

QUOTATION REF.: PLNQ 43/2012

STAGE TWO PUBLIC ENGAGEMENT PROGRAMME OF URBAN RENEWAL PLAN FOR KOWLOON CITY

PART II GENERAL CONDITIONS OF CONTRACT

1. Total Services and Variation

- (a) The Services to be performed under the Contract shall be as laid down in the Invitation to Quotation and shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and Government will not be responsible for Services performed on oral instructions issued by any person whomsoever.
- (b) The Consultants shall not extend the Services beyond the requirements specified in the Assignment Brief except as directed in writing by the Director's Representative; but the Director's Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing and with mutual agreement direct the Consultants to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Consultants shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Assignment Brief.

2. Assignment

The Consultants shall not, without the written consent of the Director's Representative, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Consultants shall be deemed to be personal to him.

3. Quality of Services

- (a) The Services shall be as specified in the Assignment Brief and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Consultants.

- (b) Any drawings and specifications reasonably required for the Consultants' guidance in the execution of the Contract shall be provided by Government free of charge but shall be returned on completion of the Contract.

4. Inspection and Acceptance

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless the Director's Representative shall so certify.

5. Rejections

- (a) Without prejudice to any statutory rights, the Inspecting Officer or the Director's Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of clause 3(a) hereof.
- (b) Within 24 hours of being notified in writing of the rejection of any Services, the Consultants shall be required to take the necessary action to rectify such rejected Services and within three days or such later date as may be specified by the Government complete all such services necessary to correct the same at its sole cost and expenses to the Government's satisfaction.

6. Government Property

When Government property is issued to the Consultants under the Contract, the Consultants shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Consultants or his servants, workmen or agents, the Consultants shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Consultants may be made at any time by the Director's Representative and the Consultants shall render such assistance as is necessary for this purpose.

7. Software Asset Management

- (a) The Consultants shall at all times during the contract period exercise due diligence in software asset management and as and when required by the Government, furnish to the Government satisfactory evidence that this sub-clause has been complied with.

- (b) The Consultants warrant and undertake that the use of any software by the Consultants for the purpose of or otherwise in connection with the performance of this Contract shall not infringe any intellectual property rights (including without limitation any patent, copyright, registered design and trademark) of any third party.
- (c) The Consultants shall notify the Government immediately in writing of any allegations, claims, actions and/or proceedings in respect of such infringement and any progress thereof from time to time.
- (d) If the Consultants' use of the software for the purpose of or otherwise in connection with the performance of this Contract is held by a court to constitute an infringement of a third party's intellectual property rights (including without limitation any patent, copyright, registered design or trademark), the Government may terminate this Contract forthwith by giving notice in writing to the Consultants and recover from the Consultants the amount of any loss or damage sustained or incurred by the Government as a consequence of such termination.

8. Ownership and Intellectual Property Rights of All Deliverables

The ownership and all intellectual property rights (including without limitation any patent, copyright, registered design or trademark) in all deliverables or other particulars shall be vested in and belong to the Government. The successful bidder shall not use any such deliverables, particulars or disclose the content thereof to any third person, in any manner outside the course of the services without prior express approval in writing of the Government. The successful bidder shall not infringe any of the intellectual property rights of any third party and shall in any event indemnify and keep indemnified Government against all actions, claims, losses, damages and costs which may be sustained by Government consequent upon any such infringement. The Government or his authorized person reserves the right to modify the deliverables for future use.

9. Default

If the Consultants shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with clause 1(b) hereof, the Government may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Consultants, but without prejudice to any claims by the Government for breach of Contract including but not limited to its right of Government to assign the balance of the uncompleted Services to another Consultant or Consultants whereupon the

Consultants shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

10. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Consultants, the same may be deducted from any sum then due or which at any time thereafter may become due to the Consultants under the Contract or any other Government contracts.

11. Liability for Damages or Compensation

- (a) Government and its employees or agents shall not be under any liability whatsoever for or in respect of:
 - (i) any loss of or damage to any of the Consultants' property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise);
 - (ii) any injury to or death of any of the Consultants' employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.
- (b) The Consultants shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:
 - (i) any loss, damage, injury or death referred to in sub-clause (a) of this clause (save and except injury or death caused by the Negligence of Government or any of its employees or agents);
 - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Consultants or any of its employees or agents.
- (c) The Consultants shall indemnify the Government against any loss of or damage to any property of the Government or of any of its employees or agents or any injury to any employee or agent of the Government arising out of the Negligence of the Consultants or any of its employees, sub-consultants or agents.

- (d) For the purposes of this clause ‘Negligence’ shall have the same meaning as that assigned to it in Section 2(1) of the Control of Exemption Clauses Ordinance.
- (e) The Consultants warrant and undertake:
 - (i) that it has good and sufficient title in the Software and in every part thereof to enable it to enter into this Contract;
 - (ii) that it has a valid and continuing Licence under which it is entitled to sublicense without further payment all intellectual property rights (including without limitation any patent, copyright, registered design or trademark) to the Government under the Contract.
- (f) The Consultants shall indemnify the Government and keep the Government fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of the Software or any part thereof infringes the intellectual property rights (including without limitation any patent, copyright, registered design or trademark) of any third party, subject to the following conditions:
 - (i) the Government shall promptly notify the Consultants in writing of any allegations of infringement of which it has been notified and will not make any admission without the Consultants’ prior written consent;
 - (ii) the Government, at the Consultants’ request and expense, shall allow the Consultants to conduct and/or settle all negotiations and litigation resulting from any such claim;
 - (iii) the Government shall, at the request of the Consultants, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Consultants for any expenses incurred in so doing.
- (g) If the Government’s use or possession of the Software or any part thereof is held by a court to constitute an infringement or a third party’s intellectual property rights or if such use or possession is likely to constitute such an infringement then the Consultants shall, without prejudice to any of the Government’s other rights or remedies, promptly and at its own expenses:
 - (i) procure for the Government the right to continue using and possessing the Software; or

