

Part II – Conditions of Tender

Table of Contents

1. Invitation to Tender and Scope of Work
 2. Tender Documents
 3. Tender Submission
 4. Compilation of Tender
 5. Completion of Tender
 6. Information and Descriptive Literature
 7. Company/Business Organisation Status
 8. Qualification of Tenderer
 9. Particulars of Offer
 10. Export Approval Legal Opinions
 11. Proposed Sub-contractors
 12. Quotation
 13. Accuracy of Tender Prices
 14. Tender to Remain Valid and Open
 15. Tenderer's Commitment
 16. Communication with the Government
 17. Tenderer's Counter-Proposal
 18. Equivalent International Standard
 19. Request for Information
 20. Tender Evaluation
 21. Languages
 22. Contract Deposit, Parent Guarantee and Advance Payment Bond
 23. Negotiations
 24. Award of Contract
 25. Formation of Contract
 26. Government Discretion
 27. Contractors' Performance Monitoring
 28. Cost of Tender
 29. Consent to Disclosure
 30. Intellectual Property Rights Licence
 31. New Information
 32. Personal Data Provided
 33. Warning against Bribery
 34. Warranty against Collusion
 35. Authentication of the Submitted Information/Document
 36. Complaints about Tendering Process or Contract Awards
 37. Supplementary Information
 38. Immigration
 39. Documents of Unsuccessful Tenderers and Limitation Period for Claims Arising from this Invitation to Tender
 40. Probable Requirements
 41. Environmental Protection
 42. Tender Briefing Session
- Annex A Tender Evaluation Procedures**
- Annex B Information / Documents to be Submitted for Tender Evaluation**
- Annex C Essential Requirements**
- Annex D Marking Scheme**
- Annex E Guidance Note GN-1 (Environmental Protection)**
- Annex F Reply Slip for Tender Briefing Session**

Part II – Conditions of Tender

1 Invitation to Tender and Scope of Work

- 1.1 Tenders are invited for the supply of government vessels more particularly described in the Technical Specifications on and subject to the terms and conditions set out in the Tender Documents as listed in Clause 2 of this Part II (“Vessel”). As the Government is inviting tenders for the supply of more than one Vessel, references throughout the Tender Documents to “Vessel” or “Vessels” shall be construed as each of the Vessels to be procured. Notwithstanding the afore-mentioned interpretation principle, if in the reasonable opinion of the Government the context requires or implies that references to “Vessel” means any of the Vessels to be procured, then references to “Vessel” or “Vessels” shall mean any of such Vessels.

2 Tender Documents

- 2.1 A set of Tender Documents issued by the Government in connection with the Invitation to Tender consists of the following documents:
- (a) Part I Lodging of Tender
 - (b) Part II Conditions of Tender and Annexes A to F
 - (c) Part III Articles of Agreement
 - (d) Part IV Conditions of Contract and Annexes A to C
 - (e) Part V Schedules 1 to 12
 - (f) Part VI Offer to be Bound
 - (g) Part VII Technical Specifications and Annexes 1 to 10
- 2.2 Words and expressions appearing in these Tender Documents shall have the meanings assigned to them in Part I of the Tender Documents, or in Part IV of the Tender Documents, or other parts of the Tender Documents, unless the context otherwise requires. The rules of interpretation set out in Part IV of the Tender Documents shall apply throughout the Tender Documents.
- 2.3 Tenderers are advised to read the instructions contained herein carefully prior to preparing their tender submission. These instructions are conditions of tendering and any tender which does not follow these instructions will be considered incomplete and may be disqualified (or will be disqualified where it is so expressly provided with regard to certain instructions).
- 2.4 Any notice of this Invitation to Tender issued in the Gazette of the Government shall not be treated as forming part of the Tender Documents.

3 Tender Submission

3.1 Two Envelopes System in Submission of Tenders

For a tender to be considered complete, it shall comprise of all documents and information required in the Tender Documents including those as specified in Clause 4 of this Part II. The tender shall be submitted inside **two (2) separate envelopes** marked as specified below, addressed and deposited in the manner as specified in Part I of the Tender Documents.

- 3.1.1 The **Technical Proposal** (consisting of one original hardcopy and 9 photocopies), the contents of which are as stipulated in Clause 4.3 of this Part II, shall be enclosed in a sealed envelope. **No information on price** shall be included in the Technical Proposal; and
- 3.1.2 The **Price Proposal** (consisting of one original hardcopy and 9 photocopies), the contents of which are as stipulated in Clause 4.2 of this Part II – Price Proposal, fully completed, signed and dated shall be enclosed in another sealed envelope.

**“Tender Ref.: Marine Department Shipbuilding Tender No. 1/2023
Supply of Two (2) Hovercraft for the Hong Kong Police Force”**

The two (2) envelopes shall then be placed together inside one (1) large envelope, addressed, sealed and submitted as specified in Paragraph 1.1 of Part I.

- 3.2 The Tenderer may not propose two or more different designs and/or models of the Vessel in the same tender in response to this Invitation to Tender with different pricing (viz., different Total Purchase Prices and/or different Vessel Unit Prices). If the Tenderer fails to comply with the foregoing, **the Tenderer’s tender will not be considered further**. Whilst the Tenderer is neither required nor encouraged to propose two or more different designs and/or models of the Vessel, **a Tenderer wishing to do so shall submit two or more tenders, each tender with its own set of Technical Proposal and Price Proposal (comprising one single quotation of the Total Purchase Price and Vessel Unit Price) and covering just one design and model of the offered Vessel to which the tender relates**.
- 3.3 Nothing in these Tender Documents shall limit the Government’s power to request additional information/supporting documents in connection with the Tenderer or its tender.
- 3.4 In the event of any inconsistency between the hardcopies and the softcopies, unless the Government wishes to seek clarification, the original hardcopy shall prevail.

4 Compilation of Tender

- 4.1 A Tenderer shall note that a two-envelope system is adopted in this Invitation to Tender. The Tenderer shall submit its Tender in two (2) separate proposals, one as the Technical Proposal and another as the Price Proposal comprising the items as follows:

4.2 Price Proposal

The **Price Proposal** consists of Schedule 1 of Part V which sets out an all-inclusive unit price for the Vessel, unit price for Spare Parts to be procured and the unit price of Ship Models, and the Total Purchase Price payable under the Contract based on the quantities as specified in Schedule 1 of Part V.

4.3 Technical Proposal

- 4.3.1 Throughout the Technical Proposal, the information shall be presented in sufficient details to allow a comprehensive evaluation of the Tenderer’s understanding of this acquisition, approach, resources, technical expertise and experience. The Technical Proposal shall clearly demonstrate these in a concise, logical manner, which is easy to read and understand. The Technical Proposal shall not merely repeat back Part VII - Technical Specifications and shall provide convincing documentary evidence in support of any conclusions stated relating to promise of performance.
- 4.3.2 The Technical Proposal shall completely address the required information in the order in which it appears in these instructions.

4.3.3 Throughout the Technical Proposal, the Tenderer is encouraged to highlight its experience in areas that relate to the topic being addressed for reference only and unless also put in Schedule 10, such highlight will not be evaluated under the Marking Scheme in Annex D to Part II.

4.3.4 The Tenderer's Technical Proposal shall be divided up into three separate volumes.

(a) Volume I – Overview

(i) Executive Summary

1. The executive summary **shall not** contain any price information.
2. The Tenderer shall provide an overview of the proposal highlighting management, technical and system engineering and support features that offer the best value to the Government.
3. The description shall include significant operational features performance characteristics identifying how the design specifically meets the Offered Specifications.
4. The Tenderer shall summarise its strategy and approach to executing the Contract meeting all contractual requirements throughout all phases including fully testing and fitting out all of the two (2) Vessels before the final acceptance and delivery to the Hong Kong Government.

(ii) Tenderer's Profile

1. The Tenderer shall provide the background, experience and resources relevant to its ability to meet the requirements. The Tenderer shall provide these details as per the format at Schedule 8 of Part V, and also includes all corporate documents and information concerning the Tenderer required in Clause 7 of this Part II.
2. The Tenderer shall provide details of any other matters relating to the commercial, technical or financial capacity of the Tenderer which may materially affect the Tenderer's ability to perform the obligations under the contract.

(iii) Statement of Non-Compliance

1. The Tenderer shall complete the compliance reference table in the format at Schedule 5 of Part V.
2. Any Tender which fails to meet any of the Essential Requirements stipulated in Annex C of this Part II, subject to any clarification under Clause 17.6 of this Part II, **will not be considered further**.
3. If a Tenderer does not fully comply with any Specifications without Label or Desirable Specifications, the Tenderer shall state its non-compliance in a Statement of Non-compliance, to include details of the extent, justification, impact of non-compliance, and any proposed alternative solutions.

(b) Volume II – Project Strategies and Experience

(i) Project Strategy

1. The Tenderer shall describe the overall strategy to meet the requirements in the Contract, which includes how the Tenderer will conduct the work with a clear timeline showing the key activities and the milestones to meet the Delivery Schedule as stipulated in Schedule 2 of Part V.
2. The Tenderer shall describe the overall approach of planning and managing its production process and labour work force.
3. The Tenderer shall describe the production methods, processes and sequences it plans to use for constructing the Vessels.
4. The Tenderer shall describe its overall processes for planning scheduling, reporting and assessing cost and scheduled performance.

(ii) Past Performance and Relevant Project Summaries

1. The Tenderer shall provide details of relevant past experience as per the format at Schedule 10 of Part V.

(iii) Tenderer shall provide details of joint ventures, collaborations with other companies or any other commitments proposed sub-contractors to be appointed in Schedule 8 of Part V.

1. If any sub-contractors are proposed to be appointed, the Tenderer shall define the scope of work that will be subcontracted and the rationale and approach to subcontracting. The Tenderer shall provide supporting evidence that the proposed sub-contractor has sufficient resources and capability to provide the work expected to be undertaken.
2. The Tenderer shall describe how the performance of the subcontracted work will be proactively monitored for quality and timely delivery.

(iv) Risk Assessment

1. The Tenderer shall identify the risks in technical, commercial, legal, financial, operational and scheduling aspects associated with the resulting Contract in supplying the two (2) Vessels to the Government.

(c) Volume III – Additional Documents

Other Documents not set out in Volumes I to II but required to be submitted as per the requirements of Annex B to this Part II including as follows and without prejudice to the stated consequences specified in Annex B for failure to submit any of these items but any Schedules already submitted in Volumes I to II shall also be submitted again in this Volume III to form a complete set of the Schedules except for Schedule 1 – Price Schedule:

The following shall be submitted as part of the Technical Proposal:

- (i) The Offer to be Bound in the form set out in Part VI of the Tender Documents signed by or on behalf of the Tenderer including Counter-Proposal (if applicable);

- (ii) Schedule 5 containing statements of compliance as more particularly described in Clauses 5.3 and 5.4 of this Part II including Counter-Proposal (if applicable);
- (iii) Schedule 6 containing the particulars of the major Equipment as listed therein to be offered by the Tenderer;
- (iv) Schedule 7 attaching thereto a list of drawings of the proposed Vessel and other documents and plans required therein;
- (v) Schedule 8 containing the details of the Tenderer and information of the Tenderer's process agent, nominated shipyard facilities and, if applicable, Tenderer's sub-contractor;
- (vi) Schedule 9 containing information of the proposed Recognised Organisation of its rules and regulations with class notations;
- (vii) Schedule 10 containing information of the claim of Tenderer's experience in vessel projects and Accreditations;
- (viii) Schedule 11 containing Excess Proposals including Innovative Suggestions;
- (ix) Schedule 12 containing Non-collusive Tendering Certificate;
- (x) all product literature and other documents in relation to the proposed major Equipment as required under Clause 6 of this Part II to be set out or attached to Schedule 6; and
- (xi) all corporate documents and information concerning the Tenderer required in Clause 7 of this Part II.

5 Completion of Tender

- 5.1 The tender and all accompanying documents (including particularly the Schedules in Part V and the Offer to be Bound in Part VI) shall be submitted in writing, i.e., in manuscript or produced by whatever device including a computer printer, a scanning machine and shall be submitted in the manner stipulated in Part I of the Tender Documents and this Part II. The Offer to be Bound to be submitted (other than the signature on the Offer to be Bound which must be original) shall be Part VI or a printed copy from a softcopy of Part VI or a photocopy or a scanned copy of such hardcopy or printed copy. Any manner of reproduction of Part VI (including copy-typing) to be submitted as the Offer to be Bound shall not be acceptable and the Tender with the non-conforming Offer to be Bound will not be considered further.
- 5.2 The Technical Specifications set out in Part VII of the Tender Documents contain three classes of specifications, viz., the requirements labelled as [E], which are part of the Essential Requirements, specifications labelled as [D], and other requirements which are not labelled as [E] or [D]. The first class of specifications in the Technical Specifications, shall be “Essential Requirements” (in upper or lower case). The Tenderer is required to submit proposals to show compliance with the Essential Requirements in the manner further explained in Clause 5.3 below. A Tenderer failing to comply with the Essential Requirements will be disqualified and **its tender will not be considered further**. For those specifications in the Technical Specifications (excluding all of Annexes 1 to 10) without any label (“Specifications without Label”), the Tenderer is permitted to propose Counter-Proposals to these Specifications without Label in accordance with Clause 17.3. For those specifications labelled as [D] (“Desirable Specifications”), it is up to the Tenderer to propose whether or not its offer will comply with such Desirable Specifications. These Specifications without Label and the

Desirable Specifications shall also form part of the Contract if and to the extent the Contractor has committed to comply with them or has not proposed any Counter-Proposals to them during the tendering stage. In the event of any Counter-Proposals, they shall be dealt with under Clause 5.4 and Clause 17 of this Part II.

