), invasion, acts of foreign enemies, riot, civil commotion, rebellion, storm or other cause whatsoever beyond the reasonable control of the Government. Following any event which results in such loss, destruction or damage, the Government will announce any arrangements concerning Tender submission as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).
- 3.13 If a Tenderer submits a Tender by Electronic Tendering, the Tenderer shall, in addition to compliance with the Tender Documents, observe and comply with all terms and conditions of use of the PCMS and the e Tender Box as set out in or referred to in the e-Tender Box.
- 3.14 Modification of Tender
- (a) Before the Tender Closing Date, a Tenderer who has lodged a Tender may modify its Tender as considered necessary.
 - (b) Paper-based Tendering

Any modification to the submitted Tender considered necessary by the Tenderer shall be the subject of a separate letter accompanying the Tender. Figures and words shall not be altered or erased; any modification shall be effected by striking the incorrect figure or word and inserting the correct figure or word in manuscript above the original figure or word. All such amendments shall be initialled by the Tenderer in manuscript.
 - (c) Electronic Tendering

In case of modification to the submitted Tender, the Tenderer shall submit either a complete set of the revised Tender superseding the original Tender, or just the revisions to the original Tender. Either way, this shall be stated clearly in the submission.

3.15 Apart from Part VI “Offer to be Bound” of the Tender Form (which, in the case of Paper-based Tendering, must be originally signed by or on behalf of the Tenderer as required under Clause 3.3(a)(i) above), wherever there is any provision in the Tender Documents requiring that the original of any document or the document as mentioned in Clause 3.15(a)(i) or (ii) below to be submitted as part of the Tender,

- (a) in the case of Paper-based Tendering, (i) the Tenderer may submit a photocopy certified to be true and complete by the person(s) specified in Clause 3.10(a)(i) above; (ii) in the case of any certificate which is required to be issued by a recognised certification body (if applicable), the photocopy certificate must be certified as true and complete by that specified body or a lawyer duly qualified to practise in Hong Kong or the laws of the place of incorporation, formation or establishment of the Tenderer; and (iii) if only a photocopy without any certification has been submitted, the Government reserves the right to request a certified true copy as required in (i) or (ii) above (whichever is applicable) (“certified true copy”) after the Tender Closing Date. The Tender may not be considered further if the certified true copy is not provided; and
- (b) in the case of Electronic Tendering, the Tenderer shall first submit the certified true copy as described in Clause 3.15(a)(i) or 3.15(a)(ii) above (whichever is applicable) in electronic format as part of its Tender via the e-Tender Box. Subsequently, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. If only a photocopy without any certification has been submitted in electronic format as part of its Tender via the e-Tender Box, the Government reserves the right to request a certified true copy (hardcopy) after the Tender Closing Date. The Tender may not be considered further if the certified true copy (hardcopy) is not provided.

4. Acceptance of Innovative Suggestions

- 4.1 The Government may, at its absolute discretion, accept one or more of the Innovative Suggestions submitted by the successful Tenderer in its Tender. The Accepted Innovative Suggestions as found in the Innovative Suggestion Schedule in Annexes attached to the Memorandum of Acceptance shall form part of the Contract.
- 4.2 The Tenderers are at liberty to decide whether or not to submit Innovative Suggestions. Should the Tenderer provides Innovative Suggestions, those Innovative Suggestions shall be submitted as part of its Tender before the Tendering Closing Date or otherwise the Government will evaluate the Tender on an “as is” basis. However, the Government may, but is not obliged to, request clarification or submission of any factual information or document to support any claim or proposal in respect of the Innovative Suggestions under Clause 7.1 below.

5. Tenders to Remain Open

- 5.1 A Tender once submitted by a Tenderer will be binding on the Tenderer. By submitting a Tender, the Tenderer shall be deemed to have represented to the Government that it has done so as the principal but not as an agent of any other person. If the Tenderer submits a Tender as an agent on behalf of another person, full disclosure must be made in the Tender.
- 5.2 It is a requirement of this Invitation to Tender that a Tender shall remain valid and open for a period of **one hundred and eighty (180) days** after the Tender Closing Date (“Tender Validity Period”).
- 5.3 If a Tenderer offers in its Tender a period that is shorter than the applicable Tender Validity Period specified in Clause 5.2 above, or if it rejects the Tender Validity Period prescribed in Clause 5.2 above, its Tender will **not** be further considered.

6. **Prices**

- 6.1 Unless otherwise provided for in the Tender Documents, the Tenderer shall quote the prices for each item in Schedule 1 in Hong Kong dollars only. The prices quoted by the Tenderer for an item shall be all-inclusive of all amounts chargeable for the performance by the Tenderer of all obligations as stated in the Contract for or concerning or in relation to such item. Under no circumstances will the Government compensate the Contractor for any loss incurred in the fluctuation of the currency in which the prices are quoted.
- 6.2 Prices quoted by a Tenderer shall only be shown in Schedule 1.
- 6.3 A Tenderer must quote fixed prices for all items and the same price for the same item regardless of the quantity. A Tender with any price variation clause, including one based on foreign exchange market fluctuation, will **not** be considered further.
- 6.4 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by all prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment to its Tender after the Tender Closing Date on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typo mistake or inconsistency in a Tender, in Clause 7 below, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer’s clarification is not provided or not satisfactory, or the Tenderer refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an as is basis (i.e., in the form as originally submitted prior to the Tender Closing Date) or disqualify the Tenderer on ground that it has provided erratic or inconsistent proposals or quotations for proper evaluation.
- 6.5 Without prejudice to the generality of these Terms of Tender, the Government may require a Tenderer who in the opinion of the Government has submitted an unreasonably low price to justify and demonstrate that such a Tenderer is capable of carrying out and completing the Contract. The Government may reject the Tender if the Tenderer fails to so justify and demonstrate to the Government’s satisfaction.

7. Request for Information

7.1 Notwithstanding anything herein to the contrary, in the event that the Government determines that:

- (a) clarification in relation to any part of the Tender is necessary; or
- (b) certain document or a piece of information, other than those specified in Clause 3.3 and 3.4 above or those which failure of submission will result in automatic disqualification, is missing from any Tender,

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer shall within five (5) working days from the date of the request or within such other period as specified in the request submit the clarification, information or document. If the clarification or information or document is not provided by the aforesaid deadline, the Tender may not be considered further.

7.2 Any excess proposal or information submitted by a Tenderer which goes beyond what has been requested by the Government in Clause 7.1 above will be ignored for the purposes of the Tender evaluation or will entitle (but not oblige) the Government **not** to consider the Tender further.

8. Tenderer's Counter-Proposals

8.1 The Tenderer must not submit any proposal that has the effect of varying or modifying (a) all provisions in the Tender Documents concerning the preparation, submission and evaluation of Tenders and award of Contract; and (b) those additional provisions which are not permitted to be subject to any counter-proposal as identified in these Terms of Tender.

8.2 The Tenderer must not directly or indirectly attempt to preclude or limit the effect of any requirements or instructions set out in the Tender Form, these Terms of Tender or the Schedules.

8.3 If a Tenderer fails to comply with Clause 8.1 or 8.2 above, subject to any clarification which the Government may, but is not obliged to, seek from the Tenderer, its Tender will not be further considered.

8.4 Counter-proposal to other provisions of the Tender Documents not specified in Clause 8.1 or 8.2 above, whilst not strictly disallowed, is not encouraged. If the Tenderer wishes to submit one or more counter-proposals to any provision in the Tender Documents not of the types specified in Clause 8.1 or 8.2 above ("Counter-Proposals"), the Counter-Proposals shall be submitted in the following manner:

- (a) (i) for Paper-based Tendering, the Counter-Proposals shall be attached to Part VI "Offer to be Bound" of the Tender Form; or
- (ii) for Electronic Tendering, the Counter-Proposals shall be attached as a separate attachment and identified as such;

- (b) the original provisions which the Counter-Proposals relate to shall be fully recited before the proposed alteration or deletion;
 - (c) the proposed alteration to the original provisions shall be underlined and shall bear the corresponding clause number of the original provisions unless it is an addition;
 - (d) if it is an addition, the additional provisions shall be underlined;
 - (e) words to be deleted shall be crossed out by a single line only; and
 - (f) an explanation shall be given below the alteration or deletion and put in square brackets “[]”.
- 8.5 Unless the Government otherwise agrees, Counter-Proposals that are not submitted in Clause 8.4 above will **not** be considered by the Government and will not be regarded to form part of the Tender submitted by a Tenderer. In such event, the Tenderer shall be deemed to have agreed to the original provisions to which the Counter-Proposals relate and the Government will continue to consider the Tenderer’s Tender on this basis.
- 8.6 Notwithstanding and without prejudice to the aforesaid, the Government may, but is not obliged to, negotiate with the Tenderer any Counter-Proposal. The Government may at its absolute discretion reject any Counter-Proposal. If the Government does elect to negotiate with a Tenderer concerning a Counter-Proposal, and if after such negotiation, the Tenderer is unwilling to withdraw such Counter-Proposal, or otherwise revise it on terms acceptable to the Government, its Tender may not be considered further. Any accepted Counter-Proposal following from a successful negotiation shall be deemed as part of the Tenderer’s Tender and forms part of the Contract and shall be binding on the Tenderer if the Contract is eventually awarded to it.

9. Tenderer’s Enquiries

- 9.1 Any enquiries from the Tenderer concerning the Tender Documents up to the date of lodging its Tender with the Government shall be in writing and shall be submitted to the Government no later than three (3) working days before the Tender Closing Date. The request shall be submitted in the manner specified in Clause 10 below.
- 9.2 After lodging a Tender with the Government, the Tenderer shall not attempt to initiate any further contact, whether direct or indirect, with the Government on its Tender or the Tender Documents. The Government shall have the sole right to initiate any such further contact and all such contacts and any replies of the Tenderer thereto shall be in writing or formally documented in writing.
- 9.3 Unless otherwise expressly stated by the Government in writing, a statement made by the Government (whether oral or written) in response to any enquiry made by a potential Tenderer shall be for information only. No such statement shall constitute a representation or Warranty by the Government of any nature whatsoever (whether expressed or implied), and no invitation is made by the Government to any Tenderer or potential Tenderer to rely on such statement. No such statement shall form part

of the Tender Documents or alter, negate or constitute a waiver of any provision of the Tender Documents.

10. Communication with the Government

- 10.1 All communications in relation to the Invitation to Tender shall be conducted directly between the Government and the Tenderer unless the Government elects to contact any proposed sub-contractor or customer or client of the Tenderer directly.
- 10.2 Without prejudice to the requirements in Clause 12 below concerning notification of acceptance of Tender, all communications given or made by the Government or a Tenderer in relation to the Invitation to Tender shall be in writing and sent or delivered to the other Party in the manner provided in Clause 38 of the Conditions of Contract at the address, facsimile number or email address specified in Section A of Schedule 2, save that in the case of lodging any enquiries under Clause 9.1 above, the Tenderer shall lodge such enquiries by facsimile or by email only. The Tenderer shall complete its postal address, facsimile number and email address in the Appendix to these Terms of Tender and shall note that the Government will not accept the use of a postal box as the Tenderer's correspondence address for any purpose whether before or after the award of the Contract.

11. Tender Assessment

- 11.1 Tenders will be evaluated based on price as well as technical competence of the Tenderer, understanding of the Government's requirements, relevant job experience and quality of work.
- 11.2 The Tenders will be assessed using the Marking Scheme and Assessment Criteria set out in Annex 1.

12. Acceptance

- 12.1 The successful Tenderer will be notified in writing by fax within one hundred and eighty (180) days from the Tender Closing Date ("Conditional Acceptance of Tender"). Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall, within twenty-one (21) days of the notification or such later date as the Government may allow, be obliged to:
- (a) deliver the Contract Deposit as required in Clause 19 below to the Government;
 - (b) comply with other conditions as the Government may specify therein.
- 12.2 Only upon completion of the actions specified in Clause 12.1 above by the successful Tenderer to the satisfaction of the Government, the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance in Clause 12.3 below. The Contract will incorporate the Tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents). In the event that the successful Tenderer fails to complete the actions as mentioned in Clause 12.1 above (unless and save to the extent they are waived by the Government, if any) by the

deadline specified in Clause 12.1 above, the Conditional Acceptance of Tender may be declared void and of no further force by the Government, and the Government may disqualify the Tenderer concerned. Whereupon it may, but not obliged to, award the Contract to another Tenderer.

12.3 The successful Tenderer who has complied with Clause 12.1 above to the satisfaction of the Government will receive as an indication of unconditional acceptance the Memorandum of Acceptance in the form set out in Part VII from the Government. This Memorandum of Acceptance shall constitute a binding Contract. Tenderers who do not receive any notification within the Tender Validity Period shall assume that their Tenders have not been accepted. A copy of each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.

12.4 Without prejudice to the rights and powers under these Terms of Tender, unless and until the Government has issued the Memorandum of Acceptance indicating its unconditional acceptance in Clause 12.3 above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

13. Offer to be Binding

13.1 All parts of these Tender Documents submitted and offered by the Tenderer shall be binding on the Tenderer. A Tenderer is deemed to have satisfied itself as to the correctness of its Tender. In the event that a Tenderer discovers an error in its Tender after the Tender has been deposited, the Tenderer may correct the same in a separate letter before the Tender Closing Date. No request for adjustment or variation whatsoever shall be allowed or entertained after the Tender Closing Date.

13.2 In event that, upon examination by the Government after the Tender Closing Date, a Tenderer has made manifest errors in the figures stated in its tender, the Government shall have the right to inform the Tenderer of such errors. The Tender shall be requested to provide written confirmation of its willingness to abide by the corrected figures.

13.3 By signing the Part VI – Offer to be Bound, a Tenderer confirms that its offer has been made subject to the terms and conditions contained in these Tender Documents, and any variation or adjustment agreed with the Government and upon acceptance by the Government will be incorporated into and form part of the Contract.

14. Negotiation

The Government reserves the right to negotiate with any Tenderer about the terms of its Tender and the Contract.

15. Government Discretion

15.1 Notwithstanding anything to the contrary in this Tender Documents, the Government reserves the right to disqualify a Tenderer on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer or a related person of the Tenderer;
- (b) the Tenderer has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Tender or in any subsequent submission by the Tenderer or communication between the Government and the Tenderer since submission of that Tender;
- (c) (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision has been made by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Tenderer in its Tender infringes any Intellectual Property Rights or any other rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award); or (ii) the Government has grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Tenderer or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Tender Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer or a related person of the Tenderer (as defined in Clauses 15.6 and 15.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficiency(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficiency(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficiency(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficiency(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficiency(ies) has been remedied (“Contract Default(s)"); and the Government in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender;
- (e) (i) the Tenderer; or (ii) a related person of the Tenderer; or (iii) a director or management staff of the Tenderer or those of the related person of the Tenderer, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any

time during a period of five (5) years preceding the Tender Closing Date and thereafter up to the time of Contract award;

- (f) professional misconduct or acts or omissions has or have been committed during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Tenderer or a related person of the Tenderer or a director or management staff of the Tenderer or those of the related person of the Tenderer; professional misconduct includes any breach of the Good Industry Practice; or
- (g) the Tenderer has failed to pay taxes to the Government during a period of five (5) years preceding the Tender Closing Date and up to the time of Contract award; or

The grounds specified in Clauses 15.1(a) to 15.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

15.2 For the purposes of Clause 15.1 above, each Tenderer shall provide at the time of submission of its Tender (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 15.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 15.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 15.1(d) above;
- (d) details of conviction as mentioned in Clause 15.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 15.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 15.1(g) above.

If none of the events as mentioned in Clauses 15.1(a) to 15.1(g) above has ever occurred within the applicable period as mentioned above, the Tenderer shall provide a statement to that effect by completing the relevant part of the Information Schedule at the time of submission of its Tender. If found missing, the Government reserves the right to seek clarification in Clause 15.3 below. The information provided by the Tenderer is not conclusive. The Government may independently verify the veracity and completeness of any information provided. In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

- 15.3 In addition to the information mentioned in Clause 15.2 above, the Government reserves the right (but not obligation) to request from a Tenderer or a related person of the Tenderer or director or management staff of the Tenderer or those of the related person of the Tenderer or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 15.1 above.
- 15.4 If the Tenderer fails to comply with the request made by the Government in Clause 15.3 above within such time as required by the Government, the Government may disqualify the Tenderer in Clause 7 above. If the Tenderer has submitted false, inaccurate or incomplete information, the Government may disqualify the Tenderer in Clause 15.1(b) above.
- 15.5 In providing the information required under Clauses 15.2 and 15.3 above, the Tenderer may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 15.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Tenderer to perform the Contract to be awarded in this Invitation to Tender.
- 15.6 If the Tenderer is a company, the expression "related person" of the Tenderer includes any one of the following:
- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Tenderer ("majority shareholder");
 - (b) a holding company or a subsidiary of the Tenderer;
 - (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Tenderer; or
 - (d) a company in which a majority shareholder (being an individual) of the Tenderer directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions "holding company" and "subsidiary" have the meanings given to them in the Companies Ordinance (Cap. 622).

- 15.7 If the Tenderer is a sole proprietor or partnership, the expression "related person" includes any one of the following:
- (a) any partner of the Tenderer (if it is a partnership);
 - (b) the spouse, parent, child, brother or sister of the Tenderer, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
 - (c) a company in which the Tenderer or any partner of the Tenderer beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

- 15.8 References to related persons of the Tenderer, directors and management staff of the Tenderer or those of a related person in any of the applicable Sub-clause of Clause 15.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.
- 15.9 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

16. Provision of Services

The Contractor does not have any exclusive right to provide the Services by virtue of the Contract.

17. Tender Addenda

Should the Government require any amendments, clarifications or adjustments to be made to the Tender Documents before the Tender Closing Date, the Government may do so by issuing numbered addenda giving full details of such amendment, clarification or adjustment. The Tenderer shall acknowledge receipt of these addenda. These addenda if comprising an amendment, clarification or adjustment to any provisions of the Contract, shall form a part of the Contract and shall take priority over the documents previously issued.

18. New Information Relevant to Qualified Status

Tenderers shall inform the Government in writing immediately of any factor which might affect their qualified status as an enlisted service provider with the Government, or as a qualified service provider 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.

