

Part II – Conditions of Tender

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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 (“**Vessel**”). In the event that the Government is inviting tenders to bid for the supply of one Vessel only, references throughout the Tender Documents to “Vessel” or “Vessels” shall be construed as that single Vessel only. In the event that 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 C
 - (c) Part III Articles of Agreement
 - (d) Part IV Conditions of Contract and Annexes A to C
 - (e) Part V Schedules 1 to 9
 - (f) Part VI Offer to be Bound
 - (g) Part VII Technical Specifications and Annexes 1 to 7
 - (h) Part VIII Non-collusive Tendering Certificate
- 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 For a tender to be considered complete, it shall comprise of all documents and information required in the Tender Documents (consisting of one original hard copy and four photocopies) including those as specified in Clause 4 of this Part. The tender shall be submitted inside a sealed plain envelope marked as specified below, addressed and deposited in the manner as specified in Part I of the Tender Documents.

**“Tender Ref.: Marine Department Shipbuilding Tender No. 2/2019
Supply of One (1) Hovercraft
for the Agriculture, Fisheries and Conservation Department”**

- 3.2 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.

- 3.3 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 The tender shall comprise of all documents as described below and in other parts of the Tender Documents (where applicable):
- (a) Price Information
 - (i) Schedule 1 setting out an all-inclusive unit price for the Vessel and unit price for Spare Parts to be procured, and the Total Purchase Price payable under the Contract based on the quantities as specified in Schedule 1.
 - (b) Offer to be Bound
 - (i) The Offer to be Bound in the form set out in Part VI of the Tender Documents signed by the Tenderer.
 - (c) Particulars of the Offer
 - (i) Schedule 5 containing statements of compliance as more particularly described in Clause 5.3 of this Part;
 - (ii) Schedule 6 containing the particulars of the major Equipment as listed therein to be offered by the Tenderer;
 - (iii) Schedule 7 attaching thereto a list of drawings of the proposed Vessel and other documents and plans required therein;
 - (iv) Schedule 9 containing information of the proposed Recognised Organisation; and
 - (v) all product literature and other documents in relation to the proposed major Equipment as required under Clause 6 of this Part to be set out or attached to Schedule 6.
 - (d) Tenderer's Information
 - (i) Schedule 8 containing the details of the Tenderer and information of the Tenderer's nominated shipyard facilities and if applicable, Tenderer's Sub-contractor; and
 - (ii) all corporate documents and information concerning the Tenderer required in Clause 7 of this Part.
 - (e) Non-collusive Tendering Certificate set out in Part VIII of the Tender Documents.

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 completed in ink or typescript and shall be submitted in the manner stipulated in Part I of the Tender Documents and this Part.
- 5.2 The Technical Specifications set out in Part VII of the Tender Documents contain two classes of specifications, viz., the requirements labelled as [E], which are part of the Essential Requirements, and other requirements which are not labelled as [E]. Both classes of specifications shall form part of the Contract and shall be of equal materiality and importance upon the award of the Contract, and after award of the Contract, non-compliance with any requirements or specifications (including desirable specifications which the successful Tenderer has committed to comply with) set out in Part VII regardless of whether they were classified as Essential Requirements shall have the same consequences as specified in the Contract. However, the Government will not conduct any check at tendering stage whether the items offered comply with those specifications not labelled as [E] apart from the confirmation of intention to comply to be set out in Schedule 5. Save for the checking during the tendering stage in the manner as aforesaid, no differentiation shall be made based on the classification unless otherwise expressly specified.