- 5.3 In completing Schedule 5, for the Essential Requirements set out in Annex C to this Part II, the Tenderer shall indicate whether or not it complies with all the Essential Requirements specified therein and in the case of Essential Requirements set out in the Technical Specifications, together with proper pointers to the proposals in the tender supporting such statements. Subject to the separate check as mentioned in Clause 5.6 below and subject to any clarification with the Tenderer, **a Tenderer which expressly indicates non-compliance with any of the aforesaid Essential Requirements will be treated as having proposed an offer not complying with the relevant Essential Requirements and its tender will not be considered further.** Where the Tenderer has not selected yes/no* answer by deleting the inapplicable answer in the last column of Schedule 5 for any of the Essential Requirements, unless the Government wishes to seek clarification, it shall be deemed that the Tenderer has confirmed compliance.
- 5.4 In addition, for Specifications without Label, in accordance with the deeming provision set out in Note 2 at the end of Schedule 5, the Tenderer shall be deemed to have confirmed compliance with all Specifications without Label in Item [13] of Schedule 5 except those which the Tenderer specifies in the fourth column by referring to their Paragraph numbering (in the applicable level) as they appear in Part VII (excluding Annexes 1 to 10). For the Desirable Specifications, the Tenderer should also indicate whether it will comply with these Specifications. Any express indication of non-compliance of the Specifications without Label or any failure to indicate compliance will not lead to any disqualification of the Tenderer or make its Tender non-conforming unless (a) such Counter-Proposals would affect compliance with any of the Essential Requirements; or (b) under Clause 17.5 where the Tenderer refuses to withdraw a Counter-Proposal not acceptable to the Government. In the case where any Counter-Proposals could affect compliance with any of the Essential Requirements, subject to any clarification which the Government may make under Clause 17.6, **the Tenderer's tender will not be considered further.**
- 5.5 Without prejudice to the need to state compliance as mentioned in Clause 5.3 above, the Tenderer may wish to submit Excess Proposals in relation to the Vessel or any of the Equipment which exceed the essential requirements and/or Specifications Without Label in Part VII. "Excess Proposals" are proposals made by the Tenderer (a) Excess Proposals in Schedule 11 (Excess Proposals) under headings "Functional Aspects", "Operational Aspects" and where applicable "Environmental Aspects" and/or (b) Innovative Suggestions under the heading of "Innovative Suggestions", all in Schedule 11 (Excess Proposals), for evaluation under Part (A) of the Marking Scheme in Annex D to Part II. Desirable Specifications in Part VII may or may not be specifications in relation to the Excess Proposals. If they are not specifications in relation to Excess Proposals as aforementioned, if and to the extent the Tenderer wishes to comply, the Tenderer shall indicate compliance with such Desirable Specifications in Schedule 11 of Part V under the heading "Desirable Specifications other than the specifications for the Excess Proposals".
- 5.6 Notwithstanding any of the statements of compliance in Schedule 5 in Part V, the Government will conduct checks at the tendering stage to determine whether the items offered by a Tenderer indeed comply with the Essential Requirements, viz., specifications labelled as [E] in the Technical Specifications, the Excess Proposals submitted by the Tenderer, and if evidence is readily available also in compliance with the Specifications without Label (if and to the extent that the Tenderer has indicated to comply in the manner mentioned in Clause 5.4 above).

- 5.7 When signing the Offer to be Bound, Part VI of the Tender Documents, the Tenderer shall ensure that:
- (a) the name of the Tenderer is the same as the name appearing on the Certificate of Incorporation or where there has been a change of name, the Certificate of Change of Name, or the trading name appearing on the Business Registration Certificate (if any), or any other equivalent business/corporation document issued by the competent authority of the place of incorporation of the Tenderer; in the case of an unincorporated joint venture, the aforesaid requirement shall not apply and the name of the Tenderer shall follow the name as shown in the agreement for the joint venture to which the parties of the joint venture are parties; and
 - (b) the form is duly signed by the Tenderer or an authorised person for and on behalf of the Tenderer; a copy of documentary proof (e.g. board resolution of the Tenderer or extract thereof, confirmation letter, etc.) to prove the person who signed Part VI (Offer to be Bound) has the authority to sign the tender for and on behalf of the Tenderer shall be attached for reference.
- 5.8 The duly completed tender comprising all items specified in Clause 4.1 of this Part II shall be submitted in the manner under “Lodging of Tender” of Part I – Lodging of Tender, viz., by way of Paper-based Tendering.
- 5.9 **If a Tenderer fails to submit any of documents stipulated in Paragraph (a) (for the Technical Proposal) and Paragraph (b) (for the Price Proposal) of Annex B to this Part II on or before the Tender Closing Date, its tender will not be considered further.**

6 Information and Descriptive Literature

- 6.1 Complete products and services information, including technical and descriptive literature and catalogues for the Equipment specified in Schedules 6 and 7 to be offered for the Vessel, shall be submitted with each copy of the tender. Information submitted shall be sufficiently detailed to substantiate that the products and services offered meet the Offered Specifications. Each item of the Tenderer’s offered Vessel and Equipment (including those as stated in Schedules 6 and 7) must, based on the aforesaid items and other proposals set out in the Tenderer’s tender, be shown to comply or exceed with each and every Essential Requirement as stated in the Technical Specifications. Without prejudice to the Government's right (but not obligation) to seek clarification with the Tenderer pursuant to Clause 17.6 of this Part II, the Government will disqualify a Tenderer if any of the offered Vessel or Equipment fails to comply with any of the Essential Requirements.
- 6.2 The Tenderer shall provide in Schedule 7 of Part V all preliminary plans and information in relation to the proposed Vessel and other Equipment as required in **the table of Schedule 7** of Part V and including those which are required to be submitted by the Tender Closing Date. For those plans and information which are required to be submitted by the Tender Closing Dates in Schedule 7 of Part V, **the Tenderer’s tender will not be considered further** if the Tenderer fails to submit any of these plans or information by the Tender Closing Date.

7 Company/Business Organisation Status

7.1 Each Tenderer shall provide the following details relating to itself in Schedule 8 – Tenderer’s Information of Part V:

- (a) name and principal place of business (in address form) of the Tenderer;
- (b) type of business entity of the Tenderer;
- (c) shareholders/partners/proprietor/joint venture parties of the Tenderer and their percentages of shareholding or ownership or voting power or financial contribution; if the Tenderer is an incorporated joint venture or unincorporated joint venture, a copy of the joint venture agreement shall be provided;
- (d) length of business operation;
- (e) names and correspondence addresses of the following:
 - (i) managing director or partners or joint venture party if applicable;
 - (ii) other directors; or
 - (iii) sole proprietor
- (f) names and addresses of banks which are prepared to provide references or other relevant financial data which indicate the financial viability of the Tenderer;
- (g) if the Tenderer is a company or body corporate, its Memorandum and Articles of Association (if any), Certificate of Incorporation, Certificate of Change of Name (if any), and other corporate documents;
- (h) a copy of a valid and up-to-date business registration certificate evidencing its business status issued under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) (or or documentary evidence showing that the Tenderer is exempt from business registration under the Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong); or if the Tenderer does not carry on business in Hong Kong, the equivalent document issued by the authority of place of business of the Tenderer (unless it is an unincorporated joint venture);
- (i) (if the Tenderer is a company incorporated in Hong Kong or is registered as a non-Hong Kong company under the Companies Ordinance, Chapter 622 of the Laws of Hong Kong) a copy of the latest annual return filed with the Companies Registry and all subsequent filings since the latest annual return; or (if not) the equivalent documents issued by the authority of the place of incorporation of the Tenderer;
- (j) place and date of its incorporation or formation; and
- (k) particulars of the Tenderer’s process agent in Hong Kong (if the Tenderer does not have a place of business in Hong Kong).

7.2 If a Tenderer is incorporated, formed or established outside Hong Kong (or in the case that the Tenderer is an unincorporated joint venture, in relation to each party of the unincorporated joint venture and references in this Clause 7.2 and Clause 7.3 to “Tenderer” shall mean each party to such unincorporated joint venture), a legal opinion in form and substance satisfactory to the Government and issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment (as the case may be) of the Tenderer and acceptable to the Government shall be provided upon request by the Government on the following issues and any other issues as may be required by the Government at the expense of the Tenderer:

- (a) the Tenderer was duly incorporated, formed or established and validly existing under the laws of the place of the Tenderer’s incorporation, formation or establishment and that the Tenderer has full power, capacity and authority to carry on the business as it is now conducting and to supply the products and services to the Government on the terms and conditions of the proposed Contract;

- (b) the Tenderer has the full power, authority and legal capacity to:
 - (i) execute and submit its Tender and to incur the liabilities and perform the obligations under the Tender Documents; and
 - (ii) enter into and execute the Contract and to incur the liabilities and perform the obligations thereunder;
- (c) the proposed Contract with the Government will, upon execution by the authorised signatory of the Tenderer and the Government of the Articles of Agreement, constitute the legal, valid and binding obligations of the Tenderer in the place of its incorporation, formation or establishment, and is enforceable against the Tenderer in accordance with its terms;
- (d) the execution, delivery and performance of its Tender and the proposed mode of execution, delivery and performance of the Contract (if awarded to the Tenderer) have been duly authorised by all necessary corporate action of the Tenderer, and does not violate any provision of any applicable law, regulation or decree of the Tenderer's place of incorporation, formation or establishment, or the Memorandum and Articles of Association or similar constitutional documents of the Tenderer;
- (e) no authorisations, consents, approvals are required from any governmental authorities or agencies or other official bodies in the place of incorporation, formation or establishment in connection with the execution and delivery of the Tenderer's Tender, or the performance by the Tenderer of its obligations under the Tender Documents and the Contract; the Tenderer's Tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation, formation or establishment in order to secure their validity and/or priority;
- (f) there is no restriction under the laws of the place of the Tenderer's incorporation, formation or establishment affecting the Tenderer's obligations under the Tender Documents and the Contract;
- (g) the choice of the laws of Hong Kong to govern the Tender Documents and the Contract is a valid choice of laws and would be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer;
- (h) the ruling given by the arbitrator to be appointed under the arbitration agreement in Clause 46.2 of Part IV for the adjudication of any dispute arising from the Contract will be recognised and given effect to by the courts of the place of incorporation, formation or establishment of the Tenderer;
- (i) it is not necessary under the laws of the place of incorporation, formation or establishment of the Tenderer that the Government be licensed, qualified or otherwise registered in such place of incorporation, formation or establishment in order to enable it to enforce its rights under the Tender Documents and the Contract; and
- (j) (where the place of export of any item proposed in Schedule 1, 6, or 7 of Part V is the same as the place of incorporation, formation or establishment of the Tenderer) the Export Ban Legal Opinion and the Export Approval Legal Opinion as specified in Clauses 10.1 and 10.2 of this Part II in respect of these items.

7.3 The Government may require a Tenderer to provide, at its own expense, additional legal opinion satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation, formation or establishment of the Tenderer or the Place of Origin of all or any of the Items, and acceptable to the Government on any other matters arising from its Tender or the Contract. Where the place of export for any items proposed in Schedule 1, 6, or 7 of Part V is not the same as the place of incorporation, formation or establishment of the Tenderer, the Government reserves the power to ask for additional legal opinion to be issued by an independent law firm of the place of the export

confirming the points as mentioned in Clause 7.2(j) above (“Additional Legal Opinion”). Any additional legal opinion may have to opine, including without limitation, whether there is any export ban or otherwise any requirement for export approval in relation to the export or re-export of the Item(s) to Hong Kong for the intended usage and whether the Tenderer has such export approval.

- 7.4 If any of the guarantors to the Parent Guarantee required under Clause 22.1(b) of this Part II (if applicable) is a company not incorporated under the laws of Hong Kong, a legal opinion will equally be required similar to the one described in Clause 7.2 of this Part II save that references therein to the “Tenderer” and “Contract” shall mean the guarantor and the performance guarantee respectively.

8 Qualification of Tenderer

8.1 Tenderer’s Experience

The Tenderer may wish to provide details in Schedule 10 concerning its experience in different types of vessel projects as described in Part (B) of the Marking Scheme together with the supporting documents as specified in Schedule 10. Where no information whatsoever has been provided for a vessel project, the Government will not ask for the information after the Tender Closing Date and will deem that the Tenderer has no experience in the relevant vessel project. Where some information has been provided in relation to a vessel project, the Government reserves the power, but not the obligation, to seek clarification or submission from the Tenderer of any other missing information or supporting documents in relation to that vessel project. The Government also reserves the power, but not the obligation, to contact a client to verify any information provided or to seek any other information as the Government considers fit. By submitting a tender, the Tenderer warrants and represents that it has obtained the prior written consent of all clients referred to in Schedule 10 or whose details having been subsequently supplied to the Government upon any request of the Government to release the information to the Government concerning the vessel project and for the Government to contact directly with such clients.

8.2 Shipyard Facilities

8.2.1 The Tenderer’s nominated shipyard for the construction of the Vessel must have all the essential shipbuilding and workshop facilities including lifting gear, hull construction and calibration equipment, machinery installation and calibration equipment and vessel launching or slipping facilities.

8.2.2 The Tenderer shall provide information of the nominated shipyard and workshop facilities as required in Paragraph 3 of Schedule 8 (Tenderer’s Information) in Part V to substantiate that the nominated shipyard and workshop facilities comply with the requirements stipulated in Clause 8.2.1 above. **The Tenderer’s tender will not be considered further** if the Tenderer fails to provide the required information before the Tender Closing Date or by the time which may subsequently be specified by the Government at the Government’s discretion.

8.3 Accreditations

The Tenderer may wish to provide information in relation to the International Organization for Standardization (“ISO”) or other Accreditations specified in Part (B) of the Marking Scheme, awarded to it or the owner of the shipyard nominated in paragraph 3 of Schedule 8 of Part V with the Accreditation(s) identifying the shipyard, together with supporting documents, for evaluation thereunder. The issue date of the submitted certification shall be on

or before the Original Tender Closing Date and the certificate shall be valid as at the Original Tender Closing Date.

8.4 Calculation of the experience of the Tenderer which is a joint venture

8.4.1 Subject to the ensuing sub-Clauses 8.4.2 and 8.4.3, where a Tenderer is itself a joint venture (incorporated or unincorporated), for the purpose of calculating the relevant experience of the joint venture, the relevant experience of each joint venture party to that joint venture may be attributed to that joint venture after weighing the joint venture party's percentage of voting power in the Tenderer (in the case of an incorporated joint venture) or financial contribution to the Tenderer (in the case of an unincorporated joint venture). The number of vessel projects in which the joint venture party was a contractor will be given a weighting based on its voting power percentage (in the case of incorporated joint venture) or financial contribution percentage (in the case of unincorporated joint venture) to determine whether the relevant vessel project should be taken into account. For example, the unincorporated joint venture Tenderer has Party A and Party B as joint venture parties with financial contribution of 70% from Party A and 30% from Party B. Party A has implemented one vessel project and Party B has implemented two vessel projects. The joint venture Tenderer will be regarded to having performed one vessel project (i.e. 1 x 70% from Party A plus 2 x 30% from Party B) with the remaining 30% to be ignored as the calculation must lead to complete multiple of 100% in order to count as one or more vessel projects. To the extent the Tenderer wishes to rely on the experience of a joint venture party, the Tenderer may wish to provide in Schedule 8 of Part V information of the voting power of that joint venture party in the Tenderer or the financial contribution which should be made by the joint venture party to the Tenderer. Where the joint venture agreement does not mention about the financial contribution, the Government reserves the right to request the missing information under Clause 19 of this Part II.