19. Contract Deposit and Financial Vetting

- 19.1 If the Estimated Total Contract Value payable by the Government to the successful Tenderer exceeds HK\$1.36 million, but is less than or equals to HK\$15 million, as security for the due and faithful performance of the Contract by the successful Tenderer, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to two percent (2%) of the Estimated Total Contract Value specified in Schedule 1 for the entire Contract Period as security for the due and faithful performance of the Contract by the successful Tenderer.
- 19.2 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall submit the following documents for financial vetting to demonstrate their financial capability:

- (a) Originals (or copies certified by its auditors) of the audited accounts of the Tenderer, and the audited consolidated accounts of the group if the Tenderer is a subsidiary of another company for the three (3) financial years prior to the Tender Submission Date. The audited accounts must comply with the following requirements:
 - (i) the audited accounts must be prepared in accordance with accounting principles generally accepted in Hong Kong and the disclosure requirements of the Companies Ordinance (Cap. 622);
 - (ii) the latest audited accounts must be for the period ending no more than eighteen (18) months before the Tender Closing Date;
 - (iii) the audited accounts must contain the Director's Report, Auditor's Report, Balance Sheet, Income Statement (or commonly referred to as Profit & Loss Account), Statement of Changes in Equity, Cash Flow Statement and Notes to the Accounts;
 - (iv) all such accounts must have been audited by a certified public accountant (practising) or a corporate practice as registered in the Professional Accountants Ordinance (Cap. 50) or for a non-Hong Kong company, by auditors recognised by its local law;
 - (v) if any such accounts are prepared in a language other than Chinese or English, translations, certified as accurate by the respective consulate or a notary public registered in Hong Kong, must be provided; and
 - (vi) if the Tenderer is a joint venture or partnership, audited accounts for each of the members/participants of the joint venture or partnership must be submitted if the members are incorporated bodies;
- (b) management accounts up to a period of not more than three (3) months before the Tender Closing Date shall be provided if this has not been covered by the latest audited accounts;
- (c) unaudited accounts are acceptable only if the Tenderer is an unincorporated business where audited accounts are not mandatorily required or the Tenderer is a newly established company where the first accounts are not yet available;
- (d) the management accounts or unaudited accounts mentioned in Sub-clauses (b) and (c) above must be certified by the sole proprietor, partners, directors of the Tenderer or by certified public accountants or other accountants acceptable to the Government;
- (e) projected profit and loss accounts and cash flow statements of the Contract and for each contract year and the pre-operating period (if applicable) complying with the following requirements:
 - (i) for a company, they shall be certified by the company's director or company secretary. For a joint venture or partnership, separate certification from each of the director of the members/participants of the joint venture or a partner of the partnership is required;

- (ii) the assumptions used in preparing the projections shall be reasonable and must be clearly stated. All the supporting schedules and detailed calculations shall also be provided;
 - (iii) the projections shall at least include the projected revenue, details of operating expenses, capital expenditure including the initial investments and sources of finance, and other particulars showing how the Tenderer will deal with the Contract; and
 - (iv) the assumptions by the Government included in the Tender Document must be reflected in the Tenderer's projections;
 - (f) copy of the latest annual return filed with the Companies Registry if the Tenderer is a corporate entity or similar statutory filings showing the authorized and issued share capital, name of shareholders and directors if the Tenderer is an overseas company; and
 - (g) Tenderers shall upon the request in writing by the Government provide any other financial and corporate information as required by the Government for assessment of the financial capability of the Tenderer to undertake the Contract on or before such date as stated in the written notification by the Government.
- 19.3 If the Estimated Total Contract Value exceeds HK\$15 million, the successful Tenderer shall deposit with the Government a Contract Deposit of an amount equivalent to not more than two percent (2%) of the Estimated Total Contract Value (if it passes the financial vetting as stipulated in Clauses 19.2 above) or not more than five percent (5%) of the Estimated Total Contract Value (if it is unable to submit adequate financial information for a meaningful assessment or fails in the financial vetting as stipulated in Clauses 19.2 above) as security for the due and faithful performance of the Contract by the successful Tenderer.
- 19.4 The Contract Deposit shall be payable within twenty-one (21) days from the date of the Conditional Acceptance of Tender or such later date as the Government may allow and either in cash or in the form of a bank guarantee in the form attached at Annex 2 issued by a bank holding a valid banking licence under the Banking Ordinance (Cap. 155).
- 19.5 If the successful Tenderer elects to pay the Contract Deposit by way of a bank guarantee, the proposed guarantor and the form and substance of the bank guarantee must be subject to the acceptance of the Government. Without prejudice to the generality of the foregoing, the bank guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence issued under the Banking Ordinance (Cap. 155) and acceptable to the Government;
 - (b) unless otherwise agreed by the Government, it must be on the terms set out at Annex 2; and any authorisation used by the bank for the execution of the bank guarantee shall be acceptable to the Government; and

- (c) the bank guarantee shall come into effect on such date as may be directed and stated by the Government in the Conditional Acceptance of Tender until three (3) months after the expiry of the Contract Period or the date upon which all of the Contractor's obligations shall have been performed and discharged to the satisfaction of the Government, whichever is the later.

19.6 A Tenderer is required to elect the method of providing a Contract Deposit it prefers by completing the Offer to be Bound at Part VI. In the event that a Tenderer fails to elect which method of providing a Contract Deposit it prefers, it will be assumed that the Tenderer will pay the Government the Contract Deposit by way of cash.

20. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers will be destroyed not less than three (3) months after the date the Contract has been awarded.

21. Complaints About Tender Process or Contract Award

- 21.1 This Invitation to Tender is governed by the WTO GPA, and all relevant provisions of the WTO GPA shall apply to this Invitation to Tender. Tenderers are hereby notified that the Government has established a Review Body on Bid Challenges under the WTO GPA ("Review Body") to address challenges made against alleged breaches of the WTO GPA.
- 21.2 Tenderers are advised that the procedures for handling bid challenges are set out in the Rules of Operation of the Review Body ("Rules"), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department of the Government, or which may be obtained upon request.
- 21.3 In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may lodge a challenge to the Review Body within ten (10) working days after the Review Body knew or reasonably shall have known the basis of the challenge. The challenge that filed later than thirty (30) working days shall not be considered. However, Tenderers are encouraged to seek resolution of their complaints in consultation with the AFCD (for and on behalf of the Government) before lodging a complaint with the Review Body. In such instances, the AFCD shall give impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.

22. Personal Data Provided

- 22.1 A Tenderer's personal data (if he is an individual) 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 Tender 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.
- 22.2 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 22.1 above.

- 22.3 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 (Cap. 486). The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- 22.4 Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections shall be addressed to Personal Data Privacy Officer of the AFCD.

23. Consent to Disclosure

- 23.1 The Government shall have the right to disclose, without further reference to the successful Tenderer, whenever it considers appropriate or upon request (written or otherwise) by any third party information on the awarded Contract, the name and address of the successful Tenderer, particulars of the Services and Work Orders awarded to the successful Tenderer, the price quotations of the successful Tenderer and the date of award of the Contract. In submitting a Tender, each Tenderer irrevocably and unconditionally authorizes the Government to make and consents to the Government making any of the disclosure aforesaid.
- 23.2 Nothing in Clause 23.1 above shall prejudice the Government's power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not specified in Clause 23.1 above) if the disclosure is made under any one of the following circumstances (even if disclosure may also mean the information will at the same time, or subsequently, become public information):
- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Cap. 1) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
 - (b) the disclosure of any information already known to the recipient;
 - (c) the disclosure of any information which is public knowledge;
 - (d) the disclosure of any information in circumstances where such disclosure is required in any laws of Hong Kong, or an order of a court of Hong Kong or a court or tribunal with competent jurisdiction;
 - (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant); or
 - (f) without prejudice to the power of the Government under Clause 23.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

24. Contractors' Performance Monitoring

If a Tenderer is awarded a Contract, its subsequent performance will be subject to monitoring and may be considered during the evaluation of its future Tenders.

25. Costs of preparing the Tender

A Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender, including all costs and expenses relating to (a) communication or negotiations with or providing presentation to the Government; and (b) attending the briefing session, whether before or after the Tender Closing Date.

26. Offering Gratuities

The Tenderer shall not and shall ensure that its 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 its Tender, and result in Contract termination, if any awarded.

27. Anti-collusion

27.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Annex 3 of the Non-collusive Tendering Certificate referred to in Clause 27.2 below), regarding, amongst other things, price, Tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap. 619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

27.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Annex 3) as part of its Tender.

27.3 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 27.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 27.2 above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (a) reject the Tenderer's Tender;
- (b) if the Government has accepted the Tender, withdraw its acceptance of the Tender; and
- (c) if the Government has entered into the Contract with the Tenderer, forthwith terminate the Contract.

27.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses

arising out of or in relation to any breach of any of the representations and/or warranties and/or undertakings in Clause 27.1 above or in the Non-collusive Tendering Certificate submitted by it under Clause 27.2 above.

- 27.5 A breach by a Tenderer of any of the representations and/or warranties and/or undertakings in Clause 27.1 above may prejudice its future standing as a Government contractor or tenderer.
- 27.6 Clause 27.1 above shall have no application to the Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.
- 27.7 The rights of the Government under Clauses 27.3 to 27.6 above are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

28. Briefing Session

- 28.1 A Tender briefing session will be held. Tenderers are strongly advised to attend the Tender briefing session before submitting their Tenders in order to fully acquaint themselves with the requirements of the Government and to determine the scale and costs of the Services to be provided. Details of the briefing session are as follows:

Time: 10:00
Date: 16 December 2024 (Monday)
Venue: Room 701A
7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Tenderers wishing to attend the briefing session must complete and return by facsimile (fax no. 2314 2866) the registration form at the Annex 4 on or before 12 December 2024.

- 28.2 Each Tenderer is advised to send no more than two representatives to attend the Tender briefing session due to limited seating capacity.
- 28.3 In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or "extreme conditions" announced by the Government is/are in force for any duration between 0900 (Hong Kong time) and 1700 (Hong Kong time) on the Tender briefing session as originally scheduled, the Tender briefing session will be cancelled, and rescheduled to later date and time. The tenderer will be notified of the new schedule of Tender briefing session. The Government shall not be held liable for any loss or damage incurred as a result of the rescheduling of the Tender briefing session caused by above-mentioned adverse weather event.

PART III CONDITIONS OF CONTRACT

1. Contract Period

- 1.1 The Contract shall be for a term of thirty-six (36) months commencing from the Commencement Date unless or until earlier terminated or extended in Clause 1.2 below (“Contract Period”).
- 1.2 The Government shall have the option to extend the Contract Period for additional period(s) of not more than six (6) months in aggregate. The Government shall be entitled to exercise such option, not less than one (1) week prior to the expiry of the original Contract Period (as last extended, as the case may be) by giving the Contractor a written notice to that effect specifying in such notice the period of extension.
- 1.3 There is no limit on the number of times the Government exercises its option to extend or the period of each extension in Clause 1.2 above provided that the maximum extended period(s) (excluding the original period of thirty-six (36) months) do not exceed six (6) months.
- 1.4 Upon the Contract Period is extended in Clause 1.2 above, the Contract shall continue to be in full force and effect (including this Clause 1) on and subject to the same terms and conditions.

2. Services and Variation

- 2.1 The Contractor shall perform the Services and carry out the Work Orders awarded to it in accordance with the provisions of the Contract including but not limited to the Service Specifications, Conditions of Contract, Schedules and Accepted Innovative Suggestions and in accordance with the timetable as set out in the Contract.
- 2.2 The Contractor shall not extend the provision of Services beyond the requirements explicitly stated in the Contract and the Work Order, unless otherwise directed in writing by the Government. The Contractor shall promptly execute such variations and shall be bound by the same terms and conditions, to the extent applicable, as if the aforementioned variations were expressly incorporated into the Contract.
- 2.3 In performance, the Contractor shall also comply with all Service Specifications and all applicable laws and regulations.
- 2.4 The Contractor shall provide necessary Work Boat installed with Equipment to complete the Services specified in Work Order(s). The Work Boat installed with Equipment comply with the Service Specifications in Schedule 5 or be of equivalent specifications.
- 2.5 In case of any variation made to the Contract, the quantification of the amount to be added to or deducted from the Contract Prices shall be ascertained in the Rates specified in Schedule 1, to the extent that is applicable. In the event that the Rates are not expressly provided in Schedule 1 or are not applicable, the adjustment shall be determined by an amount deemed reasonable under the prevailing circumstances.

- 2.6 The frequency for performing each Work Order in Schedule 1 is an estimate only, and shall not be binding on the Government. All Service Specifications set out in a Work Order shall be deemed to form part of the Contract.

3. Contractor's Acknowledgement and Obligations

- 3.1 The Contractor acknowledges and agrees that when entering into the Contract, it has been supplied with sufficient information to enable it to supply to the Government the Services, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract.
- 3.2 The Contractor further acknowledges that the Government relies on the skill and judgment of the Contractor in the provision of Services and the performance of its obligations under the Contract. The Contractor acknowledges and agrees that save to the extent expressly set out in the Contract, it is neither expected nor necessary that the Government will have to provide any assistance or perform any act or do anything whatsoever to ensure the provision of the Services and performance of its obligations in the Contract.
- 3.3 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence; and
 - (b) in accordance with Good Industry Practice.
- 3.4 The Contractor shall comply with all applicable laws and regulations. In particular, the Contractor shall:
- (a) comply with the Employment Ordinance (Cap. 57) and the Immigration Ordinance (Cap. 115). The Contractor shall not employ any persons who are forbidden by the laws of Hong Kong or are not entitled for whatever reasons to undertake any employment in Hong Kong;
 - (b) make its own arrangements to provide Mandatory Provident Fund Schemes to its employees in the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and
 - (c) comply with the requirements of the Occupational Safety and Health Ordinance (Cap. 509) and any other legal provisions pertaining to the health and safety of the personnel, Government staff and others who may be affected by its performance of Services.
- 3.5 The Contractor shall:
- (a) duly and unconditionally secure, obtain and maintain throughout the Contract Period all and any authorisations, approvals, consents, licences, permits, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are or may be required or necessary to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where the

- Contractor's procedures so require, the consent of its parent company) ("Consents");
- (b) ensure that the Consents are in full force and effect, and the use of the Services by the Government will not contravene any applicable laws, throughout the Contract Period; and
 - (c) bear all costs, charges and expenses that may be incurred in obtaining and maintaining the Consents throughout the Contract Period.
- 3.6 The Contractor shall, through the Government Representative, keep the Government informed of all matters related to the Contract within the actual or constructive knowledge of the Contractor and shall answer all enquiries received from the Government Representative.
- 3.7 The Contractor shall pay all taxes, duties, fees, charges, assessments of any nature levied by relevant governmental authorities and to pay the fines and penalties imposed for any offence or infringement by the Contractor under any laws or regulations in connection with the performance of the Contract.
- 3.8 To the extent that the Government considers it reasonably necessary and that the information (in whatever media) is in the possession of the Government and is not subject to any confidentiality restriction, the Government may at the request initiated by the Contractor (but not otherwise required in the Contract), provide all such information for the Contractor's guidance in the execution of the Contract free of charge provided such request from the Contractor is made in a timely manner to avoid any delay on the part of the Contractor to perform the Contract. If required by the Government, the Contractor shall return all such information (in whatever media) to the Government upon the expiry or early termination of the Contract or at the time specified in the Conditions of Contract.
- 3.9 Without prejudice to the deadline delivery dates and other time requirements to be observed and complied with by the Contractor, whenever any approval or agreement or instruction or direction is sought by the Contractor from the Government in accordance with the requirements of the Contract, the Government is entitled to a reasonable period of time for considering whether any such agreement or approval should be given, and a reasonable period of time to specify such direction or instruction. It will use its reasonable endeavours to give notification to the Contractor of its decision and where applicable any work to be done in order for such approval or agreement or direction or instruction to be given within a reasonable period of time.
- 3.10 In the light of the foregoing, the Contractor will not be entitled to any extension of time or additional payment or exemption from any obligation or liability on the alleged ground (a) that the Contract contains insufficient or unclear or inconsistent or out-of-scope specifications or requirements; or (b) that the Government has not provided any assistance or performed any act to ensure performance by the Contractor of its obligations; or (c) that the Contractor has to expend time and resources reporting to the Government on the progress; or (d) that any non-compliance with any obligation or delay is due to the manufacturer or any other person; or (e) that the Government has not provided or otherwise in a timely manner any direction, instruction, information or approval which is not otherwise expressly

required under the Contract; or (f) for any approval or agreement which is stated to be required in the Contract, that the Government abstains from giving any such approval or agreement.

- 3.11 The Contractor shall be responsible for the completeness and accuracy of all deliverables (including but not limited to the Setup and its associated Equipment), drawings, documents and information supplied by the Contractor to the Government in connection with the Services. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the Government in Clause 16.2 below in connection with, any discrepancies, errors or omissions therein.
- 3.12 The Contractor acknowledges that it does not have the right to provide the Services to the Government on an exclusive basis and nothing in this Contract confers any such exclusive right. Nothing in the Contract shall preclude the Government from procuring any Services from any other person.

4. Contractor's Warranties and Representations

4.1 The Contractor warrants, represents and undertakes that:-

- (a) the Contractor and Contractor Personnel shall have the necessary training, skill, experience, qualifications and expertise to provide the Services on the terms and conditions set out in the Contract;
- (b) the Contractor shall carry out the Services with all due diligence and in a timely, safe, proper, skilful and workmanlike manner;
- (c) the Services shall conform in all respects to the Service Specifications and conditions under the Contract;
- (d) it shall not employ any illegal workers to carry out its obligations under the Contract;
- (e) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (f) all information and documents supplied, and statements and representations from time to time made by or on behalf of the Contractor in or in relation to its Tender and the Contract are genuine, true, accurate and complete;
- (g) throughout the Contract Period, no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (h) throughout the Contract Period, it is not subject to any contractual obligation, or court judgment or ruling order or arbitration decision, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

- (i) throughout the Contract Period, no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue; and
 - (j) throughout the Contract Period, it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.
- 4.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 4.1 above and in other provisions of the Contract (including without limitation the Conditions of Contract and Clause 27.1 of the Terms of Tender), and those made by the Contractor in its Tender for the Contract including all Schedules, during the evaluation of the Tender, and those from time to time made in the course of performance of the Contract, are collectively referred to as "Warranties", and each, a "Warranty".
- 4.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.
- 4.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a service provider and the rights conferred on the party contracting with the service provider under the Supply of Services (Implied Terms) Ordinance (Cap. 457) apply to bind the Contractor and the Government respectively.

5. Work Order

- 5.1 A Work Order shall specify the number of Work Order(s) required, the location at which will be performed, the date for performing the Services, and the completion time frame for each Work Order. The Work Order shall be issued not less than three (3) days prior to the scheduled commencement of the Services. The Contractor shall complete the requested Work Order of the Services within the stipulated time frame. All Services rendered in each Work Order under this Contract shall be subject to inspection and shall not be considered as accepted unless certified in writing by the Government Representative.
- 5.2 The Contractor shall provide at least such frequency for performing each Work Order in Schedule 1 based on the instructions of the Government.
- 5.3 Without prejudice to the rights and authority of the Government under this Contract or any applicable law, the Government Representative reserves the right to reject any Services, or any portion thereof, that do not strictly adhere to the Conditions of Contract.
- 5.4 For the avoidance of doubt, any actions taken by the Contractor in the terms of this Contract, as well as any acts or omissions on the part of the Government, shall not be interpreted as acceptance of the Services under any Work Order, or any part

thereof, unless the Government provides written certification of acceptance in Clause 5.1 above.

6. Contract Manager

- 6.1 The Contract Manager shall assume the role upon award of the Contract unless otherwise approved by the Government.
- 6.2 The Contractor Manager shall assume responsibility for the provision of the Services and possess full authority to make all necessary decisions in relation thereto, as well as to receive all instructions from the Government.
- 6.3 The Contractor shall bear the expenses for the Contract Manager with a mobile phone.
- 6.4 The Contract Manager shall promptly address any inquiries raised by the Government and, upon request, accompany the Government to designated locations as directed.
- 6.5 The Contractor shall not replace or substitute the Contract Manager without obtaining prior consent from the Government.

7. Work Supervisor

- 7.1 In the requirements of the Merchant Shipping (Local Vessels) (Works) Regulation (Cap. 548I), the Contractor shall appoint a work supervisor, who shall possess knowledge of the types of Work Order necessary to perform the Services and demonstrate proficiency in both English and Chinese (Cantonese) languages, with the ability to effectively communicate matters related to the supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys.
- 7.2 The work supervisor shall attend the Tender briefing session organised by the Licensing and Registration Section, AFCD at 0830 hours on the scheduled date of the Services specified in the Work Order. The Government reserves the right to approve or disapprove any change of work supervisor requested by the Contractor.

8. Coxswain and Engine Operator in Work Boat

- 8.1 Each of the Work Boat shall be manned on all voyages with Contractor Personnel, including a coxswain who shall be assisted by a minimum of one of competent, duly qualified and trained engine operator to ensure that all necessary assistance and services are provided to the Government efficiently. In the event that the Government or its nominee is not reasonably satisfied with the conduct and/or performance of any coxswain or engine operator of the Work Boat, the Government or its nominee may give notice thereof to the Contractor requiring the Contractor to arrange for the substitution or replacement of any coxswain or engine operator and upon receipt of such notice, the Contractor shall use at its own expense and as soon as practicable arrange to substitute or replace the coxswain or the engine operator.
- 8.2 The Contractor warrants that all coxswain and/or engine operator deployed for performing this Contract possess the qualifications and/or experience in the supply of boundary buoys and provision of services for deployment and overhaul of

boundary buoys. The Contractor shall ensure that the appointment or replacement of any coxswain and/or engine operator for the Work Boat has no lesser qualifications and/or experience than the outgoing coxswain or engine operator. The Contractor shall make available all relevant documentation of qualifications and experience of the coxswain and / or experience of the coxswain and / or engine operator upon request by the Government for verification purposes.