- 5.3 In completing Schedule 5, for the Essential Requirements set out in Annex C to this Part, 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. For requirements in the Technical Specifications which are not identified as Essential Requirements, the Tenderer shall also be required to indicate that it will comply with these requirements should the Contract be awarded to it. **A tender which expressly indicates non-compliance with any of the aforesaid Essential Requirements or any of the aforesaid other requirements (excluding desirable specifications) will not be considered further.**
- 5.4 When signing Part VI, the Offer to be Bound 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, 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;
 - (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.
- 5.5 The duly completed tender comprising all items specified in Clause 4.1 of this Part shall be submitted in the manner under “Lodging of Tender” of Part I – Lodging of Tender, viz., by way of Paper-based Tendering.
- 5.6 **If a Tenderer fails to submit any of documents stipulated in Paragraph (a) of Annex B to this Part 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 Schedule 6 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 Essential Requirements. Each item of the Tenderer’s offered Vessel and Equipment (including those as stated in Schedule 6) must, based on the aforesaid items and other proposals set out in the Tenderer’s tender, be shown to comply 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, the Government will disqualify a Tenderer if any of the offered Vessel or Equipment fails to comply with any of the Essential Requirements.

7 Company/Business Organisation Status

- 7.1 Tenderers shall provide the following details in Schedule 8:
- (a) name and address of the company/business organisation;
 - (b) length of business experience;
 - (c) shareholders of the company and their percentages of shareholding;
 - (d) names and residential addresses of the following:
 - (i) managing director; and
 - (ii) other directors;
 - (e) a copy of the memorandum (if any) and articles of association and a copy of the agreement amongst the shareholders (if any);
 - (f) a copy of Certificate of Incorporation, and where applicable Certificate of Change of Name, and Business Registration Certificate or other equivalent documents evidencing business status;
 - (g) place and date of its incorporation or formation; and

- (h) 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 the successful Tenderer is incorporated or established in a place other than Hong Kong, an opinion from a lawyer qualified in the jurisdiction of incorporation and acceptable to the Government at the cost of the successful Tenderer shall be provided in accordance with Clause 25.2 of this Part covering issues including without limitation the following in such form and substance as shall be required by the Government or otherwise acceptable to the Government:
- (a) the Tenderer is duly incorporated or established and validly existing under the relevant laws of the place where it is incorporated or established ("**place of incorporation**") and has full power and authority to carry on the business as it is now conducting;
 - (b) the Tenderer has the full power, authority and legal capacity to:
 - (i) execute and submit its tender (including all annexes, proposals and attachments thereto collectively referred to as "**its tender**") and to incur the liabilities and perform the obligations under these 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 of the Articles of Agreement, constitute the legal, valid and binding obligations of the Tenderer 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, and does not violate any provision of any applicable law, regulation or decree of the place of incorporation, or the memorandum and articles of association or equivalent constitutional documents of the Tenderer;
 - (e) no authorisations, consents, approval are required from any governmental authorities or agencies or other official bodies in the place of incorporation in connection with the execution and delivery of its tender, or the performance by the Tenderer of its obligations under these Tender Documents and the Contract;
 - (f) its tender and the Contract (if awarded to the Tenderer) need not be registered or filed in the place of incorporation in order to secure their validity and/or priority;
 - (g) there is no restriction under the laws of the place of incorporation affecting the Tenderer's obligations under these Tender Documents and the Contract;
 - (h) the choice of the laws of Hong Kong to govern these 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; and
 - (i) it is not necessary under the laws of the place of incorporation that the Government be licensed, qualified or otherwise registered in the place of incorporation in order to enable it to enforce its rights under these Tender Documents and the Contract.
- 7.3 The Government may require the Tenderer to provide, at its own expense, additional legal opinions satisfactory to the Government in all respects issued by a lawyer duly qualified to practise the laws of the place of incorporation of the Tenderer and acceptable to the Government on any other matters arising from its Tender or the Contract.
- 7.4 If a Parent Guarantee is stated to be required in the Notification of Conditional Acceptance issued pursuant to Clause 25.2 of this Part, and any of the parent guarantor(s) is an overseas company, unless and to the extent waived by the Government, a legal opinion similar to the one described in Clause 7.2 of this Part will equally be required save that references therein to "Tenderer" and "Contract"/"tender" shall mean the parent guarantor and the Parent Guarantee respectively.