8.4.2 For the Accreditations as mentioned in Clause 8.3 above and Part (B) of the Marking Scheme, only those certificates issued either in the name of the Tenderer or in the name of the owner of the shipyard nominated in paragraph 3 of Schedule 8 of Part V (with the Accreditations identifying the shipyard) will be taken into account. Where the Tenderer is a joint venture, an Accreditation issued in the name of the lead joint venture party will also be taken into account. Where no lead joint venture party is identified, the experience of the joint venture party responsible for the vessel construction as shown in the joint venture agreement will be treated as the lead joint venture party. If none can be identified, and there is no Accreditation issued in the name of the joint venture or the owner of the shipyard as aforesaid, the joint venture Tenderer will score no mark for the relevant assessment criterion in Part (B) of the Marking Scheme.

8.4.3 Where the Tenderer as a joint venture itself (incorporated or unincorporated) has performed the relevant vessel project and/or has been issued with the certificates for the relevant Accreditations, then the whole of vessel project and/or the Accreditations will be taken into account without the need to undergo the weighting exercise mentioned in Clauses 8.4.1 and 8.4.2 above, provided that the parties to the joint venture at the time of performing the relevant vessel project were the same as those at the time of submission of tender in response to this Invitation to Tender.

9 Particulars of Offer

9.1 The Tenderer shall provide in Schedule 6 and where applicable Schedule 7 the particulars of each proposed Equipment with the Offered Specifications including:

- (a) the name of the manufacturer;
- (b) the model or version name or number as advertised by the manufacturer (if applicable);
- (c) manufacturer specifications of the Equipment including the specific information expressly required in Schedule 6 in relation to the particular Equipment; and
- (d) place of origin.

Provided further the Tenderer shall only propose one single model or version of a product series from the same manufacturer but not two or more models or versions of different product series and/or from different manufacturers for any **piece of Equipment in Schedules 1, 6 and/or 7 of Part V, failing which the Tenderer's tender may not be considered further.**

- 9.2 The Tenderer shall note the requirements stipulated in Paragraph 1.5 (Design and Construction Responsibility) and Paragraph 2.4 (Rules and Regulations) of Part VII. The Tenderer shall state in Schedule 9 which Recognised Organisation (RO) and its rules and regulations and class notations shall be used and complied with in the design and construction of the Vessel provided that the proposed class notations of the RO must not be inconsistent with the Offered Specifications otherwise, subject to any clarification which the Government may wish to make, **its tender will not be considered further.**
- 9.3 **The Tenderer's tender will not be considered** further if the Tenderer fails to submit the name of the manufacturer and model or version (name or number) (if applicable) required for the Equipment in Schedule 6 and the information specified in Clause 9.2 above in its tender before the Tender Closing Date.
- 9.4 The Tenderer must not offer to supply any used or refurbished goods to the Government. If a Tenderer fails to comply with this requirement, **its tender will not be further considered.** By submitting a tender, the Tenderer undertakes and declares that all goods it offers in this Invitation to Tender will be fresh from stock and/or a factory (in the case of Equipment which are required to be Proprietary Made) or originally built for this Contract (in all other cases).
- 9.5 Where based on the place of origin, any export approval should be required for the Vessel and any Equipment proposed in Schedule 6 to be issued by the competent authority (at state or national level) of the proposed place of export (including any which should be required based on announcement of intention but not necessarily having any law in place yet as at the Tender Closing Date), regardless whether any Export Approval Legal Opinion under Clause 10.2 of this Part II is requested before the Notification of Conditional Acceptance, and without prejudice to the requirements in Clause 25.2(i) of this Part II, the Tenderer shall submit evidence that such export approval can be obtained when the Contract is awarded to the Tenderer or factual evidence, i.e. an export licence or approval in principle to export issued by the competent authority at state or national level, when required by the Hong Kong Government anytime during the tender evaluation, otherwise its tender may not be considered further. Where the foreign law of the place of origin (including governmental announcement of intention without yet any legal enactment) as at the Tender Closing Date provides for a complete export ban to Hong Kong which could concern the Vessel or any Equipment and no export exemption from such export ban would be permitted (otherwise there is a policy of denial of request for export exemption), the Tenderer shall not offer any Vessel or Equipment from such place of origin; otherwise **its tender will not be considered further.** For the avoidance of doubt, in the case of the Vessel, the place of origin shall be the country in which the shipyard as proposed in Schedule 8 of Part V is located.
- 9.6 For the avoidance of doubt, the Government is entitled not to consider a Tenderer's tender further in light of any Export Ban (as defined in Clause 10.1 of this Part II) announced or come into effect after the Tender Closing Date even if that Export Ban was not in place at the time of the Tenderer's submission of the tender on or before the Tender Closing Date. If any export approval should be required based on any announcement or law or regulation coming

into effect after the Tender Closing Date, the Government shall equally be entitled to ask the Tenderer to submit evidence that such export approval can be obtained when the Contract is awarded to the Tenderer, otherwise its tender may not be considered further.

- 9.7 Innovative Suggestions are one type of Excess Proposals achieving any of the benefits specified in Part (A) of the Marking Scheme under the heading Innovative Suggestions. Where an Excess Proposal has already earned marks under any of the other assessment criterion in Part (A) of the Marking Scheme, such Excess Proposal shall not be treated as an Innovative Suggestion and will not be evaluated as an Innovative Suggestion under Part (A) of the Marking Scheme. Subject to the foregoing, the Tenderer shall submit the details of the Innovative Suggestion in the part designated for Innovative Suggestions in Schedule 11 (Excess Proposals) of Part V, otherwise no mark will be awarded even if any proposal set out elsewhere could also be evaluated as an Innovative Suggestion under Part (A) of the Marking Scheme. **Any other additional proposal other than factual information not originally contained in the original tender submission but provided by the Tenderer after the Tender Closing Time will not be taken into account in the evaluation.**

10 Export Approval Legal Opinions

- 10.1 The Government does not accept any offered item which is subject to a complete ban on export to Hong Kong from the place of origin (whether or not via any other place) (and including any policy of denial of export licence request) (“Export Ban”). As mentioned in Clause 9.5 of this Part II, the Tenderer shall not offer any such items from such place of origin; otherwise **its tender will not be considered further**. To prove that there is no such Export Ban in respect any item as offered by the Tenderer in Schedules 1, 6 and 7 of Part V whether as at the Tender Closing Date or after that date, if requested by the Government any time after the Tender Closing Date in relation to any such items, the Tenderer shall supply as part of its tender the legal opinion confirming that there is no such Export Ban (“Export Ban Legal Opinion”). The Export Ban Legal Opinion shall be issued by an independent law firm (unless the Government accepts an in-house lawyer of the Tenderer) qualified to practice in the place of origin of the relevant items covered by the request (regardless of whether such place of origin is the same as the incorporation, formation or establishment of the Tenderer). If such Export Ban Legal Opinion cannot be submitted within seven (7) days from the date of request or such other period as the Government may allow, the Tender may not be considered further. Alternatively, the Government may proceed to evaluate the tender and reserves the power to ask for such missing legal opinion under Clause 25.2 of this Part II (if the Tenderer is identified as the preferred Tenderer).
- 10.2 If requested by the Government any time after the Tender Closing Date, the same Export Ban Legal Opinion shall also give opinion to confirm whether any export licence is required and whether a valid and subsisting export licence (“Export Approval”) has been obtained by the Tenderer (“Export Approval Legal Opinion”). Should the Tenderer fail to provide such Export Approval Legal Opinion, the Tender may not be considered further. Alternatively, the Government may proceed to evaluate the tender to ask for such missing legal opinion under Clause 25.2 of this Part II (if the Tenderer is identified as the preferred Tenderer).

11 Proposed Sub-contractors

- 11.1 Where applicable, Tenderers shall provide in Paragraph 4 of Schedule 8 details of the proposed sub-contractors to be appointed to perform the Contract. The Government reserves the power to request the Tenderer to withdraw any sub-contracting proposal and if the Tenderer refuses to do so, its tender may not be considered further.

12 Quotation

- 12.1 A tender must offer to supply in Schedule 1 – Price Schedule and in the prescribed quantities as specified in Schedule 1 the Vessel and the Spare Parts in Ready for Use condition complying with (a) the specifications set out in Part VII – Technical Specifications (viz., (i) the Essential Requirements, (ii) the Specifications without Label (except those subject to Counter-Proposals as further mentioned in (b)(iii) below), and (iii) where applicable, the Desirable Specifications which the Tenderer has confirmed compliance in Schedule 11 of Part V), and (b) to the extent not inconsistent with the aforesaid specifications, those specifications set out in its tender (including (i) those in the Schedules of Part V, (ii) any Excess Proposals in Schedule 11 (Excess Proposals) of Part V; and (iii) any Counter-Proposals to the Specifications without Label to be made in the manner specified in Clause 17.3 (collectively “Offered Specifications”). **A partial tender for some but not all such items specified in Schedule 1 – Price Schedule will not be considered.**
- 12.2 The Tenderer is requested to quote in Hong Kong dollars or United States dollars in Schedule 1 of Part V (a) an all-inclusive unit price for the Vessel in Ready for Use condition complying with the Offered Specifications in Part 1 of Schedule 1; (b) the unit price for each set of the Spare Parts complying with the Offered Specifications as specified in Part 2 of Schedule 1; and (c) the unit price of a ship model of the Vessel in Part 3 of Schedule 1. **Offers submitted in other currencies (i.e. currencies other than Hong Kong dollars or United States dollars) will not be considered further.**
- 12.3 The all-inclusive unit price quoted for the Vessel in Ready for Use condition complying with the Offered Specifications shall be deemed to be an all-inclusive price for all items and services required whether specified in the Contract or otherwise to ensure that the Vessel is Ready for Use including without limitation the price and charges for all Work, Equipment complying with the Offered Specifications in the quantities as specified in Part VII, the Deliverables in respect of the Vessel (including the Excess Proposals), delivery of the Vessel together with all Equipment and the Deliverables to the Government Dockyard, insurance, taxes, duties and licences. No other money whatsoever and on account of whatsoever purpose will be payable by the Government for these items and services.
- 12.4 In addition, the Contractor will be required to construct the Vessel on a total solution basis and no contribution from the Government whether in terms of manpower, equipment or shipyard facilities will be provided. On this basis, the Tenderer should have included in the unit price for the Vessel in Schedule 1 all prices chargeable for purpose of supplying the Vessel in full compliance with the Offered Specifications. Under no circumstances whatsoever will the Government be responsible for any other costs and liabilities incurred by the Contractor in supplying the Vessel other than its unit price as quoted in Schedule 1 and accepted by the Government.
- 12.5 **An offer with any price variation clause including without limitation one which is based on foreign exchange market fluctuation will not be considered further.**
- 12.6 All prices and charging rates quoted in United States dollars will be converted into Hong Kong dollars for the purpose of price assessment. The conversion rate shall be based on the selling rate quoted by the Hong Kong Association of Banks on the Tender Closing Date.
- 12.7 Payment will be made in the currency specified in the Contract.

13 Accuracy of Tender Prices

- 13.1 Each Tenderer shall make sure that all prices and other proposals offered in its Tender are accurate and complete before it submits the Tender. The Tenderer shall be bound by the tender

prices and other proposals offered in its Tender if the Tender is accepted by the Government. The Tenderer may not initiate any request for amendment of its Tender after the Tender Closing Date on any ground (including any mistake made in the Tender). On the other hand, in the event of any apparent arithmetical or typographical mistake or inconsistency in a Tender, pursuant to Clause 19 of this Part II, the Government may, but is not obliged to, ask the Tenderer to clarify, or to confirm another figure to replace the original figure. Where the Tenderer's clarification is not provided or is not satisfactory, refuses to confirm such other figure, or where the Government does not elect to seek clarification or confirmation from the Tenderer, the Government reserves the power to proceed to evaluate the Tender on an "as is" basis (i.e., in the form as originally submitted on the Tender Closing Date) or disqualify the Tenderer on the grounds that it has provided erratic or inconsistent proposals or quotations for proper evaluation.

14 Tender to Remain Valid and Open

- 14.1 A tender once submitted by a Tenderer will be binding on the Tenderer.
- 14.2 It is an Essential Requirement that a tender shall remain valid and open for acceptance for a period of **365 days** after the Tender Closing Date ("**Tender Validity Period**").
- 14.3 By submitting a tender, the Tenderer undertakes and agrees that its tender shall remain valid and open throughout the Tender Validity Period. A Tenderer who counter-proposes a shorter Tender Validity Period than the period specified in Clause 14.2 above will be disqualified and **its tender will not be considered further.**

15 Tenderer's Commitment

- 15.1 All tenders, information and responses from a Tenderer must be submitted in writing, i.e., in manuscript or produced by whatever device including a type-writer, a computer printer, a scanning machine, or other mode of representing and reproducing words in a legible form. All parts of the tender submitted by a Tenderer will, if and to the extent accepted by the Government, and subject to such changes as the Government may stipulate in exercise of its powers under these Conditions of Tender or as the parties may agree, form part of the Contract if the Contract is awarded to that Tenderer.
- 15.2 The Government reserves the right not to consider a tender that directly or indirectly attempts to preclude or limit the effect of any requirement specified in the Lodging of Tender, these Conditions of Tender or the Annexes to this Part II.

16 Communication with the Government

- 16.1 Only those communications which are in writing from the Government may be considered as duly authorised on behalf of the Government. Similarly, only communications from the Tenderer, which are in writing and are stated to be made for and on behalf of the Tenderer will be recognised by the Government as duly authorised by the Tenderer.
- 16.2 All communications connected with or arising out of these Tender Documents shall be conducted directly between the Government and the Tenderer irrespective of the number of manufacturers or Sub-contractors involved.

