

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

**TERMS OF QUOTATIONS AND
GENERAL CONDITIONS OF CONTRACT**

FOREWORD

This document contains the terms and general conditions for acquisition of quotation for services for the Working Family and Student Financial Assistance Agency of the Government of the Hong Kong Special Administrative Region (WFSFAA). The WFSFAA may issue addendum to these terms and conditions before the quotation closing date.

Suppliers who respond to the invitation should confirm compliance with these terms and conditions, and those issued under the addendum.

INTERPRETATION

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

- “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 Supplier whose quotation has been accepted by the Government;
- “Government” means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China;
- “Government Representative” means any officer of the Government specified by the Head, Working Family and Student Financial Assistance Agency acting for and on behalf of Government or any officer authorized to act on his 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 pursuit of the Contract;
- “Quotation Closing Date” means the latest date (Hong Kong time) by which quotation must be lodged;
- “Schedule” means the schedule attached to the invitation to quotation;
- “Services” means the work referred to in the Schedule;
- “Supplier” means the person, firm or company that is involved to offer quotations for the Services that is invited to offer quotations for the stores or Services referred to in the invitation to quotations and who will sign and submit the “Offer to be Bound” if a quotation is submitted;

PART 1

TERMS OF QUOTATION

1. Invitation to Quotation

Suppliers 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 and Service Requirements set out in the 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.
- (b) The Schedule issued with the invitation to quotation must not be altered by the Supplier. Any modification of the Schedule considered necessary by the Supplier 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 initiated by the Supplier in ink.
- (c) Quotations are to be completed in ink or typescript. Quotation 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. Complete information should accompany the quotation.
- (e) Quotation must be submitted to the address and marked for the attention as specified at the top of the Quotation Form by post or by hand delivery; and if a facsimile number and/or email address is also provided, to such facsimile number or email before the quotation closing day (“Quotation Closing Date”) and quotation closing time on that day (“Quotation Closing Time”) as specified at the top of the Quotation Form. Late Quotations including Quotations posted or despatched prior to, but received after, the Quotation Closing Time will not be considered. Should it be necessary for the Supplier to attach other enclosures to the form or

Schedule, reference to these enclosures should be made on the Schedule.

3. Quotations to Remain Open

(a) Quotations shall, unless otherwise indicated by the Supplier, remain open for not less than ninety (90) days after the Quotation Closing Date. If Suppliers are unable to comply with this requirement, they must clearly state the period for which their quotation is valid for acceptance. If before the expiry of the agreed validity period their offer is withdrawn, they are advised that due notice will be taken of their action and this may well prejudice their future standing as a Government supplier.

(b) Quotation Closing Date and Time

All quotations must be submitted before the Quotation Closing Date and time (Hong Kong Time). Late quotations will not be considered.

(c) Quotation Closing Date and Time Extension

In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions after super typhoons” announced by the Government is/are in force for any duration between 9:00 a.m. and 12:00 noon on the Quotation Closing Date, the latest date and time before which Quotations are to be despatched to such facsimile number or address referred to in the invitation of quotations will be extended to 12:00 noon on the next working day (all times mentioned are Hong Kong time).

4. Charges

(a) The charges to be quoted by Suppliers are to be shown in Hong Kong dollars. Such charges shall be net and where applicable, they shall include all expenses incidental to the due and proper performance of the Contract by the Contractor. The charges to be quoted by the Supplier must be shown on the Schedule provided in the invitation to quotation.

(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 6 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 Suppliers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. The Supplier must quote fixed prices, A quotation with any price variation clause, including one based on foreign exchange market fluctuation, will not be considered further.

(d) **Accuracy of Quoted Prices**

Suppliers should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances shall the Government be obliged to accept any request for price adjustment on any grounds including any mistake made in the price quoted.

5. Acceptance

(a) The successful Supplier will receive as an indication of acceptance a fax or a letter of acceptance. This fax or letter of acceptance together with the terms of Quotation, the General Conditions of Contract, the submitted Schedule(s) and Offer to be Bound shall constitute a binding contract. Suppliers who do not receive any notification within the validity period of their offer shall assume that their quotations have not been accepted.

