

SPECIAL CONDITIONS OF TENDER

SPECIAL CONDITIONS OF TENDER

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

ARCHITECTURAL SERVICES DEPARTMENT

CONDITIONS OF TENDER

Part B – Special Conditions of Tender

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SCT 1 (Not used)

SCT 2A (Not used)

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SCT 3 (Not used)

SCT 4 Contractors' Joint Venture

- (1) Tenderers may submit their tender in the form of a joint venture provided:
 - (i) the participants or shareholders in the joint venture collectively satisfy the qualification requirements; and
 - (ii) each participant or shareholder in the joint venture is technically capable for that part of the Works it undertakes.
- (2) Where the tenderer is an unincorporated joint venture, it must:
 - (i) subject to General Conditions of Tender Clause GCT 21 nominate a lead participant whose percentage participation in the joint venture as calculated pursuant to sub-clause (4) below shall be more than that of any other participant in the joint venture. The lead participant must be a Group C contractor in the List of Approved Contractors for Public Works for Buildings; and
 - (ii) subject to General Conditions of Tender Clause GCT 25, it shall submit to the Surveyor designate a Letter of Undertaking in the form set out in Appendix SCT.A to these Special Conditions of Tender duly executed by all the participants of the unincorporated joint venture.

Failure to comply with this sub-clause by an unincorporated joint venture shall render his tender invalid.

- (3) Where the tenderer is an incorporated joint venture it shall, subject to General Conditions of Tender Clause GCT 25, submit to the Surveyor designate a Letter of Undertaking in the form set out in Appendix SCT.B to these Special Conditions of Tender duly executed by all the shareholders of the incorporated joint venture. There must be at least one shareholder who is a Group C contractor in the List of Approved Contractors for Public Works for Buildings and the proposed value of work of that shareholder (hereinafter referred to as the major shareholder) in the joint venture pursuant to sub-clause (4) below shall be more than that of any other shareholder in the joint venture. Failure to comply with this sub-clause by an incorporated joint venture tenderer shall render his tender invalid.

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SCT 4 Contractors' Joint Venture (Cont'd)

- (4) Where the tenderer is a joint venture (whether incorporated or unincorporated), the tenderer shall, subject to General Conditions of Tender Clause GCT 21, provide with its tender details of the proposed value and portion of work to be undertaken by each participant or shareholder in the joint venture. The percentage participation of each participant or shareholder in a joint venture shall be calculated by reference to the proposed value of his portion of work against the corrected tender sum. Any portions of work not specifically undertaken by any participants or shareholders are deemed to be undertaken by the lead participant or the major shareholder. Where a joint venture participant or shareholder undertakes more than one category of works given in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, the proposed value and portion of work to be undertaken by such participant or shareholder in a joint venture shall be sub-divided into each category of work he undertakes. If the total percentage participation of all the participants or shareholders in a joint venture is less than 100%, the difference shall be attributed to the lead participant nominated or the major shareholder determined under sub-clauses (2) and (3) of this Special Conditions of Tender as the case may be such that the total percentage participation of the participants or shareholders shall be 100%. If the total percentage participation of the participants or shareholders in a joint venture is more than 100%, the percentage participation of each participant or shareholder shall be reduced proportionately such that the total percentage participation of the participants or shareholders shall add up to 100%.

If the proposed value of work to be undertaken by a participant or shareholder in a joint venture submitted by the tenderer does not tally with the proposed portion of work to be undertaken by him, the Architect designate may seek clarification from the tenderer and if the difference in value remain irreconcilable after clarification, the tender shall not be considered further.

- (5) Without prejudice to any other General Conditions of Tender and Special Conditions of Tender, a participant or shareholder in a joint venture will be considered as technically capable of undertaking the Works or part of the Works as required under sub-clause(1)(ii) of this Special Conditions of Tender, if:
- (i)(a) the participant or shareholder in the joint venture is a contractor included in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works (“the List”); and
 - (b) the proposed portion of work to be undertaken by the participant or shareholder is of the same category of the List in which the participant or shareholder is included unless there is no such category in the List which could match such work; and
 - (c) the proposed value of work to be undertaken by the participant or shareholder does not exceed the values of contract or works that may be undertaken by a contractor listed in the same category and group in which the participant or shareholder is included, the details of which are set out in the Contractor Management Handbook “CMH” published by the Development Bureau. For the purpose of the application of this sub-clause, probationary contractors will be treated in the same manner as confirmed contractors and the limits on the values of contract or works that may be undertaken by probationary contractors as set out in the CMH will not apply except for the lead participant or major shareholder; or