8 Qualification of Tenderer

8.1 Experience

- (a) The Tenderer must have the experience in vessel design and construction as per the requirements set out in Item 1 of Annex C to this Part.
- (b) Any tender which fails to meet the Essential Requirements concerning Tenderer's experience as referred to in Clause 8.1(a) of this Part will **not** be considered further.
- (c) The Tenderer shall provide details of its experience in Schedule 5 to prove that it complies with the above-mentioned Essential Requirements concerning experience as referred to in Clause 8.1(a) of this Part. The Government reserves the power, but not the obligation, to seek clarification or submission from any Tenderer of any missing or supplementary information whether in relation to the same contract or project or client as specified in Schedule 5 or otherwise. 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 5 or whose details having been subsequently supplied to Government upon any request of the Government to release the information to the Government concerning their projects and for Government to contact directly with such clients.

8.2 Shipyard Facilities

- (a) 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.
- (b) The Tenderer shall provide information of the nominated shipyard and workshop facilities as required in Paragraph 5 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(a) 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.

9 Particulars of Offer

9.1 The Tenderer shall provide in Schedule 6 the particulars of each proposed Equipment as specified therein including:

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

9.2 The Tenderer shall note the requirements stipulated in Paragraph 1.5.2 (Design and Construction Responsibility) and Paragraph 2.4.2 (Rules and Regulations) of Part VII. The Tenderer shall state in Schedule 9 which Recognised Organisation (RO) and its rules and regulations and class notation shall be used and complied with in the design and construction of the Vessel.

9.3 The Tenderer's tender will **not** be considered further if the Tenderer fails to submit the information required in Schedules 6 and 9 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).

10 Technical Drawings

- 10.1 The Tenderer shall provide in Schedule 7 all preliminary plans and information in relation to the proposed Vessel as required in Paragraphs 1 to 3 of Schedule 7 by the Tender Closing Date. The Tenderer's tender will **not** be considered further if the Tenderer fails to submit any of the plans or information required in Paragraphs 1 to 3 of Schedule 7 by the Tender Closing Date.

11 Proposed Sub-contractors

- 11.1 Where applicable, Tenderers shall provide in Paragraph 6 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 all items specified in Schedule 1 – Price Schedule. A partial tender for some but not all items specified in Schedule 1 – Price Schedule will **not** be considered.
- 12.2 The Tenderer is requested to quote in Hong Kong dollars in Schedule 1 of Part V (a) an all-inclusive unit price for the Vessel; and (b) the unit price for each set of the Spare Parts to be procured. These unit prices shall be multiplied by the quantities as specified by the Government in Schedule 1 of Part V in each case to come up with a sub-total of the Total Purchase Price, and these sub-totals shall be added up to become the Total Purchase Price. Prices quoted in United States dollars or in the currency of the place manufacturing the product offered may also be considered. If a Tenderer does not specify the currency of the prices quoted in Schedule 1 - Price Schedule, it shall be deemed that the quoted prices are in Hong Kong dollars.
- 12.3 The all-inclusive unit price quoted for the Vessel 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 in the quantities as specified in Schedule 6, the Deliverables in respect of the Vessel (excluding Spare Parts in Part 2 of Schedule 1), 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 all of the requirements of the Contract. 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 a currency other than Hong Kong 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 It is the duty of the Tenderer to make certain that prices quoted are accurate before submitting its tender. Under no circumstances will the Government be obliged to accept any request for price adjustment after the Tender Closing Date. Where the Government considers that allowing price adjustment is not appropriate, the Tenderer shall be bound by its original tender price if its tender is accepted by the Government. Nothing herein prejudices the Government's power, but not an obligation, to seek clarification or negotiate with any Tenderer. The Government may also, but is not obliged, ask the Tenderer to confirm a corrected figure based on an apparent arithmetical or typo mistake. Where there is inconsistency in the unit price and the total price for any item, the Government may, but is not obliged, seek clarification or treat one rather than the other as correct, without seeking clarification whereupon any treatment shall be binding on the Tenderer.

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 **270 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. 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.