9. Occupational Safety and Health

- 9.1 The Contractor shall comply with the Government's prevailing policies, guidelines and procedures safeguarding occupational safety and health of the Contractor Personnel deployed for the Services.
- 9.2 The Contractor must ensure that whenever it is so required, comprehensive assessment and management of risks to occupational safety and health of the Contractor Personnel deployed for the Services will be undertaken. Based on such assessment, adequate measures must be taken to guard against such risks.
- 9.3 The Contractor must only provide experienced supervisory staff to give proper training, supervision and instructions to its Contractor Personnel. The Contractor must ensure that all Contractor personnel provided by it to execute the Services:
- (a) are properly trained, competent and efficient in carrying out the duties as stipulated in the Service Plan;
 - (b) shall be fully aware of any potential risks that may exist through the undertaking of their duties and to follow policies and guidelines that may be in force from time to time concerning occupational safety and health;
 - (c) take all reasonable measures to avoid causing danger to the Contractor Personnel in the discharge of their duties;
 - (d) stay alert, listen to and observe all relevant bulletins regarding the weather and the state of the Hong Kong Waters;
 - (e) is mandatory for all incidents and dangerous occurrences to be reported promptly to the Government.
- 9.4 In the event that the Contractor fails to comply with any of the Clauses 9.1 to 9.3 or is unable to meet any relevant safety standards, it may be disqualified from participating in any future Tender or quotation exercises conducted by the Government.

10. Custody of Work Boat and Equipment

In the event that any Work Order cannot be completed within a single working day, and Work Boat and Equipment remained on-site, the Contractor shall have sole responsibility for the safety and risk associated with the said Work Boat and Equipment.

11. Contacts for Emergency

The Contractor shall provide the Government with an updated list of staff's contact names and telephone numbers. The list shall be readily available in the event of any emergency that occurs outside of normal working hours. The Contractor shall ensure that sufficient staff can be mobilized promptly to adequately address any such emergency.

12. Receipt of Components

The Contractor shall be obligated to sign the check-out record for all Setup and its associated Equipment that are obtained from the storage location of Setup and its associated Equipment, and shall sign the check-in record for all Setup and its associated Equipment that are returned.

13. Payment

13.1 In consideration of Contractor's due and proper provision of the Services and performance of its obligations under a Work Order strictly in accordance with the terms and conditions of the Contract and subject always to all and any set-off and deductions (if any), the Government shall pay the Contractor the amount equal to the applicable Rates quoted by the Contractor in Schedule 1 and accepted by the Government, multiplied by frequency of Work Order required as specified by the Government in Work Order and actually performed by the Contractor ("Contract Price") to the satisfaction of the Government. Notwithstanding the final settlement of any Work Order's Contract Price, should non-compliance with the specified requirements of the Work Order or deficiencies in the Services be identified post-settlement, the Government reserves the right to deduct such amounts from subsequent Work Order's Contract Price.

13.2 Regardless of whether the Contract Price shall be payable in one lump sum (i.e. Work Order 2 to Work Order 7) or by instalment (i.e. Work Order 1), unless otherwise agreed in writing by the Government, the Government shall have any obligation to pay the Contractor the Contract Price for such Services have been accepted by the Government in writing. The Government shall pay the Contractor the Contract Price within thirty (30) days after receipt by the Government of the invoice in respect of such Work Order.

13.3 Unless specifically stated in the Contract, apart from the Contract Price, no other money shall be payable by the Government to the Contractor or any other person under the Contract. Save as otherwise expressly provided for in the Contract, the Contractor shall perform, comply with and observe all provisions of the Contract and its obligations under the Contract at its own costs expenses.

13.4 Without prejudice to Clause 13.4 above, the Contract Price is inclusive of all charges for provision of the Services, including all charges, expenses, fees, and costs incurred by the Contractor in fulfilling the terms and conditions under the Contract. Save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).

13.5 The Contractor shall invoice the Government for any Contract Price chargeable upon completion of the Work Order, which shall set out the particulars of the Services provided, including (i) the Rates of respective Work Order; (ii) number of Work

Order; (iii) the frequency of Work Order placed by the Government; (iv) Work Order with description of the completed Services; and (v) inspection report to the Government within ten (10) working days after the Government's acceptance of the completed Services in the Work Order. The inspection report shall include but not limited to a detailed assessment and recommendation regarding whether the current condition of the Setup and its associated Equipment are suitable for continuous use and safely positioned in their respective locations.

- 13.6 In the case where the Contract Price is payable in instalment (i.e. Work Order 1(a), 1(b) and 1(c)), the Contractor shall invoice the Government for any Contract Price chargeable upon completion of the Work Order. The particulars of the Services in Clause 13.5 above also applicable to the instalment. An invoice for an instalment of the Contract Price shall not be issued unless (a) the Services as specified in Schedule 1 for that instalment have been performed and accepted by the Government as confirmed by it in writing; and (b) the invoice shall have taken into account all applicable deductions, set-off and withholding that be applicable in Clause 13.1 above.
- 13.7 Notwithstanding any provision of the Contract, the Government reserves the right to withhold payment of all or any part of Contract Price and any other sum payable by the Government to the Contractor under the Contract if:
- (a) the Contractor fails to adhere to or perform any provision of the Contract;
 - (b) the Government disputes, on reasonable ground, its obligation to the amount in question;
 - (c) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for loss or damage suffered by the Government; or
 - (d) withholding of payment is required by any applicable law.
- 13.8 No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.
- 13.9 The Government shall not be held responsible or liable for any delay in payment and no interest or other surcharge or any other payment howsoever described shall be charged to the Government due to (a) invoices not having been issued in this Clause 13, or (b) the amount billed in the invoices not having been duly calculated in accordance with the provisions of the Contract (including without limitation not having taken into account all applicable deductions, set-off or withholding), or (c) the Contractor disputing any deductions or set-off or withholding made by the Government in the Contract, or (d) any invoice or correspondence being improperly addressed contrary to the requirements stipulated in the Contract. Each invoice shall include all deductions, set-off and withholding which may be made in the terms of the Contract and shall show the net amount payable. If the Contractor does not render an invoice charging a correctly stated net amount due to its failure to take into account all appropriate deductions, set-off or withholding or otherwise, the Government may,

but is not obliged to, pay the net amount which duly takes into account all appropriate deductions, set-off and withholding.

13.10 For the avoidance of doubt, the Contractor shall not be entitled to any payment other than those set out in Clauses 13.1 to 13.9 above.

14. Inspection and Replacement

14.1 The Government may inspect any of the Work Boat installed with Equipment at any time and may require the Contractor to replace the same at no extra cost to the Government if it is considered in its opinion to be unsuitable for this Contract in any respect or to be withdrawn from Service subject to maintenance, dry docking or licensing. The Contractor shall allow and facilitate such inspection free of charge as the Government or his nominee may require. The Government may inspect the replacement Work Boat installed with Equipment at any time when replacement is needed. The Contractor shall, ensure that the replacement Work Boat installed with Equipment meets all the Service Specifications in Schedule 5, and allow and facilitate such inspection free of charge as the Government or his nominee may require.

14.2 Where the Government is satisfied that in any particular case that the Contractor has failed to provide the Services in accordance with any terms and conditions or any provisions of the Contract, the Government may (without prejudice to any rights or remedy that the Government has or may have against the Contractor) require the Contractor by either verbal or written instructions to remedy or rectify the failure in order to comply fully therewith. The Contractor shall take immediate and necessary action to rectify such rejected Services within such time as may be specified in the Government notification, unless otherwise justified by the Contractor within such stipulated time period and agreed to by the Government in writing.

14.3 Without prejudice to the above, the Government shall also have the right to reject the Services or any part thereof that is performed by the Contractor and to withhold payment of the costs and expenses until the failures or defects have been rectified by the Contractor.

14.4 If the Contractor fails to rectify such rejected Services in this Clause 14.3 above, the Government may, without prejudice to any other rights and remedies available to the Government, carry out and complete such Services by its own resources or by engaging other contractors. All costs and expenses whatsoever which may be incurred by the Government thereof shall be recoverable in full from the Contractor forthwith and shall be settled by the Contractor within fourteen (14) days of the date of the bill.

15. Failure to carry out Accepted Innovative Suggestions

15.1 The Contractor undertakes and warrants that it shall carry out all Accepted Innovative Suggestions. In the event that the Contractor fails to carry out in full any of the Accepted Innovative Suggestions in relation to any supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys or otherwise not relating to any services, (in each case a “non-complied Accepted Innovative Suggestion”), the Contractor shall, subject to Clauses 15.2 to 15.4 below, pay to the government a sum of money calculated according to the applicable formula as

liquidated damages for **EACH** of such non-complied Accepted Innovative Suggestions:

(a) Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion in relation to the Services/Work Order(s) **(L1)**:

$$L1 = C1 \times W(T) \times \frac{M(IS)}{M(TP)}$$

where C1 = the Estimated Contract Value payable during the relevant billing period for the Services or any part thereof in respect of which the Contractor fails to carry out the relevant Accepted Innovative Suggestion (but the amount shall be before the deduction of liquated damages for all non-complied Accepted Innovative Suggestions covered by this formula)

W(T) = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme

M(IS) = the marks that would be given to one (1) Pro-innovation Proposal in accordance with the Marking Scheme (regardless of whether marks are actually given to the non-complied Accepted Innovative Suggestion)

M(TP) = the maximum technical marks for the Technical Proposal in the Marking Scheme

(b) Liquidated damages relating to the Contractor's failure to fully carry out an Accepted Innovative Suggestion which is not related to the Services **(L2)**

$$L2 = C2 \times W(T) \times \frac{M(IS)}{M(TP)} \times \frac{P}{CP}$$

where C2 = the Estimated Contract Value payable under the whole of the Contract (but the amount shall be before the deduction of liquated damages for all non-complied Accepted Innovative Suggestions covered by this formula)

W(T) = the weighting, expressed as a percentage, of the technical assessment in the overall Marking Scheme

M(IS) = the marks that would be given to one (1) ESG Proposal in accordance with the Marking Scheme (regardless of whether marks are actually given to the non-complied Accepted Innovative Suggestion)

M(TP) = the maximum technical marks for the Technical Proposal in the Marking Scheme

P = duration of time expressed in number of days during which the Contractor fails to fully carry out the relevant Accepted Innovative Suggestion within the Contract Period up to the day the amount of the liquidated damages is determined for the time being or up to the end of the Contract Period as the case may be

CP = Contract Period expressed in number of days

The amount calculated in the above formulae represents a reasonable sum proportionate to the Government's legitimate interest in the enforcement of the relevant Accepted Innovative Suggestion.

- 15.2 The number of Accepted Innovative Suggestions which are Pro-innovation Proposals that the Contractor fails to fully carry out and upon which liquidated damages are payable under the applicable formula in Clause 15.1 above shall not exceed the minimum number of Pro-innovation Proposals to which full marks could be awarded to a Tenderer in the Marking Scheme. The same for those Accepted Innovative Suggestions which are ESG Proposals. However, there is no limit on the number of billing periods in respect of which liquidated damages shall be payable under the first formula of Clause 15.1 above.
- 15.3 The aggregate amount of liquidated damages payable in the first formula and the second formula in Clause 15.1 above may not exceed 14.4 per cent of the Estimated Total Contract Value.
- 15.4 The liquidated damages payable in the first formula in Clause 15.1 above may be deducted from the Estimated Contract Value payable in respect of Services over the billing period to which the non-complied Accepted Innovative Suggestion relates or from any other Estimated Contract Value payable during the Contract Period. The Government reserves the right to demand the payment of the liquidated damages from time to time including the time when the invoice in respect of the relevant billing period is to be settled or in respect of any subsequent billing period or at the end of the Contract Period whether by setting off from any invoiced amount or from the Contract Deposit (if any). The liquidated damages payable in the second formula in Clause 15.1 above may likewise be deducted in the same manner from any Estimated Contract Value or from the Contract Deposit. Alternatively, any such amount shall be settled by the Contractor in cash as per the demand of the Government within seven (7) days.
- 15.5 For the avoidance of doubt, for any billing period during which the Services should be performed that an Accepted Innovative Suggestion is not complied with, liquidated damages shall be calculated separately under Clause 15.1 for each such billing period.

16. Liability and Indemnities

- 16.1 Neither the Government nor any of its Contractor Personnel shall be under any liability whatsoever for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its Contractor Personnel however caused (whether by any Negligence of the Government or any of its Contractor Personnel or otherwise); or
- (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its Contractor Personnel, save and except any such injury or death caused by the Negligence of the Government or any of its employees (in the course of employment).

16.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the Government, its assigns, successors-in-title, and authorised users (including the employees and agents of the Government) (each an "Indemnified Party") from and against:

- (a) all and any liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs, charges and expenses incurred or suffered by an Indemnified Party of whatsoever nature (including all legal and expert costs, charges and expenses on a full indemnity basis); and
- (b) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted by any person against an Indemnified Party or by an Indemnified Party against any person (regardless of whether or not they have been settled or compromised) (collectively, "Claims" and each a "Claim") and everything stated in Clause 16.2(a) above incurred or suffered by an Indemnified Party in all and any such Claims,

which arise directly or indirectly as a result of or in connection with, or which relate in any way to, all or any of the following:

- (i) the breach of any provisions of the Contract by the Contractor;
- (ii) the negligence, recklessness, tortious acts or wilful act or omission of the Contractor Personnel;
- (iii) any Warranty which is incorrect, inaccurate, incomplete or misleading;
- (iv) any claim or allegation that the use or possession of the materials or third party materials infringes the Intellectual Property Rights or any other rights of any person;
- (v) the non-compliance by the Contractor Personnel with any applicable law, or regulation, order or requirement of any government agency or authority;
- (vi) any act or omission of the Contractor Personnel, in the performance of the Contract notwithstanding that the Contractor is authorised or obliged to do or commit any such act or omission under this Contract;
- (vii) any loss, damage, injury or death referred to in Clause 16.1 above save and except injury or death caused by the Negligence of the

Government or any of its employees (in the course of employment);
or

- (viii) any injury or death of any third party, or any loss or damage to property sustained by any third party, in consequence of any act, omission, default, or negligence of the Contractor or any of the Contractor Personnel.

Each of the above is separate and shall be construed independently and shall not prejudice or be limited by reference to or inference from the other of them or other provisions of this Contract.

- 16.3 In the event of any person 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 verbally inform the Government as early as practicable and deliver to the Government a written report within seven (7) working days after the occurrence of the injury or death, or on an earlier date specified by the Government.
- 16.4 For the purposes of this Clause 16, “Negligence” (appearing in upper case) shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Cap. 71).
- 16.5 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the Government in enforcing any of the terms and conditions of the Contract.

17. Policy of Insurance and Compensation

- 17.1 The Contractor shall ensure that the owner of the Work Boat and Equipment shall, effect and keep in force, and renew immediately upon expiry, throughout the Contract Period at its sole costs policies of insurance in relation to the use of the Work Boat and Equipment by the Contractor for performing the Services in accordance with the requirements of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) and its subsidiary legislation (in particular section 23D of the said Ordinance and the Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (Cap. 548K) and on such other terms and conditions as shall be required and other applicable laws and approved by the Government from time to time.
- 17.2 The Contractor shall ensure that Contractor Personnel shall, effect and keep in force, and renew immediately upon expiry, throughout the Contract Period at its sole costs policies of insurance in relation to the use of labour by the Contractor for performing the Services. The policies of insurance shall include a level of coverage that is deemed sufficient with regards to all risks that may be incurred by the Contractor for performing the Services. The coverage must include, but not limited to, death, personal injury, loss or damage to property, or any other loss. The insurance company selected shall be authorised under the Insurance Ordinance (Cap. 41).
- 17.3 The Contractor shall maintain the employees’ compensation insurance policy in compliance with the Employees’ Compensation Ordinance (Cap. 282) throughout the Contract Period.

- 17.4 Upon expiry of any of the policies of insurance required under Clause 17 during the Contract Period, the Contractor shall renew the same on and subject to the original terms and conditions or otherwise such revised terms and conditions as the Government may stipulate. Upon issuance of the renewed insurance policy, the Contractor shall forthwith furnish a copy to the Government for keeping.
- 17.5 Under no circumstances whatsoever shall the Government be responsible for the premium payable under any of the policies of insurance required under this Clause 17 or the premium payable for the renewal thereof. The Contractor shall bear the cost of all excesses (deductibles), exclusions or limitations applying under the said policies.
- 17.6 The Contractor shall conform to the terms and conditions of any of the policies of insurance required under this Clause 17 and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall not do or permit or suffer to be done any act or omission whereby any of the policies of insurance required under Clause 17 shall be rendered void or voidable, or which would otherwise amount to a breach of such policy(ies). The Contractor shall bear the economic consequences of, and indemnify the Government in full from and against any loss and liability which may arise from any failure of the Contractor to observe and comply with this Clause 17.
- 17.7 If any of the policies of insurance required under this Clause 17 provides that the payment of certain amount of compensation shall be borne by the insured parties, the Contractor shall be solely responsible for such payment.
- 17.8 The Contractor shall lodge all claims with the insurance company and shall deal with the said company upon receipt from the Government or otherwise of a report on any injury, death, loss or damage.
- 17.9 If the Contractor fails to effect and keep in force any of the insurance policies required under this Clause 17, or any other insurance which it may be required to effect under the terms of this Contract then and in any such cases without prejudice to the liability of the Contractor under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), its subsidiary legislation and other applicable laws, the 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 the Government as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 17.10 No provision within any insurance policy or the amount of coverage provided therein shall serve to absolve the Contractor of any liability under the Contract. It is the sole responsibility of the Contractor to determine the level of insurance coverage that are sufficient for the Contractor in fulfilling any liability that may arise under the Contract.

18. Termination

18.1 In event that:

- (a) the Contractor fails to perform any Services in accordance with the provision of the Contract or any Services requested in a Work Order within the time as

specified in that Work Order;

- (b) any Services are rejected in the Contract;
- (c) the Contractor is in breach of any provision of the Contract which in the opinion of the Government is not capable of remedy;
- (d) the Contractor commits a breach of any provision of the Contract which is capable of remedy and fails to remedy the same within fourteen (14) days from the date of service of notice by the Government (or such longer period as specified in the notice) requiring such remedy;
- (e) any Warranty is incorrect, inaccurate, incomplete or misleading;
- (f) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (g) the Contractor, any officer (including director) and Contractor Personnel commits an offence under the Prevention of Bribery Ordinance (Cap. 201) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the Government;
- (h) the Contractor abandons the Contract in whole or in part;
- (i) the Contractor assigns or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- (j) any event or circumstance occurs which enables the Government to terminate the Contract under any one of the following provision of the Conditions of Contract:-
 - (i) Clause 30.6 (Contract Deposit);
 - (ii) Clause 22.3 (Probity);
 - (iii) Clause 26.3 (Force Majeure);
 - (iv) Clause 21 (Illegal Workers);
 - (v) Clause 37.4 (Admission of Contractor Personnel to Government Premises); or
 - (vi) Clause 27.3 of the Terms of Tender (Anti-collusion).

the Government may by seven (7) days' written notice to the Contractor terminate the Contract immediately.

18.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders' or members'

resolution has been passed that it be wound up or dissolved (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation the terms of which have been approved by the Government in advance);

- (c) a petition is presented for the winding up or dissolution or bankruptcy of the Contractor, which is not dismissed within fourteen (14) days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy or winding up or dissolution;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- (h) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (i) the Government reasonably believes that any of the events mentioned above is about to occur.