(b) **Schedule of Compliance**

Suppliers 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' may invalidate the quotation.

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 Supplier about the terms of the offer.

7. Consideration of Offers

The Government is not bound to accept the lowest or any quotation. The Government reserves the right to accept all or any part of any quotation at

any time within the period mentioned in clause 3 hereof. The Government Representative may elect, at its sole option, to reject any quotations if, in its opinion, the Supplier is incapable of understanding or fulfilling the Contract.

8. Documents of Unsuccessful Suppliers

Documents of unsuccessful Suppliers may be destroyed not less than three (3) months after the date the Contract has been awarded.

9. New Information Relevant to Qualified Status

Suppliers should inform the Government in writing immediately of any factor which might affect their qualified status as a registered supplier with the Government, or as a qualified supplier 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.

10. Latest Audited/Unaudited Accounts

The Suppliers 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 fourteen (14) days from the date of such request. Late submission of the accounts may render their quotations not to be considered further.

11. Complaints about Bidding Process or Contract Awards

The bidding process is subject to internal monitoring to ensure that contracts are awarded properly and fairly. Any Supplier who feels that its offer has not been fairly evaluated may write to the Head, Working Family and Student Financial Assistance Agency. The Supplier shall lodge the complaint before disposal of documents of unsuccessful Suppliers which shall be within three (3) months after the award of contract.

12. Warning against Bribery

- (a) The offer of an advantage to any Government officers 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 the Service Provider or any of its officers (including directors), employees or agents will render

its quotation null and void.

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

13. Personal Data Provided

- (a) All personal data provided in the quotation will be used by the Government for the purposes of the invitation to quotation and all other purposes arising from or incidental to it (including the purposes of quotation evaluation, the award of the Contract and resolution of any dispute arising from the invitation to quotation). If insufficient and inaccurate information is provided, the quotation may not be considered.
- (b) By submitting a quotation, a Supplier is regarded to have agreed to, and to have obtained from each individual whose personal data is provided in the quotation his consent for the disclosure, use and further disclosure by the Government of the personal data for the purposes set out in Clause 13(a) below.
- (c) An individual to whom personal data belongs and a person authorised by him in writing has the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). The right of access includes the right to obtain a copy of the individual's personal data provided in the quotation.
- (d) Enquiries concerning the personal data collected by means of the invitation to quotation, including the making of access and corrections, should be addressed to the Personal Data Privacy Officer of the WFSFAA.

14. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the successful offer, without any further reference to the successful Service Provider, the name and address of the successful Service Provider, description of services and the fees, costs, and expenses payable by the Government for engaging the successful Service Provider; and the offer submitted by the successful Service Provider.

15. Contractors' Performance Monitoring

Suppliers 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 will be rejected if by the Quotation Closing Date, the Service Provider is under suspension from bidding for the quotations issued by the WFSFAA.

16. Cancellation of Quotation

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

PART 2
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 Schedule and Special Conditions (if any) and shall be carried out, as and when required, to the satisfaction of the Government Representative. 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 Contractor shall not extend the Services beyond the requirements specified in the Schedule except as directed in writing by the Government Representative; but the Government Representative may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor 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 Schedule.

- (c) Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the rates specified in the Schedule so far as the same may be applicable and where rates are not contained in the said Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

2. Assignment

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

3. Quality of Services

- (a) The Services shall be as specified in the Schedule and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.
- (b) Any drawings and specifications reasonably required for the Contractor's 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 Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

5. Rejections

- (a) Without prejudice to any statutory rights, the Government Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of sub- clause (a) of clause 3 hereof.
- (b) Within twenty-four (24) hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

6. Government Property

When Government property is issued to the Contractor under the Contract, the Contractor 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 Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Government Representative and the Contractor shall render such assistance as is necessary for this purpose.

7. Government Premises/Contractor's Premises

- (a) The Contractor, shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of Government premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Government Representative or Inspecting Officer at all reasonable times.
- (c) The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto Government premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Government in respect of any loss or damage to such Government premises, piers or wharves.

