

Marine Department Shipbuilding Tender No. 2/2023

Tender Addendum No. 1

Tender Reference: Marine Department Shipbuilding Tender No. 2/2023

Procuring Department: Marine Department

Subject: Supply of Twelve (12) Divisional Fast Patrol Craft for the Hong Kong Police Force

Amendment as follows:

1. Original paragraph 29.2 of Part IV – Conditions of Contract

29.2 Notwithstanding anything herein to the contrary, subject to the written agreement of the Contractor, the Government may at any time during the continuance of the Contract, and by not less than one month's prior written notice to the Contractor, make such changes (whether addition or reduction) as the Government deems appropriate to the scope of the Work to be carried out or the Vessel, Equipment and/or Deliverables to be procured. The cost of such changes (if any) shall be deduced, where applicable, on the basis of the unit price specified in the applicable Schedule, or in the absence of which it shall be agreed between the Government and the Contractor. For the avoidance of doubt, any changes may include without limitation changes (addition or reduction) of the number of Vessel to be procured, addition or deletion of the Equipment or Deliverables to be procured, or changes in the scope of the Work.

Should read as

29.2 Notwithstanding anything herein to the contrary, subject to the written agreement of the Contractor, the Government may at any time during the continuance of the Contract, and by not less than one month's prior written notice to the Contractor, make such changes (whether addition or reduction) as the Government deems appropriate to the scope of the Work to be carried out or the Vessel, Equipment and/or Deliverables to be procured. The cost of such changes (if any) shall be deduced, where applicable, on the basis of the unit price specified in the applicable Schedule, or in the absence of which it shall be agreed between the Government and the Contractor. For the avoidance of doubt, any changes may include without

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limitation changes (addition or reduction) of the number of Vessel to be procured, addition or deletion of the Equipment or Deliverables to be procured, or changes in the scope of the Work. For the avoidance of doubt, this Clause, Clauses 9.1 to Clause 9.3, Clause 9.4, Clause 10.1, Clause 42.2 of this Part and any other provision of the Contract providing for any change to the Contract shall be separate and independent from each other, shall be construed independently and shall not be limited or restricted by reference to or inference from any of them. For the avoidance of doubt, any change under Clause 9.4, Clause 10.1 or Clause 42.2 shall not require the agreement of the Contractor and whether any change should fall within the scope of any of the aforesaid Clauses shall be at the judgment of the Government which shall be binding on the Contractor. However strictly to the extent for the purpose of Clause 30.2 of this Part, any change to the Contract shall be treated as change under Clause 29.2.

The revised pages (with an indication of “Revised on 12 April 2024” at the header) are attached for replacement. Please replace the relevant pages by the revised ones attached and submit your tender together with the revised pages.

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

Interested parties are reminded that the Tender Closing Date is **31 May 2024**. To be considered as a valid tender, tenderer must deposit their tender proposals in the Government Secretariat Tender Box situated at the Lobby of the Public Entrance on the Ground Floor, East Wing, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong or where applicable, other places assigned by a Government officer for depositing bulky tenders (in either case, whichever is applicable, “Specified Tender Box”) **before 12:00 noon on 31 May 2024** in accordance with the manner stipulated in the Tender Documents. A late tender or a tender not submitted in accordance with the manner stipulated in the Tender Documents will not be considered further.

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

makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Contractor or all or any part of its business or assets; or

- 29.1.6 the Contractor abandons the Contract in part or in whole; or
- 29.1.7 the Contractor has failed to complete any activity in any of the Timetables (as defined in Clause 11.3 of this Part IV) for more than six (6) weeks from the original scheduled completion date as specified therein; or
- 29.1.8 the Contractor assigns or transfers or purports to assign or transfer all or any part of the Contract or all or any of its rights or obligations thereunder without the prior written consent of the Government; or
- 29.1.9 without prejudice to the generality of the foregoing grounds for termination, if any event or circumstance occurs which enables the Government to terminate the Contract under Clause 34.3(c) (Warranty against Collusion) of Part II – Conditions of Tender or any one of the following provisions of this Part IV:
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|---------------|--------------------------------|
| Clause 12.6.5 | (Acceptance Tests and Trials); |
| Clause 14.4 | (Rejection after Acceptance); |
| Clause 21.7 | (Indemnities); |
| Clause 32.1 | (Illegal Workers); and |
| Clause 34.3 | (Prevention of Bribery). |

