

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT**

**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department**

Tender Ref.: AFCD/LES/2014/1

LODGING OF TENDER

A Tender must be properly completed *in triplicate* in accordance with paragraph 2 of the Terms of Tender in Part II, and enclosed in a sealed plain envelope marked “**Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department (Tender Ref.: AFCD/LES/2014/1)**” and addressed to “**The Chairman, Tender Opening Committee, Government Logistics Department**” and deposited in the Government Logistics Department Tender Box located at the **Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong** before **12:00 noon on 27 March 2014 (Thursday) (Hong Kong time)**. *Late tenders will not be accepted.*

PART I

INTERPRETATION

1. In the Tender Documents and the Contract, unless the context otherwise requires, the following expressions shall have the following meanings:-

“Charging Rates” means the monthly rates and hourly rates of the Launches as quoted in Schedule 1;

“Contract” means the contract for the provision of the Services between the Government and that Contractor on the terms and conditions set out in the following documents:

- (a) the Tender Documents;
- (b) the Tender submitted by the Contractor and accepted by the Government subject to such changes as the Government may stipulate in exercise of its powers under the Tender Documents, or as the parties may agree;
- (c) the Offer to be Bound signed by that Contractor;
- (d) the Memorandum of Acceptance issued by the Government to that Contractor pursuant to paragraph 8(c) of the Terms of Tender.

References to “the Contract” or “this Contract” mean the same contract as defined herein.

“Contract Period” means the period specified in Clause 1 of the Conditions of Contract;

“Contractor” means the Tenderer whose Tender for the Contract is accepted by the Government;

“Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;

“Estimated Total Contract Value” means the estimate total contract value as quoted in Schedule 1;

“Government Representative” 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;

“Invitation to Tender” means this Government’s invitation to tender for the Contract on the terms and conditions set out in these Tender Documents.

“Hong Kong”	means the Hong Kong Special Administrative Region of the People's Republic of China;
“Launches”	Means the two patrol launches to be provided by the Contractor for the provision of the Services under the Contract;
“Monthly Charges”	means the sum payable to the Contractor for the Services each month and is calculated in accordance with Clause 10 of the Conditions of Contract;
“Services”	means all services, duties, and obligations to be provided, performed and complied with by the Contractor under the Contract (including the letting of the Launches (with crew) to the Government);
“Tender”	means a tender submitted by a Tenderer in response to this Invitation to Tender;
“Tender Documents”	<p>means the documents issued by the Government in connection with this Invitation to Tender comprising of:</p> <ul style="list-style-type: none"> (a) Part I: this “Interpretation”; (b) Part II: the “Terms of Tender” (including the Lodging of Tender at the cover of the Tender Documents); (c) Part III: the “Conditions of Contract” (d) Part IV: the “Offer to be Bound”; (e) Part V: the “Memorandum of Acceptance”; (f) “Schedule 1”, “Schedule 2” and “Schedule 3”; and (g) “Annex” <p>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;</p>
Tender Closing Date”	means the latest date and time (Hong Kong time) by which Tenders must be lodged, being 12:00 noon on 27 th March 2014 (Hong Kong time); and
“Tenderer”	means a person who has submitted a Tender in response to the Invitation to Tender;
“working day”	unless otherwise defined, mean a day excluding Saturdays, Sundays, public holidays, and any day on which Tropical Cyclone Signal No. 8 or above is hoisted, or Black Rainstorm Warning is in force, at any time between 9:00 am and 6:00 pm.

2. In this document, unless the context otherwise requires, the following rules of interpretation shall apply:-
- 2.1 Any references, express or implied, to statutes or statutory provisions shall be construed as references to those statutes or provisions as respectively amended or re-enacted or as their application is modified from time to time by other provisions (whether before or after the date hereof) and shall include any statutes or provisions of which they are re-enactments (whether with or without modification).
- 2.2 References to paragraphs or Clauses as they appear in a particular part of the Tender Documents or Contract shall mean the paragraphs or clauses of that relevant part of the Tender Documents or Contract (unless otherwise expressly stated or the context otherwise requires).
- 2.3 The expressions “Tenderer” and “Contractor”, shall, where the context permits, include their respective successors, personal representatives, administrators, and permitted assigns.
- 2.4 References to “person” shall include references to individuals, bodies corporate, and unincorporated associations and partnerships (whether or not having separate legal personality).
- 2.5 Reference to a gender shall include every single gender and the singular number shall include the plural and vice versa.
- 2.6 References to “applicable laws” 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.
- 2.7 References to including shall be on a without limitation basis.
- 2.8 Any approval or consent or agreement of the Government or Government Representative required shall be evidenced in writing unless otherwise waived by Government in writing; and no such approval or consent or agreement shall relieve the Contractor from its obligations to exercise all necessary skill, care and diligence in the performance of the Services.

- 2.9 References to a document shall include all schedules, appendices, and annexures attached to such document. References to a document shall mean the same as from time to time amended or supplemented in accordance with the terms of the Contract. Headings to individual clauses and provisions of the Tender Documents and the Contract are for ease of reference only and shall not affect the interpretation or construction of the Tender Documents and the Contract.

PART II TERMS OF TENDER

1. Invitation to Tender

Tenders are invited for the execution of the whole of the Services (including the letting of the Launches with crew to provide launch services for the operations of Agriculture, Fisheries and Conservation Department) more particularly described in the Conditions of Contract and the Schedules, subject to and in accordance with the terms and conditions set out in the Contract.

2. Tender

- (a) The successful Tenderer will be required to perform all the Services during the Contract Period.
- (b) (i) Tenders are to be submitted in TRIPLICATE (one original and two copies) and are to be completed in ink or typescript. Tenders not so submitted may not be considered.

(ii) Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (c) For a Tender submitted by a Tenderer to be considered complete, it must comprise the following documents in TRIPLICATE, each completed and signed by the Tenderer, to be placed in a sealed envelope marked “Tender for the Provision of Launches Services for Operations of Agriculture, Fisheries and Conservation Department (Tender Ref.: AFCD/LES/2014/1)” containing the following items:
 - (i) the **Offer to be Bound** in Part IV completed and signed;
 - (ii) **Schedule 1** duly completed and signed;
 - (iii) **Schedule 2** containing information of the proposed Launches and members of its crew proposed to be deployed for the Services, including copies of approved layout drawings or plan for modification, Launches’ licences, crew certificates and other documents relevant to the proposed Launches including two colour photographs in 3R size showing full view of the Launches as referred to in Schedule 2, and the documents required to be submitted under Schedule 2 in relation to the proposed crew members;
 - (iv) if the Tenderer is the owner of the proposed Launches, a copy of certificate of ownership issued pursuant to section 10 of Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, Cap. 548D of the Laws of Hong Kong (“Cap. 548D”) evidencing its ownership; and
 - (v) if the Tenderer is not the owner of the proposed Launches, a copy of:

- (1) the purchase agreement or lease agreement whereby the Tenderer is to acquire the property in or the right to use the proposed Launches 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) the certificate of ownership issued pursuant to section 10 of Cap. 548D evidencing the ownership.
- (d) In addition to the Tender, the Government may, but is not obliged to, require the Tenderer, at any time whilst its Tender remains open, to demonstrate at any position within the Hong Kong waters that the proposed Launches comply with the mandatory requirements and specifications set out in Part 1 of Schedule 3. All costs incurred for the demonstration shall be at the expense of the Tenderer concerned. A Tenderer's failure to carry out the demonstration within 7 calendar days after the request by the Government or failure to demonstrate that the proposed Launches comply with the mandatory requirements and specifications set out in Part 1 of Schedule 3 will be disqualified.
- (e) Subject to paragraph 2(g) below a tender may not be considered if any document required in paragraph 2(c) above is missing at the time of opening of tenders or any information or proposal required to be completed in or accompanied with any such document is missing. Alternatively, a Tenderer who has failed to provide any such document or information or proposal at the time of opening of tenders may be requested to submit the missing item pursuant to paragraph 5 below. To avoid any potential disqualification or delay, Tenderers are urged to ensure that a complete set of documents, all duly completed and compiled as required in paragraph 2(c), is submitted at the time of submission of their tenders.
- (f) All proposals, information and responses from Tenderers must be submitted in writing.
- (g) Notwithstanding anything in these Terms of Tender to the contrary, **a Tenderer who fails to submit a signed Offer to be Bound based on the form set out in Part IV of the Tender Documents or submit the Schedule 1 containing the price quotation for the Services will be disqualified** and no request for late submission will be made during the evaluation stage.