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SCT 4 Contractors' Joint Venture (Cont'd)

- (ii) if the participant or shareholder in the joint venture is NOT a contractor included in the List, the proposed value of work to be undertaken by this participant or shareholder does not exceed the limits described in sub-clause (5)(i)(c) of this Special Conditions of Tender, as if this participant or shareholder were included in the relevant category, group and if applicable, class on the List to which it would have been eligible provided that this participant or shareholder satisfies the minimum technical and management criteria set out in the CMH for direct entry to the respective category, group and, if applicable, class on the List for the category of work it proposed to undertake either on a probationary status, or as a confirmed contractor if the category of work concerned has no probationary status. For this purpose, experience gained in contracts overseas (government or non-government) will be counted. The joint venture tenderer shall submit, subject to General Condition of Tender Clause GCT 21, together with its tender, documentary evidence, in the form of a certificate of completion and articles of agreement and the like to the satisfaction of the Surveyor designate, supporting their job experience; or
- (iii) if the participant or shareholder in the joint venture is a contractor included in the List and if this participant or shareholder wishes to take up work in excess of the value governed by sub-clause (5)(i)(c) of this Special Conditions of Tender in the category and group in which the participant or shareholder is included, the proposed value of work to be undertaken by this participant or shareholder does not exceed the governing values referred to in sub-clause (5)(ii) of this SCT. Submission of documentary evidence, subject to General Condition of Tender Clause GCT 21, will also be required.

Failure to comply with the submission requirements under this sub-clause by a joint venture tenderer shall render his tender invalid.

- (6) No tenderer is permitted to submit more than one tender for each contract. For the purpose of this Clause, a tenderer who submits a tender on its own behalf and as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture in response to a tender exercise shall be regarded as having submitted more than one tender. A holding company and its subsidiaries are considered as one and the same tenderer. Tenders submitted from a tenderer on his own behalf who is found to be in breach of this sub-clause or from a joint venture or joint ventures in which any participant or shareholder is found to be in breach of this sub-clause shall not be considered.

SCT 5 (Not used)

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SCT 6 ISO 9000

- (1) The tenderer shall, upon written request by the Surveyor designate issued in accordance with General Conditions of Tender Clause GCT 25, submit to the Surveyor designate:

EITHER

- (a) a copy of his ISO 9001:2008 certificate acceptable to the Employer showing the scope of certification and a statement either:
- (i) confirming that there is no area/aspect in the Contract which his quality system specifically excludes; or
 - (ii) disclosing the areas/aspects in the Contract which his quality system specifically excludes.

OR

- (b) where the tenderer due to circumstances beyond his control has not obtained ISO 9001:2008 certification:
- (i) a copy of the confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of the tenderer's Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with the requirements of the ISO 9001:2008 standard; and
 - (ii) an undertaking that within three months of the acceptance of tender, he would book with the certification body the date of audit for the ISO 9001:2008 certification; with detailed documented quality system procedures ready at the time of booking.

- (2) Where the tenderer is a joint venture, he shall, upon written request by the Surveyor designate issued in accordance with General Conditions of Tender Clause GCT 25, submit to the Surveyor designate :

- (a) a statement declaring that he shall implement the quality system of one of his participants or shareholders and specifying which one;
- (b) a copy of the written notification to the certification body of the specified participant or shareholder that the joint venture shall implement the quality system of the specified participant or shareholder and the written agreement that the activities of the joint venture shall be subject to the surveillance of the certification body; and
- (c)(i) a copy of his specified participant or shareholder's ISO 9001:2008 certificate acceptable to the Employer showing the scope of certification and a statement either:
 - (A) confirming that there is no area/aspect in the Contract which the specified participant or shareholder's quality system specifically excludes; or
 - (B) disclosing the areas/aspects in the Contract which the specified participant or shareholder's quality system specifically excludes.

SPECIAL CONDITIONS OF TENDER

SCT 6 ISO 9000 (Cont'd)

(2) OR

(ii) where the specified participant or shareholder due to circumstances beyond his control has not obtained the ISO 9001:2008 certification:

(A) a copy of the confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of the specified participant or shareholder's Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with the requirements of ISO 9001:2008 standard; and

(B) an undertaking that within three months of the acceptance of tender, the specified participant or shareholder would book with the certification body the date of audit for the ISO 9001:2008 certification; with detailed documented quality system procedures ready at the time of booking.

(3) The submission under sub-clause (2)(a) of this Special Conditions of Tender, if applicable, shall form part of the Contract.