18.3 Separate from the event mentioned in Clause 18.1(j)(iii) above and Clause 26.3 below, where there is a Force Majeure Event, the Government may terminate the Contract in part or in whole in Clause 26.7 below. In case of partial termination of any part but not the whole of the Contract under this Clause 18.3 (including the partial termination of the Contract in relation to one or more Items of the Services), the partial termination shall be referred to as "Partial Termination Due to FM".

18.4 Notwithstanding anything therein to the contrary, the Government may at any time and from time to time during the Contract Period, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination. In the case of suspension, the written notice shall specify the period of the suspension ("Suspension Period") and the scope of the suspension (viz., the Work Order(s) to be suspended, which may be all or any of the Work Order or any part of it) ("Suspended Services"). In case of partial termination of any part but not the whole of the Contract under this Clause (including the partial termination of one or more Item(s) of the Services), the partial termination shall be referred to as "Partial Termination by Notice".

18.5 Instead of terminating the Contract in relation to all Work Order of the Services in Clauses 18.1 or 18.2 above, the Government may elect, but is not obliged, to terminate the Contract in relation to any one or more Work Order(s) only ("Partial Termination Due to Default"). The term "Partial Termination" may mean a Partial Termination Due to FM or a Partial Termination by Notice or a Partial Termination

Due to Default and in each case a “Partial Termination”. The Work Order(s) of the Services to which a Partial Termination relates are referred to as “Terminated Services”. The Terminated Services may cover all or any Work Order(s) of the Services which have not been accepted up to the time of the Partial Termination.

- 18.6 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 18.1 to 18.5 above and in each Sub-clause of Clauses 18.1 and 18.2 shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

19. Termination Consequences

- 19.1 If the Contract is terminated, the Government shall:

- (a) cease to be under any obligation to pay any fee to the Contractor until all costs, loss and/or damage resulting or arising out from the termination of the Contractor’s engagement have been calculated and provided such calculation shows a sum or sums due to the Contractor;
- (b) not be responsible for any losses or expenses suffered or incurred by the Contractor due to the termination of the Contract;
- (c) be entitled to repossess any of the Government’s materials, clothing, equipment or other goods loaned to the Contractor and to have a lien on any of the materials, clothing, equipment or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Government; and
- (d) have, without prejudice to any claims made or to be made by the Government for breach of the whole or any part of Contract, the right to assign the uncompleted Services to another contractor or other contractors whereupon the Contractor shall be liable for any amounts in excess of the Estimated Total Contract Value.

- 19.2 The above rights of the Government are in addition to and without prejudice to any other rights the Government may have whether against the Contractor directly or in any guarantee or indemnity.

- 19.3 Any termination of the Contract howsoever occasioned shall not affect any accrued right or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.

- 19.4 If the Contract is terminated or expired for any reason, the Contractor shall:

- (a) forthwith return to the Government all documents containing confidential information, personal data, and any other information, property and materials that are in the possession or under the control of the Contractor and the Contractor Personnel and which were obtained or produced in the course of providing the Services;
- (b) provide full assistance and cooperation to the Government in order to

facilitate an orderly transition of the provision of the Services to the individual(s) specified by the Government, and/or the timely completion of any ongoing work;

- (c) Within a period of twenty-eight (28) days from the date of termination, the Contractor shall diligently compile and submit to the Government a comprehensive report containing all pertinent information, facts, data, findings and conclusions pertaining to the Services rendered up until the effective date of termination; and
- (d) The Contractor shall promptly provide the Government with all information pertaining to the provision of the Services that may reasonably be requested, for the purposes of enabling a complete understanding of the manner in which the Services have been rendered, or for the purpose of allowing the Government or a replacement contractor for conducting in due diligence.

20. Government Premises / Contractor Premises

- 20.1 The Contractor shall ensure that all persons engaged by it in carrying out this Contract remain at such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- 20.2 Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government at all reasonable times.
- 20.3 The safety of any craft, vessel and vehicle used by the Contractor (including the Work Boat) and brought alongside or onto public 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 public piers or wharves.

21. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of any Government contracts including this Contract. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government may, by notice, terminate the Contract in Clause 18.1(j) above.

22. Probity

22.1 The Contractor acknowledges it has been reminded that:

- (a) dishonesty, theft and corruption on its part or that of the Contractor and Contractor Personnel are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Cap. 201), sections 17, 18D and 19 of the Theft Ordinance (Cap. 210) and section 161 of the Crimes Ordinance (Cap. 200); and
- (b) the soliciting or accepting of advantages, as defined under the Prevention of Bribery Ordinance (Cap. 201) is not permitted.

22.2 The Contractor shall inform its officers, employees (whether permanent or temporary) and the Contractor Personnel that the soliciting or accepting of

advantages (as defined under the Prevention of Bribery Ordinance, Cap. 201) is not permitted. The Contractor shall also caution its Contractor Personnel against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

22.3 The Government may terminate the Contract immediately Clause 18 above if the Contractor or the Contractor Personnel is convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) or the Crimes Ordinance (Cap. 200).

23. Heat Stroke Prevention

23.1 The Contractor shall provide Contractor Personnel, as appropriate, with either:

- (a) making suitable work arrangement such as rescheduling work to cooler periods;
- (b) adopting measures by making reference to Labour Department's latest "Guidance Notes on Prevention of Heat Stroke at Work" published on 15 May 2023 (as may be updated from time to time) which shall cover at least the following:
 - (i) to conduct risk assessments of heat stress for the specific work taking account of the environmental (such as airflow, temperature), work (such as physical workload) and personal factors (such as heat acclimatisation of employees);
 - (ii) to implement, as far as reasonably practicable, appropriate heat stroke preventive measures (such as installing temporary covers / shelters; providing ventilation equipment, and providing sheltered / ventilated resting places) based on the risk assessment results; and
 - (iii) to arrange hourly rest breaks as appropriate for non-skilled workers working outdoors, in indoor environment without air-conditioning and / or in the vicinity of heat sources, based on the recommendations and criteria provided in Labour Department's latest guidelines, when the heat stress at working warning issued by Labour Department is in force;
- (c) providing potable water at all times during work;
- (d) providing uniforms with dry-fit properties; and
- (e) providing wide-brimmed hats, arm sleeves or umbrellas.

24. Publicity

The Contractor shall submit to the Government 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. Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not

use the Government's name in any document, publish or use any advertising or other publicity material without the prior written consent of the Government.

25. Confidentiality

- 25.1 The Contractor shall not disclose and shall treat as proprietary to the Government and confidential all Government data, any other information report, document, plan, record, data (including any personal particulars records and personal data (as defined under the Personal Data (Privacy) Ordinance (Cap. 486), database, code or particulars (i) furnished or disclosed by or on behalf of the Government or by any other person to the Contractor or any of Contractor Personnel; or (ii) otherwise is accessible by or available to the Contractor or any of the Contractor Personnel in the course of performing the Services (collectively “confidential information”), provided that the restrictions on disclosure contained in this Clause 25.1 shall not apply to the disclosure of any confidential information:
- (a) to any person employed, used or engaged by the Contractor in the conduct of the Services in circumstances where such disclosure is necessary for the performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the Contractor to refrain from disclosing the said information to a third party;
 - (b) already known to the recipient other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;
 - (c) which is or becomes public knowledge other than as a result of disclosure by the Contractor or anyone of the Contractor Personnel or their respective associates or associated persons;
 - (d) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
 - (e) with the prior consent in writing of the Government.
- 25.2 Any disclosure permitted under Clause 25.1 above (excluding Clause 25.1(d) above) shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 25.1 above and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- 25.3 The Contractor shall not, and shall procure and ensure each one of the Contractor Personnel, and their respective associates and associated persons, shall not disclose, make use of or reproduce any confidential information other than to the extent necessary for the performance of the Contractor's obligations under the Contract or with the prior written consent of the Government.
- 25.4 The Contractor shall ensure that all of the Contractor Personnel and any other persons engaged in any work in connection with the Contract are aware of and comply with the provisions of this Clause 25 and the Official Secrets Ordinance (Cap. 521) and the Contractor shall indemnify and keep the Government, its authorised users, assigns

and successors-in-title fully and effectively indemnified on the terms set out in Clause 16 above as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.

- 25.5 The Contractor shall promptly notify the Government of, and give the Government all reasonable assistance in connection with, any proceedings which the Government may institute against any person pursuant to any of the provisions in this Clause 25.
- 25.6 The Contractor acknowledges that any unauthorised disclosure or use of the Confidential Information can cause irreparable harm and significant injury to the Government, the degree of which may be difficult to ascertain or that damages may not be an adequate remedy. Accordingly, the Contractor agrees that the Government shall have the right to obtain and be immediately granted an injunction prohibiting any breach of this Clause 25 and/or specific performance ensuring the compliance of this Clause 25 in light of any threatened or actual breach of this Clause 25, without prejudice to its other rights and claims including those available under the Contract or at law arising from such breach.
- 25.7 Without prejudice to the generality of the foregoing provisions, the Contractor further undertakes that it will not at any time itself or through any Contractor Personnel use, sell, license, sub-license, create, develop or otherwise deal in any Confidential Information.
- 25.8 The Government may request the Contractor in writing at any time that any Confidential Information disclosed pursuant to the terms of this Clause 25 and any copies, analyses, compilations and extracts thereof whether in hardcopies, electronic format or other media be returned, destroyed and/or deleted with a written statement to the effect that upon such return, destruction and/or deletion it has not retained in its possession or under its control, either directly or indirectly, any Confidential Information in whatever form and medium. The Contractor shall comply with any such request from the Government within seven (7) days of receipt of such request.

26. Force Majeure

- 26.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the Government in writing concerning such matter and provide the Government with all relevant information as the Government may request.
- 26.2 Within seven (7) days after the occurrence of a Force Majeure Event or earlier, the Contractor shall notify the Government in writing of the full particulars of the Force Majeure Event has and/or will materially prevent it from performing the Contract or such part thereof, and likely duration of such material prevention.
- 26.3 Provided the Government is satisfied with the Contractor's claim of a Force Majeure Event which has materially prevented and/or will continue to materially prevent it from performing its obligations under the Contract or such part thereof, the Contract or such part thereof strictly to the extent of such prevention shall be suspended during the subsistence of such Force Majeure Event commencing from a date to be agreed between the Parties ("Suspension due to Force Majeure"). Where the Government is not so satisfied about any alleged claim of a Force Majeure Event, there shall be no Suspension due to Force Majeure. The Contractor may not allege or claim any

event as a Force Majeure Event. Any failure by the Contractor to perform any obligation under the Contract shall be treated as default and entitles the Government to terminate the Contract under any applicable Sub-clause of Clause 18.1 or Clause 18.2 above.

- 26.4 Without prejudice to the generality of Clause 30.3 above, whilst the Suspension due to Force Majeure subsists:
- (a) the Contractor shall not be required to perform any part of its obligations under the Contract strictly to the extent it is materially prevented from doing so by the Force Majeure Event (“Affected Obligations”) but it shall use its best endeavours to remove or mitigate the effect of the Force Majeure Event on the Affected Obligations;
 - (b) the Government may make alternative arrangements for the performance of the Affected Obligations, whether by another person or otherwise, without compensation to the Contractor;
 - (c) the Contractor shall not be entitled to any payment of money in respect of the Affected Obligations (if any money would have been payable in the first place);
 - (d) notwithstanding anything in the Contract to the contrary, no compensation shall be payable by either Party to the other due to any losses or damage arising from the Suspension due to Force Majeure; and
 - (e) the Contractor shall continue to fully and punctually perform and observe all of its other obligations which are not affected by the Force Majeure Event in full accordance with the requirements of the Contract including those obligations which are not Affected Obligations, and to that extent, all terms and conditions of the Contract shall continue to apply and be in full force and effect.
- 26.5 Following the issue of a notice by the Contractor under Clause 26.1 above which has led to Suspension due to Force Majeure under Clause 26.3 above, the Contractor shall keep the Government informed once every week or at such longer frequency as may be allowed by the Government, and in any event from time to time upon the request of the Government, of:
- (a) the likely duration of the relevant Force Majeure Event and of its effect of materially preventing the Contractor from performing the Affected Obligations;
 - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event (“Mitigation Actions”); and
 - (c) any other matters relevant to that Force Majeure Event or the Contractor’s performance affected by that Force Majeure Event.
- 26.6 As soon as the relevant Force Majeure Event has terminated or otherwise that the Government considers that the Mitigation Actions have minimised the effect of the Force Majeure Event on the ability of the Contractor to perform the Affected Obligations, the Contractor shall forthwith notify the Government, or the Government may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate date for resuming the

performance of the Affected Obligations (“Resumption Date”). The Contractor shall immediately after the termination of the Force Majeure Event or with effect from Resumption Date as determined by the Government in the aforesaid manner, resume performance of the Affected Obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the Government and the Contractor on the appropriate Resumption Date, the Government’s decision shall be final in the absence of manifest error.

- 26.7 Should a Suspension due to Force Majeure subsist for more than thirty (30) days, the Government shall be entitled to, but is not obliged to, terminate the Contract (whether in whole or in part) in Clause 18.3 above (depending on the election of the Government).

27. Disclaimer

- 27.1 The Contractor acknowledges to the Government that it has not relied on or been induced to enter into the Contract by any Warranty, representation, forecast, estimate, or projection given by the Government or any of its officers, employees, agents or advisers.
- 27.2 The Contractor shall not in any way be relieved from any obligation under the Contract nor shall it be entitled to claim against the Government on grounds that any information, whether obtained from the Government or otherwise (including information made available by the Government), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of all such information.

28. Set-off

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.

29. Relationship of the Parties

- 29.1 Nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the Government and the Contractor. The Contractor shall not (without the consent in writing of the Government) commit the Government to any obligation whatsoever.
- 29.2 The Contractor enters into this Contract with Government as an independent contractor only and shall at all times remain as an independent contractor throughout the Contract Period.
- 29.3 For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

30. Contract Deposit

- 30.1 If:

(a) the Contractor fails to comply any provision of the Contract, the Government

may deduct from the Contract Deposit paid in cash, or call on the bank guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the Government arising from or relating to such failure; or

- (b) any amount is due or payable by the Contractor to the Government under the Contract, the Government may deduct from the Contract Deposit paid in cash, or call on the bank guarantee, to recover the amount due to payable,

in each case of Sub-clause (a) or (b) above, irrespective of whether or not a demand for payment has been made against the Contractor.

- 30.2 The Contract Deposit (whether paid in cash or in the form of the banker's guarantee) may be deducted or called on by the Government without the Government first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.
- 30.3 If any deduction is made by the Government from the Contract Deposit or a call is made on the bank guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within twenty-one (21) days after the date of the written demand by the Government, deposit a further sum or provide a further bank guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further bank guarantee under this Clause 30.6 below, the further bank guarantee must comply with the requirements in Clause 19.5(a) to (c) of the Terms of Tender.
- 30.4 Where the total Contract Price payable for all Services to be procured under the Contract for the whole of the Contract Period is likely to exceed the original Estimated Total Contract Value, the Government may, by written notice to the Contractor, require the Contractor to submit to the Government such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to two percent (2%) or five percent (5%) if any, whichever is the higher, if the Contractor failed in the financial assessment under Clause 19 of the Terms of Tender in the Tender evaluation stage) of the revised Estimated Total Contract Price specified by the Government in the notice.
- 30.5 If a notice is issued by the Government under Clause 30.4 above, the Contractor shall within twenty-one (21) days deliver to the Government the additional amount of further Contract Deposit required in the notice in the form of either cash or a further bank guarantee. The further bank guarantee must comply with the requirements in Clause 19.5(a) to (c) of the Terms of Tender. A further Contract Deposit paid by the Contractor to the Government shall form part of the Contract Deposit.
- 30.6 If the Contractor fails to comply with Clauses 30.3, 30.4 or 30.5 above, the Government shall have the right to terminate the entire Contract in Clause 18.1 above.
- 30.7 Upon the expiry or termination of the Contract Period:

- (a) if the Contract Deposit is paid in cash, the Government shall, after deducting the sums due from the Contractor to the Government, return the balance of the Contract Deposit (if any) in cash and without interest to the Contractor by the date specified in (i) or (ii) below, whichever is applicable:
 - (i) the end of three (3) months counting from the date of early termination or expiry of the Contract Period; or
 - (ii) in the case if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing).
- (b) if the Contract Deposit is paid by way of a bank guarantee, the bank guarantee shall be discharged and released in accordance with the guarantee period as stated therein.

(the applicable period specified in Sub-clause (a) or (b) above is referred to as the “Guarantee Period”.)

30.8 Where upon expiry of the Guarantee Period, any claim of the Government or any liability of the Contractor, whether under or arising from or in relation to the Contract cannot yet be quantified or finalised, the Government may, without prejudice to its other rights and remedies, pay the entire Contract Deposit or any part thereof (whether in cash or in banker’s guarantee) into a suspense account, for so long as it considers necessary, and pending the quantification or finalisation of the amount of the claim or liability. Upon quantification or finalisation of the amount of all or any claims or liabilities, the Government shall apply the amount in the suspense account in or towards satisfaction of the quantified amount. Where there is any remaining amount in the suspense account after such application, the Government will return the remaining amount to the Contractor without interest. Where the amount in the suspense account is insufficient to cover all or any claims or liabilities, the Government reserves all rights and remedies against the Contractor in respect of such claims and liabilities.

31. Assignment

- 31.1 The Contractor shall not, without the prior written consent of the Government, assign, transfer, sub-contract or otherwise deal with any of its interests, rights, benefits or obligations under 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 it. Acceptance of the Tender does not signify the Government’s acceptance of any sub-contracting proposal set out in the Tender.
- 31.2 In the event that the Contractor intends to appoint a sub-contractor, it shall be obligated to submit the proposed sub-contract to the Government for consideration and approval. The Government reserves the sole discretion to grant permission for sub-contracting and to determine the terms and conditions thereof. A certified copy

of the sub-contract shall be provided to the Government within seven (7) days of the effective date of the sub-contract.

- 31.3 The Contractor shall remain fully liable and shall not be relieved from any of its obligations hereunder by entering into any sub-contract for the performance of any part of the Contract. Notwithstanding any prior written consent, the Contractor shall be responsible for all acts, omission, and defaults of its Contractor Personnel (of whatever tier) as if they were its own acts, omissions or defaults.

32. Entire Agreement and Amendment

- 32.1 The Contract supersedes all prior agreements, arrangement and undertakings between the parties and constitutes the entire Contract between the parties relating to the subject matter hereof. No addition to or modification of any provision of the Contract shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties hereto for and on its behalf.
- 32.2 Save and to the extent expressly provided for in the Contract which enables the Government to on its own make such supplement or amendment to the Contract pursuant to such provision, no variation of the Contract shall be valid unless it is in writing and signed by each of the Government and the Contractor.

33. Order of Precedence

- 33.1 In the event of, and only to the extent of, any conflict or inconsistency amongst or between any provisions of the Contract, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:
- (a) the Conditions of Contract;
 - (b) Service Specifications;
 - (c) The Terms of Tender;
 - (d) Interpretation;
 - (e) Schedules;
 - (f) the Memorandum of Acceptance;
 - (g) the Offer to be Bound;
 - (h) Non-collusive Tendering Certificate;
 - (i) Undertaking for renewing the Operating Licence of Work Boat; and
 - (j) Any materials submitted by the Contractor.

34. Severability

In the event that any provision of the Contract or any part of any such provisions shall at any time be adjudged to be invalid, unlawful, illegal, voidable or otherwise howsoever

unenforceable under any applicable law of Hong Kong, such provision or such part of such provision, as the case may be, to but only to the extent required by such law, shall be severed from the Contract and rendered ineffective so far as possible without modifying the remaining provisions thereof.