- 16.3 Unless otherwise expressly stated by the Government in writing, any statement, whether oral or written made in response to any enquiry made by a prospective Tenderer shall be for information only. No such statement constitutes a representation or warranty of whatsoever nature, express or implied, and no invitation is made by the Government to any Tenderer or prospective Tenderer to rely on the accuracy or completeness of such statement. Unless in the context of an issued addendum to these Tender Documents, the statement will not be deemed to form part of these Tender Documents and it shall not alter, negate or waive any of the provisions set out in the Tender Documents.

17 Tenderer's Counter-Proposal

- 17.1 By submitting their tenders, unless otherwise expressly permitted, all Tenderers 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 these Conditions of Tender and the Annexes to this Part II, Lodging of Tender, Schedules and Offer to be Bound. Unless otherwise expressly permitted, none of such terms and conditions may be varied, and any counter-proposal from a Tenderer to vary any such term or condition will, without prejudice to other rights and powers of the Government, be ignored, or otherwise the tender may not be considered further. Without prejudice to the generality of the foregoing, any proposal which directly or indirectly precludes or limits the effect of any provisions specified in the aforesaid documents will be treated as a counter-proposal.
- 17.2 Save in the case of the Conditions of Contract and their Annexes, the Specifications without Label and Desirable Specifications in Part VII (but excluding Annexes 1 to 10 to Part VII), the successful Tenderer is equally 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 submitted by a Tenderer will, without prejudice to other rights and powers of the Government, (a) either be ignored; or (b) the Tenderer will be asked to withdraw it (**failing which its tender will not be considered**); or (c) no request for withdrawal will be given and **the tender will immediately not be considered**. None of the above (a) and (b) shall apply in the case of any counter-proposal to any essential requirement in Part VII (viz., requirements with [E] label). Such counter-proposal to any essential requirements will lead to disqualification of the Tenderer, subject only to any clarification opportunity which may be given pursuant to Clause 17.6 of this Part II. In the case of the Conditions of Contract, their Annexes or Specifications without Label in Part VII (excluding Annexes 1 to 10 to Part VII), or the payment schedule in Schedule 3, the Tenderer may submit counter-proposals but strictly in accordance with Clause 17.3 of this Part II.
- 17.3 Any counter-proposal to the Conditions of Contract or their Annexes, Specifications without Label, or Schedule 3 ("Counter-Proposals") will only be considered in exceptional circumstances. In the case of Counter-Proposals to the Specifications without Label, they will only be considered if they do not affect compliance with the Essential Requirements; and they are justified as advantageous to the Government or both the Government and the Contractor. For other Counter-Proposals, they will only be considered if they are not substantially substantial or do not cause substantial deviations from the original requirements to which they relate. Any Counter-Proposal shall be drafted and submitted in the following manner:
- (a) the Counter-Proposal shall be attached to the Offer to be Bound (or alternatively, in the case of Counter-Proposals to the Specifications without Label, attached to Schedule 5 of Part V, in either case, together with all necessary supporting documents including calculations and plans to justify the Counter-Proposals);

- (b) the original version of the relevant provision must be fully recited before any proposed alteration or deletion is made;
- (c) any alteration to any terms or requirements must be underlined and must bear the corresponding Clause number of the original provision unless it is an addition;
- (d) words to be deleted shall be crossed out by a single line only; and
- (e) an explanation shall be given below any such alteration or deletion and be put in square brackets ([]) for justification of the Counter-Proposals in the manner mentioned in the overhanging paragraph of Clause 17.3. For example, in the case of any Counter-Proposal to the Specifications without Label, where the Tenderer is of the view that the original specification to which the Counter-Proposal relates is not technically achievable whether on its own or after being integrated with the Vessel and the Equipment as a whole. Alternatively, the Tenderer is of the view that the Counter-Proposal relates to an alternative design or configuration or covers specifications that better meets the operational and/or maintenance requirements of the Government than the design or configuration or specifications contemplated in the Specification without Label. Generally speaking, proposed non-compliance as specified in Schedule 5 of Part V or deletion of a Specification without Label without any proposed alteration in replacement proposing an alternative design or configuration or specification is generally not acceptable unless it is justified as technically not achievable.

17.4 Unless the Government waives the requirements in Clause 17.3 of this Part II, a Counter-Proposal which is not submitted in accordance with Clause 17.3 of this Part II will be ignored and will not form part of the Contract, and the Tenderer concerned will be deemed to have agreed to the original term to which the Counter-Proposal relates.

17.5 The Government reserves the right to negotiate with the Tenderer concerning any Counter-Proposals regardless of whether they have been submitted in accordance with Clause 17.3 of this Part II. The Government may refrain from awarding the Contract to the Tenderer who is unwilling to withdraw its Counter-Proposal(s) which are not acceptable to the Government. Where this was the Tenderer which has attained the highest combined score in the tender evaluation, the **Tenderer's tender will not be considered further**, and the next Tenderer which has attained the next highest combined score will be the preferred Tenderer and the Government will conduct negotiation with that next ranking Tenderer with regard to any Counter-Proposals it may have made. On the other hand, to the extent that the Tenderer agrees to withdraw or further modify the Counter-Proposals, references to "Offered Specifications" shall henceforth be read to exclude such withdrew or modified Counter-Proposals. Unless otherwise agreed by the Government, the Tenderer may not ask for further increase to the Total Purchase Price for withdrawing or modifying any Counter-Proposals.

17.6 Where the Tenderer has in Schedule 5 and /or Schedule 11 affirmed its compliance with any requirement in the Technical Specifications (whether by virtue of any deeming provision or otherwise) (whether with or without label [E] or desirable specifications labelled with [D]) but (a) it has also submitted counter-proposals to any such requirements (whether by way of the items proposed in any of the Contract Schedules or by way of a specifically drafted provision containing the counter-proposal or otherwise) or (b) the Government, based on the information available to it including information published by the relevant manufacturer or in the tender, is in doubt as to whether the proposed Vessel or any proposed Equipment does at the time of evaluation truly comply with such requirements, the Government may, but is not obliged to, seek clarification with the Tenderer concerned pursuant to Clause 19 of this Part II. In the event that the Tenderer refuses to affirm compliance with the Essential Requirements in the course of the clarification or if the Tenderer has affirmed compliance, but the Government is not satisfied that the proposed Vessel or any proposed Equipment does at the time of evaluation truly comply with such Essential Requirements, the Tenderer will

be disqualified and **its tender will not be considered further**. In the case of Specifications without Label, or Desirable Specifications, the Counter-Proposals shall be dealt with depending on the result of the clarification by the Tenderer. If it is found that the Counter-Proposal could affect compliance with any of the Essential Requirements, the Tender **will not be considered further**. Subject to the foregoing, a Tenderer will not be disqualified for refusing to confirm compliance with any Specifications without Label or Desirable Specifications except under Clause 17.5 above.

- 17.7 Without prejudice to the rights and powers of the Government (including without limitation those under Clause 17.6 of this Part II), the Government has no obligation to any Tenderer that in relation to another Tenderer's offer, it should take into account information from any third party source (including from the manufacturer) to verify that other Tenderer's or its offer's compliance with any essential requirement or Specifications without Label or Desirable Specifications (including those set out in the Technical Specifications and those set out in these Conditions of Tender).

18 Equivalent International Standard

- 18.1 Any Equipment item offered by the Tenderer which is in compliance with an alternative standard different from the standard specified in the Technical Specifications ("**original standard**") may be considered provided that it can be shown that meeting such alternative standard means that the Equipment item complies with specifications no worse than those specifications covered by the original standard.
- 18.2 A Tenderer shall identify in its tender the alternative standard with which its offered Equipment item is in compliance. It shall also provide a comparison between the alternative standard and the original standard and documentary evidence satisfactory to the Government that compliance with the alternative standard means compliance with the specifications which are no worse than the specifications covered by the original standard.
- 18.3 Without prejudice to the power of the Government to request late submission, a Tenderer's failure to submit the information and/or documentary evidence requested above to the Government's satisfaction will lead to **its tender not being considered further** if the specifications are Essential Requirements.

19 Request for Information

- 19.1 In the event that the Government determines that:
- (a) clarification in relation to any part of the Tender is necessary (including without limitation in relation to any apparent inconsistency in the proposals submitted by the Tenderer); or
 - (b) a document or a piece of information other than the document or information set out in Clause 19.2 of this Part II, is missing from any Tender,
- it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the required document or information. The Tenderer concerned shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document in the form required by the Government. **A Tenderer's Tender will not be considered further** if complete information or document is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. Without prejudice to the foregoing, any proposal or information supplied by a

Tenderer which goes beyond what has been requested by the Government will be ignored for the purposes of the tender evaluation or will entitle (but not oblige) the Government to disqualify the Tenderer concerned. As an alternative to seeking clarification or further information or document, the Government may not consider the Tender further or may proceed to evaluate the Tender on an “as is” basis.

19.2 The document and information not covered by Clause 19.1(b) of this Part II are:

- (a) unit price quotations required in Schedule 1 – Price Schedule;
- (b) a signed Part VI – Offer to be Bound; and
- (c) any other document or information in respect of which it is specified in the Tender Documents that a failure to provide such to the Government in a Tender by the Tender Closing Date will result in **the Tender not being considered** including those specified in Paragraph (a) and Paragraph (b) of Annex B to this Part II.

20 Tender Evaluation

20.1 Without prejudice to other rights and powers of the Government to disqualify a Tenderer under other applicable provisions in the Tender Documents, Tenders will undergo the assessments mentioned in **Annex A (Tender Evaluation Procedures) to this Part II**.

21 Languages

21.1 All notices, correspondence and other communications, and all documents prepared or provided, under or in connection with this Invitation to Tender shall be in the English or Chinese languages. If documents are originally prepared in any other language, the Tenderer shall at its own cost provide the Government with English or Chinese language translation.

22 Contract Deposit, Parent Guarantee and Advance Payment Bond

22.1 Within 21 days from the date of **confirmation of Notification of Conditional Acceptance** (or such longer period as the Government may allow in writing), the successful Tenderer shall pay to the Government:

- (a) a Contract Deposit whether in cash or as a bank guarantee in the form set out in Annex A to the Conditions of Contract equal to two per cent (2%) of the Total Purchase Price; and
- (b) if expressly required in the Notification of Conditional Acceptance a duly executed Parent Guarantee in the form appearing in Annex B to the Conditions of Contract with only such amendments as may previously have been agreed in writing by the Government to be executed by each of the individual shareholders or holding company (direct or indirect) (as the case may be) stipulated by the Government in the condition. The Government is entitled to decide whether the guarantor(s) providing the Parent Guarantee is/are acceptable and to refuse the offer from any successful Tenderer which fails to meet the Government’s requirements; and
- (c) where the Tenderer intends to receive the first instalment of the Total Purchase Price by issuing an invoice to the Government for such instalment upon signing of the Articles of Agreement, an Advance Payment Bond in the form set out in Annex A to the Conditions of Contract in the same amount as the first instalment as specified in Schedule 3 – Payment Schedule and Retention Money.

- 22.2 Contract Deposit (where it is to be settled by bank guarantee) and an Advance Payment Bond to be submitted by the successful Tenderer pursuant to Clauses 22.1(a) and (c) of this Part II shall be issued by a licensed bank in Hong Kong (i.e. a bank with a valid banking license issued under the Banking Ordinance, Cap. 155 of the Laws of Hong Kong).

23 Negotiations

- 23.1 The Government reserves the right to negotiate with any Tenderer in relation to the Tenderer's Tender and the terms and conditions of the Contract. If the Government at its discretion considers appropriate, the Government will normally conduct negotiation with the Tenderer whose Tender is identified as the most advantageous to the Government based on the assessments set out in Annex A to this Part II.

24 Award of Contract

- 24.1 Unless the Government decides that it is in the public interest not to award the Contract, subject to the other provisions of the Tender Documents, the Contract will normally be awarded to the Tenderer who passes the assessments as mentioned in Annex A (Tender Evaluation Procedures) to this Part II and has attained the highest combined score under these assessments. Notwithstanding anything herein to the contrary, the Government is not bound to accept the Tender with the highest combined score or any Tender and reserves the right to accept any Tender at any time within the Tender Validity Period.
- 24.2 Even if the Tenderer is identified as the successful Tenderer for the award of the Contract pursuant to Clause 24.1 of this Part II, the Government reserves the right to accept all or any part of the Tenderer's offer including all or any of the Counter-Proposals and Excess Proposals.

25 Formation of Contract

- 25.1 Unless and until the Articles of Agreement have been executed by both the successful Tenderer and the Government, there is no Contract between the Government and that Tenderer.
- 25.2 The successful Tenderer will be notified within the Tender Validity Period as specified in Clause 14.2 of this Part II (as the same may be from time to time extended with the agreement of the Tenderers) (such notification is referred to as "**Notification of Conditional Acceptance**"). Upon receipt of such Notification of Conditional Acceptance, the successful Tenderer shall be obliged to fulfil all of the following conditions to the satisfaction of the Government within 21 days of the notification (or such later date as the Government may allow):
- (a) the Contract Deposit and where applicable the Advance Payment Bond as required under Clauses 22.1(a) and (c) of this Part II;
 - (b) the provision of a Parent Guarantee as required under Clause 22.1(b) of this Part II (if applicable) (and in the case that the Tenderer is an incorporated joint venture, each joint venture party must sign the Parent Guarantor on a joint and several basis);
 - (c) (if not already requested earlier prior to the conditional acceptance of tender) the provision of a legal opinion as required under Clause 7.2 and/or 7.4 of this Part II and the Additional Legal Opinion as required under Clause 7.3 of this Part II (if applicable);

- (d) the sub-contractor undertaking in the form set out in Annex C to Part IV to be executed by each Sub-contractor;
- (e) if not already provided in the Tender or if there are any subsequent changes, certified true copies of corporate documents of the successful Tenderer including the memorandum and articles of association or equivalent documents and business licence of the successful Tenderer and filings with the relevant registry showing the names of its directors and shareholders;
- (f) where the successful Tenderer carries on business in Hong Kong, a copy of the insurance policy as required under Clause 7.1 of Part IV, and evidence of payment of premium thereunder;
- (g) if requested by the Government, the agreement to the deletion of any Counter-Proposals or Excess Proposals not accepted by the Government (and in the case of Excess Proposals regardless of whether they were evaluated under the Marking Scheme and gained marks for the Tenderer) by initialling against the deletions on the version of the relevant Contract Schedules in Part V attached to the Notification of Conditional Acceptance and returning the same to the Government for incorporation into the final version of the Contract;
- (h) subject to sub-clause (g) above, modification of the Technical Specifications in Part VII of the Tender Documents by incorporating the Offered Specifications (excluding those Excess Proposals and Counter-Proposals not accepted by the Government), and other relevant information and clarifications provided by the Tenderer during the tender evaluation stage; and submit them for approval by the Government before the signing of the Articles of Agreement;
- (i) if not already provided as part of the tender (and unless the Government at its absolute discretion asks for such Export Approval(s) within a deadline after the Contract award), the production of evidence to the satisfaction of the Government showing that the Export Approval(s), including those the Export Approval Legal Opinion has confirmed to be required, having been obtained; however, where the Tenderer has provided evidence to the satisfaction of the Government that any item requiring Export Approval has been exported to a user (similar to the Government bureau/ department for which the Vessel is to be built) located in the mainland of the People's Republic of China (excluding Hong Kong Macau and Taiwan) from the same place of origin any time within the last two (2) years preceding the Tender Closing Date ("China Export Record"), the aforesaid Export Approval in relation to an item which has China Export Record shall not need to be provided under this sub-clause (i) as one of the conditions to be fulfilled before the award of the Contract but without prejudice to the successful Tenderer's obligation to obtain the Export Approvals in respect of these items after the award of the Contract under Clause 4.7 of Part IV;
- (j) the undated Articles of Agreement using the form set out in Part III to be signed by the Contractor in duplicate; except that in the case that the Tenderer is an unincorporated joint venture, each joint venture party must sign one counter-part of the Articles of Agreement as the Contractor on a joint and several basis; and
- (k) such other conditions as the Government may stipulate in the Notification of Conditional Acceptance.