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, 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.
- 17.2 Save in the case of the Conditions of Contract and their Annexes, 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 any counter-proposal to any requirement in Part VII (whether with or without [E] label but excluding desirable specifications labelled with [D]). Such counter-proposal 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. In the case of the Conditions of Contract and their Annexes or the payment schedule in Schedule 3, the Tenderer may submit counter-proposals but strictly in accordance with Clause 17.3 of this Part.
- 17.3 Any counter-proposal to the Conditions of Contract or their Annexes or Schedule 3 will only be considered in exceptional circumstances. 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;
 - (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 ([]).
- 17.4 Unless otherwise acceptable to the Government, a counter-proposal which is not submitted in accordance with Clause 17.3 of this Part will be ignored 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 which may be submitted in accordance with Clause 17.3 of this Part. 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.
- 17.6 Where the Tenderer has in Schedule 5 affirmed its compliance with any requirement in the Technical Specifications (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. In the event that the Tenderer refuses to affirm compliance with the relevant 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 requirements, where the relevant requirements are Essential Requirements labelled as [E], or other requirements in the Technical Specifications which are

not labelled as [E] or [D], the Tenderer will be disqualified and its tender will **not** be considered further.

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 Notwithstanding anything in the Tender Documents to the contrary, in the event that the Government determines that:

- (a) clarification in relation to any part of the tender is necessary; or
- (b) a document or a piece of information is missing in the tender (other than the documents listed in Paragraph (a) of Annex B to this Part or other items in respect of which it is expressly specified that if found missing after the Tender Closing Date, the tender will **not** be considered further),

it may, but is not obliged to, request the Tenderer concerned to make the necessary clarification, or submit the document or information. The Tenderer shall thereafter within five (5) working days or such other period as specified in the request submit such clarification, information or document. The Tenderer’s tender may not be considered further if complete clarification, information or document is not provided by the deadline specified in the request or otherwise not acceptable to the Government. As an alternative to seeking clarification or submission, the Government may immediately disqualify the tender. As another further alternative, the Government may proceed to evaluate the tender on an “as is” basis.

- 19.2 Notwithstanding anything in the Tender Documents to the contrary including the exclusion specified in brackets in Clause 19.1(b) above and Paragraph (a) of Annex B to this Part, where an Offer to be Bound submitted by the Tender Closing Date is a photocopy or the signature is machine printed or computer generated or stamped, the Government reserves the power but not the obligation to request the original or signature in manuscript (as the case may be) from the Tenderer under Clause 19.1.

20 Tender Evaluation

- 20.1 The tenders will be evaluated based on the evaluation stipulated in Annex A to this Part.

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.
- 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 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 the conditions of its 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 assessment set out in Annex A to this Part.

24 Award of Contract

- 24.1 Notwithstanding anything in the Tender Documents to the contrary, in evaluating the tenders submitted and awarding the Contract, (a) the Government is not bound to accept the tender offering the lowest Total Purchase Price; and (b) the award will normally be made to the recommended Tenderer identified in Annex A to this Part or to the Tenderer whom the Government considers to be fully capable of undertaking the Contract.
- 24.2 The Tenderer acknowledges that the Government may elect at its sole option to accept all or any part of the Tenderer's offers.

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 (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;

- (b) the provision of a Parent Guarantee as required under Clause 22.1(b) of this Part (if applicable);
 - (c) the provision of a legal opinion as required under Clause 7.2 and/or 7.4 of this Part (if applicable);
 - (d) the warranty agreement in the form set out in Annex C to the Conditions of Contract to be executed by each Sub-contractor together with copies of the relevant sub-contracts between the successful Tenderer and the Sub-contractors;
 - (e) 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 the Conditions of Contract, and evidence of payment of premium thereunder; and
 - (g) 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, only upon fulfilment of the conditions by the Tenderer specified in Clause 25.2 of this Part to the satisfaction of the Government, but subject to the discretion of the Government in Clause 26 of this Part, the Government will enter into the Contract with the successful Tenderer by signing the Articles of Agreement. The Contract will incorporate the tender submitted by the successful Tenderer (subject to such other changes as the Government may stipulate in exercise of its powers under the Tender Documents or as the parties may agree). If a Tenderer fails to fulfil all or any of the conditions mentioned in Clause 25.2 of this Part (unless and save to the extent they are waived by the Government, 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 against the defaulting Tenderer, the defaulting Tenderer shall be responsible for the difference in the tender price submitted by itself 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, in the event that the Government exercises any of its discretion under Clause 26 of this Part, 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 therein.
- 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 to identify the successful Tenderer notwithstanding the issue of any conditional acceptance of tender under Clause 25.2 of this Part 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”.