35. Rights and Remedies Cumulative

Notwithstanding anything herein to the contrary, all rights and powers of the Government under the Contract are cumulative, and may be exercised at the same time or separately. They do not exclude any other rights, powers and remedies provided by applicable laws and regulations.

36. Waiver

36.1 Time shall be of the essence of the Contract but no failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

36.2 Without prejudice to the generality of Clause 36.1 above, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the Government under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the Government may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the Government of any other right, power or remedy.

37. Admission of Contractor Personnel to Government Premises

37.1 Upon request from time to time by the Government, the Contractor shall provide to the Government a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor Personnel who may at any time require admission on behalf of the Contractor to any premises occupied by the Government for the purposes of the Contract if so required by the Government, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the Government may reasonably require.

37.2 The Contractor shall ensure that while any of the Contractor Personnel is on the Government's premises they will conform to the Government's normal codes of staff and security practice.

37.3 The Government reserves the right to refuse to admit to the Government premises any person, whose admission would be, in the reasonable opinion of the Government, undesirable.

37.4 In the event that the Contractor fails to comply with this Clause 37 and it is determined that such failure is prejudicial to the interests of the Government, the Government may thereupon terminate the Contract forthwith in Clause 18 above.

38. Notices

38.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at the applicable postal address, facsimile number or email address stated below (or such other replacement postal address, facsimile number or email address as the addressee has by no less than seven (7) working days' prior written notice specified to the other party):

To the Contractor: at the correspondence address, facsimile number and email address as specified in Section A of Schedule 2.

To the Government: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Licensing and Registration Section
(Attn.: Mr. MAK Chu-wa)
Fax no.: (852) 2314 2866
Email address: daniel_cw_mak@afcd.gov.hk

38.2 Such notices, demands, invoice, correspondence or other communications shall be addressed as provided in Clause 38.1 above and, if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
- (b) if sent by post (regardless of whether during or outside normal business hours), two (2) working days (for any place in Hong Kong) and seven (7) working days (for any place outside Hong Kong) after the date of posting which is a working day;
- (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
- (d) if sent by email during normal business hours on a working day, upon despatch unless the sender has received a non-delivery notification from his own computer system.

38.3 Notice, demand, invoice, correspondence or other communication to the Contractor from the Government in the prescribed manner specified in Clause 38.2 above shall

be deemed to have been served provided that the notice, demand, invoice, correspondence or other communication has been sent to the correct applicable contact of the Contractor as specified in Clause 38.1 above.

38.4 Nothing in this Clause 38 shall affect the validity of any notice, demand, invoice or communication despatched by personal delivery or by fax or by email outside normal business hours whether on a working day or a non-working day. Any such notice, demand, invoice, correspondence or other communication fulfilling the conditions specified in Clause 38.2 above shall be deemed to have been duly given or made on the next working day following from the date of personal delivery or fax or email. Where posting is not done on a working day, it shall be deemed to have been done on the next working day after such day.

39. Governing Law

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

40. Retention of Records

The Contractor must keep and maintain the records until six (6) years after the expiry of the Contract, or such longer period as may be agreed by the parties. Full and accurate records of the Contract include the Services provided under it, all expenditure reimbursed by the Government, and all payments made by the Government. If requested by the Government, the Contractor must afford the Government or its representative or authorised person access to the records and to make and retain copies thereof as may be requested by the Government or its representative or authorised person.

41. Assistance in Legal Proceedings

41.1 Whenever requested by the Government, the Contractor must provide the Government with all relevant information, documents (including documentation and statements from staff) and any other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the Government may be involved, as well as any internal disciplinary hearing of the Government that arises from or in connection with the Contract or the Contractor's presence at the Government's premises. If requested by the Government, the Contractor must make arrangements for the relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

41.2 Where the Contractor or any Contractor Personnel become aware of an incident, accident or any other matter which may give rise to a claim or legal proceedings by a third party against the Government or the Contractor or in respect of the Contract, it must notify the Government immediately in writing giving full details of such incident, accident or matter as the Government Representative may require.

42. Contracts (Right of Third Parties) Ordinance

The parties hereby declare that nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

43. United Nations Convention on Contracts for the International Sale of Goods not applicable

The Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

PART IV SERVICES SPECIFICATIONS

Services Specifications and Working Procedures for the Provision of Services

1. Work Order 1: Supply for the Setup and its associated Equipment

- 1.1 The Contractor shall supply and deliver one (1) Setup and its associated Equipment with merchantable quality, suited for the purpose for which Setup and its associated Equipment of that kind are commonly bought, as and when required. The Contractor shall propose the drawings and Service Specifications of the Setup and its associated Equipment, which shall be best suited for the hydrological conditions of the respective Fish Culture Zones and comply with the Service Specifications of the Setup and its associated Equipment in Schedule 5. The Service Specifications of the Setup and its associated Equipment include (i) the Setup shall be designed for the deployment in the deep water areas (approximately fourteen (14) metres to twenty (20) metres; except for location MB(S)4, where the water depth is approximately six (6) to eight (8) metres); (ii) the boundary buoy shall be equipped with a buoy body filled with foam core or divided by at least two (2) equally spaced watertight compartments; (iii) the boundary buoy shall compose with steel or plastic (preferable) and shall be able to sustain possible impacts by other vessels to ensure that the boundary buoys remain in shape and afloat after such impacts; (iv) the boundary buoy has not less than or equal to 1.75 metres in the diameter; (v) the boundary buoy has not less than or equal to three (3) metres in the focal height; (vi) the boundary buoy has not less than or equal to nine-tenths (0.9) metres in the height between waterline and top of water tight compartment; (vii) the boundary buoy has not less than ten (10) mm in plate thickness for steel or equivalent strength for plastic; (viii) the boundary buoy's shape must not be in conflict with that used for a lateral or safe water mark; (ix) the boundary buoy shall be equipped with the radar reflector; (x) the boundary buoy shall be equipped with top mark, which is a single yellow cross positioned on top; (xi) the boundary buoy shall be equipped with watertight battery compartment; (xii) the boundary buoy shall be painted in yellow colour in surface finish; (xiii) boundary buoy shall be equipped with not less than twenty-four (24) mm open link mooring chain and comply with the recommendations provided by Recognised entities; (xiv) the mooring block should have sufficient weight to hold the boundary buoy in position with regard to the seabed, tidal and weather conditions likely to be experienced at the deployment location; (xv) the boundary buoy has a light with quick flashing yellow, with a range of at least three (3) nautical miles and atmospheric transmission factor of at least 0.74; (xvi) the boundary buoy has a light in the type approved by the International Association of Marine Aids to Navigation and Lighthouse Authorities; (xvii) the boundary buoy has a light's battery in water-proof and leak-proof type.

Work Order 1(a) – engagement of Recognised entities

- 1.2 For the Work Order 1(a), the Contractor shall engage Recognised entities as listed under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) or the Shipping and Port Control (Works) Regulations (Cap. 313) to monitor the production of the Setup and its associated Equipment.
- 1.3 The Contractor shall submit the finalised drawings and Service Specifications of the Setup and its associated Equipment to the Recognised entities for approval, ensuring

compliance with Service Specifications of the Setup and its associated Equipment, within one and a half (1.5) months from the date of receiving the Work Order 1 from the Government. The Contractor shall obtain the certificate of works provided from Recognised entities, and provide a copy of this certificate to the Government to obtain written consent for the manufacturing of the Setup and its associated Equipment.

Work Order 1(b) – submission of test certificate and inspection reports

- 1.4 For the Work Order 1(b), the Contractor shall ensure that all required testing and inspections of the Setup and its associated Equipment are conducted and certified by Recognised entities. Upon completion, the Contractor shall submit all relevant test certificate(s) and inspection report(s) to the Government in the format and through the submission method dictated by the Government. These documents shall confirm that the Setup and its associated Equipment comply with the drawings and Service Specifications detailed in Clauses 1.1 and 1.3 above, or as otherwise agreed in writing. All documents, including component numbers as specified, shall be provided at no additional cost immediately upon completion of all required test(s) and inspection(s).
- 1.5 The Contractor shall provide the Government with written notification at least one (1) month prior to the anticipated completion date of the Setup and its associated Equipment. The Contractor shall ensure that all Services Specifications of the Setup and its associated Equipment are accessible and prepared for examination at the time of inspection. The Contractor shall be responsible for ensuring that the inspecting officer or class surveyors from Recognised entities have full access to the Services, Setup supply facilities and the Setup and its associated Equipment under manufacturing process, as and when required for the purposes of inspection. The Contractor shall be responsible for all expenses and costs incurred by Recognised entities and Government for these inspections. Any modifications to the nomination of Recognised entities offered by the Contractor shall be subject to the Government's prior approval in writing.
- 1.6 The safe working load ("SWL") for all pulley supports of the Setup and its associated Equipment and name of the Setup shall be conspicuously and permanently marked on the Setup. The loading tests for the mooring eyes, lifting eyes and pulley supports for the Setup shall be carried out in the presence of the inspecting officer or class surveyors from Recognised entities. Those testing loads shall be clearly stated on the drawings and Service Specifications of the Setup and its associated Equipment.

Work Order 1(c) – manufacturing and delivery of the Setup and its associated Equipment

- 1.7 For the Work Order 1(c), the Contractor shall complete the manufacturing and delivery of the Setup and its associated Equipment, which comply with their Service Specifications, within three (3) months from the date of receiving the written consent from the Government. Should the Contractor encounter genuine difficulties that could delay the manufacturing and delivery period, the Contractor may request an extension of the deadline in writing, detailing the nature of the difficulties and the additional time required. Approval of any extension is at the discretion of the Government and will be granted based on the merits of the circumstances presented.

Ownership of the Setup and its associated Equipment provided under this Contract shall be the property of the Government.

- 1.8 If the Setup and its associated Equipment are not fit for the purpose or of merchantable quality, fail to comply with the drawings and Service Specifications of the Setup and its associated Equipment approved by the Government, or fail to have effective operational condition to the satisfaction of the Government. The Government may, by written notice at any time and from time to time:
- (a) reject all or part of the Setup and its associated Equipment Setup delivered under this Contract;
 - (b) require the Contractor to repair and replace all or part of the Setup and its associated Equipment delivered hereunder; or
 - (c) terminate the Contract forthwith in Clause 18.2 of the Conditions of Contract.
- 1.9 The Government reserves the right to reject any Setup and its associated Equipment that are not supplied, inspected or tested in the drawings and Service Specifications. The Government shall incur no liability for such rejection.
- 1.10 All test certificate(s) and inspection report(s) shall be deemed acceptable only if the Government does not reject the associated certificate(s) and inspection report(s) as unsatisfactory within thirty (30) days from the respective dates of the reports and results.

2. Work Order 2: Storage of the Setup and its associated Equipment as backup

- 2.1 The Contractor shall store one Setup and its associated Equipment as backup upon delivery to the storage location as and when required by the Government. The Setup and its associated Equipment are securely lashed to prevent damage. All lashing shall be maintained in optimal condition.
- 2.2 The Contractor shall maintain a clean and hygienic state of the storage location for the storage of Setup and Equipment in optimal condition. The Contractor shall ensure that adequate security measures and safety precautions are adhered to.

3. Work Order 3: Deployment of the Setup and its associated Equipment

- 3.1 The Contractor shall deploy the Setup and its associated Equipment to the deployment location(s) mentioned in Appendices I and II as and when required.
- 3.2 Upon arrival of the Setup and its associated Equipment in Hong Kong, a Work Order 3 shall be issued to the Contractor for each deployment operation. The Contractor shall deploy the Setup and its associated Equipment during each deployment operation.
- 3.3 The Contractor shall provide and operate Work Boat(s), along with the required Setup and its associated Equipment, which shall meet the Service Specifications in Clause 1.1 above and Clause 8.1 below, for each deployment operation.

- 3.4 The Contractor shall remove any marine growth on the Setup using the power tools or other appropriate measures prior to each deployment operation.

4. Work Order 4: Overhaul of the Setup and its associated Equipment

- 4.1 The Contractor shall overhaul the Setup located in the deployment location(s) described in Appendices I and II as and when required.
- 4.2 The Contractor shall provide and operate Work Boat(s), along with the required Setup and its associated Equipment, which shall meet Service Specifications in Clause 1.1 above and Clause 8.1 below, for each overhaul operation.
- 4.3 The Contractor shall lift the deployed Setup from the water onto the Work Boat, and remove any marine growth present on the Setup by the power tools or other applicable measures.
- 4.4 The Contractor shall conduct a visual inspection of the Setup with the aid of Equipment, including but not limited to ultrasonic thickness gauge, to verify their conditions, including thickness of mooring chain.
- 4.5 The Contractor shall re-deploy the Setup in the deployment locations (s) described in Appendices I and II upon completion of the visual inspection.
- 4.6 The Contractor shall transport the replaced Setup and its associated Equipment to the storage location.

5. Work Order 5: Retrieval of the Setup and its associated Equipment without replacement

- 5.1 The Contractor shall retrieve the Setup and its associated Equipment without replacement as and when required by the Government.
- 5.2 A Work Order 5 shall be issued to the Contractor in each retrieval operation. The Contractor shall retrieve a Setup and its associated Equipment during each retrieval operation.
- 5.3 The Contractor shall provide and operate Work Boat(s), along with the required Setup and its associated Equipment that meet Service Specifications in Clause 1.1 above and Clause 8.1 below, for retrieval operation.
- 5.4 The Contractor shall lift the deployed Setup from the water onto the Work Boat, and shall remove any marine growth present on the Setup by the power tools or other applicable measures.
- 5.5 The Contractor shall conduct a visual inspection of the Setup with the aid of Equipment, including but not limited to ultrasonic thickness gauge, to verify their conditions, including thickness of mooring chain.
- 5.6 The Contractor shall re-deploy the Setup in the deployment locations (s) described in Appendices I and II upon completion of the visual inspection.

6. Work Order 6: Painting of the Boundary Buoy

- 6.1 In cases of significant wear, fading or damage to the boundary buoy, the Contractor shall paint boundary buoy as and when required by the Government.
- 6.2 The Contractor shall remove any marine growth present on the boundary buoy, and use power tools to clean the external surface in a standard of ISO8501 to 1:2007 St3 or equivalent.
- 6.3 The treatment process for surface preparation shall consist of the following sequential steps to ensure optimal adhesion and polish. Initial surface treatment shall involve scraping and wire brushing. Both scraping and wire brushing shall be performed in a uniform direction initially, followed by a subsequent pass at right angles to ensure thorough coverage and removal of all loose material. Dusting shall be carried out as the secondary step to remove any residual particles, ensuring the surface exhibits a pronounced metallic sheen.
- 6.4 The Contractor shall remove any grease and clean all external surfaces of the boundary buoy prior to the application of paint.
- 6.5 The Contractor shall apply paint approved by paint supplier(s) to coat the surface of the boundary buoy. The application shall strictly adhere to the Service Specifications for Boundary Buoy Paintings, ensuring consistency and quality of the coating.
- 6.6 Upon completion of painting, the Contractor shall mark the boundary buoy with the specific identification number and name as required. This marking shall be clear, durable, and easily visible to meet operational requirements.

7. Work Order 7 : Supply of the Setup-associated Equipment

- 7.1 The Contractor shall provide necessary labour and materials to remove and re-fit the Setup associated Equipment including (i) top mark; (ii) forelock; (iii) eye ring; (iv) solar LED flashlight of the same model or equivalent; (v) mooring chain; and (vi) mooring block as and when required by the Government, in the Service Specifications approved by Recognised entities.

8. Services Specifications for the Work Boat

- 8.1 The Contractor shall deploy necessary Work Boat installed with Equipment to perform the provision of Services. The Work Boat installed with Equipment shall comply with the following Service Specifications or be of equivalent specifications: (i) the Work Boat shall be a flat-topped crane barge, a flat-topped derrick barge or a similar vessel; (ii) the Work Boat shall be equipped with lifting gear that meets the safe working load requirements prescribed under the Merchant Shipping (Local Vessel) (Works) Regulation (Cap. 548I), which shall not be less than thirty (30) tonnes; (iii) the Work Boat shall be accompanied with a tugboat when the Work Boat is not self-propelled and the tugboat shall be properly manned in accordance with the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D); (iv) the Work Boat have vertical lift with at least six point two (6.2) meters, as measured between the level of the Work Boat's weather deck and the lower lifting block of the main hoist; (v) the Work Boat have capacity or other acceptable arrangement to accommodate not less than four (4) sets of boundary buoys, including their components and mooring blocks. The stowage of the boundary buoy(s), component and mooring block(s) on board the Barge must not be piled in stacks; (vi)

the Work Boat shall be capable of operating with a shallow draft under working conditions, including manoeuvring, operating and working at sea with a minimum water depth of three (3) metres; and (vii) the Work Boat possess the capability to moor and maintain a stable position while laying and overhauling in confined water areas with fish culture farms.

- 8.2 The Contractor shall comply all applicable law and regulations, including the Merchant Shipping (Local Vessels) (Works) Regulation (Cap. 548I).

9. Working Time and Outside Working Time

- 9.1 During the Contract Period, the Contractor shall keep the Work Boat installed with Equipment ready for use by the Government throughout the period specified in the Work Order.
- 9.2 Notwithstanding, the Government's actual requirements for the Services may vary depending on the actual need, including but not limited to the requirements of work, the urgency of the work or the operational necessities. The Contractor may be required to perform the Services outside the aforementioned Working Time on an occasional basis or under special circumstances, without receiving any additional compensation, whether in cash or in any kind.
- 9.3 Should the Work Order be required by the Government for Services outside the Working Time, notice of the requirement shall be given by the Government to the Contractor and such Services must be performed and carried out by the Contractor as specified in the notice (except that the Services are consecutively provided before or after the Working Time). Services required under this clause shall commence and complete at such times as the Government may direct. Suitable relieving of Contractor Personnel shall be arranged by the Contractor without causing the delay of the Government.

10. Service Area and Reporting Place

- 10.1 The Government shall require the Work Boat installed with Equipment to be navigated or transported in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones in Appendix I or any navigable areas within Hong Kong Waters as the Government or his nominee may specify from time to time (including the officer on board of the Work Boat). The Service area, the craft anchorage and the number of boundary buoys required are provided in Appendix II.
- 10.2 The Contractor shall ensure, at the commencement of any Work Order that the Work Boat installed with Equipment required for the execution of the Services are available at the storage locations of the Setup and its associated Equipment provided by the Contractor or other locations specified by the Government.

11. Mooring Components Identification

As and when required by the Government, the Contractor shall be responsible for providing and affixing identification tags made of brass, aluminium, or other non-corrosive materials to mark each mooring component that is either used or to be used in connection with the Services. The identification tagging procedures are required when components are received into stock or removed from the water and placed into stock.

Service Specifications for Boundary Buoy Paintings

12. General Specifications

- 12.1 The Contractor shall use paints that comply with the Service Specifications for boundary buoy paintings. Paints shall be directly supplied from paint supplier(s) or their authorised distributor(s). These suppliers shall have a documented history of reliability and shall provide a technical support with respect to the preparation and application of their products.
- 12.2 The Contractor shall provide paints or dyes for the Services that (i) comply with international recognised limits of volatile organic compounds and heavy metals; and (ii) are marine-grade ablative antifouling paint and water-based coating adopted for marine applications.
- 12.3 The paints or dyes to be utilised for the Services shall be directly supplied by internationally recognised paint or dyes suppliers or their authorised distributors, who possess a positive track record and are capable of providing technical assistance with respect to the proper preparation and application of their products.
- 12.4 The Contractor shall be required to submit product data to the Government for approval prior to utilising the paints or dyes.
- 12.5 The colour of the paints or dyes utilised for the Services set out in this Contract shall adhere to the colour code specified in B.S. 381C or equivalent standards:

Colour	B.S. 381C Colour Code
White	00E55
Black	00E53
Blue	104
Red	537
Green	221
Yellow	355
Orange (International)	592

- 12.6 The Contractor shall strive to utilise paints or dyes provided by a single paint or dyes suppliers to the extent possible. In the event that the Contractor desires to use paints or dyes from different suppliers, the Contractor shall be required to obtain prior written approval from the Government.