25.3 Unless and to the extent waived by the Government in writing, upon fulfilment of the conditions by the Tenderer specified in Clause 25.2 of this Part II to the satisfaction of the Government, the Government will, subject to Clause 26 of this Part II, enter into the Contract with the successful Tenderer by signing the Articles of Agreement to be pre-signed and provided by the Tenderer under Clause 25.2(j) of this Part II. In the case where the Tenderer is an unincorporated joint venture, each joint venture must sign the Articles of Agreement as

the Contractor on a joint and several basis. The Government will date these Articles of Agreement on the date that it signs the same under this Clause 25.3. The Contract will incorporate, to the extent accepted by the Government, 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 (including without limitation the exclusion of any parts of the Tender which are to be ignored under any provisions of the Tender Documents) or such changes as the parties may agree). If a Tenderer fails to fulfil all or any of the conditions mentioned in Clause 25.2 of this Part II (unless and save to the extent they are waived by the Government in writing, if any), or fails to enter into the Articles of Agreement upon notification by the Government (“defaulting Tenderer”), the Notification of Conditional Acceptance will become void and be of no further force. The Government will disqualify the defaulting Tenderer, and it may, but is not obliged to, award the Contract to another Tenderer. Without prejudice to other rights and claims of the Government, the defaulting 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. On the other hand, notwithstanding anything in the Tender Documents or in the conditional acceptance of tender to the contrary, in the event that the Government exercises any of its discretion under Clause 26 of this Part II, the Government shall be entitled not to enter into the Contract with a Tenderer even if the Tenderer has received a conditional notification of acceptance and fulfilled all the conditions specified in Clause 25.2 of this Part II.

- 25.4 Tenderers who do not receive any notification within the Tender Validity Period will mean that their tenders have not been accepted.

26 Government Discretion

- 26.1 Notwithstanding anything in these Tender Documents to the contrary, if it is in the public interest to do so, the Government reserves the right to (a) cancel this Invitation to Tender, and abstain from making any award of the Contract; or (b) re-conduct the evaluation specified in Annex A to this Part II to identify the successful Tenderer notwithstanding the issue of any conditional acceptance of tender under Clause 25.2 of this Part II to any Tenderer.
- 26.2 After cancellation pursuant to Clause 26.1(a) above, if and when it considers fit, the Government reserves the right to re-issue this Invitation to Tender on such terms and conditions as the Government considers fit.
- 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 Contractors’ 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 or demonstration to the Government; or (c) attending briefings, document inspections, site visits or surveys; or (d) in presenting its reference sites or factories and equipment to the Government representatives during the site visits by the Government representatives, whether before or after the Tender Closing Date.

29 Consent to Disclosure

29.1 The Government may disclose, whenever it considers appropriate, to the public or upon request by any member of the public (which may have been a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, particulars (including the nature and quantity) of the products/services to be provided by the successful Tenderer, the date of the award, the name and address of the successful Tenderer, place of manufacture of the Vessel to be supplied and the Total Purchase Price.

29.2 Nothing in Clause 29.1 above shall prejudice the Government’s power to disclose whenever it considers appropriate information of any nature whatsoever in relation to or concerning any Tenderer (successful or unsuccessful) or its Tender (whether or not specified in Clause 29.1

above and including information recorded in whatever media) if the disclosure is made under any one of the following circumstances:

- (a) the disclosure of any information to any public officer or public body, as defined in the Interpretation and General Clauses Ordinance (Chapter 1 of the Laws of Hong Kong) or any other person employed, used or engaged by the Government (including agents, advisers, contractors and consultants);
- (b) the disclosure of any information already known to the recipient;
- (c) the disclosure of any information which is public knowledge (including due to disclosure to a public body under Clause 29.2(a) of this Part II);
- (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong, a request made by the Review Body on Bid Challenges (“the Review Body”) under the Agreement on Government Procurement of the World Trade Organization (“WTO GPA”) (where applicable), or an order of a court of Hong Kong or a tribunal with competent jurisdiction; or
- (e) the disclosure of any information regarding anti-competitive collusive conduct to the Competition Commission of Hong Kong (and other authorities as relevant);
- (f) without prejudice to the power of the Government under Clause 29.1 above, to the extent the information relates to a Tenderer, with the prior written consent of that Tenderer.

30 Intellectual Property Rights Licence

- 30.1 A Tender once submitted will become the property of the Government. Tenders of unsuccessful Tenderer may be destroyed in accordance with Clause 39 of this Part II. In consideration of the Government considering its Tender on and subject to the terms and conditions of the Tender Documents, without prejudice to all other rights and powers of the Government under the Tender Documents (including in particular its right to disclose information in the Tenders) and under the Contract (including in particular the Licence), each Tenderer hereby grants and shall upon the demand of the Government at the Tenderer’s cost procure that the lawful owner or authorised person of the relevant Intellectual Property Rights will grant, to the Government, its assigns, successors-in-title and authorised users, a royalty-free, non-exclusive, irrevocable, sub-licensable, transferable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its Tender and the presentation and demonstration to be conducted by the Tenderer (if any) including but not limited to doing any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong) for the purposes of tender evaluation and the disclosure as mentioned in Clause 29 of this Part II and for all other purposes incidental thereto or in connection therewith. Such right and licence shall continue to subsist so long as all or any Intellectual Property Rights subsist in the Tender (or any part thereof) and the presentation and demonstration to be conducted by the Tenderer (if any) under any applicable law, including the laws of Hong Kong.
- 30.2 The Tenderer shall indemnify the Government, its assigns, successors-in-title, and authorised users on the terms set out in Clause 21 of Part IV in the event if the exercise by any of them of the rights mentioned in Clause 30.1 of this Part II infringes or is alleged to infringe the Intellectual Property Rights of any person.
- 30.3 The Tenderer shall irrevocably waive, and undertake to procure at its own cost and expense all authors and presenters of the Tender, the presentation and demonstration (if any) or any part thereof to irrevocably waive, all moral rights (whether past, present or future) in such

items. The waiver shall operate in favour of the Government, its assigns, successors-in-title and authorised users and shall take effect from the date of submission of the Tender.

31 New Information

- 31.1 Each Tenderer should inform the Government in writing immediately of any factor which might affect its ability to meet any requirements of the Tender Documents, e.g., if the Tenderer is no longer the authorised agent for supplying a proprietary product. The Government reserves the right not to consider a Tenderer's Tender further if the Tenderer's continued ability to meet such requirements is in doubt.

32 Personal Data Provided

- 32.1 All personal data provided in a Tender will be used by the Government for the purposes of the Invitation to Tender and all other purposes arising from or incidental to it (including for the purposes of tender evaluation, the award of the Contract and resolution of any dispute arising from this Invitation to Tender). If the Tender is a successful Tender, the purposes shall be extended to include Contract enforcement and management, and resolution of dispute arising from the Contract. The Government may further disclose the personal data to such persons as it considers necessary for achieving all or any of the aforesaid purposes.
- 32.2 By submitting a Tender, a Tenderer is deemed to have agreed to, and to have obtained from each individual whose personal data is provided in the Tender, his consent for the disclosure to the Government, use and further disclosure by the Government of the personal data for the purposes and to the persons specified in Clause 32.1 above.
- 32.3 An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to the individual's personal data as provided for in sections 18 and 22, and Principle 6 of Schedule 1 to the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the Tender.
- 32.4 Enquiries concerning the personal data collected by means of the tender including the making of access and corrections shall be addressed to the Personal Data Privacy Officer of the Marine Department.

33 Warning against Bribery

- 33.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such offence committed by a Tenderer or any of its officers (including directors), employees or agents will render its Tender null and void.
- 33.2 The successful Tenderer shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the performance of the Contract, that the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors once selected.

34 Warranty Against Collusion

- 34.1 The Tenderer must ensure that the Tender is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in Paragraph 3 of the Non-collusive Tendering Certificate referred to in Clause 34.2 of this Part II), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.
- 34.2 The Tenderer shall complete and submit to the Government a Non-collusive Tendering Certificate (in the form set out in Schedule 12 in Part V (“Non-collusive Tendering Certificate”)) as part of its Tender.
- 34.3 In the event that a Tenderer is in breach of any of the representations, warranties and/or undertakings in Clause 34.1 of this Part II or in the Non-collusive Tendering Certificate submitted by it under Clause 34.2 of this Part II, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (a) reject the Tenderer’s Tender;
 - (b) if the Government has accepted the Tender, withdraw its acceptance of the Tenderer’s Tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract under Clause 29.1.9 of Part IV.
- 34.4 By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 34.1 of this Part II or in the Non-collusive Tendering Certificate submitted by it under Clause 34.2 of this Part II.
- 34.5 A breach by a Tenderer of any of the representations, warranties and/or undertakings in Clause 34.1 of this Part II or in the Non-collusive Tendering Certificate submitted by it under Clause 34.2 of this Part II may prejudice its future standing as a Government contractor or service provider.
- 34.6 The rights of the Government under Clauses 34.3 to 34.5 of this Part II are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

35 Authentication of the Submitted Information/Document

- 35.1 By submitting a Tender in response to the Invitation to Tender, each Tenderer authorises the Government to obtain from
- (a) any person whose particulars are set out in the tender submitted by the Tenderer including the manufacturer and any other proposed sub-contractor specified in the Contract Schedules, and
 - (b) any issuing body of any of the certificates or documentary evidence required in the Tender Documents,

all information which the Government considers appropriate and relevant to the evaluation of the Tender including information to verify the legitimacy, completeness, authenticity and accuracy of any information or document submitted by the Tenderer. If any consent from any

other person is required for the Government to obtain any of the aforesaid information or document, the Tenderer represents that such consent has been duly obtained.

36 Complaints about Tendering Process or Contract Awards

- 36.1 The tendering process is subject to internal monitoring to ensure that the relevant contract is awarded properly and fairly. Any Tenderer who feels that its Tender has not been fairly evaluated may write to the Director of Marine who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration, where the complaint relates to the tendering system or procedures followed. Regardless of the nature of the complaint, the Tenderer must lodge the complaint within three (3) months after the award of Contract.
- 36.2 A Review Body on Bid Challenges under the WTO GPA has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA. The relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department. They may also be sent to the interested parties upon request to the Secretariat of the Review Body. In the event that a Tenderer believes that a breach of the WTO GPA has occurred, the Tenderer may, within ten (10) working days after it knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless, the Tenderer is encouraged to seek resolution of its complaint in consultation with the Marine Department before lodging a complaint to the Review Body. In such instances, the Marine Department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.
- 36.3 The Review Body may receive and consider a late challenge but a challenge will not be considered if it is filed later than thirty (30) working days after the basis of the challenge is known or reasonably should have been known to the Tenderer.

37 Supplementary Information

- 37.1 Tenderers should look out for any amendments to these Tender Documents that will be published on the Internet (<http://www.mardep.gov.hk>) before the Tender Closing Date.
- 37.2 Prospective Tenderers should provide their information such as company name, name of contact person, email address and contact number when they download these Tender Documents from the Internet (https://www.mardep.gov.hk/en/tender/newves_one.html). According to the submitted information, all supplementary information or tender addenda to these Tender Documents will be sent to the corresponding email address.

38 Immigration

- 38.1 The Tenderer is reminded that, as a general policy, importation of labour from a place other than Hong Kong is not allowed by the Immigration Department save that in some special deserving circumstances the Director of Immigration may permit the importation of key management and technical personnel on a temporary basis. It is the Tenderer's sole responsibility to make any such arrangement as circumstances may require including obtaining work visas for those staff who are required to travel to Hong Kong for performing the Contract.

39 Documents of Unsuccessful Tenderers and Limitation Period for Claims Arising from this Invitation to Tender

- 39.1 The documents of unsuccessful Tenderers shall be retained for a period of not less than three years after the date of the Articles of Agreement are signed by both the Government and the successful Tenderer (in the case if WTO GPA applies to this Invitation to Tender). No Tenderer shall initiate any claim or legal proceedings against the Government arising from this Invitation to Tender after the expiry of three years from the date the Contract has been awarded and the Articles of Agreement signed (in the case if WTO GPA applies to this Invitation to Tender) or after expiry of one year from the date the Contract has been awarded and the Articles of Agreement signed (in the case if WTO GPA does not apply to this Invitation to Tender). Where it is not covered by the WTO GPA, the Government may destroy these documents three (3) months after the Contract has been constituted in the aforesaid manner.