8. Payment for Services

- (a) In consideration of the Contractor's due and proper performance of all its obligation in accordance with the Contract, the Government shall pay the Contractor the Contract Price in arrears in accordance with the Contract Schedule.
- (b) Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the Government, in respect of any Services provided to the Government, the Government shall not have any obligation to pay the Contractor any Contract price for such Services unless and until the Services have been accepted by the Government. The Government shall pay the Contractor the

Contract price within thirty (30) days after the date of acceptance of the Services.

- (c) The Contract Price is inclusive of all charges for provision of Services. Subject to Clause 1 abovementioned and save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract price for any reason (including foreign exchange fluctuations).
- (d) The Contractor shall invoice the Government for any payment of the Contract price. In respect of each provision of the Services, the Contractor shall deliver to the Government an invoice setting out the particulars of the Services provided (including the unit rate), the Order number (if any), the amount of Contract price payable for the Services and such other information as the Government Representative may require from time to time.
- (e) Notwithstanding any provision of the Contract, the Government is entitled to withhold payment of all or any part of the Contract price and any other sum by the Government to the Contractor if –
 - (i) the Contractor fails to observe or perform any provision of the Services;
 - (ii) the Government disputes on any reasonable ground its obligation to pay the amount in question;
 - (iii) the Government has reasonable grounds to believe that the Contractor is or will be liable to the Government under any provision of the Contract for loss or damage suffered by the Government; or
 - (iv) withholding of payment is required by any applicable law.
- (f) No payment made by the Government under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the Government in respect of any breach of the Contract by the Contractor.

9. Termination of contract

During the Contract Period, the Government may at any time at its option suspend or terminate this Contract by giving notice with immediate effect if the Contractor:

- (a) is found to have provided false or incomplete information in bidding this Contract;
- (b) is in breach of any terms/provisions of this Contract;
- (c) has persistently or flagrantly neglected its duties and obligations under this Contract; or
- (d) has failed to carry out all or any of the Services specified in this Contract within the Contract Period or such extended period as agreed by the Government. Such suspension or termination shall not prejudice or affect any rights of action or other remedies that may have accrued to the Government, including but not limited to the right of the Government to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess of the Contract Price. The Contractor will not be able to claim any compensation and will only be paid for Services satisfactorily performed under the Contract. The Government will have no obligation of the Government, or for any work agreed but not yet performed by the Contractor.

10. Illegal Workers

- (a) The Contractor undertakes not to employ illegal workers in the execution of any Government contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, the Government Representative may, on behalf of the Government, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the Government as a result of the termination of the Contract.

11. Default

If the Contractor 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 Contractor, 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 contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called 'any excess') of the Contract price.

12. Recovery of Sums Due

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

13. Liability for Damages or Compensation

(a) The 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 Contractor's 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); or

(ii) any injury to or death of any of the Contractor's 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 Contractor 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 Contractor or any of its employees or agents.

- (c) The Contractor 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 Contractor or any of its employees, sub-contractors 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 (Chapter 71 of the Laws of Hong Kong).

14. Policy of Insurance and Compensation

- (a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by Government which refers to the insurance company authorised under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Government 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 Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which it may be required to effect under the terms of the Contract then and in any such cases the 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 the Government as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- (c) In the event of any of the Contractor's 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 Contractor shall within seven (7) clear working days give notice in writing of such injury or death to the Government Representative.

15. Bankruptcy

The Government Representative may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

- (a) if the Contractor 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 (Chapter 6 of the Laws Hong Kong) for the time being in force, or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do; or
- (b) if the Contractor, 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 entitled 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.

16. Publicity

The Contractor shall submit to the Government Representative for approval all proposed 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 Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Government 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) Special Conditions of Contract (if applicable) / Specifications
- (b) Terms of Quotation
- (c) General Conditions of Contract/Terms of Quotation
- (d) Contract Schedules

Working Family and Student Financial Assistance Agency

The Government of the Hong Kong Special Administrative Region

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