SCT 7 Outline Environmental Management Plan

(1) The tenderer shall upon written request by the Surveyor designate in accordance with the General Condition of Tender Clause GCT 25 submit an Outline Environmental Management Plan, which shall be the tenderer's proposal to:

(a) minimize the environmental nuisances of air, noise and wastewater pollution; and

(b) minimize the generation of surplus construction and demolition (C&D) materials, in particular, the proposed measures to avoid/minimize the use of timber for Temporary Works construction, to effectively carry out on-site sorting of C&D materials and to minimize the generation of C&D waste from equipment/material packaging during the course of the Works.

(2) The Outline Environmental Management Plan shall be specific to the Site and used for the preparation of the Environmental Management Plan after the Contract is awarded. It shall **not** form part of the Contract.

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SCT 8 Disclosure of information (bid challenges)

- (1) The tenderer shall note that the provisions of the Agreement on Government Procurement of the World Trade Organisation (WTO GPA) apply to this procurement. In the event of a bid challenge by a tenderer to the Review Body on Bid Challenges of alleged breaches of the WTO GPA in respect of this procurement, the Employer may be requested by the Panel appointed in accordance with the Rules of Operation of the Review Body on Bid Challenges (the Panel) to disclose information submitted by other tenderers.
- (2) By submitting his tender, the tenderer shall be deemed to have consented that in the event of a bid challenge by a tenderer to the Review Body on Bid Challenges of alleged breaches of the WTO GPA in respect of this procurement and the Employer is requested by the Panel to disclose information submitted in his tender, the Employer may disclose the information to the Panel and to such other persons and in such manner as the Panel may require in accordance with the Rules of Operation. This may include disclosing the information to the complainant which has lodged the bid challenge.

SCT 9 Funding approval

The tenderers shall note that this tender exercise is held before the necessary funds for the contract have been approved. The tenderers shall also note that the Employer reserves the right to cancel this tender exercise for not having the necessary funds approved; and that the tenderers will accordingly be notified if the necessary funds are not approved.

SCT 10 (Not used)

SCT 11 (Not used)

SCT 12 (Not used)

SCT 13 (Not used)

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SCT 14 Specialist Sub-contractors

- (a) Some parts of the Works as listed hereinafter in this sub-clause shall be executed by Specialist Sub-contractors. The tenderer shall hold a tender exercise inviting tenders only from the List of Specialist Sub-contractors maintained by the Employer and attached hereto as Appendix SCT.C to these Special Conditions of Tender. The tender exercise shall be completed before the tenderer submits his Tender. Upon completion of the tender exercise, the tenderer shall confirm with the Employer that the Specialist Sub-contractor selected has not been suspended or removed from the said list. The tenderer shall include the name of the selected Specialist Sub-contractor on the Form provided in Appendix SCT.D to these Special Conditions of Tender and submit with his Tender the completed Form and a copy of a letter from his selected Specialist Sub-contractor indicating the Specialist Sub-contractor's agreement to carry out the respective part of the Works for the tenderer should the Tender be accepted. After award of the Contract, the tenderer shall enter into a sub-contract using the Standard Form of Domestic Sub-Contract published by the Hong Kong Construction Association with the same selected Specialist Sub-contractor, who has not been suspended or removed from the said list. The tenderer shall not negotiate tender prices with the tenderers for the Specialist Sub-contract after the tender exercise. In the event that no tender is received, or the selected Specialist Sub-contractor has been suspended and/or removed from the said list as confirmed by the Employer, the tenderer must, unless the Employer directs otherwise, conduct another tender exercise in accordance with the procedures set out in this Clause for the selection of the Specialist Sub-contractor for such work. For the avoidance of doubt, no changes to the tendered rates in the Schedule of Rates and/or the tender price as contained in the Tender are permitted as a result of or arising from any re-tendering exercise for a Specialist Sub-contractor in respect of any Specialist Sub-contract works. The tenderer shall invite tenders in respect of the following Specialist Sub-contract works:
- (i) Landscaping
 - (b) (Not used)
 - (c) (Not used)

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SCT 14 Specialist Sub-contractors (Cont'd)

- (d) (Not used)
- (e) The tenderer shall incorporate the Special Conditions of Tender and the Special Conditions of Sub-contract set out in Appendix SCT.E to SCT.F to these Special Conditions of Tender in his tender exercise for the Specialist Sub-contract works.
- (f) The tenderer shall submit with his Tender a statement in the Form provided, Architectural Services Department's Standard Form No. QS/TD.150, in Appendix SCT.D to these Special Conditions of Tender confirming that ALL contractors on the Lists of Specialist Sub-contractors listed under Clause (a) of this Special Condition of Tender have been invited to submit tenders when the tender exercise for such works was carried out. The statement shall be certified by a person authorised to sign Government contracts on the tenderer's behalf.