40 Probable Requirements

- 40.1 Forecast or estimation on the quantities of the services and goods required and the Total Purchase Price payable, and all other information, statistics and forecast set out in the Tender Documents or any information or clarification provided from time to time or given at the briefing session (collectively “briefings”) (if any), are provided purely for the Tenderer’s information on an “as is” basis without warranty of any kind. The Government gives no warranty, representation or undertaking that (a) any information, statistics and forecast provided in the Tender Documents or any information or clarification provided from time to time or the briefings (if any) or otherwise are sufficient, accurate, complete, suitable or timely for any purpose whatsoever; and (b) there will be purchase of any particular quantity of equipment, hardware, software, program or service from any Tenderer whether specified in the Tender Documents to be provided upon request or demand.
- 40.2 To the maximum extent permitted by laws, the Government does not accept any liability or responsibility for (a) any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), (b) damage (including any direct, special, indirect or consequential damage of whatsoever nature) or (c) any cost or expense, suffered or incurred by any Tenderer arising from the use of, or reliance on, any information, statistics or forecast provided in the Tender Documents, or any information or clarification provided from time to time or in the briefings (if any), or otherwise that the actual price payable on and subject to the Contract do not meet the expectation or projection of any Tenderer or do not recoup the investment cost incurred or by any margin of the Total Purchase Price.
- 40.3 Each Tenderer acknowledges to the Government that it has not relied on or been induced to submit its Tender by any representation, warranty, forecast, estimate, or projection given by the Government or any of its officers, employees, agents, advisers, consultants or contractors.
- 40.4 No Tenderer will in any way be relieved from any obligation under the Tender Documents 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. The Tenderer shall make its own enquiries as to the accuracy and adequacy of all such information.

41 Environmental Protection

- 41.1 Tenderers are encouraged to minimise the impact of their activities on the environment and to observe the general guidelines in Guidance Note GN-1 (Environmental Protection) at Annex E to the Conditions of Tender.

42 Tender Briefing Session

- 42.1 A tender briefing session will be held, tentatively scheduled for 0930 hours on 18 September 2023, by online video conferencing through “Webex” software. Although participation in the tender briefing session is not compulsory, prospective Tenderers are encouraged to participate. The purpose of the briefing session is to explain the tendering process to the prospective Tenderers in order to help them better understand the process and avoid common errors made during the compilation and submission of Tenders. The briefing will be given in English. A prospective Tenderer who wishes to participate in the briefing session is requested to complete the reply slip at Annex F to this Part and fax it to the Director of Marine (Attn.: Senior Surveyor of Ships/Government New Construction (2)) on (852) 2746 0518 on or before 11 September 2023. Confirmation of registration will be issued to the prospective Tenderer upon receipt of the signed reply slip. Late registration may not be accepted.
- 42.2 For the online tender briefing session, two (2) logins to the “Webex” meeting room will be allowed for each prospective Tenderer (i.e., the prospective Tenderer may register with two (2) email addresses for accessing the meeting room). The invitation and password for joining the online briefing session will be provided on or before 1200 hours on 13 September 2023 through email to the prospective Tenderers who have submitted the reply slip. Only the “Webex” account holder with the email addresses registered with that account and provided in the reply slip will be allowed to join the online tender briefing session.
- 42.3 In case Tropical Cyclone Warning Signal no. 8 or above is hoisted, or a Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force, or the “Webex” meeting room is inaccessible by all attendees registered for the online briefing session, for any duration at or after 0800 hours on 18 September 2023, the tender briefing scheduled for that day will be cancelled and the Government will notify prospective Tenderers who have submitted the reply slip of the arrangement for the rescheduled tender briefing.
- 42.4 The schedule of the tender briefing session is subject to change at the sole discretion of the Government. Prior notice will be given to the prospective Tenderers who have submitted the reply slip regarding the arrangement of the rescheduled tender briefing (if necessary).

Annex A – Tender Evaluation Procedures

Without prejudice and in addition to the powers of the Government under the Tender Documents to disqualify a Tenderer, Tenders submitted in response to this Invitation to Tender will be evaluated in the following manner.

Stage 1 – Completeness Check

A completeness check will be conducted by checking whether the Tender's Technical Proposal in the Tender has been submitted in accordance with the requirements stipulated in the Tender Documents. If a Tenderer fails to submit any of the documents stipulated in **Paragraph (a) of Annex B (Information / Documents to be Submitted for Tender Evaluation)** to Part II – Conditions of Tender for the Technical Proposal before the Tender Closing Date, **its Tender will not be considered further.**

Tenders which have passed Stage 1 of this assessment will proceed to Stage 2 of this assessment.

Stage 2 – Assessment of Compliance with Essential Requirements

1. A Tender will be checked for its compliance with the Essential Requirements as detailed in the Tender Documents.
2. Any Tender which fails to meet any of the Essential Requirements (viz., those set out in **Annex C (Essential Requirements)** to this Part II – Conditions of Tender, those identified as such in Part VII with [E] label and in any other parts of the Tender Documents) **will not be considered further.**
3. Apart from the Essential Requirements, the Government may also exercise all or any of its rights and powers to not consider a Tenderer's Tender further under all or any of the applicable provisions of the Tender Documents including without limitation those set out in Part II – Conditions of Tender. Where the Government does so under any such applicable provision, **the Tenderer's Tender will not be considered further.** In addition, such rights and powers may be exercised in accordance with the timing as specified in the relevant provisions of the Tender Documents but not necessarily under this Stage 2.
4. Those Tenders which have passed Stage 2 of this assessment will proceed to Stage 3.

Stage 3 – Technical Assessment

5. All Tenders which have passed Stages 1 and 2 of this assessment will be evaluated according to the Marking Scheme in **Annex D (Marking Scheme) to Part II – Conditions of Tender** and summarised below.

Assessment Criteria	Maximum Marks
(A) Technical Aspect	
I. Functional Aspects	20
II. Operational Aspects	25
III. Innovative Suggestions	
(a) Pro-innovation Proposals – directly relevant to the procurement	20
(b) ESG Proposals – measures to improve environmental protection, sustainability or governance or social responsibility which may but need not be directly relevant to the procurement	5
Sub-total for (A)	70
(B) Experience and Accreditations	
I. Experience in Design and Construction of Hovercraft	10
II. Accreditations	5
Sub-total for (B)	15
(C) Past Performance	
I. Tenderer's Past Performance in Design, Construction, Delivery and Warranty Services	15
Sub-total for (C)	15
Total Technical Marks	100

6. Presentation

As part of the Technical Assessment in accordance with the Marking Scheme in Annex D (Marking Scheme) to Part II - Conditions of Tender, the Marine Department (“MD”), at its sole discretion, may require all Tenderers which have passed Stage 1 and Stage 2 of the Tender Evaluation Procedures to make a verbal presentation, so as to verify the submitted information and data in supporting the Tenderer's commitment in achieving the stated requirements as stipulated in the Tender Documents. If so required and at MD's sole discretion, either all Tenderers who have passed Stage 1 and Stage 2 assessments, or none of these Tenderers as the case may be, will be required to make the presentation. A Tenderer invited to the presentation but opted not to attend will not be disqualified.

7. A **maximum weighted technical score of 70** will be allocated to the Tender achieving the highest overall technical mark. The weighted technical scores of other Tenders which have passed Stage 1 and 2 assessments will be calculated in accordance with the following formula:

$$\left[\begin{array}{l} \text{Weighted Technical} \\ \text{Score of a Tender} \end{array} \right] = 70 \times \frac{\left[\begin{array}{l} \text{Overall technical mark of the Tender being assessed} \end{array} \right]}{\left[\begin{array}{l} \text{Highest overall technical mark among all Tenders} \\ \text{which have passed Stages 1 and 2 Assessments} \end{array} \right]}$$

Stage 4 – Price Assessment

8. The Price Proposals of the Tenders which have passed Stages 1 to 2 of this assessment, and completed Stage 3 assessment will be evaluated. A checking will be conducted to determine if all unit prices for all items complying with the Offered Specifications as specified in Schedule 1 have been submitted in these Tenders. If so, the Tender price of each such Tender will be assessed. The “Tender price” submitted in a Tender means the Total Purchase Price quoted in Schedule 1 of Part V in such Tender. A **maximum weighted price score of 30** will be allocated to the Tender with the lowest Tender price. The weighted price scores of other Tenders which have passed Stage 1 and 2 assessments will be calculated in accordance with the following formula.

$$\left[\begin{array}{l} \text{Weighted Price} \\ \text{Score of a Tender} \end{array} \right] = 30 \times \frac{\left[\begin{array}{l} \text{Lowest Tender price among all Tenders} \\ \text{which have passed Stages 1 and 2 Assessments} \end{array} \right]}{\left[\begin{array}{l} \text{Tender price of the Tender being assessed} \end{array} \right]}$$

Stage 5 – Calculation of combined score for Technical and Price Assessment

9. The combined score of each of the Tender proposals that have completed the aforesaid Stages 1 to 4 of this assessment will be calculated as follows:

$$\text{Combined Score} = \text{Weighted Technical Score} + \text{Weighted Price Score}$$

Note: All figures of the weighted technical scores, weighed price scores and combined scores in Stages 3 to 5 of this assessment will be rounded to the nearest two decimal places. Figures with the values at the third decimal place larger than or equal to 0.005 will be rounded up by adding 0.01 to the figures and curtailing the third decimal place onwards whereas figures with the values at the third decimal place below 0.005 will be rounded down by curtailing the third decimal place onward without changing the values at the second decimal place.

10. Normally, a Tenderer whose Tender obtained the highest combined score and who is considered by the Government to be capable of undertaking the Contract (including technically, commercially and financially) will be awarded the Contract unless it has proposed Counter-Proposals under Clause 17.3 of Part II – Conditions of Tender which are not acceptable to the Government. Where it has done so, further negotiation with such Tenderer concerning such Counter-Proposals will be required. That Tenderer may still be disqualified

if it is unwilling to withdraw or modify any Counter-Proposals not acceptable to the Government. If two or more Tenderers obtain the same highest combined score, the Tenderer's tender which obtains the higher or highest weighted technical score will be recommended for acceptance subject to the same arrangement as aforementioned.

Annex B – Information / Documents to be Submitted for Tender Evaluation

- (a) A Tenderer shall submit all of the following in the **Technical Proposal** of its tender **before the Tender Closing Date**.
- (i) the **“Offer to be Bound” in the form set out in Part VI (using the hardcopy obtained from the Government or a photocopy or scanned copy of such hardcopy or a printed copy using a softcopy obtained from the Government or a photocopy or scanned copy of such printed copy) and originally signed by the Tenderer; reference to “original signed” includes a digital image of a hand-written signature (viz., a scanned signature) regardless of whether the scanning of the signature was done separately or together with the document as a whole;**
 - (ii) a statement of compliance with all the Essential Requirements in Schedule 5 (Statement of Compliance) of Part V;
 - (iii) the name of the manufacturer and the model or version (name or number) (where applicable) of all the Equipment in Schedule 6 (List of Major Equipment to be Supplied) of Part V;
 - (iv) all such plans and information listed in the table set out in Schedule 7 (List of Drawings and Information to be Submitted with the Tender) of Part V which are essential submission (i.e., those specified items and information which are expressly required to be submitted before the Tender Closing Date, **otherwise the Tenderer’s tender will not be considered further**); and
 - (v) the proposed Recognised Organisation (“RO”) and its rules and regulations, and class notation for the Vessel as required in Schedule 9 (Proposed Recognised Organisation) in Part V (which proposed class notation must not be inconsistent with the Offered Specifications).

Otherwise, the Tenderer’s tender will not be considered further.

- (b) A Tenderer shall submit all of the following in the **Price Proposal** of its tender **before the Tender Closing Date**.
- (i) the unit price quotations for all items complying with the Offered Specifications as required in Part 1 to Part 2 of Schedule 1 (Price Schedule) of Part V.

Otherwise, the Tenderer’s tender will not be considered further.

- (c) In addition to Paragraphs (a) and (b) above, the Tenderer is required to provide all other information/supporting documents requested in these Tender Documents or relevant to its tender, including but not limited to the following:
- (i) in accordance with the deeming provision set out in Note 2 at the end of Schedule 5, elaboration on those Specifications without Label under the heading of “Specifications without Label” in Item 13 of Schedule 5 which the Tenderer does not intend to comply by referring to their Paragraph numbering (in the applicable level) as they appear in Part VII (excluding Annexes 1 to 10); and Counter-Proposals in respect of such Specifications without Label to be submitted in accordance with Clause 17.3 of Part II as well all necessary plan and information to prove compliance with such Counter-Proposals;
 - (ii) the remaining information required in Schedule 6 of Part V (other than the information which is already covered in (a)(iii) above);

- (iii) all such plans and information listed in the table of Schedule 7 (List of Drawings and Information to be Submitted with the Tender) of Part V (other than the information which is already covered in (a)(iv) above and unless any such plan or information relates to a Specification without Label which the Tenderer has already counter-proposed under (c)(i) above before the Tender Closing Date);
- (iv) the Tenderer's information and corporate documents as required in Paragraphs 1 and 2 of Schedule 8 (Tenderer's Information) of Part V;
- (v) information of Tenderer's nominated shipyard and workshop facilities as required in Paragraph 3 of Schedule 8 (Tenderer's Information) of Part V;
- (vi) where applicable, the Sub-contractor in Paragraph 4 of Schedule 8 (Tenderer's Information) of Part V;
- (vii) a copy of a relevant document showing that the authorised person(s) who sign(s) the "Offer to be Bound" has/have the authority to sign for and on behalf of the Tenderer as required in Clause 5.7 of Part II;
- (viii) all technical and descriptive literature and catalogues for the Equipment proposed in Schedules 6 and 7 as required in Clause 6 of Part II; and
- (ix) the signed Non-collusive Tendering Certificate in Schedule 12 of Part V as required in Clause 34 of Part II.

The Tenderer should provide all the above items at the same time when it submits the tender. If any of the above is found missing in a tender, the Government may, but is not obliged to, make a request for the missing item pursuant to Clause 19 of this Part II. If the Government does elect to request the missing item, but it is still not provided within the time specified by the Government, **the Tenderer's tender will not be considered further**. Alternatively, the Government may elect to evaluate the tender on an "as is" basis. Or further in the alternative, the Government will not consider the Tenderer's tender further without giving any opportunity to the Tenderer to make a resubmission.