13. Preparation for New Boundary Buoys before Utilisation (Applicable to Steel Boundary Buoys)

- 13.1 Above Waterline - Apply one (1) to two (2) full coats of acrylic resin-based coating to achieve a dry film thickness of forty (40) to sixty (60) microns, according to the colour of the boundary buoy, or as directed in the Work Order. Sharp corners, edges, and other hard-to-coat areas shall be striped before the full coat is applied.

Apply one (1) to two (2) full coats of non-slip coating on the top side of the boundary buoy.

- 13.2 Below Waterline - Apply two (2) to three (3) full coats of Tin-free anti-fouling achieving eighty (80) to one hundred (100) microns of dry film thickness in each coat. Sharp corners, edges, and other hard-to-coat areas shall be striped before the full coat is applied.

14. Preparation for EXISTING Boundary Buoys before Utilisation (Applicable to Steel Boundary Buoys)

- 14.1 In preparing boundary buoys for painting, all marine growth or rusty scales on the surface shall be removed using hand tools and/or powered equipment. All exposed surface shall then be cleaned further by scraping and wire-brushing to meet the ISO 8501-1:2007 St 3 or equivalent. Scraping shall be performed first in one direction and then at right angles. After dusting, the surface shall exhibit a pronounced metallic sheen.

- 14.2 (i) Overall - Touch up all bare metal areas with Hi-build chlorinated rubber based primer coating to eighty (80) to one hundred (100) microns dry film thickness.

Apply two (2) to three (3) full coat Hi-build chlorinated rubber based primer: 80 to 100 micron dry film thickness on each coat.

- (ii) Above Waterline - Apply one (1) to two (2) full coats of acrylic resin-based coating to forty (40) to sixty (60) microns dry film thickness, according to colour of the boundary buoy, or as directed in the Work Order. Sharp corners, edges, and other hard-to-coat areas shall be striped before full coat is applied.

Apply one (1) to two (2) non-slip coating on the top side of the buoy.

- (iii) Below Waterline - Apply two (2) to three (3) full coats of Tin-free anti-fouling, achieving eighty (80) to one hundred (100) microns of dry film thickness in each coat. Sharp corners, edges, and other hard-to-coat areas shall be striped before the full coat is applied.

14.3 Day Mark Wings (if fitted):

- (i) Apply one (1) filler coat Hi-build chlorinated rubber based primer (20% dilution by thinner);
- (ii) Apply one (1) full coat Hi-build chlorinated rubber based primer to 80 to 100 microns of dry film thickness; and
- (iii) Apply two (2) to three (3) full coats of acrylic resin based enamel coating, achieving forty (40) to sixty (60) microns of dry film thickness on each coat, according to the colour of the buoy, or as directed in the Work Order.

Appendix I

Maps illustrating demarcation of Wong Chuk Kok Hoi and Mirs Bay (North and South) Fish Culture Zones by the Setup

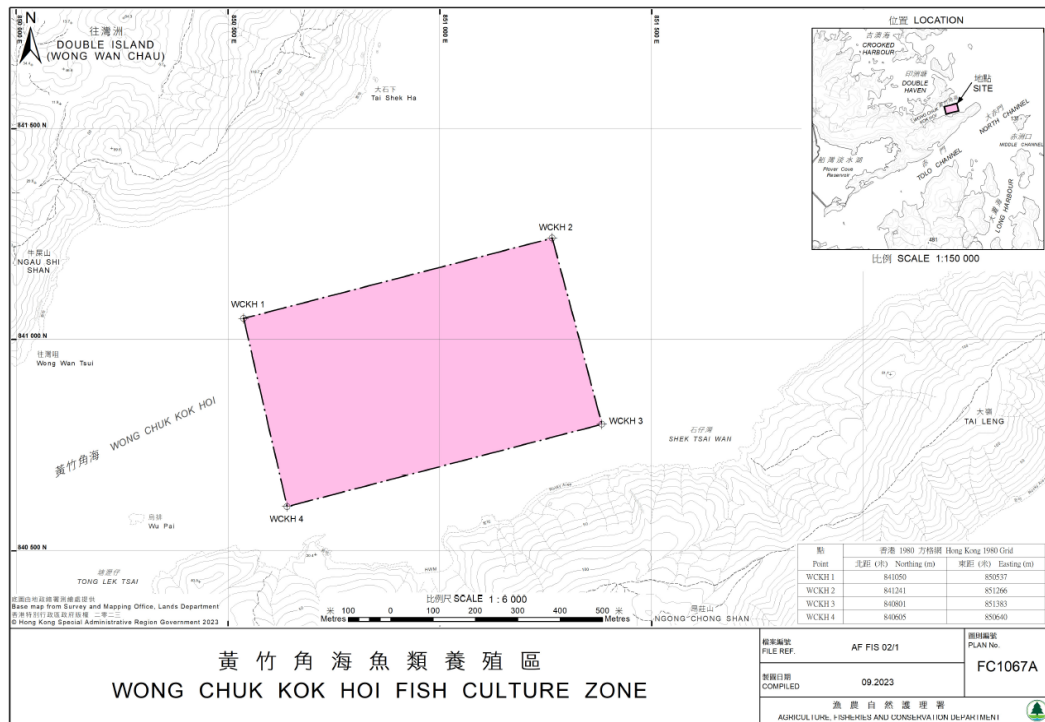


Figure 1: Wong Chuk Kok Hoi Fish Culture Zone

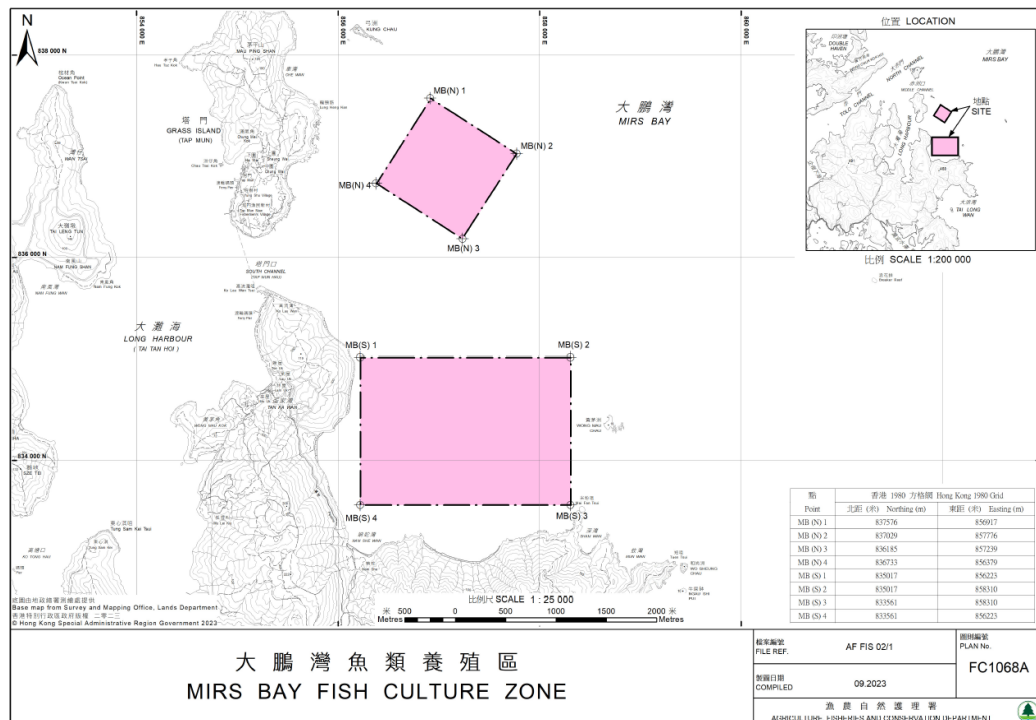


Figure 2: Mirs Bay (North and South) Fish Culture Zones

Appendix II

Setup for Fish Culture Zones and Craft Anchorage

Fish Culture Zones	Sub-Zones	No. of Setup	Name of Setup	Coordinates (WGS 84)	
				Northing	Easting
Wong Chuk Kok Hoi Fish Culture Zone (WCKH FCZ)		Four (4)	WCKH 1	22° 30.542N	114° 18.933E
			WCKH 2	22° 30.645N	114° 19.358E
			WCKH 3	22° 30.407N	114° 19.427E
			WCKH 4	22° 30.301N	114° 18.993E
Mirs Bay Fish Culture Zones (MB FCZ)	Mirs Bay (North) Fish Culture Zone (MB(N) FCZ))	Four (4)	MB(N) 1	22° 28.656N	114° 22.651E
			MB(N) 2	22° 28.359N	114° 23.152E
			MB(N) 3	22° 27.902N	114° 22.838E
			MB(N) 4	22° 28.200N	114° 22.337E
	Mirs Bay (South) Fish Culture Zone (MB(S) FCZ))	Four (4)	MB(S) 1	22° 27.270N	114° 22.245E
			MB(S) 2	22° 27.268N	114° 23.461E
			MB(S) 3	22° 26.479N	114° 23.461E
			MB(S) 4	22° 26.481N	114° 22.243E

Remarks:

1. The Contractor shall be responsible for procuring fourteen (14) Setup, including twelve (12) Setup to demarcate the boundary of Fish Culture Zones and two (2) Setup for the backup purpose. The Setup and its associated Equipment comply in all respects with the Service Specifications in Clause 1.1 above.
2. The Contactor shall be responsible to provide storage locations for Setup and its associated Equipment.

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 1 Price Schedule

Explanatory notes:

1. Tenderers shall quote for all items by filling in all the unshaded boxes in the table below.
2. The figures indicated in the table below for “Estimated Work Order required” are estimated quantities for the entire Contract Period. Payments will be made based on the actual number of times the Services have been requested and carried out in compliance with the terms and conditions of the Contract.
3. If a Tenderer intends to offer a certain Service item free of charge, the Tenderer shall indicate this intention in writing, instead of leaving the space blank. Using the words “free of charge” or “FOC”.

Number of Work Order (WO)	Description of Work Order	Rates (HK\$)	Estimated Work Order required	Estimated Contract Value (HK\$)
		(I)	(II)	(III) = (I) x (II)
WO 1	The Contractor shall supply one (1) Setup and its associated Equipment and confirm compliance with the Clause 1.1 of the Service Specifications.		Fourteen (14)	
WO 1(a)	The Contractor shall confirm compliance with the Clauses 1.2 to 1.3 of the Service Specifications. Upon completion of Work Order 1(a), 50% of the Estimated Contract Price for Work Order 1 will be advanced upon receiving the certificate of works approval for the production of Setup and its associated Equipment, certified by Recognised entities.			
WO 1(b)	The Contractor shall confirm compliance with the Clauses 1.4 to 1.6 of the Service Specifications. Upon completion of Work Order 1(b), 30% of the Estimated Contract Price for Work Order 1 will be advanced once the Government inspected the Setup and its associated Equipment, certified by the Recognised entities.			
WO 1(c)	The Contractor shall confirm			

	compliance with the Clauses 1.7 to 1.10 of the Service Specifications. 20% of the Estimated Contract Price for Work Order 1 will be advanced once the Government confirmed the arrival of the Setup and its associated Equipment to Hong Kong.			
WO 2	The Contractor shall store one (1) Setup and its associated Equipment as backup upon delivery to the storage location as and when required by the Government, and confirm compliance with the Clauses 2.1 to 2.2 of the Service Specifications.		Two (2)	
WO 3	The Contractor shall deploy one (1) Setup to the deployment location(s) within Hong Kong as and when required by the Government, and confirm compliance with the Clauses 3.1 to 3.4 of the Service Specifications.		Twelve (12)	
WO 4	The Contractor shall overhaul one (1) Setup located in deployment location(s) within Hong Kong as and when required by the Government, and confirm compliance with the Clauses 4.1 to 4.6 of the Service Specifications.		Six (6)	
WO 5	The Contractor shall retrieve, without replacement, one (1) Setup as and when required by the Government, and confirm compliance with the Clauses 5.1 to 5.6 of the Service Specifications.		Twelve (12)	
WO 6	The Contractor shall paint one (1) boundary buoy as and when required by the Government, and confirm compliance with the Clauses 6.1 to 6.6 of the Service Specifications.		Six (6)	
WO 7	The Contractor shall provide necessary labour and materials for the supply of the Setup-associated Equipment and confirm with Clause 7.1 of the Service Specifications.			
WO 7(a)	The Contractor shall supply one (1) set of top mark as and when required by the Government.		Three (3)	
WO 7(b)	The Contractor shall supply one (1)		Three (3)	

	forelock as and when required by the Government.			
WO 7(c)	The Contractor shall supply one (1) piece of eye ring as when required by the Government.		Three (3)	
WO 7(d)	The Contractor shall supply one (1) set of solar LED flashlight of the same model or equivalent as and when required by the Government.		Four (4)	
WO 7(e)	The Contractor shall supply one (1) set of mooring chain as and when required by the Government.		Four (4)	
WO 7(f)	The Contractor shall supply one (1) set of mooring block as and when required by the Government.		Four (4)	

Estimated Total Contract Value (i.e. Summations of the Estimated Contract Value for all Work Orders) HK\$	_____ (IV)
--	-------------------

Signature of the Tenderer/ an
authorised signatory for an on
behalf of the Tenderer :

Name and title of the
authorised signatory (where
applicable) :

Name of Tenderer :

Phone / Fax no. :

_____ / _____

Date :

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 2 Section A - Details of Tenderer

The Tenderer shall provide the following details relating to itself in this Schedule 2:

(a)	Name of the Tenderer	
(b)	Principal place of business of the Tenderer (in address form)	
(c)	Type of business entity of the Tenderer	a company / a sole proprietorship / a partnership / a statutory company / others * (*Please delete whichever is not applicable).
(d)	Shareholders / partners / proprietor of the Tenderer and their percentage of ownership	
(e)	Length of business experience (in years)	
(f)	Names of the following	
	1. managing director and other directors;	
	2. partners; or	
	3. sole proprietor	
(g)	Place and date of incorporation or formation	
(h)	Business profile information of the Tenderer including the number and location of full time / contract employees, core business strategies and strength and industry expertise	
(i)	Names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer	
(j)	A copy of a valid Business Registration Certificate issued under the Business Registration Ordinance (Cap. 310) or documentary evidence showing that the Tenderer is exempted from business registration under the Business Registration Ordinance (Cap. 310); or if the Tenderer does not carry on business in Hong Kong, the equivalent documents issued by the place of business of the Tenderer	Please attach if applicable
(k)	(if the Tenderer is a company) a copy of the Memorandum (if any) and Articles of Association, Certificate of Incorporation, Certificate of Change of Name (if any) or equivalent documents issued by the authority of the place of incorporation of the Tenderer	Please attach if applicable
(l)	(if the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance (Cap. 622) a copy of	Please attach if applicable

	the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or the equivalent documents issued by the authority of the place of incorporation of the Tenderer	
(m)	Employee's Compensation Insurance Policy	
	Name of insurer:	
	Policy no.:	
	Expiry date:	
(n)	A certified extract of Tenderer's board resolution or other documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender. This requirement shall always be applicable to a Tenderer which is a company regardless of the mode of submission of Tender. In the case that a Tenderer is a sole proprietorship or a partnership, documentary evidence acceptable to the Government demonstrating the Tenderer's authorisation and approval for the submission of its Tender shall also be required if (a) (in the case of Paper-based Tendering), the signatory of the Offer to be Bound, or (b) in the case of Electronic Tendering using an Identification Code, the person submitting the Tender, is not the sole proprietor or a partner (or a general partner in the case of a limited partnership) (as the case may be). In any of the aforesaid applicable situations, the name of the person authorized to sign the Offer to be Bound as shown in the aforesaid board resolution or documentary evidence (as the case may be) shall be the same as shown in the Offer to be Bound, failing which the Government reserves the power to seek clarification.	Please attach if applicable

*delete where inapplicable

Name of Tenderer : _____

Date : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 2

Section B - Details of Work Boat and Equipment

Part A – Proposed Work Boat for the proper and efficient performance of the Services

Part B – Provision of Equipment necessary for performing the Service

The Tenderer certifies and warrants that the Work Boat particularized below be provided for the Services under the Contract and that each of the Work Boat installed with Equipment complies in all respects with the Service Specifications in Schedule 5 as at the date of submission of its Tender and will comply with such Service Specifications throughout the Tender Validity Period and the Contract Period:

	<u>Work Boat</u>	<u>Equipment</u>
Certificate of ownership number:		
Validity period of the operating licence:		
Charter party agreement / legally binding agreement to substantiate its claim of the right of use of the proposed items:		

Remarks:

Please attach to this Schedule 2 two (2) colour photographs in 3R size illustrating full view of the proposed Work Boat, photocopies of the Work Boat's licences, certificates of ownership of abovementioned items and other relevant documents.

Name of Tenderer : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 2

Section C – Details of the Tenderer's Experience in Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys

	Name of contract (ref. no.)	Client	Contract period
<i>Example</i>	<i>Supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys</i>	<i>The Government of the HKSAR</i>	<i>April 2021 – 31 March 2022</i>
1.			
2.			
3.			
4.			
5.			
6.			
7.			

Remarks:

1. Assessment will be based on the accumulated experience in supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys in the past ten (10) years preceding the Original Tender Closing Date.
2. A Tenderer shall submit documentary evidence (e.g. a copy of the letter of acceptance) to substantiate its claim of the experience. Experience not substantiated before Original Tender Closing Date will not be taken into account.

Name of Tenderer : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 2

Section D – Details of the Contract Manager’s Experience in Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys

	Contract Manager
Name:	
Position:	
Telephone number:	
Other means of direct communication:	

Relevant full-time working experience at management or supervisory level in supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys in the past ten (10) years preceding the Original Tender Closing Date:

	Name of contract (ref. no.)	Client	Contract period	Position
<i>Example</i>	<i>Supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys</i>	<i>The Government of the HKSAR</i>	<i>April 2021 – 31 March 2022</i>	<i>Manager</i>
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Remarks:

A Tenderer shall submit documentary evidence (e.g. a copy of employment contract/referee’s letter) to substantiate its claim of the working experience of the Contract Manager(s). Working experience not substantiated before Original Tender Closing Date will not be taken into account.

Name of Tenderer : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 2

Section E - Information required under Clause 15.1 of the Terms of Tender

☐ * (a) I/We confirm that none of the events as mentioned in Clause 15.1(a) to 15.1(g) of the Terms of Tender has ever occurred.

☐ * (b) I/We confirm that the following event(s) as mentioned in Clause 15.1(a) to 15.1(g) of the Terms of Tender has occurred:

Date	Details of the event

Note: * Please tick (✓) the appropriate box if the statement is confirmed to be correct.

Name of Tenderer : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 3 **Execution Plan**

1. Please provide the documents as required in the Execution Plan, namely a Service Plan, a Contractor Personnel Management Plan and Innovative Suggestions. The Execution Plan shall demonstrate the Tenderer's ability to coordinate and deliver the Services promptly with quality assurance measures. Failure to provide Execution Plan will render a Tender invalid and will **not** be further considered.
2. The Execution Plan as amended and accepted by the Government shall form part of the Contract and the Contractor shall abide by it.
3. The Service Plan shall cover the following items:

3.1 Operational arrangement

- (a) Service Specifications of the Setup and its associated Equipment to be supplied;
- (b) Service Specifications of Work Boat(s) to be provided;
- (c) programmes for optimal workflow for the supply of Setup and its associated Equipment (i.e., Work Boat, Equipment and supervised labours required);
- (d) programmes for optimal workflow for the deployment of Setup and its associated Equipment (i.e., Work Boat, Equipment and supervised labours required);
- (e) schedules for supply of boundary buoys and provision of services for deployment and overhaul of the Setup and its associated Equipment (i.e., Work Boat, Equipment and supervised labours required);
- (f) measures to deal with unforeseen changes and situation, such as inclement weather encountered in the supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys, other than those stated in the Conditions of Contract;
- (g) a reviewing mechanism for the effectiveness of the Services;
- (h) communication channel during inclement weather conditions; and
- (i) measures to enhance security control for Equipment / tools / users' personal belongings on the Work Boat.

