



CONSTRUCTION
INDUSTRY COUNCIL
建造業議會

Our ref 本會檔號: (1093) in P/ADM/COR/EXN (1)

Your ref 來函檔號:

25 July 2017

Dear Tenderers,

Tender Reference No. (309) in P/AE/PUR/AGC

**Consultancy Services on the Potential Utilisation of Prefabrication Yards
and Prefabricated Components in Hong Kong
for the Construction Industry Council ("The CIC")**

Tender Query No. 1

Further to our issuance of the Invitation to Tender on 11 July 2017, tender queries were received. The CIC's response is hereby distributed to all Tenderers. This letter shall not have any contractual or other legal standing or effect. The question(s) and the CIC's response(s) are set out in Attachment 1.

Please acknowledge receipt of the aforementioned information by signing below and returning this letter by fax at (852) 2100 9439 or by e-mail to kelvinlee@cic.hk **by 1 August 2017**.

Yours sincerely,
For and on behalf of
Construction Industry Council

Accepted and Confirmed by
Company Name:

Justin WONG
Manager
Projects & Contracts Administration

Name:
Position:
Date:

/JW

Tender for Consultancy Services on the Potential Utilisation of Prefabrication Yards and Prefabricated Components in Hong Kong ("the CIC")

Item No.	Tender Reference / Queries	The CIC's Responses
1.	<i>We intend to lead the team for this but will be supported by other companies with very relevant expertise. These companies will be our sub-consultants. Could we assume that it is permitted to include track record projects from our sub-consultants?</i>	<p>Yes, the relevant track records of the tenderer's proposed sub-consultant(s) can be included in the technical proposal provided that documents indicating the working relationships or engagements between the tenderer and its proposed sub-consultant(s) (e.g. Memorandum or Letter of Undertakings) are also included.</p> <p>The relevant track records of the tenderer and its proposed sub-consultant(s) shall be listed out in separate section(s) in the technical proposal for ease of reference.</p> <p>Please also be advised that the organization of the project team and the relevant track records of the tenderer and its proposed sub-consultant(s) will be evaluated by the tender assessment panel as a whole, and any significant changes on the proposed sub-consultant(s) will be taken into consideration during tender evaluation.</p>
2.	<i>Whether sub-consultants are required to sign Appendix B and C of Conditions of Tender?</i>	<p>No. Sub-consultant(s) are not required to sign Appendix B and C, as the contractual arrangement is between the CIC and the tenderer (as the main consultant).</p> <p>The tenderers shall take note on Clauses 38 and 39 of the General Conditions of Employment.</p> <p><u>38. Employment and Replacement of Sub-consultants</u> <i>The Consultant shall obtain the prior written approval of the</i></p>

Tender for Consultancy Services on the Potential Utilisation of Prefabrication Yards and Prefabricated Components in Hong Kong (“the CIC”)

Item No.	Tender Reference / Queries	The CIC’s Responses
		<p><i>Employer to:</i> <i>(i) the appointment of sub-consultants to undertake any part of the Services; and</i> <i>(ii) the replacement of any sub-consultants appointed under sub-clause (i) of this Clause.</i></p> <p><u><i>39. Liability of Consultant for acts and default of Sub-consultants</i></u> <i>The appointment of sub-consultants to undertake any part of the Services shall not relieve the Consultant from any liability or obligation under this Agreement and he shall be responsible for the acts, default and neglects of any sub-consultants, his agents, servants or workmen as fully as if they were the acts, default and neglects of the Consultant, his agents, servants or workmen.</i></p>
3.	<p><i>Is it possible to provide a copy of “Survey on the Potential Utilisation of Prefabrication Yards in Hong Kong – Survey Report”, conducted by Mercado Solutions Associates Limited (MSA)?</i></p>	<p>The report “Survey on the Potential Utilisation of Prefabrication Yards in Hong Kong – Survey Report” is a confidential document and is currently not available to the public. Tenderers who would like to receive a copy of the said survey report are required to sign and return the enclosed Non-Disclosure Deed before the CIC may release the report.</p>
4.	<p><i>Could we assume that we should consider buildings and transport infrastructure, such as roads, tunnels etc. Is this correct?</i></p>	<p>Yes, the study should cover all aspects of construction in Hong Kong.</p>
5.	<p><i>One benefit of pre-fabrication is the improved safe working that it enables. Could we assume that we should consider</i></p>	<p>The appointed consultant is welcomed to consider all possible tangible and intangible benefits.</p>