- (d) The Tenderer may wish to provide the items below at the same time when it submits its tender.
 - (i) "Excess Proposals" including Innovative Suggestions made by the Tenderer for evaluation under the applicable assessment criteria of Part (A) of the Marking Scheme in Schedule 11 (Excess Proposals) of Part V and any other applicable Schedule as stated in Schedule 11 of Part V;
 - (ii) (not applicable if there is no such type of desirable specifications) Statement of compliance with the desirable specifications other than the specifications of the Excess Proposal in Schedule 11 (Excess Proposal) of Part V under the heading of "Desirable Specifications other than the specifications for the Excess Proposals"; and
 - (iii) information and supporting documents to support the Tenderer's claimed experience in design and construction of vessel project(s) and Accreditations in Schedule 10 (Claim of Tenderer's Experience and Accreditations) for evaluation under Part (B) of the Marking Scheme.

Where no information whatsoever ever is provided in relation to a vessel project or an Accreditation or an Excess Proposal, the Government will evaluate the Tender on an "as is" basis. Where some information has been provided in Schedule 10 in relation to a vessel project or an Accreditation, or some information about an Excess Proposal has been provided in the applicable Schedule, but there is other missing information or supporting document, the Government reserves the power, but not the obligation to seek the missing information or supporting documents. Alternatively, the Government may choose to evaluate the tender on

an “as is” basis. Where there is no compliance statement in relation to any of the desirable specifications, it shall be deemed that the Tenderer does not elect to comply with it.

- (e) Nothing in this Annex shall limit the Government’s absolute right to determine or to request any other information/supporting documents in connection with or arising out of this Invitation to Tender.

Important Note:

Tenderer should provide their contact details when downloading the Tender Documents and look out for any amendments to these Tender Documents that will be published on the Internet (<http://www.mardep.gov.hk>) as stipulated in Clauses 37.1 and 37.2 of this Part II.

Annex C - Essential Requirements

Item	Tender Reference	Essential Requirements in Part VII
1.	Paragraph 2.3.1 of Part VII of the Tender Documents	The Hovercraft shall be fitted with two engines providing propulsion (thrust) and lift separately. The Hovercraft shall be designed to carry three (3) persons with seating provided, with a payload of at least 350 kg.
2.	Paragraph 2.3.2 of Part VII of the Tender Documents	The Hovercraft shall be designed with a detachable canopy covering the consoles and crew seats.
3.	Paragraph 2.3.3 of Part VII of the Tender Documents	The hull of the Hovercraft shall be built in marine grade aluminium alloy, suitable for use in the marine environment, sheltered waters, over land as well as mud.
4.	Paragraph 2.4.1 of Part VII of the Tender Documents	The Hovercraft shall be designed and constructed in accordance with the Hovercraft Code or equivalent, in the latest version as at the Contract Date.
5.	Paragraph 2.5.1 of Part VII of the Tender Documents	In the fully loaded condition [i.e. full fuel plus three (3) persons on board as specified in Chapter 1.7.2(e) of this Part VII] and with all engines running at their declared Maximum Continuous Rating (MCR), the guaranteed minimum highest achievable speed under the Official Speed Trial Conditions as stated in Annex 5 to Part VII shall be as follows: Minimum highest achievable forward speed in still air on water: 28 knots
6.	Paragraph 2.5.2 of Part VII of the Tender Documents	The Hovercraft shall also be designed for loitering operations. The Hovercraft shall be capable of operating at 2 to 5 knots.
7.	Paragraph 2.6 of Part VII of the Tender Documents	Length Overall: 6.5 – 7 metres Extreme Breadth: 3.5 – 4 metres Maximum Height: 2.5 – 3 metres
8.	Paragraph 2.7 of Part VII of the Tender Documents	Hull Structure: Marine Grade Aluminium Skirt: Hypalon Loop and Natural Rubber Segments Air Propeller (and Impeller) Blades: Composite Material Air Propeller Duct (Shroud): Composite Material Rudder(s): Marine Grade Aluminium /Composite Material Consoles: Composite Material
9.	Paragraph 2.8.2 of Part VII of the Tender Documents	Endurance for fuel capacity over ground and sea: 4 hours at the patrol speed of 20 knots at sea.

Item	Tender Reference	Essential Requirements in Part VII
10.	Paragraph 3.4.1 of Part VII of the Tender Documents	The offered Hovercraft shall meet the stability requirements of the RO and the Hovercraft Code, or equivalent, in the latest version as at the Contract Date.
11.	Paragraph 4.1.2 of Part VII of the Tender Documents	The Hovercraft shall be powered by two engines for propulsion (thrust) and lift respectively. Both engines shall be four-stroke diesel engines of adequate power to deliver the Contract Speed as stated in Paragraph 2.5 of Part VII.
12.	Paragraph 4.1.3 of Part VII of the Tender Documents	If either engine is having an output power of 130 kW or more, such engine(s) shall have Type Approval Certificate(s) issued by an RO or other entities acceptable to MD in compliance with IMO Tier II emission requirements, and which shall be provided to MD.

Annex D – Marking Scheme

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
(A) Technical Aspect	70	
(I) Functional Aspects	20	
<p>(a) General Arrangement</p> <p>It is desirable that the design of the general arrangement of the proposed Hovercraft as shown in the Preliminary General Arrangement Plan of the proposed Hovercraft submitted by the Tenderer in Schedule 7 of Part V providing benefits in the following aspects exceeding the requirements as set out in Part VII:</p> <p>(i) Safe and efficient movement of crew to different stations inside the Hovercraft;</p> <p>(ii) Efficient access and maintenance of major equipment as listed in the Schedule 6 of Part V;</p> <p>(iii) Efficient design and layout that facilitates handling of major incidents, including but not limited to search and rescue operations and medical evacuations; and</p> <p>(iv) Higher robustness of construction, better speed control response and predictable manoeuvrability at high speeds with smooth ride characteristics.</p>	16	<p>Marks will be given as follows:</p>
		<p>16 marks</p> <p>The General Arrangement of the proposed Hovercraft demonstrates a practical and effective design which can bring benefits to all the four (4) aspects as stated in the first column opposite.</p>
		<p>12 marks</p> <p>The General Arrangement of the proposed Hovercraft demonstrates a practical and effective design which can bring benefits to three (3) aspects as stated in the first column opposite.</p>
		<p>8 marks</p> <p>The General Arrangement of the proposed Hovercraft demonstrates a practical and effective design which can bring benefits to two (2) aspects as stated in the first column opposite.</p>
		<p>4 marks</p> <p>The General Arrangement of the proposed Hovercraft demonstrates a practical and effective design which can bring benefits to one (1) aspect as stated in the first column opposite.</p>
<p>0 mark</p> <p>The General Arrangement of the proposed Hovercraft brings no benefit to any aspect as stated in the first column opposite.</p>		

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
<p>(b) B5 Diesel Fuel Tank and Systems</p> <p>As B5 Diesel is supplied to the Hong Kong Police Force, it is desirable that the Tenderer has proposed additional design features, to mitigate the risk of accelerated fuel system wear and microbial contamination.</p>	4	Marks will be given as follows:
		4 marks Two (2) or more additional design features
		2 marks One (1) additional design feature
		0 mark No additional design features
(II) Operational Aspects	25	
<p>(a) The Electronic Navigation Equipment (or “ENE”) for the Hovercraft</p> <p>It is desirable that any one or more of the ENE as listed in Chapter 7 of Part VII proposed by the Tenderer for the Hovercraft (“Selected ENE”) should have one or more features in addition to those already specified in Chapter 7 of Part VII (“Additional Features”).</p> <p>The proposed brand and model of the one or more Selected ENE with the Additional Features shall have been installed and used on a Hovercraft operated by one or more law enforcement agency, military organisation, coast guard agency, conservancy agency or a company providing maritime security services in Hong Kong or any other part of the world anytime within 60 months prior to the Original Tender Closing Date.</p> <p>The Additional Features shall in the sole opinion of the Government substantially enhance the operation including but not limited to any one of the following:</p> <ul style="list-style-type: none"> (i) Capability; or (ii) Functionality; or (iii) Security; or (iv) Resilience. 	15	Marks will be given as follows:
		15 marks Five (5) or more Additional Features
		12 marks Four (4) Additional Features
		9 marks Three (3) Additional Features
		6 marks Two (2) Additional Features
		3 marks One (1) Additional Feature
0 mark No Additional Feature		

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
<p>(b) Comfortability and Maneuverability</p> <p>It is desirable that the Hovercraft has more useful features to enhance the crew's comfort and maneuverability with benefits exceeding the requirements set out in Part VII.</p>	10	Marks will be given as follows:
		10 marks The proposed Hovercraft has two (2) or more additional useful features.
		5 marks The proposed Hovercraft has one (1) additional useful feature.
		0 mark The proposed Hovercraft has none (0) additional useful feature.
(III) Innovative Suggestions (Notes 3 to 6)	25	
<p>(a) Pro-innovation Proposals</p> <p>Tenderers are encouraged to propose effective and practical pro-innovation proposals which are directly relevant to the procurement and would enhance the capabilities of the proposed Hovercraft to perform the missions, including but not limited to sea safety patrol, search and rescue operations, law enforcement operations, logistical support, beach landing, and officer transferring.</p> <p>Details of such proposals shall be submitted with supporting evidence for consideration, and acceptance or otherwise will be at the sole discretion of the Government.</p>	20	Marks will be given as follows:
		20 marks Five (5) or more effective and practical pro-innovation proposals.
		16 marks Four (4) effective and practical pro-innovation proposals.
		12 marks Three (3) effective and practical pro-innovation proposals.
		8 marks Two (2) effective and practical pro-innovation proposals.
		4 marks One (1) effective and practical pro-innovation proposal.
		0 mark No effective and practical pro-innovation proposals.

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
<p>(b) ESG Proposals</p> <p>Tenderers are encouraged to propose ESG proposals that will improve environmental protection, sustainability or governance or social responsibility, which may but need not be directly relevant to the procurement, but would bring about positive values/benefits to the Government, or the public at large.</p> <p>Marks will be given to effective and practicable ESG proposals which contribute to all or some or any one of the following positive values/benefits –</p> <ul style="list-style-type: none"> • environmental protection (e.g. reduction in energy consumption, use of renewable energy, such as solar energy, in the execution of the contract, etc.); • social responsibility (e.g. employment of people with disabilities and/or rehabilitated persons for the contract, etc.); and/or • governance. 	5	Marks will be given as follows:
		5 marks Two (2) or more effective and practicable ESG proposals.
		2 marks One (1) effective and practicable ESG proposal.
		0 mark No effective and practicable ESG proposal.
(B) Experience and Accreditations	15	
(I) Tenderer's Experience in Design and Construction of Hovercraft (Notes 7 and 8)		
<p>(a) Number of Hovercraft Contracts Completed</p> <p>In the past ten (10) years prior to the Original Tender Closing Date, the Tenderer has performed and completed one or more contracts in either the design and construction, or just construction, of one or more aluminium Hovercraft between 5m and 8m LOA (both figures inclusive) capable of achieving a minimum speed of 20 knots, which was in service any time within last ten (10) years prior to the Original Tender Closing Date ("Reference Contracts (1)"). Marks will be</p>	5	Marks will be given as follows:
		5 marks The Tenderer has performed and completed five (5) or more Reference Contracts (1).
		4 marks The Tenderer has performed and completed four (4) Reference Contracts (1).
		3 marks The Tenderer has performed and completed three (3) Reference Contracts (1).

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
awarded to the Tenderer as per the third column opposite, based on the information provided in Schedule 10 of Part V and shall also make reference to Note 2 below.		2 marks The Tenderer has performed and completed two (2) Reference Contracts (1).
		1 mark The Tenderer has performed and completed one (1) Reference Contract (1).
		0 mark The Tenderer has not performed and completed any Reference Contract (1).
<p>(b) Number of Patrol Hovercraft Contracts Completed</p> <p>In the past ten (10) years prior to the Original Tender Closing Date, the Tenderer has performed and completed one or more contracts in either the design and construction, or just construction, of one or more aluminium patrol Hovercrafts for law enforcement agencies, military organisation, coast guard agency, conservancy agency or a company providing maritime security services between 6.5m and 7m LOA (both figures inclusive) capable of achieving a minimum speed of 25 knots, which was in service any time within last ten (10) years prior to the Original Tender Closing Date. ("Reference Contracts (2)").</p> <p>Marks will be awarded to the Tenderer as per the third column opposite, based on the information provided in Schedule 10 of Part V and shall also make reference to Note 2 below.</p>	5	Marks will be given as follows:
		5 marks The Tenderer has performed and completed five (5) or more Reference Contracts (2).
		4 marks The Tenderer has performed and completed four (4) Reference Contracts (2).
		3 marks The Tenderer has performed and completed three (3) Reference Contracts (2).
		2 marks The Tenderer has performed and completed two (2) Reference Contracts (2).
		1 mark The Tenderer has performed and completed one (1) Reference Contract (2).
		0 mark The Tenderer has not performed and completed any Reference Contract (2).