3. Tenders to Remain Open

- (a) Tenders shall remain open for acceptance by the Government on the terms and conditions set out in the Tender Documents for not less than **180 days** after the Tender Closing Date ("Tender Validity Period").
- (b) All Tenders must be deposited in the manner as prescribed in the Lodging of Tender on the cover page of the Tender Documents before 12:00 noon on the Tender Closing Date (Hong Kong time). Without prejudice to the rights and powers of the Government under paragraph 5 below, **late Tenders will not be considered.**

- (c) In case a rainstorm black warning or tropical cyclone signal No. 8 or above is hoisted for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the Tender Closing Date as originally scheduled, the Tender Closing Date will be extended to 12:00 noon (Hong Kong time) on the first working day after that date (Hong Kong time) when the above-mentioned adverse weather event is lowered before 9:00 a.m. (Hong Kong time) on that day.

4. Charges

- (a) The Charging Rates to be quoted by Tenderers in Schedule 1 are to be denominated in Hong Kong dollars. Such Charging Rates shall be inclusive of all amounts chargeable by the Tenderer for the Services. Any discount which may be offered by the Tenderer shall also be specified and indicated clearly as to whether the Charging Rates include or exclude such discount. In the absence of any such indication, the Government shall deem that the quoted Charging Rates exclude such discount.
- (b) If, at the request of the Contractor which is acceded to by the Government Representative, assistance of any Government staff is provided after normal working hours (i.e. on Mondays to Fridays, outside the hours of 9 a.m. to 5 p.m. (Hong Kong time) or any time Saturday or Sunday), the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.
- (c) The Charging Rates quoted in the Tender must remain valid as the maximum chargeable rates per month/hour throughout the duration of the Contract. No request for price variation will be considered during the Contract Period.
- (d) Tenderers should make certain the Charging Rates quoted are accurate before submitting their Tenders. Under no circumstances will the Government be obliged to accept any request for price adjustment. If the Government rejects such request, the Tenderer shall be bound by its original price proposal set out in its Tender.

5. Seeking of Clarification

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

- (a) clarification of any part of the Tender is necessary; or
- (b) certain document or information or proposal is missing in the Tender (including without limitation any of the documents requested in paragraph 2(c) above but excluding those mentioned in paragraph 2(g) above),

it may, but not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the missing item. Each Tenderer shall thereafter within seven (7) calendar days or such other period as specified in the Government's request submit such clarification or item. Tenders may not be considered if the requested clarification or item is not provided as required by the deadline, or in the case of request for clarification, the clarification provided is not satisfactory to the Government. As an alternative to seeking clarification or submission, the Government may, as its discretion, proceed to evaluate the Tender on an as is basis or disqualify the Tenderer, depending on the importance of the missing item to the Government.

6. Tenderer's Counter-Proposal

- (a) By submitting their Tenders, all Tenderers in their capacity as Tenderer agree to comply with and observe all parts of the Tender Documents which relate to all matters concerning or relating to this Invitation to Tender, including without limitation all provisions in the Terms of Tender, the Interpretation, and the Offer to be Bound. Unless acceptable to the Government, none of such terms and conditions may be varied, and any counter-proposal from a Tenderer to vary any such term or condition will be ignored, or otherwise will entitle the Government to disqualify the Tenderer concerned.
- (b) The successful Tenderer is required to accept all terms and conditions in the Tender Documents which form part of the Contract on an as is basis. Unless otherwise acceptable to the Government, a counter-proposal by a Tenderer to any such term and condition will either be ignored, or entitles the Government to disqualify the Tenderer concerned.

7. Tender Assessment

- 7.1 The Tenders will first be checked for completeness. **A Tenderer who fails to submit a signed Offer to be Bound or the price proposal in Schedule 1 will be disqualified.** In all other cases, further request for clarification or submission of missing item may be made, but strictly in accordance with paragraph 5 above.
- 7.2 Each Tender will then be checked for compliance with the mandatory requirement as follows:
 - (a) the proposed Launches comply with the specifications and requirements set out in Part 1 of Schedule 3; and
 - (b) the Tenderer is the owner of the proposed Launches, or the Tenderer has, under a legally binding agreement agreed with the owner to enter into a purchase agreement or a lease agreement, whereby the Tenderer is to acquire the property in or the right to use the proposed Launches for, inter alia, carrying out the Services throughout the Contract Period.

If the Tenderer fails to comply with any of these mandatory requirements, its Tender will be considered non-conforming and will not be further assessed.

7.3 For those Tenderers meeting the mandatory requirements specified in paragraph 7.2, price will be the sole determinant for assessment and selection. Subject to other provisions in these Terms of Tender, the Tenderer who offers the lowest Estimated Total Contract Value will normally be awarded with the Contract.

8. Acceptance

- (a) The successful Tenderer will be notified within 180 days from the Tender Closing Date (such notification is referred to as “Conditional Acceptance of Tender”). Upon receipt of such Conditional Acceptance of Tender, the successful Tenderer shall be obliged to deliver to the Government the following items within 21 days of the notification (or such later date as the Government may allow):
- (i) the contract deposit as required under paragraph 15.6;
 - (ii) copies of the insurance policies required in Clause 14 of the Conditions of Contract and receipts evidencing payment of premium thereunder; and
 - (iii) modify the proposed Launches to ensure that they comply with all those requirements and specifications specified in Part 2 of Schedule 3 to the satisfaction of the Government Representative. If the Government Representative is not satisfied that the proposed Launches are in compliance with such requirements and specifications, he may, in his absolute discretion, require the Contractor to carry out modification or further modification. Failure of the Contractor to modify the proposed Launches to the satisfaction of the Government Representative within the aforesaid 21-day period or such longer period as the Government may allow shall mean that the Tenderer has failed to fulfil this condition.
- (b) **Only upon receipt by the Government of the item(s) specified in paragraph 8(a) from the successful Tenderer in accordance with that paragraph, and the Government being satisfied with these item(s), the Government will enter into the Contract with the successful Tenderer by issuing the Memorandum of Acceptance pursuant to paragraph 8(c) 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 or as the parties may agree). In the event that the successful Tenderer fails to provide the item(s) mentioned in paragraph 8(a) (unless and save to the extent they are waived by the Government, if any), 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. Without prejudice to other rights and claims of the Government at law, the disqualified Tenderer shall be responsible for the difference in the Tender price

submitted by that Tenderer and the eventual contractor who will be awarded the Contract whether appointed pursuant to this Invitation to Tender exercise or another subsequent invitation exercise.

- (c) The successful Tenderer who has complied with paragraph 8(a) 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 V 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 each of the documents constituting the Contract will be attached to the Memorandum of Acceptance for record.
- (d) 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 pursuant to paragraph 8(c) above to the successful Tenderer, there is to be no binding Contract with that Tenderer.

9. Offers to be Binding

- (a) All parts of the Tender submitted and offered by the Tenderer, if and to the extent accepted by the Government, will be binding on the Tenderer.
- (b) Without prejudice to other rights and powers of the Government, should it be found on examination by the Government after the Tender Closing Date that a Tenderer has made a genuine unintentional error in the figures stated in its Tender that may have a significant effect on the Tender, further clarification may be sought by the Government pursuant to paragraph 5 above. Nothing herein shall prejudice the Government's power to seek clarification under paragraph 5 or its power to negotiate with any Tenderer under paragraph 10.

10. Negotiation

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

11. Saving

- (a) Notwithstanding anything herein to the contrary, the Government is not bound to accept any conforming Tender or the lowest Tender. Ultimately, an award, if any, will be made to the Tenderer, who in the view of the Government, will be fully capable of undertaking the Contract and whose Tender is determined by the Government to be the most advantageous.

- (b) The Government reserves the right to cancel this Invitation to Tender with or without cause.
- (c) Upon cancellation of this Invitation to Tender, the Government reserves the right to re-issue the Invitation to Tender (on such terms and conditions as it considers fit), or directly appoint another contractor to take up the Services (through whatsoever means whatsoever and howsoever), or to itself undertake the Services internally within the Government.
- (d) The Government reserves the right to accept all or any part of any Tender at any time within the Tender Validity Period.
- (e) The Government reserves the right to disqualify a Tenderer on grounds include:
 - (i) a petition is presented or a proceeding is commenced or an order is made or a resolution is passed for the winding up or bankruptcy of the Tenderer; or
 - (ii) in the sole judgment of the Government Representative, the Tenderer is not considered fit and proper to provide the Services; or
 - (iii) the Tenderer has knowingly or recklessly made a false inaccurate or incomplete statement or representation in the Tender, or has submitted a forged document, or has made a promise or a proposal knowing that it will not be able to fulfil or deliver such promise or proposal; or
 - (iv) the Tenderer was in material breach of its obligations under any contract awarded by the Director of Agriculture, Fisheries and Conservation on behalf of the Government.
- (f) All information, statistics, forecasts and projections provided by the Government in connection with this Invitation to Tender (including those set out in the Tender Documents) (collectively “Information”) are for reference only. The Government gives no warranty, representation or undertaking as to their accuracy, reliability or completeness. The Government accepts no liability whatsoever for (i) the accuracy, completeness or reliability or otherwise of any such Information; and (ii) any claim, legal proceeding, liability, loss (including any direct or indirect loss, and any loss of revenue, profit, business, contract or anticipated savings) or damage (including any direct, special, indirect or consequential damage of any nature whatsoever); and (iii) any increased costs and expenses, which any Tenderer or any other person may sustain or incur, arising from its reliance on any Information.

