

**THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

STANDARD TERMS AND CONDITIONS

(Version : December 2023)

FOREWORD

This document issued by the Environmental Protection Department (EPD) contains the standard terms and conditions used for quotation requirements. EPD may issue supplement/ addendum to these terms whenever necessary.

In the invitation to quotation, these terms and conditions will be issued together with the terms of quotation (supplement) (if any), special conditions of contract (if any) and those issued under the addendum.

INTERPRETATION

In this document and the invitation to quotation, unless the context otherwise requires:

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| “Bidder” | means the firm or the organization referred to in the “Offer to be Bound” section of the invitation to quotation; |
| “Contract” | means the contract hereunder and reference to the terms thereof shall include the terms of quotation in PART 1 hereof unless inconsistent with the context of such reference; |
| “Contractor” | means the Bidder whose quotation is accepted; |
| “Government” | means the Government of Hong Kong Special Administrative Region of the People’s Republic of China; |
| “Government Representative” | means the Director of Environmental Protection or any officer authorized to act on its behalf for the purposes of the Contract; |
| “Hong Kong” | means the Hong Kong Special Administrative Region of the People’s Republic of China; |
| “Inspecting Officer” | means the officer appointed by the Government Representative for the purpose of inspecting the Services performed in pursuance of the Contract; |
| “Non-resident” | means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a company, one where its central management and control is based outside Hong Kong (and the place of incorporation would be relevant consideration but not the sole test of residence); |
| “Quotation Closing Date” | means the latest date by which quotations must be lodged; |
| “Schedule” | means the contract schedule attached (if any) to the invitation to quotation; |
| “Services” | means the services to be provided by the Contractor to the Government as specified in the Contract.; |
| “Pro-innovation Proposal” | means a proposal that adopts any one or more of the following: technological means / arrangements / work process / solutions / equipment that can enhance efficiency, effectiveness and productivity of the services; |

“Environmental Protection, Sustainability, Social Responsibility or Governance Proposal” or “ESG Proposal”

means a proposed measure or arrangement that will improve environmental protection, sustainability or social responsibility or governance which may but need not be directly relevant to the procurement covered by this invitation to quotation, but which can bring about positive value(s) and/or benefit(s) to the Government or the public at large;

“Innovative Suggestion” (in upper or lower case)

means a Pro-innovation Proposal or an ESG Proposal; and

“Innovative Suggestion Schedule”

means a schedule attached to the quotation for completion of the Innovative Suggestions to be offered by the Bidder

PART 1

TERMS OF QUOTATION

1. Invitation to Quotation

- (a) Quotations are invited for the execution of the whole (or any part) of the Services more particularly set out in the Schedule subject to and in accordance with these Terms of Quotation, the General Conditions of Contract set out in Part 2 hereof and the Terms of Quotation (Supplement) and Special Conditions of Contract (if any) set out in the invitation to quotation.
- (b) The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this invitation to quotation and a quotation submitted by a Bidder in response to this invitation to quotation.

2. Quotation

- (a) The quotation relates to the execution of all (or any part) of the Services during the Contract period as specified in the Schedule or Special Conditions of Contract.
- (b) The Schedule issued with the quotation must not be altered by the Bidder. Any modification of the Schedule considered necessary by the Bidder should be the subject of a separate letter accompanying the quotation. Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Bidder in ink.
- (c) Quotations are to be submitted in **duplicate** and are to be completed in ink or typescript; quotations not so submitted may not be considered.
- (d) Quotations may not be considered if complete information is not given with the quotation or if any particulars and data asked for in the Schedule are not furnished in full.
- (e) **Bidders must complete and sign the “Offer to be Bound” issued with the quotation. Failure to submit and duly sign the “Offer to be Bound” on or before the Quotation Closing Date will render a quotation invalid and the quotation will not be considered by the Government.**

3. Quotations to Remain Open

Quotations shall remain valid and open for acceptance on these terms for not less than 90 days after the Quotation Closing Date (or a period specified in the Terms of Quotation (Supplement)). Otherwise, the quotation will not be considered by the Government.