SCT 15 Sub-contractor's warranty

Before entering into a sub-contract with a sub-contractor, the tenderer shall procure from the sub-contractor an undertaking to provide a sub-contractor's warranty duly executed by the sub-contractor for the following sub-contract work:-

- (i) Roofing System

The Sub-contractor's warranty shall take the form appearing in Appendix SCC.A to the Special Conditions of Contract with only such amendments thereto as may have been previously approved by the Employer in writing.

SCT 16 Schedule of Rates

- (a) The tenderer is required to submit with his Tender a fully priced and detailed Schedule of Rates with approximate quantities showing the build-up of the Tender.
- (b) The quality and quantity of the work included in the sum for this Schedule of Rates shall be that which is shown on the Drawings and/or described in the Specification insofar as such Drawings and/or Specification may apply. The tenderer shall determine the quantities for this Schedule of Rates both by reference to the relevant Drawings and/or Specification and to the quantities for any items which in the opinion of the tenderer are required for this Schedule of Rates but which nonetheless do not appear on the relevant Drawings and/or Specification.

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SCT 16 Schedule of Rates (Cont'd)

- (c) Where “Provisional Quantities” are specified in the Specification, the tenderer shall include the specified quantity for the specified item in his Schedule of Rates and shall mark such item as “PROVISIONAL”.
- (d) The Specification Preliminaries and the Summary of Tender shall be deemed to be part of the Schedule of Rates.
- (e) A proforma Schedule of Rates for the following part(s) of the Works is issued to the tenderer for reference :

Section A – Construction of Lift Tower, Link Bridge, New Staircase and Refurbishment of Existing Staircase

- (i) Site Formation Works;
- (ii) Lift Tower, Link Bridge, New Staircase and Refurbishment of Existing Staircase;

Section B – Main Garden

- (iii) Service Block;
- (iv) Plumbing and Drainage Installation; and
- (v) External Works

The items and the individual descriptions listed in this proforma Schedule of Rates are not necessarily fully representative of or relevant to the Works. The tenderer may include additional items or alter any item/description and unless expressly stated otherwise in the tender documents, may enter quantities as the tenderer deems appropriate for the build-up of the Tender and for the purpose of General Conditions of Contract Clause 59(5).

The tenderer’s attention is drawn to Clause 4(1)(a)(ii) and 4(1)(b) of the General Conditions of Tender for submission of the above Schedule of Rates.

SCT 17 (Not used)

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SCT 18 Alternative products or materials

The phrase “or alternative products or materials having equivalent functions or performance” is deemed to be included wherever products or materials are specified by proprietary brand names in the Contract including Drawings and Specification. Alternative products or materials of different brands or manufacture having equivalent functions or performance may be used if prior approval from the Architect has been obtained and the Contract Sum will be adjusted in accordance with the Special Conditions of Contract Clause SCC 36.

The tenderer shall take into account these contract provisions when compiling his tender. The tenderer shall inform and remind his sub-contractors and/or suppliers of such contract provisions when quotations are obtained from such sub-contractors and/or suppliers for compiling the tender. The tenderer shall submit with his Tender a statement in the Form (Architectural Services Department’s Form No. QS/TD.230) provided in Appendix SCT.G to these Special Conditions of Tender confirming that he has informed and reminded his sub-contractors and/or suppliers of such contract provisions. The statement shall be certified by a person authorized to sign Government contracts on the tenderer’s behalf.

SCT 19 (Not used)

SCT 20 (Not used)

SCT 21 Adjustment Item

- (1) If the Tenderer intends to enter a lump sum for adjustment in his Tender, he shall enter it in the space provided in the Summary of Tender.
- (2) Any other adjustments or purported adjustments in the Tender shall be transferred and added to or deducted from (as the case may be) the lump sum adjustment entered by the Tenderer in the Summary of Tender.
- (3) The lump sum (whether positive or negative) entered as adjustment by the Tenderer in the Summary of Tender or the resulting amount after adjustment as in sub-clause (2) of this Clause shall not exceed 10% of the unadjusted tender sum.
- (4) In sub-clauses (1) and (2) of this Clause, if a percentage is entered instead of a lump sum for adjustment in the Summary of Tender or for any other adjustments or purported adjustments in the Tender, the percentage shall be converted to a lump sum.

SCT 22 (Not used)

SCT 23 (Not used)

SCT 24 (Not used)

SCT 25 (Not used)