12. Provision of Services

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

13. Addendum

The Government may issue addendum to the terms and conditions set out in the Tender Documents before or after the Tender Closing Date. If such addendum is issued after the Tender Closing Date, Tenderers may be asked to confirm compliance with the addendum, failing which they may be disqualified.

14. New Information Relevant to Qualified Status

Tenderers should 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.

15. Financial Vetting

15.1 Financial vetting will be conducted on the Tenderers if the estimated total contract value under Contract Schedule 1 exceeds HK\$5,000,000. Tenderers have to demonstrate their financial capability to undertake and fulfil the contractual obligations before they can be considered for the award of contract.

15.2 The Tenderers must, if requested by the Government, submit the following documents and information to demonstrate their financial capability within 7 calendar days of the Government's written request (or such other period as specified in the request):

(a) Financial statements:

(i) The Tenderer must submit audited financial statements for the past 3 financial years. If the Tenderer is an unincorporated entity (such as sole proprietor, partnership or unincorporated joint venture), and no audited financial statements are available, the Tenderer may submit unaudited financial statements for the past 3 financial years supplemented by tax assessment records for the same period.

(ii) If the Tenderer is a joint venture or partnership, audited financial statements for each member of the joint venture or partnership for the past 3 financial years must be submitted in addition to the financial statements of the Tenderer.

(iii) If the Tenderer is a subsidiary of another company, audited consolidated financial statements of the ultimate holding company for the past 3

financial years must be submitted in addition to the financial statements of the Tenderer.

- (iv) If the latest financial statements submitted under sub-paragraphs (i) to (iii) above are made up to a date earlier than 12 months before the date of submission of the Tender, the Tenderer must also submit unaudited financial statements that covers the period commencing on the date immediately following the last financial year end date and ending on a date not earlier than 3 months before the date of submission of the Tender.
 - (b) Projected income statements and cash flow statements of the Contract and of the Tenderer for each contract year during the Contract Period, showing the revenue, operating expenses, capital expenditure and the source of finance, such as upfront investment and/or debt financing.
 - (c) Original letter(s) from the Tenderer's bank(s) confirming:
 - (i) credit facilities available to the Tenderer;
 - (ii) unutilized balances of the credit facilities as at a date not earlier than one week prior to the date of submission of the Tender; and
 - (iii) any commitment to provide credit facilities for the Contract.
 - (d) Information on any contingent liabilities and outstanding or pending litigations involving the Tenderer which could be material to the financial condition or ability of the Tenderer to perform its obligations under this contract.
 - (e) Description and amount of all Government contracts on hand.
 - (f) Description and amount of any other tenders outstanding that have been submitted to the Government.
 - (g) Information on any commitments under other contracts which are relevant to the ability of the Tenderer to undertake the obligations under this Contract.
- 15.3 The audited financial statements to be submitted under paragraph 15.2(a) must comply with the following requirements:
- (a) The originals (or copies certified by the auditors) of the audited financial statements must be submitted.

- (b) The financial statements must contain the directors' report, auditors' report, balance sheet, income statement, statement of changes in equity, cash flow statement and notes to the accounts.
 - (c) All financial statements must have been audited by certified public accountants (practising) or, for a non-Hong Kong company, by auditors recognised in the jurisdiction in which the company is registered.
- 15.4 The unaudited financial statements and projected income statements and cash flow statements to be submitted under paragraphs 15.2(a) and (b) must be certified by a director/managing partner/sole proprietor of the Tenderer.
- 15.5 The Tenderer must provide such further information and explanation within a reasonable time as may be required by the Government for the purposes of the financial vetting.
- 15.6 The successful Tenderer will be required to pay:
- (a) a contract deposit equal to 2% of the estimated total contract value specified in Schedule 1 for the entire Contract Period pursuant to Clause 25(a) of the Conditions of Contract if it passes the financial vetting or the estimated total contract value does not exceed HK\$5,000,000; or
 - (b) without prejudice to the right of the Government to disqualify the Tenderer, a contract deposit equal to 5% of the estimated total contract value specified in Schedule 1 for the entire Contract Period if any of the following situations applies:
 - (i) where the successful Tenderer is a newly established company;
 - (ii) where the information available is inadequate for a meaningful financial vetting to be conducted;
 - (iii) where the successful Tenderer has failed the financial vetting; or
 - (iv) in any other circumstances where the Government considers appropriate.

16. Documents of Unsuccessful Tenderers

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

17. Complaints About Tender Process or Contract Award

The Tender process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Director of Agriculture, Fisheries and Conservation. The Tenderer shall lodge the complaint before disposal of documents of unsuccessful Tenderers which shall be within 3 months after the award of Contract.

18. Personal Data Provided

- (a) 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.
- (b) A Tenderer acknowledges and consents and has ensured that the relevant individual to whom the personal data has acknowledged and consented that the personal data provided in the Tender may be disclosed to other government departments or public bodies or such other person as the Government considers appropriate having due regard of the purposes mentioned in paragraph 18(a) above.
- (c) Tenderers (or the individual to whom the personal data belongs) have the right of access and correction with respect to personal data as provided for in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of this Invitation to Tender, including the making of access and corrections should be addressed to Personal Data Privacy Officer of the department issuing the Invitation to Tender.

19. Consent to Disclosure

For the purposes of this Invitation to Tender, including without limitation for evaluation and processing purposes, and for all other purposes arising from or incidental to this Invitation to Tender (including resolution of any dispute arising from this Invitation to Tender), the Government shall have the right (but no obligation to whomsoever) to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information concerning any of the Tenderers or the Tender submitted by that Tenderer, without any further reference to that Tenderer, the name and address of the successful Tenderer, particulars of the Services awarded to the successful Tenderer, the Charging Rates quoted in its Tender, the estimated total contract value and the date of award of the Contract. Nothing herein shall be construed to prejudice the Government's power to make disclosure of information including without limitation under circumstances as follows: (a) if required by laws or by a court of Hong Kong; (b) if the information is already public knowledge or known to the recipient and in this regard, all contents of the Tender Documents shall be deemed as such; or (c) the disclosure is made within the Government or other public bodies or to its advisers, consultants, lawyers and auditors.

20. Contractors' Performance Monitoring

Tenderers are advised that should they be awarded the Contract their subsequent performance will be monitored and may be taken into account when their future tenders/quotations are evaluated. A Tender will be rejected if as at the Tender Closing Date, the Tenderer is under suspension from participating in Government invitation to quotations or tenders exercises.

21. Costs of preparing the Tender

Under no circumstances whatsoever shall the Government be responsible for or liable to any Tenderer for the costs and expenses incurred by it in preparing and submission of the Tenders or for conducting the demonstration specified in paragraph 2(d) above.

22. Offering Gratuities

The Tenderer shall not and shall ensure that his employees, agents and sub-contractors 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 paragraph by the Tenderer shall, without affecting the Tenderer's liability for such breach or non-compliance, invalidate its Tender.

23. Anti-collusion

- (a) By submitting a tender, a Tenderer is regarded to have represented and warranted to the Government that in relation to the invitation to tender:
 - (i) it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its tender;
 - (ii) it has not fixed and will not fix the amount of any price submitted in its tender by arrangement with any person;
 - (iii) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a tender; and
 - (iv) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the process of offering tender.
- (b) In the event that a Tenderer is in breach of any of the representations and/or warranties in paragraph 23(a), the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

- (i) reject the Tenderer's tender;
 - (ii) if the Government has accepted the tender, withdraw its acceptance of the tender; and
 - (iii) if the Government has entered into the contract with the Tenderer, forthwith terminate the contract.
- (c) 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 in paragraph 23(a).
- (d) A breach by a Tenderer of any of the representations and/or warranties in paragraph 23(a) may prejudice its future standing as a Government contractor or tenderer.
- (e) Paragraph 23(a) 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.
- (f) The rights of the Government under paragraphs 23(b) to 23(d) are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

24. Enquiry

- (a) Any enquiries from the Tenderer concerning these Tender Documents up to the date of lodging their Tenders with the Government shall be in writing and shall be submitted 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 Enforcement Section
(Attn: Mr. WO King-tai)
Facsimile: (852) 2314 2866
- (b) Tenderers shall note that after the Tender Closing Date and before the award of the Contract, they shall not attempt to initiate any contact, whether direct or indirect, with the Government on matters relating to the Tender Documents or their submitted Tenders. Any Tenderer who fails to observe this requirement may render its Tender being disqualified. The Government reserves the sole right to initiate any contact with Tenderers and all such contacts and subsequent responses from Tenderers shall be made in writing.