4. Charges

- (a) The charges to be quoted by Bidders are to be shown in Hong Kong dollars and must only be made in the Schedule. Such charges shall be net and where applicable, they shall include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.
- (b) If, at the request of the Contractor, assistance of any Government staff is provided after normal working hours (i.e. Mondays to Fridays, inclusive, 9 a.m. to 5 p.m.; Saturdays, Sundays and public holidays excluded), the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Government staff directly engaged in such assistance.

- (c) Prices quoted

It will be assumed, unless Bidders clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. Bidders should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances will the Government accept any request for price adjustment on grounds that a mistake has been made in the quotation prices

- (d) Cost of Quotation

Each Bidder shall submit its quotation at its own cost and expense. The Government shall not be liable for any costs and expenses whatsoever incurred by a Bidder in connection with the preparation or submission of its quotation and the doing of all acts required for the purpose of the invitation to quotation, including all costs and expenses relating to (a) communication or negotiations with or providing presentation or demonstration to the Government, (b) site visits or surveys made by the Bidder, (c) presenting the Bidder's reference sites and equipment to the Government representative during the site visits, and (d) provision of quotation samples, whether before or after the Quotation Closing Date and time.

5. Acceptance and Schedule of Compliance

- (a) The successful Bidder will receive as an indication of acceptance a fax copy of Departmental Order for Provision of Services (GF220) or the letter of acceptance prior to the receipt of the original. This fax copy of the letter of acceptance or GF220 shall constitute a binding contract. Bidders who do not receive any notification within the validity period of their offers shall assume that their quotations have not been accepted.

- (b) Schedule of Compliance

Bidders shall complete the 'Schedule of Compliance' provided in respect of the offer. Should alternative offer(s) be included, separate 'Schedule of Compliance' should be completed accordingly. Failure to complete the 'Schedule of Compliance' will invalidate the quotation. Bidders are requested to confirm in the 'Schedule of Compliance' that offers submitted comply with the requirements in every respect as specified in the quotation document. If an offer does not conform to the specified requirements, Bidders should provide full details of their alternative offer, but the Government reserves the right to accept or reject any such offer.

6. Alternative Proposals and Negotiation

Alternative proposals which improve the value of the offer may be submitted. The Government reserves the right to negotiate with any Bidder about the terms of the offer.

7. Consideration of Offers

The Government is not bound to consider an offer in the event of a claim being received by the Government alleging or the Government having grounds to believe that the related goods of the Services to be supplied by the Bidder under the quotation are infringing copyrights or have otherwise infringed the intellectual property rights in the goods or product of a third party.

8. Saving

The Government Representative is not bound to accept the lowest or any quotation and reserves the right to accept all or any part of any quotation at any time within the period mentioned in clause 3 hereof.

9. Deposit

- (a) Bidders must deposit the sum as specified and when so required in the invitation to quotation as a pledge of bona fides of their quotations. A receipt of the sum deposited shall be attached to each quotation. Quotations which are not accompanied by a deposit receipt will not be considered and will be rejected.
- (b) In the event that the Bidder withdraws or revokes its quotation within the period stipulated in clause 3 hereof without any valid reason acceptable to Government, the sum deposited shall be absolutely forfeited to Government.
- (c) The sum deposited will be returned to individual unsuccessful Bidders without interest at the conclusion of the quotation exercise.
- (d) Subject to any Special Conditions of Contract set out in the invitation to quotation, the sum deposited will be returned to the successful Bidder without interest within a reasonable time of notice of acceptance given in pursuance of clause 5(a) hereof.

10. Documents of Unsuccessful Bidders

Documents of unsuccessful Bidders will be destroyed not less than three months after the date the Contract has been awarded and the agreement signed.

11. New Information Relevant to Qualified Status

Bidders should inform the Government in writing immediately of any factor which might affect their qualified status as an enlisted supplier with the Government, or as a qualified provider for a particular service. The Government reserves the right to review their qualified status in the light of any new information relevant to their qualification.

12. Latest Audited/Unaudited Accounts

Bidders shall upon request by the Government representative whilst their quotations remain open submit the latest audited accounts or unaudited accounts as appropriate for checking within 14 days from the date of such request. Late submission will not be considered.

13. Complaints about Quotation Process or Contract Awards

The quotation process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Bidder who feels that its offer has not been fairly evaluated may write to the Head of the Department who will personally examine the complaint and refer it to the relevant authority for consideration if it relates to the quotation system or procedures followed. Bidders shall lodge the complaint before disposal of documents of unsuccessful Bidders which shall be 3 months after the award of Contract.