3.2 Contingency measures

- (a) arrangements to meet ad hoc urgent requests (e.g. mobilising sufficient manpower and appropriate Work Boat to cater for service needs outside normal working hour);
- (b) procedures and support for emergency situations (e.g. unforeseen problems such as engine failure, marine traffic accident, operations during typhoons and other natural disasters, breakage of mooring chain);
- (c) procedures for the provision of subsequent Work Boat replacement upon emergency situations; and
- (d) a duty team to oversee and execute contingency operations.

4. The Contractor Personnel Management Plan shall cover the following items:

4.1 Maritime Navigation Safety

- (a) a training programme for Contractor Personnel to enhance maritime navigational safety awareness, navigational knowledge and good seamanship;
- (b) a programme for disseminating orders / messages to Contractor Personnel;
- (c) an “Accident and Incident Reporting and Investigation” mechanism to report and investigate accidents and incidents occurred with corrective actions proposal within a certain period (say, three (3) days for accident involving casualty);
- (d) a mechanism to suspend Contractor Personnel’s service according to the Contractor Personnel offence incurred;
- (e) a mechanism to ensure the provision of heat stroke prevention for Contractor Personnel in a hot environment.

4.2 Maritime Navigation Safety

- (a) procedures and arrangements for disseminating orders/messages to Contractor Personnel;
- (b) supervisory measures and training programmes to enhance Contractor Personnel’s performance, including politeness, good route knowledge, steering skills and manner, punctuality and readiness to assist; and
- (c) a mechanism for users to provide feedback on Contractor Personnel’s performance and behaviour.

Name of Tenderer : _____

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

Schedule 4

Election of Mode of Payment of Contract Deposit

Tenderers shall indicate their preferred mode of payment for the Contract Deposit, as per Clause 19 of the Terms of Tender, by selecting either cash or bank guarantee below. A Tenderer who fails to submit this Schedule or does not select their preferred mode of payment will be deemed to select payment in cash.

We, the Tenderer, agree to pay the Contract Deposit under Clause 19 of the Terms of Tender by *cash / *bank guarantee.

*(*delete as appropriate)*

Name of Tenderer : _____

Schedule 5

Service Specifications for the Setup, its Associated Equipment and Workboat

1. Service Specifications for the Setup and its associated Equipment

(a) They are Service Specifications that a Tenderer must complete this Schedule 5 and check all boxes and submit it as part of its Tender before the Tender Closing Date to prove compliance with the requirements as stipulated in paragraph 1(b)(i) to 1(b)(xvii) below.

(b) The Setup and its associated Equipment must have the below features:-

Service Specifications for the Setup and its associated Equipment	Checklist result (Please indicate “Compliant / Non-compliant” in the blank box) (If compliant, the contractor may provide supporting documents)
(i) the Setup shall be designed for the deployment in the deep water areas approximately fourteen (14) – twenty (20) m; except for location MB(S)4, where the water depth is approximately six (6) – eight (8) metres;	
(ii) the boundary buoy shall be equipped with a buoy body filled with foam core or divided by at least two (2) equally spaced watertight compartments;	
(iii) the boundary buoy shall compose with steel or plastic (preferable) and shall be able to sustain possible impacts by other vessels to ensure that the boundary buoys remain in shape and afloat after such impacts;	
(iv) the boundary buoy has not less than or equal to 1.75 metres in the diameter;	
(v) the boundary buoy has not less than or equal to three (3) metres in the focal height;	
(vi) the boundary buoy has not less than or equal to nine-tenths (0.9) metres in the height between waterline and top of water tight compartment;	
(vii) the boundary buoy has not less than ten (10) mm in plate thickness for steel or equivalent strength for plastic;	

(viii) the boundary buoy's shape must not be in conflict with that used for a lateral or safe water mark;	
(ix) the boundary buoy shall be equipped with the radar reflector;	
(x) the boundary buoy shall be equipped with top mark, which is a single yellow cross positioned on top;	
(xi) the boundary buoy shall be equipped with watertight battery compartment;	
(xii) the boundary buoy shall be painted in yellow colour in surface finish;	
(xiii) the boundary buoy shall be equipped with not less than twenty-four (24) mm open link mooring chain and comply with the recommendations provided by Recognised entities;	
(xiv) the mooring block shall have sufficient weight to hold the boundary buoy in position with regard to the seabed, tidal and weather conditions likely to be experienced at the deployment location;	
(xv) the boundary buoy has a light with quick flashing yellow, with a range of at least three (3) nautical miles and atmospheric transmission factor of at least 0.74;	
(xvi) the boundary buoy has a light in the type approved by the International Association of Marine Aids to Navigation and Lighthouse Authorities;	
(xvii) the boundary buoy has a light's battery in water-proof and leak-proof type.	

2. Service Specifications for the Work Boat

- (a) Tenderers must complete this Schedule 5 and check all boxes and submit it as part of its Tender before the Tender Closing Date to prove compliance with the requirements as stipulated in paragraph 2(b)(i) to 2(b)(vii) below.
- (b) The Work Boat must have the below features:-

Service Specifications for the Work Boat	Checklist result (Please indicate "Compliant / Non-compliant" in the blank box) (If compliant, the contractor may provide supporting documents)
---	--

(i) the Work Boat shall be a flat-topped crane barge or a flat-topped derrick barge or other similar vessel;	
(ii) the Work Boat shall be equipped with lifting gear that meets the safe working load prescribed under the Merchant Shipping (Local Vessel) (Works) Regulation (Cap. 548I), which shall not be less than thirty (30) tonnes;	
(iii) the Work Boat shall be accompanied with a tugboat when the work boat is not self-propelled. The tugboat shall be properly manned in accordance with the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D);	
(iv) the Work Boat have vertical lift with at least six point two (6.2) metres, as measured between the level of the Work Boat's weather deck and the lower lifting block of the main hoist;	
(v) the Work Boat have capacity or other acceptable arrangement to accommodate not less than four (4) sets of boundary buoys, including their components and mooring blocks. The stowage of the boundary buoys, component and mooring blocks on board the Work Boat must not be piled in stacks;	
(vi) the Work Boat shall be capable of operating with a shallow draft under working conditions, including manoeuvring, operating and working at sea with a minimum water depth of three (3) metres; and	
(vii) the Work Boat possess the capability to moor and maintain a stable position while laying and overhauling in confined water areas with fish culture farms.	

Name of Tenderer : _____

Appendix to Schedule 5**UNDERTAKING**

To: The Government of the Hong Kong Special Administrative Region as represented by the Director of Agriculture, Fisheries and Conservation (“the Government”)

Agriculture, Fisheries and Conservation Department
8th Floor, Cheung Sha Wan Government Offices,
303 Cheung Sha Wan Road,
Kowloon

Re. Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones (Tender Ref.: AFCD/Cap3532024)

I/We, (Name of the tenderer: _____) being the tenderer for the captioned tender exercise (“Tenderer”), hereby undertake in favour of the Government that I/We shall take actions to ensure that (i) the Certificate of Survey and operating licence of the Work Boat issued by Marine Department of the Government pursuant to the Merchant Shipping (Certification and Licensing) Regulation (Cap. 548D) are valid and renew the same whenever needed; and (ii) Equipment, which includes machinery, tools, devices, appliances used or installed for the provision of the Services, will function properly throughout the Tender Validity Period, which shall remain valid and open for a period of one hundred and eighty (180) days after the Tender Closing Date.

Signed by the Tenderer / Signed by an
authorised signatory for and on behalf of :
the Tenderer

Name of the authorised signatory (where :
applicable)

Title of the authorised signatory (where :
applicable)

Date :

ANNEX 1

Marking Scheme and Assessment Criteria

Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones

1. A two (2)-envelope approach with a technical to price weighting of 60:40 will be adopted for this Tender evaluation whereby the price assessment will be conducted separately and subsequent to the technical assessment.
2. For Tender evaluation, a tender assessment panel (“Tender Assessment Panel”) will be formed. The Tender Assessment Panel will evaluate the Tenders in five stages as set out below.

Stage I – Completeness Check

3. All Tenders received will be checked on whether all the documents and information required in **Clause 3.3 and 3.4 of the Terms of Tender** have been submitted, except for the Schedule 1 which will be checked in Stage IV.
4. Tenders which have passed Stage I evaluation will proceed to Stage II evaluation.

Stage II – Checking for Compliance with Service Specifications

5. Tenders which have passed Stage I evaluation will be checked to ensure their compliance with the Service Specifications in Schedule 5. Information and documents submitted in a Tender to substantiate the Tenderer’s compliance of the Service Specifications will be evaluated by the Tender Assessment Panel. Tenders which have passed this Stage II assessment will proceed to Stage III assessment.

Stage III – Technical Assessment

6. Technical Proposals of Tenders which have passed Stages I and II evaluation will be further evaluated according to the Assessment Criteria and marking guidelines set out in **Appendix to Annex 1**.
7. **Any Tender which fails to score the passing mark (10 out of 40) under the assessment criterion (1) (Service Plan) of the Assessment Criteria in Appendix to this Annex 1 will not be considered further.**
8. The weighted technical score will be worked out for Tenders which have passed Stages I to III of the evaluation. The highest scoring Tender that has passed Stage III will be given the maximum weighted technical score of 60 and the remaining Tenders will be given a weighted technical score in accordance with the following formula:

$$60 \times \frac{\text{Total technical mark attained by the Tender being assessed}}{\text{Highest total technical mark among Tenders that have passed Stages I to III evaluation}}$$

Stage IV – Price Assessment

9. (a) Price Proposals of those Tenders which have passed Stages I to III evaluation will be assessed.
- (b) The price assessment will be based on the Estimated Total Contract Value in Schedule 1.
10. The lowest Estimated Total Contract Value submitted by a Tenderer amongst all the Tenderers whose Tenders have passed Stages I to III evaluation will be given the maximum weighted price score of 40 and the remaining Tenders will be given a weighted price score in accordance with the following formula:

$$40 \times \frac{\text{Lowest Estimated Total Contract Value among the Tenders that have passed Stages I to II evaluation and completed Stage III assessment}}{\text{Estimated Total Contract Value of the Tender being assessed}}$$

Note: The weighted technical score and weighted price score of each Tender will be rounded to the nearest two (2) decimal places. Figures with the value at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onward whereas figures with the value at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the value at the second decimal place.

Stage V – Calculation of Combined Score

11. (a) The weighted technical score and weighted price score of a Tender will be added up to calculate the Tender's combined score.
- (b) The Tenderer whose Tender attains the highest combined score (price and technical scores) will normally be recommended for the award of the Contract.

Appendix to Annex 1**Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones****Marking Scheme and Assessment Criteria for Stage III – Technical Proposal**

Assessment Criteria		Maximum mark	Passing mark*
(A) Execution Plan			
(1)	Service Plan (see Notes 1 and 2)	40	10
(2)	Contractor Personnel Management Plan (see Notes 3 and 4)	21	--
(3)	Innovative Suggestions		
	(a) Pro-innovation Proposals – directly relevant to the Service (see Note 5)	15	--
	(b) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services (see Note 6)	9	--
Sub-total for (A)		85	--
(B) Experience, Certification and Qualifications			
(4)	Tenderer's experience for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys (see Note 7)	3	--
(5)	Contract Manager's experience for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys (see Note 8)	5	
Sub-total for (B)		8	--
(C) Other			
(6)	Provision of an additional Work Boat for facilitating supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys (see Note 9)	7	
Sub-total for (C)		7	
Total Technical Mark		100	--

Note 1: Service Plan's requirements

The Service Plan shall cover the items mentioned in Paragraph 3 of Schedule 3.

Note 2: Marking Guidelines for Assessment Criterion (1)Assessment of the Proposed Plan

Marks (excluding those reserved for Pro-innovation Proposals / ESG Proposals) will be given for the Service Plan in accordance with the following five (5)-grade approach:

<u>Percentage of maximum marks</u>	<u>Marking standard</u>
100%	The proposed plan is practical with detailed information for all of the required items.
75%	The proposed plan is practical with detailed information for ten (10) to twelve (12) required items and brief information for the remaining items.
50%	The proposed plan is practical with detailed information for seven (7) to nine (9) required items and brief information for the remaining items.
25%	The proposed plan is practical with detailed information for three (3) to six (6) required items and brief information for the remaining items.
0%	The proposed plan is impractical or fails to provide information on any of the required items.

Any Tender which fails to score the passing mark of 10 under Assessment Criterion (1) (Service Plan) will not be considered further.

Note 3: Contractor Personnel Management Plan's requirements

The Contractor Personnel Management Plan shall cover the items mentioned in Paragraph 4 of Schedule 3.

Note 4: Marking Guidelines for Assessment Criterion (2)Assessment of the Proposed Plan

Marks (excluding those reserved for Pro-innovation Proposals / ESG Proposals) will be given for the Contractor Personnel Management Plan in accordance with the following five (5)-grade approach:

<u>Percentage of maximum Marks</u>	<u>Marking standard</u>
100%	The proposed plan is practical with detailed information for all of the required items.
75%	The proposed plan is practical with detailed information for six (6) to seven (7) required items and brief information for the remaining items.

50%	The proposed plan is practical with detailed information for four (4) to five (5) required items and brief information for the remaining items.
25%	The proposed plan is practical with detailed information for one (1) to three (3) required items and brief information for the remaining items.
0%	The proposed plan is impractical or fails to provide information on any of the required items.

Note 5: Pro-innovation Proposals – directly relevant to the Services

- (a) Tenderers are encouraged to provide Pro-innovation Proposals for Assessment Criteria (1) and (2) to enhance the performance of the Services.
- (b) The Pro-innovation Proposals may not necessarily be technology-related. Pro-innovation Proposals are technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the service outcome. The emphasis is on output-based service delivery of which the contributions should be visible, and preferably be quantifiable and measurable. Tenderers may propose Pro-innovation Proposals involving application / adoption of new technology / inventions; and / or innovative application of existing / matured technology that may enhance service delivery while contributing to the development of “Smart City” and innovation and technology development. Marks will be given if the proposed Pro-innovation Proposals are directly relevant to, effective and practicable in improving the delivery of the Services as compared with how the Services are delivered under the existing contract or the conventional mode of service delivery adopted by the Government in general.
- (c) Pro-innovation Proposals should be proposed for the following plans respectively:

(i) Pro-innovation Proposals for the Service Plan

The Tenderer shall propose Pro-innovation Proposals that are directly relevant to the Service Plan to enhance quality, effectiveness and efficiency for the provision of Services, including but not limited to underwater inspection system, differential global positioning system for identifying the position of boundary buoys and high pressure water blasting equipment.

<u>Marks</u>	<u>Marking standard</u>
9	The proposed plan contains three (3) or more effective and practicable Pro-innovation Proposals for the respective plan.
6	The proposed plan contains two (2) effective and practicable Pro-innovation Proposals for the respective plan.
3	The proposed plan contains one (1) effective and practicable Pro-innovation Proposal for the respective plan.
0	The proposed plan does not contain any Pro-innovation Proposals for the respective plan or no supporting documents provided.

(ii) Pro-innovation Proposals for the Contractor Personnel Management Plan

The Tenderer shall propose Pro-innovation Proposals that are directly relevant to: –

- (1) Maritime navigation safety to enhance the awareness of Contractor Personnel on maritime navigation safety during delivery of the supply, deployment and overhaul of boundary buoy service (e.g. provision of devices for real-time alerts of speeding, deceleration, acceleration, lane departure or collision); and/or
 - (2) Staff management to enhance performance and morale of staff, including Contractor Personnel and supporting staff (e.g. family-friendly employment practices).
- (d) Distribution of marks for Pro-innovation Proposals meeting the requirements for each plan under (c) above is as follows:

<u>Marks</u>	<u>Marking standard</u>
6	The proposed plan contains three (3) or more effective and practicable Pro-innovation Proposals for the respective plan.
4	The proposed plan contains two (2) effective and practicable Pro-innovation Proposals for the respective plan.
2	The proposed plan contains one (1) effective and practicable Pro-innovation Proposal for the respective plan.
0	The proposed plan does not contain any Pro-innovation Proposals for the respective plan or no supporting documents provided.

- (e) Marks will not be given to any Pro-innovation Proposals / ESG Proposals which a Tenderer will neither be capable of nor responsible for implementation in the opinion of the Government.
- (f) An Innovative Suggestion that scores marks under Pro-innovation Proposals will not earn marks again under ESG Proposals and vice versa. In case a Tenderer specifies the type of an Innovative Suggestion under both Pro-innovation Proposals and ESG Proposals and the Tender Assessment Panel considers that the same Innovative Suggestion could earn marks under both Pro-innovation Proposals and ESG Proposals, it will be taken as scoring marks under Pro-innovation Proposals only. Furthermore, Pro-innovation Proposals scores marks under one plan will not earn marks again under another plan. If the Tender Assessment Panel considers that the same Pro-innovation Proposal could score marks under more than one plan, it will be taken as scoring marks under the first relevant plan. For example, if a Tenderer proposes the same Pro-innovation Proposal which could earn marks under both of the Service Plan and Contractor Personnel Management Plan, it will be taken as scoring marks under Service Plan only.
- (g) Tenderers shall propose Pro-innovation Proposals / ESG Proposals by filling in the details in Schedule of Pro-innovation Proposals or ESG Proposals under this Appendix to Annex 1 to facilitate Tender evaluation.
- (h) Apart from the Schedule of Pro-innovation Proposals and ESG Proposals mentioned in (g) above, Tenderers shall submit the following information for demonstrating the effectiveness and practicability of the Pro-innovation Proposals and ESG Proposals. Marks will not be given if the Tenderers only propose a concept without sufficient details. The information that shall be provided by the Tenderers includes the following:
- (1) If the Innovative Suggestion is concerned with a kind of technology, equipment, tool,

system, material, facility and Work Boat, etc.: scope of the Services involved, details on how to implement, specifications, catalogues, features, functions, quantity, coverage, locations and outcome, etc. as appropriate;

- (2) If the Innovative Suggestion is concerned with a kind of measure, service, scheme and activity, etc.: the objective, scope of the Services involved, details on how to implement, functions, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate; and
 - (3) If the Innovative Suggestion is related to manpower: the objective, scope of the duties involved, details on how to implement, work shifts (full time or part time), posts, recruitment method, means to approach the target candidates, quantity, monetary value, scale, coverage, locations, frequency, duration, outcome and number of target beneficiaries, etc. as appropriate.
- (i) Tenderers may be requested to provide supporting documents or a demonstration to prove the practicability of their Pro-innovation Proposals and ESG Proposals. All proposed Pro-innovation Proposals and ESG Proposals will be assessed on the basis of the information provided in the Tender submissions and factual supporting documents (e.g. test reports / certificates) provided by the Tenderers upon request by the Government. The demonstration will not be taken into account in marking. It only serves as a means to enable members of the Tender Assessment Panel to have a better understanding of the Pro-innovation Proposals and ESG Proposals proposed by the Tenderers. During the demonstration, Tenderers are also not allowed to provide additional information not contained in their original Tender submissions.
 - (j) All effective and practicable Pro-innovation Proposals and ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the Contract.

Note 6: ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the Services

- (a) Tenderers are encouraged to provide ESG Proposals which may but need not be directly relevant to the performance of the Services but which can bring about positive values or benefits to the Government or the public at large.
- (b) The ESG Proposals may not necessarily be technology-related. Marks will be given if the proposed ESG Proposals are effective and practicable for the following areas:
 - (1) measures for environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the Contract, utilisation of environmental-friendly products and spare parts, waste management scheme for proper disposal and recycling of waste metal, lubricant oil, battery and refrigerator); or

<u>Marks</u>	<u>Marking standard</u>
3	The proposed plan contains three (3) or more effective and practicable ESG Proposals.
2	The proposed plan contains two (2) effective and practicable ESG Proposals.
1	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

(2) social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the Contract); or

<u>Marks</u>	<u>Marking standard</u>
3	The proposed plan contains three (3) or more effective and practicable ESG Proposals.
2	The proposed plan contains two (2) effective and practicable ESG Proposals.
1	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

(3) governance.