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

25. Briefing session

- (a) A tender briefing session will be held on this tender invitation. 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: 3:00 pm

Date: 20 March 2014 (Thursday)

Venue: Conference Room 615

6/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 Appendix before 13 March 2014.

- (b) Each Tenderer is advised to send no more than two representatives to attend the tender briefing session due to limited seating capacity.

PART III
CONDITIONS OF CONTRACT

1. Contract Period

- (a) The Contract shall be for a term of 24 months commencing from 1 July 2014 to 30 June 2016, both dates inclusive, or such other date as specified in the Memorandum of Acceptance, unless or until earlier terminated or extended in accordance with Clause 1(b).
- (b) The Government shall have the option to extend the Contract Period for additional period(s) of not more than 6 months in aggregate. The Government shall be entitled to exercise such option, not less than 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.
- (c) There is no limit on the number of time the Government exercises its option to extend or the period of each extension pursuant to Clause 1(b) provided that the maximum extended period(s) (excluding the original period of 24 months) do not exceed 6 months.
- (d) Upon the Contract Period is extended pursuant to Clause 1(b), 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. Contractor's Obligations

- (a) The Contractor shall throughout the Contract Period lease to the Government two Launches complying with all specifications and requirements set out in Schedule 3 and all applicable laws and regulations including the Merchant Shipping (Local Vessels) Ordinance (Chapter 548 of the Laws of Hong Kong).
- (b) The Contractor shall provide at least such number of crew members as specified in Clause 9 to navigate and operate the Launches in accordance with the instructions of the Government Representative and the officers on board of the Launches.
- (c) The Contractor shall maintain the Launches in a clean, tidy and efficient operational condition to the satisfaction of the Director of Agriculture, Fisheries and Conservation and shall at its cost be responsible for the procurement all labour, spare parts, consumables, and fuel to be used in navigating, operating and maintaining the Launches.

- (d) The Contractor shall carry out all necessary repairs or other works, and if any of the Launches is no longer fit for Services, replace it with another one which complies with all requirements and specifications set out in Schedule 3, in accordance with Clauses 11 and 12.
- (e) The Government as lessee shall be entitled to unrestricted possession and usage of the Launches. Without prejudice to the generality of the foregoing, any person from time to time authorised by the Government, or the Director of Agriculture, Fisheries and Conservation may board the Launches without any restriction whatsoever.
- (f) The Contractor shall make no changes in the structure of the Launches without the prior written consent of the Director of Agriculture, Fisheries and Conservation. The Director of Agriculture, Fisheries and Conservation shall, from time to time be entitled to put in place such special arrangements on the Launches for special Government functions or operations as the Director of Agriculture, Fisheries and Conservation shall deem fit and the Contractor shall give all necessary assistance and facilities for such special arrangements.

3. Services to be provided by the Contractor

- (a) The Contractor shall provide and operate two patrol launches with crew during the Contract Period to provide launch services for use by the Government in Hong Kong waters (as defined in the Interpretation and General Clauses Ordinance, Chapter 1 of the Laws of Hong Kong, “Hong Kong Waters”) in accordance with the provision of this Contract.
- (b) For the purpose of this Contract, the “launch” or the “launches” shall mean the launch or launches as specified in the Contract Schedule or the replacement launch or launches provided pursuant to Clauses 2, 11 and 12 hereof.

4. Normal Working Time

During the Contract Period, the Contractor shall keep the Launches ready for use by the Government at the working time specified in Part B of Schedule 2 (the “Normal Working Time”).

5. Services Rendered Outside Normal Working Time

- (a) Should any of the Launches be required by the Government for Services outside the Normal Working Time, notice of the requirement will be given by the Government Representative or his nominee to the Contractor and such Services must be performed and carried out by the Contractor as specified in the notice. Services required under this clause shall commence and be completed at such times as the Government Representative or his nominee may direct.
- (b) For general information only, the estimated Services rendered outside the Normal Working Time is an annually of 50 hours.

6. Contractor's Warranties and Undertakings

The Contractor warrants and undertakes to the Government that throughout the Contract Period: -

- (a) the Contractor shall carry out the Services with all due diligence and in a proper, skilful and professional manner and shall perform the Services to the satisfaction of the Director of Agriculture, Fisheries and Conservation;
- (b) the Launches shall comply with all requirements and specifications set out in Schedule 3, and all applicable laws and regulations;
- (c) the Contractor shall keep the Director of Agriculture, Fisheries and Conservation informed of all matters relating to the Services and shall answer all reasonable enquiries made by the Director of Agriculture, Fisheries and Conservation;
- (d) the Contractor shall comply with all applicable laws and regulations in the provision of the Services, including the paying of all fees or levies and obtaining and renewing all necessary licences or permits;
- (e) the Contractor shall comply with all reasonable instructions and directions in all matters relating to the Contract as the Director of Agriculture, Fisheries and Conservation may from time to time issue to the Contractor;
- (f) the Contractor shall take all necessary measures to ensure the safety of all persons aboard or otherwise coming upon or near the Launches;
- (g) in the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of the Services and whether there be a claim

for compensation or not, the Contractor shall within seven clear working days give notice in writing of such injury or death to the Director of Agriculture, Fisheries and Conservation;

- (h) the Contractor shall comply with the Employment Ordinance (Cap. 57), Mandatory Provident Fund Schemes Ordinance (Cap. 485), Employee's Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap. 115) and other applicable laws in the employment of its staff for the performance of the Contract or other Government contracts;
- (i) in relation to the Launches provided by it for performing the Services, the Contractor is either the beneficial owner with valid certificate of ownership issued pursuant to Cap. 548D, or the lessee under valid and subsisting lease agreement granted by the lawful owners of the Launches; and
- (j) the Offer to be Bound has been duly executed by the Contractor; and the Contract constitutes valid, binding and enforceable obligations of the Contractor in accordance with its terms.

7. Service Area and Reporting and Releasing Place

- (a) The Government may require the Launches to be navigated in any navigable areas within Hong Kong Waters as the Government Representative or his nominee may specify from time to time (including the officer on board of the Launch).
- (b) The Launches shall report to the Government at the time and place as may be specified by the Government Representative or his nominee, and may be released to the Contractor at any place within Hong Kong Waters.

8. Safety of Operation

- (a) The Contractor undertakes and warrants that the coxswain and crew employed, engaged or provided by it in the Launches shall:
 - i. use all proper and professional skill, care and diligence in the management, maintenance, navigation, operation and control of the Launches;
 - ii. take special care and precautions to avoid causing danger to the persons on board the Launches or other persons or vessels using Hong Kong Waters and pay special regard to the increasing congested condition of Hong Kong Waters; and

- iii. stay alert, listen to and observe all relevant bulletins regarding the weather and the state of the Hong Kong Waters.

9. Coxswain and Crew

Each of the Launches shall be manned on all voyages with a coxswain who shall be assisted by a minimum of two of competent, duly qualified and trained crew to ensure that all necessary assistance and services are provided to the passengers and the Government efficiently. The Contractor shall ensure that the coxswain and the crew of each of the Launches wear proper and tidy outfits to the satisfaction of the Government Representative or his nominee. In the event that the Government Representative or his nominee is not reasonably satisfied with the conduct and/or performance of the coxswain or any member of the crew of the Launches, the Government Representative or his nominee may give notice thereof to the Contractor requiring the Contractor to arrange for the substitution or replacement of the coxswain or member concerned and upon receipt of such notice, the Contractor shall at its own expense and as soon as practicable arrange to substitute or replace the coxswain or member concerned.