27 Contractor Performance Monitoring

27.1 The Tenderer is advised that should it be awarded the Contract, its subsequent performance will be monitored and will be taken into account when its future tenders are evaluated.

28 Cost of Tender

28.1 Tenderers shall submit their offers at their own cost. The Government will not be liable for any costs whatsoever incurred by the Tenderer in connection with the Tenderer’s preparation and submission of its tender or in any communications or negotiation with the Government, or in any site visit or survey made by the Tenderer, or in presenting its reference sites or factories and equipment to the Government Representatives during the site visits, whether before or after the Tender Closing Date.

29 Personal Data Provided

29.1 The personal data of any individual contained in a tender will be used for the purposes of this Invitation to Tender including without limitation for the purposes of tender evaluation, Contract award, and resolution of any dispute arising from this Invitation to Tender.

29.2 The Tenderer shall ensure that the relevant individual to whom the personal data belongs prior to its disclosure in the tender has acknowledged and consented that his/her personal data may be disclosed to the Government Representative and other Government departments and public bodies for the purpose of this tender.

29.3 The individual to whom the personal data belongs has the right of access and correction with respect to the personal data provided in Sections 18 and 22, and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the personal data provided in the tender.

29.4 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.

30 Consent to Disclosure

- 30.1 The Government shall have the right to disclose, whenever it considers appropriate, to the public or at the request of any member of the public (which may be a Tenderer) without any further reference to or consent from the successful Tenderer or any other Tenderer, the Tender Documents, the Tender Closing Date, particulars of the goods/services awarded to the successful Tenderer, the name and address of the successful Tenderer, and the Contract amount.
- 30.2 Nothing in Clause 30.1 above shall prejudice the Government's power to disclose whenever it considers appropriate any information of whatsoever a nature whether or not specified in Clause 30.1 above 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, Cap. 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 because due to the disclosure under Clause 30.2(a) above);
 - (d) the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong or 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) without prejudice to the power of the Government under Clause 30.1 above, to the extent the information relates to the Tenderer, with the prior written consent of that Tenderer.

31 Intellectual Property Rights Licence

- 31.1 A tender once submitted will become the property of the Government. 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), each Tenderer hereby grants and undertakes to procure at its own cost and expense the owners of the Intellectual Property Rights to grant to the Government, its assigns, successors-in-title and authorised users a royalty-free, non-exclusive, sub-licensable, transferable, assignable, irrevocable, world-wide, unrestricted right and licence to use or exercise all or any Intellectual Property Rights subsisting in its tender for the purposes of tender evaluation and for all other purposes incidental thereto or in connection therewith and for the purposes of making the disclosures mentioned in Clause 30 of this Part. 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) under any applicable law, including the laws of Hong Kong.
- 31.2 The Tenderer shall indemnify the Government, its successors-in-title, assigns and authorised users on the terms set out in Clause 21 of the Part IV of the Tender Documents in the event that the exercise by any of them of the rights mentioned in Clause 31.1 above infringes or is alleged to infringe the Intellectual Property Rights of any person.
- 31.3 The Tenderer shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the tender 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, authorised users and successors-in-title and shall take effect from the date of submission of its tender.

32 Warning against Bribery

- 32.1 The offer of an advantage to any Government official with a view to influencing the award of the tender is an offence under the Prevention of Bribery Ordinance (Cap. 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.
- 32.2 The successful Tenderer shall inform its employees (whether permanent or temporary) who are engaged in the supply of the Vessel and/or the Services that the soliciting or accepting of advantages as defined in the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) is not permitted. The successful Tenderer shall also caution its employees against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its Sub-contractors, if any, or the supervision of the work of the Sub-contractors once selected.