<u>Marks</u>	<u>Marking standard</u>
3	The proposed plan contains three (3) or more effective and practicable ESG Proposals.
2	The proposed plan contains two (2) effective and practicable ESG Proposals.
1	The proposed plan contains one (1) effective and practicable ESG Proposal.
0	No ESG Proposals proposed or no supporting documents provided.

(c) Clauses (e), (f), (g), (h), (i) and (j) of Note 5 above are also applicable to this Note.

(B) Experience, Certification and Quantifications

Note 7: Tenderer's experience for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys

- (a) Marks will be given if the accumulated experience of the Tenderer for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys reached a specified level. The duration of experience will be calculated based on the past ten (10) years prior to the Original Tender Closing Date.

Marks will be given as follows:

<u>Marks</u>	<u>Marking standard</u>
3	An accumulated experience of at least six (6) years
2	An accumulated experience of at least four (4) years but not more than six (6) years

1	An accumulated experience of at least two (2) years but not more than four (4) years
0	An accumulated experience less than two (2) years or failing to produce documentary proof to support its claim of experience

- (b) A Tenderer shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of experience. Unsubstantiated experience will not be considered.
- (c) Local and / or foreign experience will be considered.
- (d) The experience of the Tenderer shall only be considered if the previous contract(s) was / were bided with the same name as that of the Tenderer. For the avoidance of doubt, the experience gained by a Tenderer in its capacity as a sub-contractor, or the experience of a parent company, subsidiary, or sub-contractor of the Tenderer, shall not be taken into consideration. The definitions of “parent company” and “subsidiary” shall follow the meanings as defined under the Companies Ordinance (Cap. 622).
- (e) In the event that the Tenderer is a partnership, only the years of experience acquired by the partnership will be considered for the marking criteria. The individual experience of the participants within the partnership will not be taken into account.
- (f) For the purpose of Tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years of experience shall be equivalent to seven hundred and thirty (730) days (i.e. three hundred and sixty-five (365) days x 2).
- (g) The Tenderer’s experience for supply of boundary buoys and the provision of services for deployment and overhaul of boundary buoys under different contracts during overlapping periods shall not be double-counted. The Tenderer’s experience will be measured as illustrated by the following examples:

Examples:

Overhaul service contract	Contract period	Contract period without overlapping with an earlier contract	Number of day counted for accumulated experience
A	16.4.2019 – 15.4.2021	16.4.2019 – 15.4.2021	730
B	1.10.2020 – 31.3.2022	16.4.2021 – 31.3.2022	349 (28 days in Feb 2021)
C	1.1.2021 – 31.12.2022	1.4.2022 – 31.12.2022	274
Total:			1,353

Note 8: Contract Manager’s experience for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys

- (a) Marks will be given if the accumulated experience of the Contract Manager for supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys

reached a specific level. The number of years of experience is calculated based on the past ten (10) years preceding the Original Tender Closing Date.

Marks will be given as follows:-

Marks	Marking standard
5	An accumulated experience of at least eight (8) years.
2	An accumulated experience of at least five (5) years but not more than eight (8) years.
0	An accumulated experience less than five (5) years or failing to produce documentary proof to support its claim of experience.

- (b) A Tenderer shall submit documentary evidence, which includes but is not limited to, a copy of the agreement, to support substantiate its claim of the experience. Unsubstantiated experience will not be considered.
- (c) Local and / or foreign experience will be considered.
- (d) In the event that a Tenderer proposes multiple Contract Manager, the marks shall be awarded based on the experience of the Contract Manager who possess the greatest level of experience.
- (e) For the purpose of Tender evaluation, an accumulated years of experience shall be measured in calendar days. Two (2) years' experience shall be equivalent to 730 days (i.e. 365 days x 2).

Note 9: Provision of an additional Work Boat for facilitating supply of boundary buoys and provision of services for deployment and overhaul of boundary buoys

	Items under assessment	Assessment status	Marks
(a)	Age of an additional Work Boat	(i) be less than ten (10) years	1 mark
		(ii) be ten (10) years or more	0 mark
(b)	Hull material of an additional Work Boat	(i) be recyclable hull material upon vessel disposal	1 mark
		(ii) be non-recyclable or non-environmental friendly hull material upon vessel disposal (e.g., glass reinforced plastic, non-recyclable wood)	0 mark
(c)	Engine of an additional Work Boat	(i) comply with IMO* Tier 1 / Tier 2 emission standard or equivalent	1 mark
		(ii) does not comply with IMO* Tier 1 / Tier 2 emission standard or equivalent	0 mark
(d)	Speed of an additional Work Boat	(i) be ten (10) knots or above	1 mark
		(ii) be less than ten (10) knots	0 mark
(e)	An additional Work Boat or other acceptable boat fitted with lifting gear of safe working load not less than thirty (30) tonnes	(i) be not less than thirty (30) tonnes	1 mark
		(ii) be less than thirty (30) tonnes	0 mark

(f)	An additional Work Boat or other acceptable arrangement shall be able to accommodate not less than four (4) sets of boundary buoys with their component and mooring blocks. The stowage of the buoys, component and mooring blocks on board the Work Boat must not be piled in stacks.	(i) be able to accommodate at least four (4) sets of boundary buoys	1 mark
		(ii) comply with the Service Specifications	0 mark
(g)	An additional Work Boat capable of operating with a shallow draft, including manoeuvring, operating and working at sea with a minimum water depth of three (3) metres	(i) be capable of manoeuvring, operation and working at sea with a minimum water depth of three (3) metres or shallower	1 mark
		(ii) comply with the Service Specifications	0 mark

***IMO: International Maritime Organisation**

Innovative Suggestion Schedule

(Please refer to Notes 4 & 5 of the Explanatory Notes for Marking Scheme for details.)

Tenderers shall provide details of its Innovative Suggestion¹ in the following tables. If there is not enough space, please use supplementary sheets if necessary.

Pro-innovation Proposals – Directly Relevant to the goods / services to be procured under the Contract

- For the Service Plan**

Item No.	Proposed Pro-innovation Proposals ²	Brief description on improvements/benefits/positive values to be brought about ³	Implementation Details	Supporting documents (if any)

- For the Contractor Personnel Management Plan**

Item No.	Proposed Pro-innovation Proposals ²	Brief description on improvements/benefits/positive values to be brought about ³	Implementation Details	Supporting documents (if any)

¹ The Innovative Suggestion, whether it be a Pro-innovation Proposal or an ESG Proposal, shall not just repeat, or be inconsistent with, the requirements of the Tender Documents.

² Please identify the technological means or arrangements or work process or solutions or equipment covered by the Pro-innovation Proposals that can enhance efficiency, effectiveness and productivity of the Goods and Services. If not clearly stated, it shall be assumed that the Pro-innovation Proposal shall apply to all Goods and/or all Services.

³ In order to score marks, the Innovative Suggestion must bring about any one or more such improvements and/or benefits and/or positive values as found in the list.

ESG Proposals – may but need not be directly relevant to the goods / services to be procured under the Contract

Item No.	Proposed ESG Proposals⁴ (E) for environmental protection or sustainability; (S) for social responsibility; (G) for governance	Brief description on improvements/benefits/positive values to be brought about⁵	Implementation Details	Supporting documents (if any)

Remarks:

1. All effective and practicable Pro-innovation Proposals and ESG Proposals accepted by the Government shall form part of the Contract. Any failure to perform such Pro-innovation Proposals / ESG Proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligations e.g. claiming damages and/or termination of the Contract.

Name of Tenderer in English (in Block Letters) : _____

⁴ Please identify whether the ESG Proposal is for environmental protection or sustainability / for social responsibility / for governance by filling in (E) or (S) or (G) as the case may be. Unless otherwise expressly specified, it shall be assumed that the ESG Proposal shall apply to all Goods and/or Service.

⁵ In order to score marks, the Innovative Suggestion must bring about any one or more such improvements and/or benefits and/or positive values as found in the list.

ANNEX 2**Form of
Bank Guarantee**

THIS GUARANTEE is made on the day of 20.....
by.....
of, a licensed bank within the meaning of the Banking
Ordinance (Cap. 155) (the “Guarantor”)

IN FAVOUR OF

The Government of the Hong Kong Special Administrative Region of the People’s Republic of China (the “Government”) of the other part.

WHEREAS

(A) By an invitation to tender issued by the Government (Tender Ref: AFCD/Cap3532024), the Government invited tenders for a contract for “Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones” (“Contract”) upon the terms and conditions of the Contract. Unless specified otherwise, capitalised terms used herein shall bear the same meaning as ascribed to them in the Contract.

(B) It is proposed that the Contract shall be awarded to (Name of the Contractor: _____), a company whose registered office is situated at registered office address: _____) (“Contractor”).

(C) It is a condition precedent to the Government agreeing to grant the Contract the Contractor that, inter alia, the Guarantor executes this Guarantee in favour of the Government.

Now this Guarantee executed as a deed witnesses as follows:-

(1) Where applicable, words and expressions used in this Guarantee (including the recitals) shall have the meaning assigned to them under the Contract.

(2) In consideration of the Government’s acceptance of the bank named herein as the Guarantor under this Guarantee:

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a continuing obligation, the due and punctual performance and discharge by the Contractor of all of his, her or their obligations and liabilities under the Contract and the Guarantor shall pay to the Government on demand and without cavil or argument all monies and discharge all liabilities which are now or at any time hereafter shall become due or owing by the Contractor to or in favour of the Government under or in connection with the Contract together with all costs, charges and expenses on a full indemnity basis which may be incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of the obligations terms conditions stipulations or provisions of the Contract, notwithstanding any dispute between the Contractor and the Government or any other person.
 - (b) The Guarantor, as a primary obligor and as a separate, continuing and independent obligation and liability from its obligations and liabilities under sub-clause (a) above, irrevocably and unconditionally agrees to indemnify and keep indemnified the Government against and shall pay to the Government on demand and without cavil or argument all losses, damages, costs, charges and expenses on a full indemnity basis suffered or incurred by the Government arising from or in connection with the failure of the Contractor to perform fully or promptly any of his, her or their obligations terms conditions stipulations or provisions of the Contract.
 - (c) The Government may place and keep any monies received by virtue of this Guarantee (whether before or after the insolvency or liquidation of the Guarantor or the Contractor) to the credit of a suspense account for so long as the Government may think fit in order to preserve the rights of the Government to sue or prove for the whole amount of its claims against the Guarantor, the Contractor or any other person.
- (3) This Guarantee shall not be affected by any change of name or status in the company, firm or individual described as the “Contractor” or where the “Contractor” is a partnership, any change in the partners or in its constitution or where the “Contractor” is a company, any change of its member or shareholder or its officers or its constitution.
- (4) The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Government and the Contractor or by any alteration in the obligations imposed upon the Contractor by the Contract or by any waiver or forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, alteration, waiver or forbearance may have been or is made or granted with or without knowledge or assent of the Guarantor.

(5) Without prejudice to Clause 4 above, the obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be amended or affected or discharged in any way by, and the Guarantor hereby waives notice of or assents to:

- (a) any suspension, termination, amendment, variation, novation or supplement of or to the Contract from time to time (including without limitation extension of time for performance);
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor under the Contract for any reason;
- (d) any forbearance, variation, extension, discharge, compromise, dealing with exchange, waiver or renewal in respect of any right of action or remedy that the Government may have, now or after the day of this Guarantee, against the Contractor and/or the negligence, failure, omission, indulgence or delay by the Government in enforcing any right, power, privilege to or remedy available to the Government in relation to the obligations of the Contractor set out in the Contract;
- (e) the voluntary or involuntary liquidation, bankruptcy, dissolution, sale of assets, receivership, general assignment for benefit of creditors, insolvency, reorganisation arrangement, composition, or other proceedings of or affecting the Contractor or its assets, or any change in the constitution of the Contractor;
- (f) any assignment, novation or sub-contracting by the Contractor of any or all of its obligations set out in the Contract; and
- (g) without prejudice to the generality of the foregoing, any fact or event (whether similar to any of the foregoing or not) which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release of or defence to the Guarantor, other than the express release of its obligations.

(6) This Guarantee shall extend to any variation, novation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Government and the Contractor and for the avoidance of doubt, the Guarantor hereby authorises the Government and the Contractor to make any such amendment, variation, novation or supplemental agreement without its notice or assent.

(7) This Guarantee shall have immediate effect the date specified in the Conditional Acceptance of Tender issued by the Government in respect of the subject tender exercise as the Contract and is a continuing security. This Guarantee shall cover all of the obligations and liabilities of the Contractor under the Contract and shall remain in full force and effect and irrevocable until:

- (a) the end of three (3) months from the date of early termination or expiry of the Contract Period; or
- (b) if at the time of expiry or early termination of the Contract Period, there is any outstanding right or claim of the Government, or any outstanding obligation or

liability of the Contractor, whether under or arising from or in relation to the Contract, the date on which all such rights and obligations, and claims and liabilities have actually been carried out, completed and discharged (as confirmed by the Government in writing),

whichever is the applicable.

(8) This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any contractual or other right or remedy or any guarantee, indemnity, lien, pledge, bill, note, charge or any other security which the Government may at any time hold (collectively “Other Security”) and this Guarantee may be enforced by the Government without first having recourse to any of the Other Security or taking any steps or proceedings against the Contractor, and notwithstanding any release, waiver or invalidity of the Other Security.

(9) Any demand, notification or certificate given by the Government specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall be conclusive and binding on the Guarantor.

(10) The obligations expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not as a surety.

(11) This Guarantee shall be governed by and construed according to the laws for the time being in force in the Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) and the Guarantor agrees to submit to the exclusive jurisdiction of the courts of Hong Kong.

(12) All documents arising out of or in connection with this Guarantee shall be served:

(a) upon the Government, at 8/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon, the Director of Agriculture, Fisheries and Conservation, marked for the attention of _____, facsimile number: (852) 2314 2866;

(b) upon the Guarantor, at _____, Hong Kong, marked for the attention of _____, facsimile number _____.

(13) Documents to be served under this Guarantee shall be deemed to have been duly served by one party if sent by letter or fax addressed to the other party at the address stated above or to the facsimile number set out above. The documents so served shall be effective (a) on the date of delivery if hand-delivered; (b) on the date of transmission if sent by facsimile; and (c) if despatched by mail (whether registered or not), on the day on which they are tendered for delivery by the postal authority in Hong Kong.

(14) The aggregate amount of the Guarantor’s liability under this Guarantee shall not exceed _____.

(15) This Guarantee may only be amended by an instrument in writing signed by the Guarantor and the Government as represented by the Government Representative.

IN WITNESS whereof the Guarantee was executed as a deed and the said Guarantor.....has caused its Common Seal/Seal to be hereunto affixed the day and year first above written.

* The [Common Seal/Seal] of the said)
 Guarantor was hereunto affixed and)
 signed by)
)
 duly authorized by its board of directors
 in the presence of

Name of witness:

Title of witness:

Signature of witness:

@ Signed Sealed and Delivered)
 for and on behalf of and as)
 lawful attorney of the Guarantor)
 under power of attorney dated)
 and deed of delegation)
 dated)
 by)
)
 and in the presence of.....)

Name of witness:

Title of witness:

Signature of witness:

* Please delete as appropriate.

@ See the Powers of Attorney Ordinance (Cap. 31)

Note: When bank guarantees are executed under power of attorney, a photocopy of the power of attorney, certified on each page by a Hong Kong solicitor that it is a true and complete copy of the original must be submitted.

ANNEX 3**NON-COLLUSIVE TENDERING CERTIFICATE**

(To be completed and returned together with the Tender submission)

To: the Government

Dear Sir/ Madam,

Non-collusive Tendering Certificate

1. I/We, (name of the Tenderer) _____ of
(address(es) of the Tenderer(s)) _____

refer to the Government's invitation to tender for the Contract ("Invitation to Tender") and my/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. I/We represent and warrant that in relation to the Invitation to Tender:
- (a) My/Our Tender was prepared genuinely, independently and made with the intention to accept the Contract if awarded;
 - (b) My/Our Tender was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Tenderer or competitor) regarding:
 - i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, any Tender;
 - iv) an intention or decision to withdraw any Tender;
 - v) the submission of any Tender that does not conform with the requirements of the Invitation to Tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Tender relates; and
 - vii) the terms of my/our Tender,

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

3. Clause 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 I/we have submitted my/our Tender, and such joint venture arrangement has already been notified to the Government in my/our Tender;
- (c) my/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) my/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 my/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 subcontracting

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, I/we understand that I/we am/are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Tender, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/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 27.1 of the Terms of Tender, the Government may exercise any of the rights under Clauses 27.3 to 27.5 of the Terms of Tender in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Cap. 619), bid-rigging is a serious anti-competitive conduct. I/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 the information on my/our Tender and my/our personal information.

Signed by the Tenderer / Signed by an
authorised signatory for and on behalf of :
the Tenderer

Name of the authorised signatory (where
applicable) :

Title of the authorised signatory (where
applicable) :

Date :

ANNEX 4

Registration Form for the Tender Briefing**Supply of Boundary Buoys and Provision of Services for Deployment and Overhaul of Boundary Buoys in Wong Chuk Kok Hoi Fish Culture Zone and Mirs Bay Fish Culture Zones****(Tender Reference: AFCD/Cap3532024)**

To: Director of Agriculture, Fisheries and Conservation
8/F, Cheung Sha Wan Government Office,
303 Cheung Sha Wan Road, Kowloon
Fisheries Enforcement and Special Projects Division
Licensing and Registration Section
(Attn.: Mr. MAK Chu-wa)
Fax no.: (852) 2314 2866

We will attend the Tender briefing for the above Tender
on 16 December 2024, 10:00
at Room 701A
7/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Name of the
prospective
Tenderer

Person to attend:

Name

Position

Tel no.

Fax no.

Date

- Note: 1. The registration form should be completed and returned by facsimile by 12 December 2024. Late registration will not be accepted.
- Note: 2. Each prospective Tenderer should register no more than two (2) persons for the Tender briefing due to limited seating capacity.
- Note: 3. Please provide a list of the prospective Tenderer's questions, if any, together with this registration.

OFFER TO BE BOUND

1. Having read the Tender Documents, I/we, the Tenderer mentioned below, agree to be bound by all of the terms and conditions as stipulated therein.
2. I/We, the Tenderer mentioned below, do hereby agree to carry out all and any of the Services at the Rates quoted by me/us in the Price Schedule free of all other charges, subject to and in accordance with the terms and conditions of the Tender Documents.

*# Signed by the Tenderer / Signed by an
authorised signatory for and on behalf of the :
Tenderer

Name of the Tenderer :

Name and title of the authorised signatory :
(where applicable)

Date :

Notes:

- (i) *For Paper-based Tendering, the Offer to be Bound to be signed and submitted shall be Part VI of this Tender Form or a printed copy from a softcopy of Part VI of this Tender Form or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part VI of this Tender Form (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and **the Tender with the non-conforming Offer to be Bound will not be considered further.***
- (ii) **For Paper-based Tendering, this Part VI – Offer to be Bound shall be signed and submitted in the Tender before the Tender Closing Date. This signed Part VI – Offer to be Bound to be submitted must not be a photocopy of the original, otherwise, **the Tender will not be considered further.***
- (iii) *The Tenderer shall not make any alteration to the original text set out in this Part VI – Offer to be Bound, otherwise **the Tender will not be considered further.** Deleting inapplicable word “I/we” or “me/us” or the alternative wording denoted by # above is however not to be treated as an alteration.*