10. Payment

- (a) In consideration of and subject to the provision by the Contractor of the Services strictly in accordance with the terms and conditions of the Contract to the satisfaction of the Government Representative, provided that a proper invoice has been issued, the Government shall, subject further to any Government rights to make deductions or set-off, pay the Contractor in arrears within 30 days after the end of each month of the Contract Period the Monthly Charges in accordance with the following formula:

Monthly Charges payable to Contractor	=	(Monthly rate for Launch 1)
	+	
		(Hourly rate for Launch 1) x (number of hours for Services rendered outside Normal Working Time)
	+	
		(Monthly rate for Launch 2)
	+	
		(Hourly rate for Launch 2) x (number of hours for Services rendered outside Normal Working Time)
	-	

	Such sums the Government is entitled to deduct pursuant to other provisions of the Contract
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- (b) For the purpose of calculating the Monthly Charges in Clause 10(a), payment for the use of, and Services rendered hereunder in respect of any of the Launches outside the Normal Working Time of less than an hour shall be computed as follows: -
- (i) use of Launch and Services rendered for a period of 30 minutes or less shall be paid half of the hourly rate set out in Schedule 1; and
 - (ii) use of Launch and Services rendered for a period of more than 30 minutes shall be paid the full hourly rate.
- (c) Subject to the rights and powers of the Government under the Contract, the Monthly Charges payable by the Government shall be paid within 30 days after receipt by the Government of the Contractor's invoice in respect thereof, or after the due date specified in Clause 10(a), whichever is later. All invoices shall be addressed and despatched in the manner specified in Clause 32. Payment will be made in Hong Kong Dollars.
- (d) For the avoidance of doubt, the Contractor shall not be entitled to any payment other than those set out in Clauses 10(a) and 10(b).

11. Inspection and Replacement

The Government Representative or his nominee may inspect any of the Launches at any time and may require the Contractor to replace the same at no extra cost to the Government if it is considered in his opinion to be unsuitable for this Contract in any respect. The Contractor shall allow and facilitate such inspection free of charge as the Government Representative or his nominee may require. The Government Representative or his nominee may inspect the replacement Launch at any time when replacement is needed. The Contractor shall, ensure that the replacement Launch meets all the requirements and specifications set out in Schedule 3, allow and facilitate such inspection free of charge as the Government Representative or his nominee may require.

12. Replacement due to Maintenance etc.

If for any reason, any of the Launches is withdrawn from service due to maintenance, dry docking or licensing, the Contractor shall forthwith provide and operate a replacement Launch at no extra cost to the Government. The Government Representative or his

nominee may inspect the replacement Launch at any time when replacement is needed. The Contractor shall ensure that the replacement Launch meets all requirements and specifications set out in Schedule 3.

13. Indemnities

13.1 None of the Government, its employees and agents shall be liable in any way for or in respect of:

- (a) any loss of or damage to any of the Contractor's property or that of its employees, agents or sub-contractors howsoever caused whether by any act, omission, default or Negligence of the Government or any of its employees or agents or otherwise (including the Launches and all other equipment located on board of the Launches); or
- (b) any injury to or death of any of the Contractor's employees, agents or sub-contractors save and to the extent any such injury or death is caused by the Negligence of the Government or any of its employees or agents (in which case the Government will be liable or vicariously liable for any such injury or death).

13.2 The Contractor shall indemnify and keep indemnified the Government from and against:

- (a) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted against the Government; and
- (b) all liabilities and indebtedness (including without limitation liabilities to pay damages or compensation), losses, damage, costs and expenses incurred or suffered by the Government (including all legal and other costs, charges, and expenses, on a full indemnity basis, which the Government may pay or incur in initiating, defending, counter-claiming, settling or compromising any action or proceeding by or against the Government),

which in any case arise directly or indirectly from, or in connection with, or out of, or which relate in any way to:

- (i) a breach of any provision of the Contract by the Contractor;
- (ii) any warranty, representation or undertaking made or deemed to have been made by the Contractor in its Tender for the Contract or in the Contract or from time to time in the course of

performance of the Services is incorrect, inaccurate or incomplete; or

- (iii) the negligence, recklessness, or wilful misconduct of the Contractor or of any of its employees, agents or sub-contractors in the conduct of the Services; or
- (iv) any loss, damage, injury or death referred to in Clause 13.1(a) and (b) save and except injury or death caused by the Negligence of the Government or any of its employees or agents; or
- (v) any injury or death of any third party, or any loss of or damage to property sustained by any third party, in consequence of any act, omission, default or negligence of the Contractor or any of its employees, agents or sub-contractors.

13.3 For the purposes of Clause 13.1 and Clause 13.2(iv), but not otherwise 'Negligence' shall have the same meaning given to it in Section 2(1) of the Control of Exemption Clauses Ordinance, Chapter 71 of the Laws of Hong Kong. Each of sub-clauses (i) to (v) in Clause 13.2 shall be construed independently and shall not be limited or restricted by reference to or inference from the terms of any other sub-clauses.

14. Policy of Insurance and Compensation

- 14.1 The Contractor shall, or shall ensure that the owners of the Launches will, effect and keep in force, and renew immediately upon expiry, throughout the continuance of the Contract Period at its cost policies of insurance in relation to the use of the Launches by the Contractor for performing the Services in accordance with the requirements of Merchant Shipping (Local Vessels) Ordinance and its subsidiary legislation (including without limitation section 23D of the said Ordinance and Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice, Cap. 548K) and on such other terms and conditions as shall be required and approved by the Government Representative.
- 14.2 If any of the policies of insurance required under Clause 14.1 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.
- 14.3 The Contractor shall submit to the Government Representative within twenty-one (21) days upon notification by the Government of award of this Contract (or such later date as the Government may allow) two (2) copies each of the said policies

of insurance required under Clause 14.1 together with the receipt for payment of the current premium under each such policy.

- 14.4 The Contractor is responsible for lodging 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.
- 14.5 If the Contractor fails to effect and keep in force any of the insurance policies required under Clause 14.1, 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 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.
- 14.6 The Contractor shall maintain the employees' compensation insurance policy in compliance with the Employees' Compensation Ordinance, Cap. 282 of the Laws of Hong Kong.
- 14.7 In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of this Contract and whether there be a claim for compensation or not, this Contractor shall within seven (7) working days give notice in writing of such injury or death to the Government Representative.

15. Termination and Effects of Termination

- 15.1 Without prejudice to any rights and claims of the Government under the Contract or otherwise at law, the Government shall be entitled to terminate the Contract by giving a 7 calendar days' written notice on the Contractor on the basis that the last day of the Contract Period will be the last day of the 7 days' notice period if any one event mentioned in any of the sub-clauses (a) to (f) below occur:
- (a) the Contractor (i) fails to carry out the whole or any part of the Services; or (ii) fails to carry out the whole or any part of the Services in accordance with the time limits specified in the Contract; or (iii) fails to observe or perform any of the terms and conditions of the Contract; or (iv) fails to pay any of the sums payable by the Contractor under the Contract, and (in the case of a breach capable of being remedied but not otherwise) has failed to remedy the breach to the satisfaction of the Government

Representative within 7 calendar days (or such longer period as the Government Representative may, in its sole discretion, allow) after the issuance by the Government Representative to the Contractor of a request in writing requiring it to do so; or

- (b) the Contractor persistently fails to perform the Services in accordance with any of the requirements set out in the Contract (regardless of whether the failures relate to the same requirement or different requirements); or
- (c) any warranties or undertakings, representations made or deemed to have been made by the Contractor to the Government in the Contract or in its Tender for the Contract or otherwise from time to time during the term of the Contract is untrue, inaccurate or incomplete; or
- (d) the Contractor becomes bankrupt or goes into liquidation or a petition has been filed for the bankruptcy or the winding up of the Contractor otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by the Government Representative in writing or the Contractor has become insolvent or make any composition or arrangement with creditors; or
- (e) the Contractor abandons the Contract in part or in whole; or
- (f) the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract without the prior written consent of Government; or
- (g) the Government is entitled to terminate the Contract pursuant to Clause 18 or 19.