33 Supplementary Information

- 33.1 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.
- 33.2 Prospective Tenderers should provide their information such as company name, contact person, contact number, email address and facsimile number to the Senior Surveyor of Ships of the Government New Construction Section of the Marine Department by fax ((852) 2746 0518) or email (gnc@mardep.gov.hk) if they wish to receive written notifications from the Government in respect of all supplementary information or tender addenda to these Tender Documents.

34 Immigration

- 34.1 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.

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

- 35.1 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. 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).

36 Complaints about Tendering Process or Contract Awards

- 36.1 This Invitation to Tender is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Tenderer who feels that its offer has not been fairly evaluated may write to the Director of Marine who will personally examine the complaint and refer it to the approving authority/relevant tender boards for consideration if necessary.
- 36.2 (a) This Invitation to Tender is covered by the WTO GPA and the provisions of the WTO GPA will apply to this Invitation to Tender. Tenderers are requested to note that a Review Body under WTO GPA has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA and the relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body

(“the Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties upon request. In the event that the 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.

- (b) Tenderers should note that the Review Body may receive and consider a late challenge but a challenge shall 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.

37 Warranty against Collusion

- 37.1 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 Paragraph 37.2 below), regarding, amongst other things, price, tender submission procedure or any terms of the Tender. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (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.
- 37.2 The Tenderer shall complete and submit to the Government a **Non-collusive Tendering Certificate (in the form set out in Part VIII of the Tender Documents)** as part of its Tender.
- 37.3 In the event that a Tenderer is in breach of any of the representations and/or warranties in Clause 37.1 of this Part or in the Non-collusive Tendering Certificate submitted by it under Clause 37.2 of this Part, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (a) reject the Tenderer’s tender;
 - (b) if the Government has accepted the tender, withdraw its acceptance of the tender; and
 - (c) if the Government has entered into the Contract with the Tenderer, terminate the Contract.
- 37.4 By submitting a tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in Clause 37.1 of this Part or in the Non-collusive Tendering Certificate submitted by it under Clause 37.2 of this Part.
- 37.5 A breach by a Tenderer of any of the representations and/or warranties in Clause 37.1 of this Part or in the Non-collusive Tendering Certificate submitted by it under Clause 37.2 of this Part may prejudice its future standing as a Government contractor or service provider.
- 37.6 Clause 37.1 of this Part shall have no application to the Tenderer’s communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its tender.
- 37.7 The rights of the Government under Clauses 37.2 to 37.5 of this Part are in addition to and without prejudice to any other rights or remedies available to it against any Tenderer.

Annex A – Tender Evaluation

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:

(a) Price Assessment

- (i) The tenders will be checked to identify the Tenderer which has submitted the lowest Total Purchase Price among all Tenderers.
- (ii) The Tenderer which has submitted the lowest Total Purchase Price will proceed to the assessment mentioned in Paragraphs (b) and (c) below.

(b) Completeness Check

A completeness check will be conducted by checking whether the Tenderer's 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 to this Part (Information / Documents to be Submitted for Tender Evaluation) before the Tender Closing Date, its tender **will not be considered further**.

(c) Assessment of Compliance with Essential Requirements

- (i) A tender will be checked for its compliance with the Essential Requirements as detailed in the Tender Documents.
- (ii) Any tender which fails to meet any of the Essential Requirements (viz., those set out in Annex C to this Part, those identified as such in Part VII and in any other parts of the Tender Documents) **will not be considered further**.
- (iii) Besides 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 provision of the Tender Documents. Where the Government does so under any such applicable provision, the Tenderer's tender will not be considered further.

Award

The Tenderer which has quoted the lowest Total Purchase Price amongst all Tenderers, and which has passed the assessment mentioned in Paragraphs (b) and (c) above will normally be recommended for acceptance. If the Tenderer has failed the assessment mentioned in Paragraph (b) or (c) above, the next Tenderer who has quoted the lowest Total Purchase Price will undergo the assessment mentioned in Paragraphs (b) and (c) above. This shall be done until a recommended Tenderer is identified (if any).