14. Personal Data Provided

- (a) Bidder's personal data provided in the quotation will be used for quotation evaluation and contract award purposes and where the Bidder is a Non-resident and should it be awarded the Contract, such data will be transferred to the Inland Revenue Department for tax assessment and collection purposes. If insufficient and inaccurate information is provided, the quotation may not be considered.
- (b) Bidder acknowledges and consents that Bidder's personal data provided in the quotation may be disclosed to other government departments and non-government organisations. Where the Bidder is a Non-resident and should it be awarded the Contract, such data (including but not limited to its names, nature of engagement, correspondence address (both local and overseas) and the amount of tax withheld) will be transferred to the Inland Revenue Department for tax assessment and collection purposes.
- (c) Bidders have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Bidder's personal data provided in the quotation.
- (d) Enquiries concerning the personal data collected by means of the quotation, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of the EPD.

15. Contractor's Performance Monitoring

Bidders are advised that should they be awarded the Contract their subsequent performance will be monitored and may be taken into account when their future quotations are evaluated. A quotation may be rejected if the Bidder is in default in respect of any EPD contract which is of the same or substantially similar nature as this invitation to quotation within 12 months of the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract.

16. Cancellation of Quotation

Without prejudice to the Government's right to cancel this invitation to quotation exercise at its absolute discretion or for public interest reasons, where there are changes of requirement after the Quotation Closing Date and time for operational or whatever reasons, the Government is not bound to accept any conforming quotation and reserves the right to cancel the invitation to quotation.

17. Warranty against Collusion

- (a) By submitting a quotation, a Bidder is regarded to have represented and warranted to the Government that in relation to the invitation to quotation:
 - (i) it has not communicated and will not communicate to any person other than the Government the amount of any price submitted in its quotation;
 - (ii) it has not fixed and will not fix the amount of any price submitted in its quotation by arrangement with any person;
 - (iii) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a quotation; and
 - (iv) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the process of offering its quotation.
- (b) In the event that a Bidder is in breach of any of the representations and/or warranties in Clause 17(a) the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
 - (i) reject the Bidder's quotation;
 - (ii) if the Government has accepted the quotation, withdraw its acceptance of the quotation; and
 - (iii) if the Government has entered into the Contract with the Bidder, terminate the Contract.
- (c) By submitting a quotation, a Bidder 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 17(a).
- (d) A breach by a Bidder of any of the representations and/or warranties in Clause 17(a) may prejudice its future standing as a Government supplier or service provider.
- (e) Clause 17(a) shall have no application to Bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its quotation, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its quotation.

- (f) The rights of the Government under Clauses 17(b) to 17(d) are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

18. Government Discretion

18.1 Notwithstanding anything to the contrary in this quotation documents, the Government reserves the right to disqualify a Bidder on grounds including any one of the following:

- (a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the Contract award or an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder or a related person of the Bidder;
- (b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the quotation or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that quotation;
- (c) in the event of (i) a claim or an allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) to be supplied or recommended by the Bidder in its quotation infringes any Intellectual Property Rights or any other rights of any person (“IPR infringement”) (and in the case of any claim or allegation, it was made any time during a period of seven (7) years preceding the Quotation Closing Date and up to the time of Contract award); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Bidder or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of seven (7) years preceding the Quotation Closing Date and up to the time of Contract award;
- (d) any time during the thirty-six (36) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract, the Bidder or a related person of the Bidder (as defined in Clauses 18.6 and 18.7 below and including those who were in such capacity any time within the same period, i.e., thirty-six (36) months prior to the Quotation Closing Date or between the Quotation Closing Date and the award of the Contract) has committed significant or persistent default(s) or deficienc(ies) in the performance of any requirement or obligation under any other Government contract regardless of the procurement department of such other Government contract, regardless of whether the default(s) or deficienc(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) or deficienc(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficienc(ies) has been remedied (“Contract Default(s)”); and the Government Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Bidder to perform the Contract to be awarded in this invitation to quotation;

- (e) (i) the Bidder; or (ii) a related person of the Bidder; or (iii) a director or management staff of the Bidder or those of the related person of the Bidder, has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the Contract award) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Quotation Closing Date and thereafter up to the time of Contract award;
- (f) in the event of the professional misconduct or acts or omissions having been committed during a period of five (5) years preceding the Quotation Closing Date and up to the time of Contract award that adversely reflect on the commercial integrity of the Bidder or a related person of the Bidder or a director or management staff of the Bidder or those of the related person of the Bidder; professional misconduct includes any breach of the Good Industry Practice; or
- (g) any failure of the Bidder to pay taxes to the Government during a period of five (5) years preceding the Quotation Closing Date and up to the time of Contract award.