15.2 Upon the Contract is terminated pursuant to Clause 15.1 (“Termination”) or upon expiry of the Contract Period (“Expiry”):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the rights and claims which have accrued to a party prior to the Termination or Expiry;
 - (ii) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any

breach(es) which entitle the Government to terminate the Contract);

- (iii) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination or Expiry and any provisions of the Contract necessary for the interpretation or enforcement of the Contract.
- (b) the Government shall not be responsible for any direct or indirect loss, damage and expense suffered or incurred by the Contractor due to any Termination or Expiry (including any pecuniary, consequential loss or loss of profit);
- (c) in the case of Termination pursuant to Clause 15.1, the Contractor shall be liable for all losses, liabilities, damage, costs and expenses incurred by the Government arising from or in the Termination including the losses specified in sub-clause (d) below;
- (d) the Government may, without prejudice to any accrued rights and claims of Government for breach of the whole or any part of Contract, assign the uncompleted Services to another contractor or contractors or undertake the Services itself whereupon in the case of Termination pursuant to Clause 15.1, the Contractor shall be liable for the contract price payable to such other contractor(s) or the costs incurred by the Government for undertaking such services (as the case may be) in excess of the contract price which would have been payable to the Contractor had the Contract not been terminated;
- (e) if not already done so, the Contractor shall compile and submit to the Government a report of the Services performed up to the date of the Termination;
- (f) in the case of Termination any time prior to the expiry of the Contract Period, the Government shall, subject to sub-clause (g) below and the right of deductions, set-off and counter-claim which the Government may have under the Contract or at law, pay to the Contractor such portion of the Monthly Charges (proportionately on the basis of 30 days a month) as is fairly and equitably payable to the Contractor for such part of the Services performed by the Contractor in the period up to the effective date of Termination (and which remains unpaid pursuant to the payment schedule under the Contract), having regard to the Services actually performed by the Contractor fully and punctually in due accordance with the terms and conditions of the Contract (if any) and

accepted by the Government; and

- (g) in the case of Termination, notwithstanding anything herein to the contrary, and regardless of the cause (the absence thereof) or basis for the Termination, the Government shall have no obligation to pay to the Contractor any money whatsoever including any unpaid portion of the Monthly Charges (save for such portion of the Monthly Charges payable by the Government under sub-clause (f) above (if any)).

16. Government Property

- (a) When Government property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 10% as and for liquidated damages and not as a penalty. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

17. Government Premises / Contractor Premises

- (a) The Contractor shall ensure that all persons engaged by him in carrying out this Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative at all reasonable times.
- (c) The safety of any craft, vessel and vehicle used by the Contractor (including the Launches) and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves in accordance with Clause 13.2.

18. 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 terminate the Contract pursuant to Clause 15.1(g).

19. Corrupt Gifts

If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Cap. 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Government Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.

20. Publicity

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

21. Confidentiality

- (a) The Contractor shall not disclose any information (i) furnished by or on behalf of the Government or by any other person to the Contractor or any of its employees, agents or sub-contractors (collectively "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 21(a) shall not apply to the disclosure of any confidential information:
- (i) 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;

- (ii) 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;
 - (iii) 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;
 - (iv) in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or
 - (v) with the prior consent in writing of the Government.
- (b) Any disclosure permitted under Clause 21(a) (excluding Clause 21(a)(iv) above) shall be in strict confidence and shall extend only so far as may be necessary for the purposes specified in Clause 21(a) and the Contractor shall ensure the confidentiality of any such disclosure by taking appropriate action to restrain or restrict any further disclosure.
- (c) 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.
- (d) 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 21 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 13 as a result of any breach of confidence (whether actionable based on this Contract or at law) by any such persons.
- (e) 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 21.

22. Disclaimer

- (a) 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.
- (b) 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.

23. Recovery of Sums Due

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

24. Relationship of the Parties

- (a) Nothing herein shall be construed as in any way constituting a partnership, agency or joint venture between Government and the Contractor. The Contractor shall not (without the consent in writing of the Government) commit the Government to any obligation whatsoever.
- (b) 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.
- (c) For the avoidance of doubt, the Contractor shall not represent itself as an employee agent or servant of Government.

25. Guarantee

- (a) Within 14 days of the notification to the Contractor of the Conditional Acceptance of the Tender in accordance with paragraph 8(a) of the Terms of Tender, the Contractor shall deposit with the Government an amount equivalent to 2% or 5%

of the estimated total contract value over the entire Contract Period (as required under paragraph 15.6 of the Terms of Tender) as a security for the due and faithful performance and observance of its obligations under the Contract (“Deposit”), to be payable by whichever method as selected by the Contractor in the Offer to be Bound, namely either in cash or in the form of a banker’s guarantee issued by a licensed bank in Hong Kong (acceptable to the Government) in the form set out in Annex hereto (“Bank Guarantee”). Such Deposit shall be non-interest bearing.

- (b) In the event that the Contractor fails to elect which method of providing a Deposit it prefers, it will be assumed that the Contractor will deposit cash with the Government. The Deposit, if in the form of cash, will be retained by the Government, or if in the form of a Bank Guarantee, must remain in force, in either case, from the date of the commencement of the Contract (a) until 7 months after the expiry or early termination of the Contract Period (unless (b) is applicable), or (b) in the case if at the time of expiry or early termination of the Contract Period, all or any of the Contractor’s obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there is any right or claim which has accrued to the Government arising from antecedent breach(es) by the Contractor of the Contract or otherwise accrued to the Government prior to the expiry or termination of the Contract, the date falling twenty-four months after the early termination or expiry of the Contract.
- (c) Notwithstanding the early termination or expiry of the Contract, only upon the expiry of the aforementioned 7 or 24 months’ period (whichever is applicable), the Deposit (if in the form of cash and if any is remaining) will be refunded to the Contractor without interest; or, if in the form of a Bank Guarantee shall be discharged or released but in the case of Bank Guarantee, strictly in accordance with the terms thereof.
- (d) The Government Representative shall have the right to deduct from time to time from the Deposit or call on the Bank Guarantee (irrespective of whether or not a demand for payment has been made against the Contractor) any amount due or payable by the Contractor to the Government under the Contract but which remains outstanding, in such order as the Government in its absolute discretion deems fit. The Deposit (whether in cash or in the form of the Bank Guarantee) may be deducted or called on, 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, or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the Government.

- (e) If any deduction shall be made by the Government from the Deposit or a call shall be made on the Bank Guarantee during the continuance of the Contract, the Contractor shall, within 14 days on demand in writing 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 of and form part of the Deposit and, where applicable, the additional security amount required under Clause 25(a).

26. Assignment

The Contractor shall not, without the written consent of the Government Representative, assign, transfer, sub-contract or otherwise deal with any of its rights 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. Notwithstanding any written consent, the Contractor shall be responsible for all acts, omission, and defaults of its sub-contractors (of whatever tier) and agents (of whatever tier), and the employees and agents of each such sub-contractor and agent as if they were its own acts, omissions or defaults.

27. Entire Agreement and Amendment

- (a) 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.
- (b) 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.

28. Order of Precedence

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

- the Conditions of Contract

- Schedule 3
- the Memorandum of Acceptance
- Schedules 1 and 2
- the Terms of Tender
- the Offer to be Bound
- the Interpretation

29. 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.

30. 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.

31. Non-waiver

Time is of the essence of the Contract but no failure or delay by the Government in exercising any right, power or remedy hereunder shall impair such right, power or remedy or operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any right, power or remedy.

32. Notices

Each notice, demand or other communication given or made under the Contract shall be in writing and delivered or sent to the relevant party at its address or fax number set out below (or such other address or fax number as the addressee has by five (5) days' prior written notice specified to the other party):

To the Contractor: at the correspondence address and fax number as specified in 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 Enforcement Section
(Attn: Mr. WO King-tai)
Facsimile: (852) 2314 2866

Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if delivered by hand, when actually delivered to the relevant address; or (b) if delivered by registered post, on the date it is officially recorded as delivered to the intended recipient by return receipt or equivalent; or (c) if delivered by fax, when dispatched (with confirmed transmission report).

33. Governing Law

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

PART IV
OFFER TO BE BOUND

This Offer to be Bound is submitted by the undersigned in response to the Government's Invitation to Tender (Ref: AFCD/LES/2014/1) for provision of the Services. Unless the context otherwise requires, terms and expressions appearing herein have the meanings given to them in the Tender Documents issued by the Government in connection with the Invitation to Tender.

To: The Government

1. I/We (the "Tenderer") hereby warrant that all information given in or attached to my/our Tender are true, complete and correct.
2. In consideration of the Government agreeing to assess my/our Tender on and subject to the terms and conditions set out in the Tender Documents, I/we, as a Tenderer, agree to be bound by all the terms and conditions in the Tender Documents.
3. Having read and understood all terms and conditions of the Tender Documents, I/we **HEREBY OFFER** (a) to provide the Services on and subject to the terms and conditions set out in the Contract, and our Tender and (b) to be bound by all terms and conditions set out in the Contract.
4. In relation the Deposit required under paragraph 15.6 of the Terms of Tender (as the case may be), I/we will pay the Deposit in cash / by way of the procurement of a Bank Guarantee in the form set out in the Annex.*

* delete the inapplicable part

Signed for and on behalf of the Tenderer: _____

By : _____

Name and Post : _____

Date : _____

Note : All the particulars required above must be provided.

PART V

MEMORANDUM OF ACCEPTANCE

The Invitation to Tender (Ref: AFCD/LES/2014/1) and your Tender submitted in response thereto refer.

On behalf of the Government of the Hong Kong Special Administrative Region of the People's Republic of China,

I _____
(name and position of officer)

accept your Tender for the Contract. The commencement date of the Contract Period shall be _____. A copy of each document constituting the Contract is hereby attached for identification purposes.

