

Tender Addendum No. 1

Tender Reference: Marine Department Shipbuilding Tender No. 3/2022
Procuring Department: Marine Department
Subject: Supply of Three (3) Aluminium Vessels for the Agriculture,
Fisheries and Conservation Department

Amendments as follows:

New paragraph 26.6 of Part II – Conditions of Tender

26.6 *Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.*

New paragraphs 29.5 & 29.6 of Part IV – Conditions of Contract

29.5 *The Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.*

29.6 *The continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security.*

Original paragraph 29.5 of Part IV – Conditions of Contract

29.5 *Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 29.1 to 29.4 above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.*

Should read as

29.7 *Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 29.1 to **29.6** above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.*

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The revised pages are attached for replacement. Please replace the relevant pages by the revised ones attached and submit your tender together with the revised pages.

The above amendments shall form part of the Tender Documents. Apart from the above, all other terms and conditions of tender/contract shall remain unchanged.

Interested parties are reminded that the Tender Closing Date is **11 November 2022**. To be considered as a valid tender, tenderers must deposit their tender proposals in the Government Logistic Department Tender Box situated on the Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong or where applicable, other places assigned by a Government officer for depositing bulky tenders (in either case, whichever is applicable, "Specified Tender Box") **before 12:00 noon on Friday, 11 November 2022** in accordance with the manner stipulated in the Tender Documents. A late tender or a tender not submitted in accordance with the manner stipulated in the Tender Documents will not be considered further.

If you have already submitted your tender proposals and wish to make change to them, you should do so by submitting a revised proposal in accordance with the manner stipulated in the Tender Documents.

1. Paragraph 26.6 of Part II - Conditions of Tender (Revised on 14/10/2022)

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- 26.3 Alternatively, if and when it considers fit, the Government may undertake or commission any other person (be it a public body or a third party contractor) to undertake the work covered by the Contract or any part thereof.
- 26.4 Notwithstanding anything to the contrary in these Tender Documents, the Government reserves the right, but not the obligation, to disqualify a Tenderer on grounds including without limitation:
- (a) 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
 - (b) in the sole judgment of the Government Representative, the Tenderer is not considered fit and proper to perform the Contract; or
 - (c) a false, inaccurate or incomplete statement, representation or declaration is contained in the tender or a false or forged document is submitted in the tender or a promise or a proposal is made by the Tenderer but with the actual or constructive knowledge that it will not be able to fulfil or deliver such promise or proposal; or
 - (d) in the event of a claim, an allegation or the Government having grounds to believe that any thing(s) or material(s) to be supplied or recommended by the Tenderer in its tender infringes or will infringe any Intellectual Property Rights of any person; or
 - (e) anytime during the 48 months prior to the Tender Closing Date or between the Tender Closing Date and the award of the Contract, the Tenderer is in default of its material obligation(s) under any other Government contract providing goods and/or services awarded by the Director of Marine regardless of whether or not such default has led to the termination of the relevant Government contract and whether or not such default has been remedied.
- 26.5 For the avoidance of doubt, there is no intended difference in meaning between the two alternative expressions that “**the Tenderer will be disqualified**” or that “**its tender will not be considered further**”.
- 26.6 Notwithstanding anything to the contrary in the Tender Documents, the Government reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

27 Contractor’s Performance Monitoring

- 27.1 If a Tenderer is awarded the Contract, its subsequent performance will be monitored and may be taken into account when its future offers for other tenders / quotations exercises are evaluated.

28 Cost of Tender

- 28.1 Tenderer shall submit its Tender at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Tenderer in connection with the preparation or submission of its Tender including all costs and expenses relating to (a) communication or negotiations with the Government; or (b) providing presentation

2. Paragraph 29.5 to 29.7 of Part IV - Conditions of Contract (Revised on 14/10/2022)

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- makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets; or
- 29.1.6 the Contractor abandons the Contract in part or in whole; or
- 29.1.7 the Contractor has failed to complete any activity in any of the Timetables (as defined in Clause 11.3) for more than six (6) weeks from the original scheduled completion date as specified therein; or
- 29.1.8 the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- 29.1.9 without prejudice to the generality of the foregoing grounds for termination, if any event or circumstance occurs which enables the Government to terminate the Contract under Clause 34.3(c) (Warranty against Collusion) of the Conditions of Tender or any one of the following provisions in these Conditions of Contract:
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| Clause 12.6.7 | (Acceptance Tests and Trials); |
| Clause 14.4 | (Rejection after Acceptance); |
| Clause 21.7 | (Indemnities); |
| Clause 32.1 | (Illegal Workers); and |
| Clause 34.3 | (Prevention of Bribery). |
- 29.2 Notwithstanding anything herein to the contrary, the Government may at any time during the continuance of the Contract, and by not less than one month's prior written notice to the Contractor, make such changes (whether addition or reduction) as the Government deems appropriate to the scope of the Work to be carried out or the Vessel, Equipment and/or Deliverables to be procured. The cost of such changes (if any) shall be deducted, where applicable, on the basis of the unit price specified in the applicable Schedule, or in the absence of which it shall be agreed between the Government and the Contractor. For the avoidance of doubt, any changes may include without limitation changes (addition or reduction) of the number of Vessel to be procured, addition or deletion of the Equipment or Deliverables to be procured, or changes in the scope of the Work.
- 29.3 If any of the events specified in Clause 29.1 occurs, or pursuant to Clause 12.6.7 or Clause 14.4, the Government may choose only to effect partial termination of the Contract whereupon the Government shall partially terminate the Contract by giving a notice to this effect to the Contractor ("**Partial Termination**" or "**partial termination**") in relation to those Vessel, Equipment and Deliverables in relation thereto, and/or Spare Parts and/or other Deliverables as specified in the Partial Termination notice (collectively, "**Rejected Items**").
- 29.4 Where there is a Force Majeure Event, pursuant to Clause 31.6 or Clause 31.7, the Government may terminate the Contract in part or in whole.
- 29.5 The Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.
- 29.6 The continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security.
- 29.7 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 29.1 to 29.6 above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.