- 29.2 Notwithstanding anything herein to the contrary, subject to the written agreement of the Contractor, the Government may at any time during the continuance of the Contract, and by not less than one month's prior written notice to the Contractor, make such changes (whether addition or reduction) as the Government deems appropriate to the scope of the Work to be carried out or the Vessel, Equipment and/or Deliverables to be procured. The cost of such changes (if any) shall be deduced, where applicable, on the basis of the unit price specified in the applicable Schedule, or in the absence of which it shall be agreed between the Government and the Contractor. For the avoidance of doubt, any changes may include without limitation changes (addition or reduction) of the number of Vessel to be procured, addition or deletion of the Equipment or Deliverables to be procured, or changes in the scope of the Work. For the avoidance of doubt, this Clause, Clauses 9.1 to Clause 9.3, Clause 9.4, Clause 10.1, Clause 42.2 of this Part and any other provision of the Contract providing for any change to the Contract shall be separate and independent from each other, shall be construed independently and shall not be limited or restricted by reference to or inference from any of them. For the avoidance of doubt, any change under Clause 9.4, Clause 10.1 or Clause 42.2 shall not require the agreement of the Contractor and whether any change should fall within the scope of any of the aforesaid Clauses shall be at the judgment of the Government which shall be binding on the Contractor. However strictly to the extent for the purpose of Clause 30.2 of this Part, any change to the Contract shall be treated as change under Clause 29.2.
- 29.3 If any of the events specified in Clause 29.1 or 29.5 of this Part IV occurs, or pursuant to Clause 12.6.5 or Clause 14.4 of this Part IV, the Government may choose only to effect partial termination of the Contract whereupon the Government shall partially terminate the Contract by giving a notice to this effect to the Contractor ("**Partial Termination**" or "**partial termination**") in relation to those Vessel, Equipment and Deliverables in relation thereto, and/or Spare Parts and/or other Deliverables as specified in the Partial Termination notice (collectively, "**Rejected Items**").
- 29.4 Where there is a Force Majeure Event, pursuant to Clause 31.6 or Clause 31.7 of this Part IV, the Government may terminate the Contract in part or in whole.
- 29.5 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- 29.5.1 the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; or
- 29.5.2 the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- 29.5.3 the Government reasonably believes that any of the events mentioned above is about to occur.
- 29.6 Each of the grounds entitling the Government to terminate the Contract as specified in Clauses 29.1 to 29.5 above shall be construed independently and shall not be limited or restricted by reference to or inference from any other ground or any other provision of this Contract.

30 CONSEQUENCES OF EARLY TERMINATION AND CONTRACT EXPIRY OR CHANGES TO THE WORK

- 30.1 Upon early termination (howsoever occasioned) or expiry of the Contract (“**Termination**”):
- 30.1.1 the Contract shall be of no further force and effect but without prejudice to:
- (a) the Government’s rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
 - (b) the rights and claims which have accrued to a party prior to the Termination; and
 - (c) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination and any provisions of the Contract necessary for the interpretation or enforcement of the Contract including without limitation the following Clauses in this Part IV: Clause 1 (Interpretation), Clauses 2.8 and 2.10 (Products and Work to be Provided), Clause 6 (Title and Risks), Clause 19 (Contractor’s Warranties and Undertakings), Clause 20 (Intellectual Property Rights), Clause 21 (Indemnities), and all remaining Clauses thereafter; the obligations of the parties under these provisions shall continue to subsist notwithstanding the Termination regardless of whether or not it is so expressly stated in these individual provisions;
- 30.1.2 the Government shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Contractor due to the Termination;
- 30.1.3 in the event of Termination pursuant to Clause 29.1 or 29.5 of this Part IV, the Contractor shall be liable for all losses, damage, liabilities, costs and expenses incurred or sustained by the Government arising from the Termination including without limitation all of the following: (a) the amounts payable to subsequent contractors and/or suppliers for the procurement from third party contractors of the items in replacement of the Vessel in Ready for Use condition, Equipment, Deliverables, Spare Parts and/or the Work (collectively, “replacement items”), and/or the cost of maintaining an in-house team for performing all or any of the Work, which are in excess of the Total Purchase Price or such portions thereof attributable to such replacement items (where applicable); (b) all administrative and legal costs incurred in monitoring the Contract over any delayed period and in the Termination and the costs for procurement the replacement items as mentioned in (a) above and the costs of setting up an in-house team as mentioned in (a) above; (c) the costs of all stop-gap measures to be implemented including those to provide services which the Vessel, Equipment and/or Deliverables were