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

- (a) A Tenderer shall submit all of the following in its tender **before the Tender Closing Date**.
- (i) **the “Offer to be Bound” in the form set out in Part VI and signed by the Tenderer;**
 - (ii) the unit price quotations for all items as required in Schedule 1 (Price Schedule) of Part V;
 - (iii) completed Schedule 5 (Statement of Compliance) of Part V (excluding the information required in Paragraph (b)(iv) below);
 - (iv) all information required in Schedule 6 (List of Major Equipment to be Supplied) for each piece of Equipment specified therein (excluding the technical and descriptive literature and catalogues required in Paragraph (b)(iii) below);
 - (v) all plans and information required in Paragraphs 1 to 3 of Schedule 7 (List of Drawings and Information to be Submitted with the Tender) in Part V; and
 - (vi) the proposed Recognised Organisation (RO) and its rules and regulations, and class notation as required in Schedule 9 (Proposed Recognised Organisation) in Part V.

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

- (b) In addition to Paragraph (a) 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) information of Tenderer’s nominated shipyard and workshop facilities as required in Paragraph 5 of Schedule 8 (Tenderer’s Information) of Part V;
 - (ii) 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 5.4(b) of Part II;
 - (iii) all technical and descriptive literature and catalogues for the Equipment specified in Schedule 6 to be offered for the Vessel as required in Clause 6 of Part II;
 - (iv) information and documentary evidence to support the Tenderer’s claimed experience as required in Clause 8.1(c) of Part II; and
 - (v) the signed Non-collusive Tendering Certificate in Part VIII as required in Clause 37 of Part II.

The Tenderer should provide all the above items at the same time when it submits tender. If any 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 Part II. If the Government does elect to request the missing item, but it is still not provided by the time specified by the Government, **the Tenderer’s tender may 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 without giving any opportunity to the Tenderer to make resubmission.

- (c) In addition to Paragraph (b) above, the Tenderer should provide the items below at the same time when it submits its tender.
- (i) the Tenderer’s information as required in Clause 7 of Part II;
 - (ii) where applicable, the Sub-contractors’ information as required in Clause 11 of Part II;
 - (iii) a copy of valid Business Registration Certificate or other valid business document of the Tenderer issued by a competent authority; and
 - (iv) a copy of the Certificate of Incorporation or the Certificate of Change of Name (if any) or equivalent document in the Tenderer’s trading name as shown in the Business Registration Certificate or other valid business documents issued by a governmental or competent authority.

If any is found missing in a tender, the Government may, but is not obliged to, make a request for the missing item. Alternatively, the Government may elect to evaluate the tender on an as is basis. If the Government elects to request the missing item, but it is still not provided by the time specified by the Government, **the Tenderer's tender may not be considered further.**

- (d) 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 look out for any amendments to these Tender Documents that will be published on the Internet (<http://www.mardep.gov.hk>) as stipulated in Clause 33.1 of Part II.

Annex C - Essential Requirements

Item	Tender Reference	Essential Requirements concerning experience (see Note 1 to 5)
1(a)	Clause 8.1 of Part II of the Tender Documents	In the past ten (10) years prior to the Original Tender Closing Date, the Tenderer must have: <ul style="list-style-type: none"> (i) an aggregate of at least three (3) years' experience in performing and completing one or more vessel design and construction project(s) ("Vessel Project(s)"), with at least one (1) hovercraft of aluminium or fiber reinforced plastic (FRP) hull; and (ii) supplied such vessel(s) to at least one (1) government law enforcement, rescue or military agency.
1(b)	Clause 8.1 of Part II of the Tender Documents	In the past ten (10) years prior to the Original Tender Closing Date, the Tenderer must have designed, built and delivered: <ul style="list-style-type: none"> (i) at least two (2) hovercraft made of aluminium or fiber reinforced plastic (FRP) powered by two engines with length overall not less than 6 metres; (ii) such vessels must have achieved the speed of at least 25 knots; (iii) the vessels mentioned in Item 1(b)(i) to 1(b)(ii) above must have been supplied to at least one (1) government law enforcement, rescue or military agency.
Item	Tender Reference	Essential Requirements in Part VII
2	Paragraphs 2.3.1 and 2.8.1 of Part VII of the Tender Documents	The proposed Vessel shall be a hovercraft with two engine for propulsion (thrust) and lift. The proposed Vessel shall be an open hovercraft for carrying four (4) persons with seating provided, and has a payload of at least 350 kg.
3	Paragraph 2.3.2 of Part VII of the Tender Documents	The hull of the proposed Vessel shall be built in marine grade aluminium alloy or fiber reinforced plastic (FRP) suitable for the use in marine environment, sheltered waters overland and mud.
4	Paragraph 2.4.1 of Part VII of the Tender Documents	The proposed Vessel shall be designed and constructed in accordance with the latest edition of the Hovercraft Code or equivalent.
5	Paragraph 2.5.1 of Part VII of the Tender Documents	In the fully loaded condition (i.e. full fuel plus four (4) persons on board) 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: <p style="margin-left: 40px;">Maximum instantaneous forward speed : 28 knots in still air on water</p> <p style="margin-left: 40px;">Maximum instantaneous forward speed : 15 knots in still air on hard and soft ground</p>