Date this _____ day of _____ 2014.

Signed by _____)
_____)
for and on behalf of the Government of _____)
the Hong Kong Special Administrative
Region of the People's Republic of China

in the presence of: _____)
_____)
_____) _____

Contract Schedule

Schedule 1

Item	<u>Launch 1</u>	<u>Launch 2</u>
(a) Launch Name		
(b) Certificate of Ownership No.		
(c) Monthly rate for services during Normal Working Time. (Charge for the services * Note 1 & 2)	HK\$ _____ (i) (per month)	HK\$ _____ (iii) (per month)
(d) Hourly rate for services rendered outside Normal Working Time (Charge for the services * Note 1 & 2)	HK\$ _____ (ii) (per hour)	HK\$ _____ (iv) (per hour)

*** Note 1:** The Contractor is entitled to receive the Monthly Charges of the Launches only when it has performed the Services for all days in a calendar month. Deduction of the Monthly Charges will be made for unavailability of Services, except when the Services are not required as directed by the Government Representative, in accordance with the following calculation:

- (1) 1/30 of the monthly rate for each whole day of unavailability; or
- (2) 1/300 of the monthly rate for each hour of unavailability.

Note 2: The Government shall hire the Launches for a minimum of four (4) hours each time it requires the Services of the Launches outside the Normal Working Time except that the Services are consecutively provided before or after the Normal Working Time.

Signed for and on behalf of the Tenderer: _____

By : _____

Name and Post : _____

Date : _____

Note : All the particulars required above must be provided.

Contract Schedule

Schedule 1

Estimated Total Contract Value [see Clause 5(b) of Conditions of Contract]:

Sum of Launch 1: (i) x 24 months + (ii) x 100 hours = HK\$ _____

Sum of Launch 2: (iii) x 24 months + (iv) x 100 hours = HK\$ _____

Estimated Total Contract Value:

Sum of Launch 1 + Sum of Launch 2 = HK\$ _____

Signed for and on behalf of the Tenderer: _____

By : _____

Name and Post : _____

Date : _____

Note : All the particulars required above must be provided.

Contract Schedule

Schedule 2

A) Details of Tenderer

Name of the Tenderer in English:	
Name of the Tenderer in Chinese:	
Business Status of the Tenderer:	a sole proprietorship / a partnership / a company*
Business Address in Hong Kong:	
Correspondence Address in Hong Kong (if different from above):	
Business Registration Number:	
Employees Compensation Insurance Policy:	Policy No:
Name of insurance company:	Insurance Period:
Contact Person:	Tel No.:
Fax No.:	Date:

*delete where inapplicable

B) Details of Launch

The Tenderer certifies and warrants that the Launches particularized below be provided for the Services under the Contract and that each of the Launches complies in all respects with the requirements and specifications set out in Part 1 of Schedule 3 as at the date of submission of its Tender and will comply with such requirements and specifications throughout the Tender Validity Period and the Contract Period:

	<u>Launch 1</u>
<u>Services Required:</u> <i>Working Time</i>	<i><u>Mondays – Sundays:</u></i> <i>- A continuous 10 hours duration daily, on irregular hours and ad hoc basis;</i> <i>(Including public holidays and any period during which strong monsoon signal, rainstorm signal, tropical cyclone warning signals no.1 or no.3 and thunderstorm warning are valid)</i>
Name of Launch	
Certificate of Ownership No. & Expiry Date	
Length (m) & Breadth (m)	
Service speed (knots)	
Carrying Capacity (excluding crew)	
Number of Engines	
Total engine horse power	
Third Party Insurance Policy Certificate No. & Expiry date	

	<u>Launch 2</u>
<u>Services Required:</u> Working Time	<u><i>Mondays – Sundays:</i></u> <i>- A continuous 10 hours duration daily, on irregular hours and ad hoc basis;</i> <i>(Including public holidays and any period during which strong monsoon signal, rainstorm signal, tropical cyclone warning signals no.1 or no.3 and thunderstorm warning are valid)</i>
Name of Launch	
Certificate of Ownership No. & Expiry Date	
Length (m) & Breadth (m)	
Service speed (knots)	
Carrying Capacity (excluding crew)	
Number of Engines	
Total engine horse power	
Third Party Insurance Policy Certificate No. & Expiry date	

Remarks:

Please attach to this Schedule 2 two colour photographs in 3R size showing full view of the Launches, copies of approved layout drawings or plan for modification (if any), photocopies of the Launches' licences and crew certificates and other documents relevant to the proposed Launches.

C) Details of Crew Members

	Crew Member 1	Crew Member 2
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competence No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*		
Expiry date		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours.

*** to be filled-in as applicable**

	Crew Member 3	Crew Member 4
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competence No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*		
Expiry date		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours.

*** to be filled-in as applicable**

	Crew Member 5	Crew Member 6
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competence No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*		
Expiry date		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours.

*** to be filled-in as applicable**

	Crew Member 7	Crew Member 8
Name:		
Position:		
HK Identity Card No.:		
Monthly salary:		
Working hours and conditions:		
Certificate of Competence No.:		
Year of issuance:		
Grade of certificate:		
Radar observer certificate No.:		
Year of issuance:		
Issuance institute:		
Workman compensation insurance policy certificate no.*		
Expiry date		
Relevant working experience & Salary per month:		

Remarks

1. In respect of each of the proposed crew member, please submit photocopies of his Hong Kong Identity Card, Certificate of Competency, and Radar Observer Certificate (if applicable). The Government may require the Tenderer to produce the original documents for inspection.
2. Under normal circumstance, each shift of the crew shall not be more than 12 hours.

*** to be filled-in as applicable**

Contract Schedule

Schedule 3

Part 1 – “Mandatory”

<i>Item</i>	<i>Launches Requirements and Specifications</i>	<i>Status (Note 1)</i>
1.	- <i>have a valid operating licence issued under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D of the Laws of Hong Kong);</i>	<i>Mandatory</i>
2.	- <i>have a valid certificate of survey issued under the Merchant Shipping (Local Vessels) (Safety and Surveys) Regulation (sub. leg. G of Chapter 548 of the Laws of Hong Kong)</i>	<i>Mandatory</i>
3.	- <i>have an approved passenger carrying capacity of not less than 20 persons and shall provide seats with backrests for all passengers;</i>	<i>Mandatory</i>
4.	- <i>have a normal service speed of not less than 20 knots (Note 2);</i>	<i>Mandatory</i>
5.	- <i>carry on board sufficient approved type of fire fighting and life saving equipment and appliances in good working condition as required for or by the licence of the Launch;</i>	<i>Mandatory</i>
6.	- <i>carry on board a standard first aid box placed inside the cabin;</i>	<i>Mandatory</i>
7.	- <i>have a ship’s length of not less than fifteen (15) metres, the maximum loaded draft of not more than 2 metres and the wheel house deck should not less than 2.5 metres above sea level at the maximum loaded draft;</i>	<i>Mandatory</i>
8.	- <i>be equipped with air-conditioning system inside the cabin;</i>	<i>Mandatory</i>
9.	- <i>be equipped with a functional marine VHF radio with channels 6, 10, 11, 12, 13, 14, 16, 60, 62, 64, 67, 68, 71, 73 and 74</i>	<i>Mandatory</i>
10.	- <i>be equipped with a set of mobile telephone;</i>	<i>Mandatory</i>
11.	- <i>be equipped with a fully operational radar of a type approved by the Director of Marine and installed a radar</i>	<i>Mandatory</i>

	<i>reflector over the deck house or at an appropriate position to enhance the radar detection by the other vessels;</i>	
12.	- <i>be equipped with a magnetic compass;</i>	<i>Mandatory</i>

Part 2 – “Modification”

<i>Item</i>	<i>Launches Requirements and Specifications</i>	<i>Status (Note 1)</i>
1.	<p>- <i>be manned by a coxswain and a sufficient number (to the satisfaction of the Government Representative) of competent, duly qualified and trained crew at all levels who shall be:</i></p> <ul style="list-style-type: none"> - <i>duly qualified and certificated where applicable; and</i> - <i>with a minimum of 5 years’ experience in the safe and efficient operation of the Launch.</i> <p><i>The said crew shall include:</i></p> <ul style="list-style-type: none"> - <i>a person who is the holder of a valid local certificate of competency as coxswain;</i> - <i>a person who has satisfactory completed a radar training course approved by the Director of Marine ;and</i> - <i>a person who is the holder of a valid local certificate of competency as engine operator; or</i> - <i>a person who is the holder of both certificates if the Launch is permitted to be operated by a combined coxswain and engine operator.</i> <p><i>In addition, the said crew should wear tidy clothing as follows:</i></p> <p><i>Summer: Long deep blue trousers and short sleeved white/light blue shirt;</i></p> <p><i>Winter: Long deep blue trousers, long sleeved white/light blue shirt and deep blue overcoat;</i></p> <p><i>Working clothing: White or dark blue boiler suit;</i></p> <p><i>Shoes: Black shoes.</i></p>	<i>Modification</i>
2.	- <i>be equipped with a properly lashed chair for the Agriculture, Fisheries and Conservation Department Officer for keeping proper look-out, and a retractable board/desk for paper work of size about 46(L) cm x 30(W) cm</i>	<i>Modification</i>