- (ii) modify or replace the Software (without detracting from its overall performance) so as to avoid the infringement (in which event the Consultants shall compensate the Government for the amount of any direct loss and/or damage sustained or incurred by the Government during such modification or replacement);
- (iii) if (i) or (ii) cannot be accomplished, remove the Software from the Government and refund to the Government all sums previously paid to the Consultants under the Contract.

12. Policy of Insurance and Compensation

- (a) The Consultants shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by Government (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Director's Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.
- (b) If the Consultants shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases Government may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by Government as aforesaid from any moneys due or which may become due to the Consultants or recover the same as a debt due from the Consultants.
- (c) In the event of any of the Consultants' employees or agents suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Consultants shall within 7 clear working days give notice in writing of such injury or death to the Director's Representative.

13. Bankruptcy

The Director's Representative may at any time by notice in writing summarily terminate the Contract without entitling the Consultants to compensation in any of the following events:

- (a) if the Consultants shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his estate made against him,

or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or

- (b) if the Consultants, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitle the court or debenture holders to appoint a receiver or manager.

Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to the Government.

14. Corrupt Gifts

- (a) If the Consultants or any employee or agent of the Consultants shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Government contracts, the Director's Representative may, on behalf of the Government, summarily terminate the Contract, without entitling the Consultants to any compensation therefor.
- (b) The Consultants shall be liable for all expenses necessarily incurred by the Government as the result of the termination of the Contract.

15. Anti-collusion

- (a) The bidder shall not communicate to any person other than the Planning Department, Government of the HKSAR (hereafter referred to as the Government) the amount of any quotation, adjust the amount of any quotation by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not bid or otherwise collude with any other person in any manner whatsoever in the quotation process until the bidder is notified by the Government of the outcome of the quotation exercise. Any breach of or non-compliance with this sub-clause by the bidder shall, without affecting the bidder's liability for such breach of rules and laws or non-compliance, invalidate his quotation.

- (b) Sub-clause (a) of this Clause shall have no application to the bidder's communications in strict confidence with his own insurers or brokers to obtain an insurance quotation for computation of quotation price and communications in strict confidence with his consultants / sub-contractors to solicit their assistance in preparation of quotation submission.
- (c) The bidder shall submit to the Government a duly signed letter in the form set out at **Annex A of Part II** to the effect that he understands and will abide by these clauses. The form shall be signed by a person authorised to sign the contract on the bidder's behalf.

16. Publicity

The Consultants shall submit to the Director's Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Government's name is mentioned or language used from which a connection with the Government can reasonably be inferred or implied. The Consultants shall not publish or use any advertising or other publicity material without the prior written consent of the Director's Representative.

17. Governing Law

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

18. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied in order to resolve any such conflict, contradiction or ambiguity:

- (a) Assignment Brief
- (b) Technical and Fee Proposals
- (c) Terms of Quotation
- (d) General Conditions of Contract

- END -

To: Planning Department, Government of the HKSAR

Annex A of Part II

Date: _____

Dear Sir/Madam,

Quotation Ref.: PLNQ 43/2012
Confirmation Letter for Compliance with
Anti-Collusion Clauses in Quotation Exercise

[I/We]¹, _____ [name of the bidder]² of

_____ [address of the bidder]² refer to [my/our]¹ bid for the above quotation exercise.

[I/We]¹ confirm that before [I/we]¹ sign this confirmation letter, [I/we]¹ have read and fully understood the anti-collusion clauses in the quotation exercise.

[I/We]¹ confirm that as at the time of submission of this letter and other than the Excepted Communications referred to in the last paragraph of this letter [I/we]¹ had not communicated to any person other than the Planning Department, Government of the HKSAR (hereinafter referred to as the Government) the amount of any quotation, adjusted the amount of any quotation by arrangement with any other person, made any arrangement with any other person about whether or not [I/we]¹ or that other person should bid or otherwise colluded with any other person in any manner whatsoever and undertake that at any time thereafter in the quotation process for the above quotation exercise until the bidder is notified by the Government of the outcome of the quotation exercise and other than the Excepted Communications referred to in the last paragraph of this letter [I/we]¹ will not communicate to any person other than the Government the amount of any quotation, adjust the amount of any quotation by arrangement with any other person, make any arrangement with any other person about whether or not [I/we]¹ or that other person should bid or otherwise collude with any other person in any manner whatsoever.

In this letter, the expression “Excepted Communications” means [my/our]¹ communications in strict confidence with [my/our]¹ own insurers or brokers to obtain an insurance quotation for computation of quotation price and communications in strict confidence with [my/our]¹ consultants or sub-contractors to solicit their assistance in preparation of quotation submission.

(Signed for and on behalf of the bidder)

1. Delete as appropriate.
2. Where the bidder comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.
3. Where the bidder comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorised to sign the contract on behalf of that person or as the case may be company.