The grounds specified in Clauses 18.1(a) to 18.1(g) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

18.2 For the purposes of Clause 18.1 above, each Bidder shall provide at the time of submission of its quotation (and thereafter up to the time of award in relation to any event occurring between the time of submission and the time of award) all information at least in relation to itself and those information in relation to its related person or its director or management staff (which it has knowledge and is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification), including but not limited to the following:

- (a) details of any petition or proceeding mentioned in Clause 18.1(a) above;
- (b) details of all infringement claims, allegations, rulings, judgments, decisions or settlement agreements as mentioned in Clause 18.1(c) above;
- (c) details of all Contract Defaults as mentioned in Clause 18.1(d) above;
- (d) details of conviction as mentioned in Clause 18.1(e) above in Hong Kong or any overseas jurisdiction;
- (e) details of any professional misconduct or act or omission as mentioned in Clause 18.1(f) above; and
- (f) details of any failure to pay taxes as mentioned in Clause 18.1(g) above.

In the case of Contract Default, the Government will form an assessment as to whether or not such Contract Default has occurred.

18.3 In addition to the information mentioned in Clause 18.2 above, the Government reserves the right (but not obligation) to request from a Bidder or a related person of the Bidder or director or management staff of the Bidder or those of the related person of the Bidder or other independent sources, such other information that is reasonably relevant to facilitate the Government's determination as to whether to exercise its right of disqualification under Clause 18.1 above.

18.4 If the Bidder fails to comply with the request made by the Government pursuant to Clause 18.3 above within such time as required by the Government, the Government may disqualify the Bidder. If the Bidder has submitted false, inaccurate or incomplete information, the Government may disqualify the Bidder pursuant to Clause 18.1(b) above.

18.5 In providing the information required under Clauses 18.2 and 18.3 above, the Bidder may show cause to satisfy the Government that in relation to any of the events as mentioned in Clause 18.1 above, even if it has occurred, it does not cast doubt on the fitness, propriety or capability of the Bidder to perform the Contract to be awarded in this invitation to quotation.

18.6 If the Bidder is a company, the expression “related person” of the Bidder includes any one of the following:

- (a) a shareholder (corporate or individual) which directly or indirectly beneficially owns fifty (50) percent or more of the issued share capital of the Bidder (“majority shareholder”);
- (b) a holding company or a subsidiary of the Bidder;
- (c) a holding company or a subsidiary of a majority shareholder (being a company) of the Bidder; or
- (d) a company in which a majority shareholder (being an individual) of the Bidder directly or indirectly beneficially owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

The expressions “holding company” and “subsidiary” have the meanings given to them in the Companies Ordinance (Chapter 622 of the Laws of Hong Kong).

18.7 If the Bidder is a sole proprietor or partnership, the expression “related person” includes any one of the following:

- (a) any partner of the Bidder (if it is a partnership);
- (b) the spouse, parent, child, brother or sister of the Bidder, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent, and a step child to be a child of both the natural parent and of any step parent; or
- (c) a company in which the Bidder or any partner of the Bidder beneficially directly or indirectly owns fifty (50) percent or more of its issued share capital or controls the composition of its board of directors.

18.8 References to related persons of the Bidder, directors and management staff of the Bidder or those of a related person in any of the applicable Sub-clause of Clause 18.1 above include persons who were in such capacity at such time of the event referred to in that Sub-clause.

18.9 Notwithstanding anything to the contrary in the quotation documents, the Government reserves the right to disqualify a Bidder on the grounds that the Bidder 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.

19. Warning against Bribery

19.1 The offer of an advantage to any public 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 Bidder or any of its officers (including directors), employees or agents will render its quotation null and void.

19.2 The successful Bidder shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors who are connected with the provision of the Services 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 Bidder shall also caution its officers (including directors), 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.