3.	- <i>be equipped with a set of Differential Global Positioning System; the data of the DGPS shall be incorporated into the ENC;</i>	<i>Modification</i>
4.	- <i>be equipped with a set of echo sounder;</i>	<i>Modification</i>
5.	- <i>be equipped with a portable loud hailer;</i>	<i>Modification</i>
6.	- <i>be equipped with 3 spare socket for electricity supply of 220 Volts AC and 24 Volt DC for miscellaneous equipment;</i>	<i>Modification</i>
7.	- <i>be equipped with a torch provided with batteries;</i>	<i>Modification</i>
8.	- <i>be equipped with emergency backup power for lighting, communication devices and main engines;</i>	<i>Modification</i>
9.	- <i>be equipped with a pair of binoculars in 7 x 50 magnitude;</i>	<i>Modification</i>
10.	- <i>be equipped with a fixed office desk not less than 1 m in width x 1.5 m in length, with a properly lashed chair and desk light, and a fixed cupboard for not less than 12 standard size file holders;</i>	<i>Modification</i>
11.	- <i>be equipped with at least 2 drawers of about 350 x 500 x 150 mm in size;</i>	<i>Modification</i>
12.	- <i>be equipped with an position-adjustable light, with dimmer switch and cap, which enables the patrol officer to do the paper work near the console area;</i>	<i>Modification</i>
13.	- <i>be equipped with a microwave oven, refrigerator and water dispenser with sufficient distilled water for daily consumption;</i>	<i>Modification</i>
14.	- <i>be equipped with a set of updated charts and harbour plan covering the waters of Hong Kong and a set of parallel ruler and dividers;</i>	<i>Modification</i>
15.	- <i>be equipped with a set of flags as required by local regulations;</i>	<i>Modification</i>

16.	- <i>be equipped with a fixed search light, manually adjustable by person within the wheel, with a power of 500W or above and a portable & rechargeable cordless search light of not less than 500,000 candle power(cp);</i>	<i>Modification</i>
17.	- <i>be equipped with a toilet with flushing system and washing basin with freshwater supply;</i>	<i>Modification</i>
18.	- <i>maintain the Launch hull in the colour of grey, black and white and the similar physical appearance of an Agriculture, Fisheries and Conservation Department patrol launch;</i>	<i>Modification</i>
19.	- <i>display the words “On Hire to Government of HKSAR” and “香港特別行政區政府租用” in a prominent position on both sides of the Launch whilst on hire. On the contrary, it should be fully covered whilst not on hire;</i>	<i>Modification</i>
20.	- <i>be in neat, clean and acceptable conditions to the satisfaction of the Government Representative.</i>	<i>Modification</i>
21.	- <i>The words “漁農自然護理署”, “AFCD”, “FISHERIES + number (to be assigned by the Government Representative)” and the logo of Agriculture, Fisheries and Conservation Department should be printed on the Launches and should also be fully covered whilst not on hire; and</i>	<i>Modification</i>
22.	- <i>The government accepts no liability for any loss or damage whatsoever arising from or related to the use of the Launch whilst not on hire.</i>	<i>Modification</i>

Notes:

1. Status

Mandatory: *The Tenderer’s proposed Launches must comply with these requirements and specifications at the time of submission of Tender and throughout the Tender Validity Period, failing which its Tender will not be considered further.*

Modification: *The successful Tenderer shall, within 21 calendar days as specified in paragraph 8(a) of the Terms of Tender, modify the proposed Launches to ensure that they comply with all those requirements and specifications with “Modification” status.*

2. Criteria of speed test to determine if item 4 is complied with by the proposed Launches which may be carried out by the Government as part of the assessment and from time to time to determine the continued compliance by the Launches (or a replacement Launches) with item 4 are as follows:

- a) Loading condition:**
- i) Four (4) government officers plus at least two (2) crew members on board.**
 - ii) Fresh water capacity – The fresh water tank(s) shall be at least 25% filled.**
 - iii) Fuel oil capacity – The fuel oil tank shall be at least 25% filled and, during the speed trial, fuel refilling will not be allowed.**
- b) Duration of test:** **The Launches shall continuously maintain the specified “normal service speed” as stated in item 4 for at least one minute.**
- c) Testing equipment:** **A GPS speed-testing device provided by the Agriculture, Fisheries and Conservation Department.**

Annex – Form of Bank Guarantee

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

IN FAVOUR OF

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

WHEREAS

(A) By an invitation to tender (Tender Reference: AFCD/LES/2014/1), the
Government invited tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department on the terms and conditions therein
(“Contract”).

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

Now the Guarantor HEREBY AGREES with the Government as follows:-

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

(2) In consideration of the Government agreeing to enter into the Contract with
the Contractor:-

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, as a
primary obligor and not as a surety, and as a continuing security, the
due and punctual performance and observance by the Contractor of all
of its obligations under the Contract and the Guarantor shall pay to the
Government on demand and without cavil or argument all monies and
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 sustained or incurred by the Government by reason or in consequence of any default on the part of the Contractor in performing or observing any of its obligations under the Contract.

(b) The Guarantor, as a principal obligor and not as a surety, and as a separate 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 from and 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 or observe fully or punctually any of its obligations under the Contract.

(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.

(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 change in obligations of the Contractor under the Contract or by any forbearance granted by the Government to the Contractor as to payment, time, performance or otherwise whether or not such arrangement, change 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 affected or discharged in any way by, and the Guarantor hereby waives notice of:-

- (a) any suspension of, variation or amendment or supplement to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Government, in whole or in part, in respect of the Contractor's obligations under the Contract;
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract for any reason;
- (d) any forbearance or waiver of any right of action or remedy that the Government may have 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, reorganization 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 or sub-contracting by the Contractor of any or all of its obligations set out in the Contract, whether or not such assignment or sub-contracting has been consented to; 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 an express release of its obligations by the Government.

(6) This Guarantee shall extend to all obligations of the Contractor under the Contract as the same may from time to time be amended or supplemented and the Guarantor hereby prospectively consents to whatever amendment, variation or supplement which may be made to the Contract.

(7) This Guarantee shall have immediate effect upon execution 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 date falling seven (7) months after the early termination or expiry of the Contract Period; or
- (b) in the case if at the time of expiry or early termination of the Contract Period, all or any of the Contractor's obligations and liabilities under or in relation to the Contract shall not have been performed, completed and discharged to the satisfaction of the Government Representative, or there is any right or claim which has accrued to the Government arising from antecedent breach(es) by the Contractor of the Contract or otherwise accrued to the Government prior to the expiry or termination of the Contract Period, the date falling twenty-four months after the early termination or expiry of the Contract Period.

(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 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 (as evidenced by confirmed transmission report); 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) Notwithstanding anything herein to the contrary, the aggregate amount of the Guarantor's liability under this Guarantee shall not exceed _____.

IN WITNESS whereof the Guarantorhas caused its Common 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:
.....)
.....)

@ 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.....)
.....)
.....)
.....)
.....)
.....)

* Please delete as appropriate.

@ See 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 should be submitted.

Registration Form for the Tender Briefing

**Tender for the Provision of Launches Services for Operations of
Agriculture, Fisheries and Conservation Department**

(Tender Reference AFCD/LES/2014/1)

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 Enforcement Section
(Attn: Mr. WO King-tai)
Facsimile: (852) 2314 2866

We will attend the tender briefing for the above tender
on 20 March 2014, Thursday, 3:00 pm
at Conference Room 615
6/F., Cheung Sha Wan Government Office
303 Cheung Sha Wan Road,
Kowloon.

Company Name _____

Person to attend:

Name _____

Position _____

Tel No. _____

Fax No. _____

Date _____

Note : 1. The registration form should be completed and returned by facsimile by 13 March 2014. Late registration will not be accepted.

Note : 2 Each company should register no more than 2 persons for the tender briefing due to limited seating capacity.

Note : 3. Please provide a list of the company's questions, if any, together with this registration.