Tender for Consultancy Services on the Potential Utilisation of Prefabrication Yards and Prefabricated Components in Hong Kong (“the CIC”)

Item No.	Tender Reference / Queries	The CIC’s Responses
	<i>these softer merits in the study?</i>	
6.	<i>Scope item 3.1 (h) of Assignment Brief requires “stakeholder engagement forums”. As an essential part of the work, whether CIC would want to also invite and suggest participants?</i>	Yes, the CIC and the appointed consultant will work out the suggested participants.

Non-Disclosure Deed

Construction Industry Council (CIC)

and

[*Name of Recipient*] (Recipient)

[Date]

Parties

Construction Industry Council, a body established under the Construction Industry Council Ordinance (Cap 587) whose office is at 38/F, COS Centre, 56 Tsun Yip Street, Kwun Tong, Kowloon, Hong Kong (CIC)

and

[Name of Recipient], a company duly incorporated under the laws of Hong Kong and having its registered address at [registered address of Recipient] (Recipient)

Background

- A. The CIC wishes to disclose Confidential Information (defined below) to the Recipient for the Purpose (defined below) and agrees to do so on the terms and conditions set out in this Deed (defined below).
- B. The Recipient acknowledges the desire and right of the CIC to preserve the secrecy of the Confidential Information and has agreed to keep confidential all Confidential Information disclosed to it by the CIC.

It is agreed as follows:

1. Definitions

In this Deed:

Business Day means:

- (a) for receiving a notice under Clause 10, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Hong Kong;

Business Hours means from 9:00am to 5:00pm on a Business Day;

Confidential Information means the Invitation to Tender and all information disclosed in relation to or in connection with the Invitation to Tender, including but not limited to:

- (a) information relating to the Purpose and the Project; or
- (b) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential information of the CIC.

whether such information was:

- (1) disclosed orally, in writing or in electronic or machine readable form;
- (2) disclosed before, on or after the date of this Deed;

- (3) disclosed as a result of discussions between the Parties concerning or arising out of the Purpose and the Project; or
- (4) obtained by the Recipient through observation or examination of the information listed in (a) and (b) immediately above;

but excluding any such information:

- (i) which is publicly known at the time of disclosure or which subsequently becomes freely available in the public domain not as a result of a breach of this Deed or other wrongful act attributable to the Recipient;
- (ii) which is rightfully known by the Recipient (as shown by its written records) prior to the date of disclosure by the CIC;
- (iii) which is required to be disclosed by law in accordance with Clause 4 below;
- (iv) which is disclosed to the Recipient without restriction by a third party and without any breach of confidentiality by that third party to the CIC; or
- (v) which is developed independently by the Recipient without reliance on any of the Confidential Information (as shown by its written records) as defined in this clause;

Deed means this deed and any schedules or annexures (if any);

Hong Kong means the Hong Kong Special Administrative Region;

Invitation to Tender means the CIC's invitation to tender for the Project and any schedules or annexures thereto (including any tender documents);

Party means either the CIC or the Recipient (as the context dictates) and **Parties** means both of them;

Purpose means the purposes of:

- (a) the Recipient responding to the Invitation to Tender; and
- (b) the Parties negotiating for a definitive agreement in relation to the Project (if applicable);

Project means [*Consultancy Services on the Potential Utilisation of Prefabrication Yards and Prefabricated Components in Hong Kong*];

Representative means, in relation to any Party, a director, officer, employee, agent, consultant or professional adviser of or representing (a) the Party and/or (b) any of the Party's related persons or corporate entities.

2. Interpretation

In this Deed:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) other grammatical forms of each defined word or expression have a corresponding meaning;

- (d) words such as “includes” and “including” do not impose any limitation on the construction of general language that is followed by specific examples;
- (e) headings are for reference only and shall not affect the construction or meaning of any provision in this Deed;
- (f) this Deed shall be construed according to its fair language and the rule of construction to the effect that ambiguities are to be resolved against the Party that drafts this Deed shall not be employed in interpreting this Deed; and
- (g) a reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, consolidated, extended and re-enacted, or as its operation is modified by any other statute or statutory provision (whether with or without modification), and shall include any subsidiary legislation enacted under the relevant statute.