6	Paragraph 2.5.2 of Part VII of the Tender Documents	The proposed Vessel shall also be designed for loitering operations. The proposed Vessel 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 Aluminum or Fiber Reinforced Plastic Skirt : Hypalon Loop and Natural Rubber Segments Air Propeller (and Impeller) Blades : Composite Material Air Propeller Duct (Shroud) : Composite Material Rudder(s) : Marine Grade Aluminum Console : Composite Material
9	Paragraph 2.8.2 of Part VII of the Tender Documents	Endurance for fuel capacity : 4 hours at the patrol speed of 20 over ground and sea : knots
10	Paragraph 3.4.1 of Part VII of the Tender Documents	The proposed Vessel shall meet the stability requirements of the RO and the Hovercraft Code or equivalent.
11	Paragraph 4.1.2 of Part VII of the Tender Documents	The proposed Vessel shall be powered by two engines for propulsion (thrust) and lift. 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 the Type Approval Certificate(s) issued by an RO or other entities acceptable by MD in compliance to meet IMO Tier 2 emission requirements, and shall be provided to MD.

Note 1: The Tenderer's experience in completing the Vessel Project(s) must have been gained as a primary contractor. Experience gained in the capacity of a sub-contractor will **not** be considered. The experience of a parent, subsidiary or affiliated company or any proposed sub-contractor of the Tenderer will not be counted and considered in the tender evaluation.

Note 2: Even if the Tenderer has gained experience in performing more than one Vessel Project over the same period, only the actual duration of that period will be taken into account in determining the aggregate experience of the Tenderer for Item 1(a).

Note 3: “completing” in Item 1(a) or “completed” in Item 1(b) means the design and construction of the vessel(s) in the relevant Vessel Project had been completed and the vessel(s) had been delivered to the purchaser.

Note 4: The experience which will be taken into account for determining compliance with the Essential Requirement mentioned in Item 1 is the number of years of experience up to the Original Tender Closing Date which can be aggregated and need not be consecutive. Any duration of the aggregate number of years of experience which is less than a year shall be disregarded.

For example, if Tenderer X has completed a Vessel Project for Company A for the period from 1 June 2014 to 31 May 2015 (i.e. 365 days) and another Vessel Project for Company B for the period from 1 January 2015 to 31 December 2015 (i.e. 365 days), then the years of experience of Tenderer X will be counted from 1 June 2014 to 31 December 2015 (i.e. 579 days \approx 1.6 years) and based on the above, 1.6 years will be taken as only 1 year of experience as any duration of the aggregate number of years of experience which is less than a year will be disregarded.

Note 5: Whilst the Government reserves the power, but not the obligation to request submission after the Tender Closing Date if found missing, the Tenderer shall provide copies of relevant contracts and delivery acceptance documents or other documentary evidence to the satisfaction of the Government to prove that the Tenderer’s experience is in compliance with the Essential Requirement set out in Items 1(a) and 1(b) above. Delivery acceptance documents must have been signed by the relevant ship owner or a classification society. Delivery documents issued and signed solely by the Tenderer is not acceptable.