Assessment Criteria	Maximum Marks out of total 100 marks	Guidelines to Tenderers for Attaining Marks in Technical Assessment
(II) Accreditations (Note 9)		
<p>(a) The Tenderer (and/or Another Holder as defined in Note 7 below) has attained all or any one of the following three accreditations (collectively, “Accreditations”) as at the Original Tender Closing Date:</p> <p>(i) International Organization for Standardization (“ISO”) 9001;</p> <p>(ii) ISO 14001; or</p> <p>(iii) ISO 45001.</p>	5	Marks will be given as follows:
		<p>5 marks</p> <p>The Tenderer and/or Another Holder has attained three (3) Accreditations and has produced supporting documents of all such Accreditations which are valid as at the Original Tender Closing Date.</p>
		<p>3 marks</p> <p>The Tenderer or Another Holder has attained two (2) of the three Accreditations and has produced supporting documents of the Accreditation which is valid as at the Original Tender Closing Date.</p>
		<p>1 mark</p> <p>The Tenderer or Another Holder has attained any one (1) of the three Accreditations and has produced supporting documents of the Accreditation which is valid as at the Original Tender Closing Date.</p>
		<p>0 mark</p> <p>The Tenderer has not attained any of the three Accreditations nor produced any supporting documents of the Accreditation which is valid as at the Original Tender Closing Date. Another Holder also does not exist.</p>

(C) Past Performance	15	
(I) Tenderer's Past Performance in Design, Construction, Delivery and Warranty Services (Note 10)		
<p>(a) Design and/or Construction Deficiencies</p> <p>In previous shipbuilding contracts the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date, there have been instances when the design and/or construction deficiencies have resulted in major failures that rendered the vessel inoperable or with significant difficulties in operation which the contractor has failed to rectified in accordance with the contract provision. The following particulars of the vessel design and/or construction are to be reviewed:</p> <p>(i) Structure; (ii) Electrical installation; (iii) Mechanical propulsion system; (iv) Auxiliary systems; (v) Outfit construction and installation; and (vi) Operational issues including but not limited to Vessel performance, manoeuvrability and dynamic behaviours of the Vessel in waves.</p> <p>Marks will be awarded to the Tenderer as per the third column opposite.</p>	3	Marks will be given as follows:
		<p>3 marks</p> <p>There has been no design and/or construction deficiency rendering a previous delivered vessel as stated in the first column opposite in any previous shipbuilding contract executed with the Government.</p> <hr/> <p>0 mark</p> <p>There has been one (1) or more instance of the design and/or construction deficiency rendering a previous delivered vessel as stated in the first column opposite.</p>

<p>(b) Adherence to Delivery Schedule</p> <p>In previous shipbuilding contracts the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date, there have been instances when the delivery schedule has not been met and caused delays to the delivery acceptance.</p> <p>Marks will be awarded to the Tenderer as per the third column opposite.</p>	3	Marks will be given as follows:
		<p>3 marks</p> <p>At least 30 days advanced delivery has been achieved in the delivery of any vessel in any previous shipbuilding contract executed with the Government, as well as the delivery schedule has been met in all vessel(s), if any, in other previous shipbuilding contract executed with the Government.</p>
		<p>1 mark</p> <p>The delivery schedule has been met in any previous shipbuilding contract executed with the Government.</p>
<p>(c) Warranty Services</p> <p>(i) In previous shipbuilding contracts the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date, there have been instances when the Tenderer failed to carry out the warranty services in a timely manner that MD had to arrange corrective maintenance and rectification of the defect either on its own or by deploying a third party contractor as deemed appropriate with a view to minimising any downtime incurred.</p> <p>Marks will be awarded to the Tenderer as per the third column opposite.</p>	3	Marks will be given as follows:
		<p>3 marks</p> <p>There has been no instance of failures of warranty items in any previous shipbuilding contract executed with the Government.</p>
		<p>1 mark</p> <p>The Tenderer has carried out all the warranty services in a timely manner in any previous shipbuilding contract executed with the Government.</p>
		<p>0 mark</p> <p>There has been one (1) or more instances when the Tenderer failed to carry out the warranty services in a timely manner as stated in the first column opposite.</p>

<p>(ii) In previous shipbuilding contracts the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date, there have been instances of recurrent failures of Warranty Items.</p> <p>Recurrent failures of Warranty Items mean the same warranty item failed again after repair / rectification work has been taken during the warranty period.</p> <p>Marks will be awarded to the Tenderer as per the third column opposite.</p>	3	<p>Marks will be given as follows:</p>
		<p>3 marks</p> <p>There has been no instance of recurrent failures of Warranty Items as stated in the first column opposite.</p>
		<p>0 mark</p> <p>There has been one (1) or more instances of recurrent failures of Warranty Items as stated in the first column opposite.</p>
<p>(iii) In previous shipbuilding contracts the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date, there have been instances of suspension of the Warranty Period due to failure of Warranty Items.</p> <p>Suspended Warranty Period means the total length of the suspension of the Warranty Period due to failure of Warranty Items in all previous shipbuilding contracts that the Tenderer has executed with the Government within last ten (10) years prior to the Original Tender Closing Date.</p> <p>Marks will be awarded to the Tenderer as per the third column opposite.</p>	3	<p>Marks will be given as follows:</p>
		<p>3 marks</p> <p>There has been no instance of suspension of the Warranty Period due to failure of Warranty Items as stated in the first column opposite.</p>
		<p>0 mark</p> <p>There has been one (1) or more instances of suspension of the Warranty Period due to failure of Warranty Items as stated in the first column opposite.</p>
<p>Total Marks</p>	<p>100</p>	

Note 1: For all assessment criteria set out in Part (A) (Technical Assessment) of this Marking Scheme, the evaluation will be conducted on the basis of the plans and proposals submitted by the Tenderer in the relevant part of the tender as specified the last column of Schedule 11 of Part V together with all supporting information and documents submitted. If these plans, proposals, supporting information and documents do prove to the satisfaction of the Government that the relevant assessment criterion or any one aspect of the relevant assessment criterion is complied with, marks will be given but not otherwise. In the absence of any such plans, proposals, supporting information and/or documents (“Lack of Information (1)”), the Tenderer will not earn any mark for such assessment criterion. All references to the situation where zero mark will be awarded will include such situation of Lack of Information (1).

- Note 2: For all assessment criteria set out in Part (B) (Experience and Accreditations) of this Marking Scheme, the evaluation will be conducted on the basis of the information and supporting documents submitted by the Tenderer in Schedule 10 of Part V. If the information and supporting documents provided do prove to the satisfaction of the Government that the relevant assessment criterion or any one aspect of the relevant assessment criterion is complied with, marks will be given but not otherwise. In the absence of such information and/or supporting documents (“Lack of Information (2)”), the Tenderer will not earn any mark for such assessment criterion. All references to the situation where zero mark will be awarded will include such situation of Lack of Information (2).
- Note 3: For the purpose of facilitating the Government to evaluate pro-innovation proposals/ESG proposals proposed for earning mark under assessment criteria in (A)(III) (a) to (b), unless the Government exercises its discretion to cancel the presentation and/or demonstration, all Tenderers whose tenders are being evaluated under this Marking Scheme may at the option of the Government be requested to attend and perform a presentation and/or demonstration to present and/or demonstrate the pro-innovation proposals/ESG proposals (all or any of them). This presentation and/or demonstration are not mandatory in order for the pro-innovation proposals/ESG proposals to be evaluated under this Marking Scheme. The Government may issue the invitation to all Tenderers’ whose tenders are evaluated under this Marking Scheme, or may opt not to issue such invitation. Even if an invitation is issued, a Tenderer may elect to attend or not to attend. The performance of the presentation and/or demonstration will not be directly evaluated but to provide a means to facilitate the Government to evaluate the pro-innovation proposals/ESG proposals in accordance with the stated assessment criteria. For Tenderers who have not agreed with the Government on the date and venue of such presentation and/or demonstration within 5 working days from the date of the Government’s request will be deemed as electing not to attend.
- Note 4: Pro-innovation proposals and ESG proposals are one of the Excess Proposals achieving any of the benefits specified in assessment criteria in (A)(III) (a) to (b) of this Marking Scheme under the heading Innovative Suggestions. Excess Proposals are proposals submitted for evaluation under this Marking Scheme. Where an Excess Proposal has already earned marks under any of the other assessment criteria listed in Parts (A)(I) to (II) of the Marking Scheme, such Excess Proposal shall not be treated as a pro-innovation proposal/ESG proposal and will not be evaluated as a suggestion for any of the assessment criteria (A)(III) (a) to (b) of the Marking Scheme. A suggestion that scores marks under pro-innovation proposals will not earn marks again under ESG proposals and vice versa. In case a tenderer specified the type of a suggestion under both pro-innovation proposals and ESG proposals and the Tender Assessment Panel considers that the same suggestion could earn marks under pro-innovation proposals and ESG proposals, it will be taken as scoring marks under pro-innovation proposals only. A pro-innovation proposal/ESG proposal yielding benefits in more than one (1) area or more than one (1) item will be treated as one (1) pro-innovation proposal/ESG proposal only. Subject to the foregoing, the Tenderer shall submit the details of the pro-innovation proposals/ESG proposals in the part designated for pro-innovation proposals/ESG proposals in Schedule 11 (Excess Proposals) of Part V, **otherwise no mark will be awarded** even if any proposal set out elsewhere could also be evaluated as a pro-innovation proposal/ESG proposal under assessment criteria (A)(III) (a) to (b) of this Marking Scheme.
- Note 5: The Government may, at its absolute discretion, accept one or more of the proposed pro-innovation proposals/ESG proposals submitted by the successful Tenderer in its Tender. The Accepted proposed pro-innovation proposal(s)/ESG proposal(s) shall form an integral part of the Contract. Any failure to perform such pro-innovation proposals/ESG proposals would be deemed a breach of the contractual obligation, and the Government would be entitled to take follow-up actions in accordance with the existing mechanism on the handling of breach of contractual obligation.
- Note 6: A proposed pro-innovation proposal/ESG proposal scoring marks must be considered effective and practicable from the Government’s point of view. Marks will not be given to any pro-innovation proposal/ESG proposal which a Tenderer will neither be capable of nor be responsible for implementation. The process of implementing the proposed pro-innovation proposal/ESG proposal shall be able to be monitored and inspected without additional cost to the Government. The proposed pro-innovation proposal/ESG proposal must not violate, or lead to violation of any laws or regulations; or infringe, or lead to infringement of the intellectual property rights of any party.

- Note 7: The Tenderer's experience under assessment as per assessment criteria in Part (B)(I) in completing the design, construction and delivery, or constructed under licence and delivered the vessels, the experience must have been gained as a primary contractor. Experience gained in the capacity of a sub-contractor will not be considered. Save in the case of a Tenderer which is an incorporated joint venture or unincorporated joint venture as evidenced by a joint venture agreement, the experience of a parent, subsidiary, or affiliated company of the Tenderer will not be counted and considered in the tender evaluation. In the case of a joint venture, the experience of the joint venture or the experience of a joint venture party to that joint venture may be counted in accordance with Clause 8.4 of Part II – Conditions of Tender.
- Note 8: "completion" or "completed" in assessment criteria under Part (B)(I) means the design and construction or just construction of the vessel(s) had been completed and the vessel(s) had been delivered to and accepted by the purchaser with supporting documents as defined in Schedule 10 of Part V. The completion date shall be treated as the date of acceptance of the completed vessel by the purchaser.
- Note 9: The Accreditation(s) must have been issued in the name of the Tenderer or in the name of the owner of the shipyard nominated in Paragraph 3 of Schedule 8 of Part V with the Accreditation(s) identifying the shipyard except that where an Accreditation is issued in the name of the lead joint venture party of a Tenderer which is an incorporated or unincorporated joint venture, such Accreditation will be treated as to have been issued in the name of the Tenderer. Whether a joint venture party of the Tenderer is a lead joint venture party shall be further determined in Clause 8.4.2 of Part II – Conditions of Tender. The issue date of the submitted certification shall be on or before the Original Tender Closing Date and the certificate shall be valid as at the Original Tender Closing Date. References to "Another Holder" in assessment criterion (B)(II) above shall mean either the owner of the shipyard nominated in Paragraph 3 of Schedule 8 of Part V (with the Accreditation(s) identifying the shipyard) or the lead joint venture party of the Tenderer, which is the holder of any of these Accreditations (where applicable).
- Note 10: The assessment of Tenderer's past performance as per assessment criteria in Part (C)(I) (a) to (c) will be based on MD's record. Tenderers with no available record of past performance in undertaking the MD shipbuilding contracts within last ten (10) years prior to the Original Tender Closing Date will be awarded with the average (i.e. rounded to the nearest two decimal places) of the mark scored by all other Tenderers who have passed Stages 1 and 2 of assessment and with available records of performance in MD. If all the Tenderers who have passed Stages 1 and 2 are with no available record of past performance in any sub-criterion in Part (C), no marks will be awarded to any Tenderer in that sub-criterion in Part (C).

Annex E - Guidance Note GN-1 (Environmental Protection)

Guidance Note GN-1 (Environmental Protection)

Contractors are encouraged to minimise the impact of their activities on the environment and to observe the following requirements in particular:

- Comply with all applicable legal and other requirements on environmental protection.
- Control the use of materials and resources (e.g. electricity, fuel, chemicals, paper, etc.) to minimise their consumption and unnecessary wastage. Use environment-friendly alternatives where possible during your daily operations.
- Store properly all materials/chemicals to prevent any spillage and leakage.
- Minimise the production of solid waste and chemical waste.
- Ensure all solid waste is properly handled, stored and disposed of in an efficient and sensitive manner to avoid any spillage and leakage. In particular, all chemical waste should be handled, stored and disposed of in accordance with the applicable legal requirements.
- Ensure proper and regular maintenance of all vehicles used for the purpose of conducting business, including controlling their noise and emissions.
- Minimise all air emissions and noise generation where practicable.
- Ensure all waste water is discharged in accordance with the applicable legal requirements.
- Reuse and recycle waste wherever possible.

Annex F - Reply Slip for Tender Briefing Session

REPLY SLIP FOR TENDER BRIEFING SESSION

To: Director of Marine
Government New Construction Section,
Government Dockyard,
Ngong Shung Road,
Stonecutters Island,
Shamshuipo,
Hong Kong

Attn.: Senior Surveyor of Ships/Government New Construction (2)
Fax No.: (852) 2746 0518

Tender Ref.: Marine Department Shipbuilding Tender No. 1/2023 Supply of Two (2) Hovercraft for the Hong Kong Police Force Tender Briefing Session

We would like to join the online briefing session to be held at 0930 hours on 18 September 2023 (Hong Kong time). The email addresses, which have been registered with Webex, for receiving the password and for logging into the online tender briefing session shall be as follows:

	Full Name of Contract Person	Post Title	Email Address
1			
2			

Name of Company: _____

Signature of Authorised Person: _____

Full Name of Authorised Person (in block letters): _____

Post Title of Authorised Person: _____

Telephone No.: _____

Fax No.: _____

Mobile Phone No.: _____

Email Address: _____

Notes:

- (i) Each prospective Tenderer may register with two (2) email addresses for accessing the meeting room as completed in this form.
- (ii) Please register on or before 11 September 2023. Late registration may not be accepted.
- (iii) Prospective Tenderer is required to check your electronic device and the minimum system requirement for joining/hosting Webex Events. Please refer to the URL below. Only the “Webex” account holder with email address registered with such account and provided in this reply slip will be allowed to join the online tender briefing session.
URL: <https://help.webex.com/en-us/1vek5r/Webex-Meetings-System-Requirements-and-Cross-Platform-Information#Webex-Meetings-Suite-System-Requirements>
- (iv) The invitation and password for joining the online tender briefing session will be sent to the provided email address on or before 1200 hours on 13 September 2023 to the prospective Tenderers who have submitted the reply slip on or before the above deadline.
- (v) A trial session of the online meeting will be held at 0930 hours on 15 September 2023. Prospective Tenderer may make use of the trial session