3. Obligations of Confidentiality

- 3.1 The Recipient shall keep the Confidential Information confidential.
- 3.2 The Recipient shall not, without the prior written consent of the CIC:
 - (a) use or copy the Confidential Information for any purpose other than the Purpose;
 - (b) disclose any of the Confidential Information to any other person or entity;
 - (c) create any copy of the Confidential Information.
- 3.3 If the Recipient is uncertain as to whether any information is confidential, the Recipient shall treat the information as if it is Confidential Information unless the CIC agrees in writing that the information is not confidential.
- 3.4 If any person or entity contacts the Recipient in relation to any subject matter of this Deed, the Recipient shall decline to provide any information or comment and shall refer the enquiry to the CIC unless the enquiry does not relate in any way to the Confidential Information.
- 3.5 If the Recipient is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose the Confidential Information, it must immediately notify the CIC and make such disclosure in accordance with Clause 4 below.
- 3.6 The Recipient shall not disclose the terms or conditions of this Deed to any third party without the prior written consent of the CIC.
- 3.7 The Recipient must at its own expense:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from access or use not authorised by this Deed;
 - (b) keep the Confidential Information under its control; and
 - (c) maintain complete, accurate and up-to-date written records of the use, copying and disclosure of the Confidential Information as permitted by this Deed and immediately produce these records to the CIC on request.
- 3.8 If the Recipient becomes aware of any unauthorised disclosure or use of the Confidential Information, the Recipient shall immediately notify the CIC and take all steps which the CIC may reasonably require in relation to such unauthorised disclosure or use.

- 3.9 The Recipient shall provide any assistance reasonably requested by the CIC in relation to any proceedings the CIC is or anticipates to be involved in relating to unauthorised use, copying or disclosure of the Confidential Information.
- 3.10 The Recipient shall ensure that all of its Representatives who are provided with the Confidential Information:
- (a) are made aware of the terms of this Deed;
 - (b) perform the obligations of confidentiality under this Clause 3; and
 - (c) do not do anything that would result in a breach of the Recipient's obligations under this Deed.

4. Disclosure by Law

- 4.1 The obligations of confidentiality under this Deed do not extend to information that (whether before, on or after the date of this Deed) the Recipient or its Representatives are required by law to disclose.
- 4.2 The Recipient must ensure that neither itself nor any of its Representatives takes any action as a result of which it may be required to make a disclosure under Clause 4.1 above.
- 4.3 The Recipient must immediately notify the CIC of any disclosure that is required by law as soon as the Recipient is aware of the need for such disclosure, and in any event before such disclosure is made.
- 4.4 To the fullest extent permitted by law, the Recipient shall withhold disclosure required by law until the CIC has had a reasonable opportunity to direct the Recipient in relation to such disclosure.

5. Return of Confidential Information

- 5.1 On demand by the CIC, the Recipient shall immediately:
- (a) deliver to the CIC all of the Confidential Information and all copies thereof in the Recipient's possession or control; or
 - (b) delete or destroy all of the Confidential Information and all copies thereof in the Recipient's possession or control; and
 - (c) certify in writing to the CIC that it has fully complied with Clause 5.1(a) or (b) above.

6. No Transfer

This Deed does not transfer to the Recipient any rights, title or interests in or to any of the Confidential Information, which belong to, and remain vested in, the CIC.

7. Acknowledgement

- 7.1 The Recipient acknowledges and accepts that the Confidential Information is of proprietary and confidential nature and that any failure to maintain the confidentiality of the Confidential Information in breach of this Deed would cause irreparable financial and other loss and damage to the CIC that cannot be reasonably or adequately compensated for in money damages.

- 7.2 The Recipient shall indemnify, defend and hold harmless the CIC and its Representatives from any and against any and all claims, actions, suits, liability, damages, losses, costs, expenses (including reasonable legal fees) and any other sums which directly or indirectly result from or arise out of a breach by the Recipient and/or its Representatives of this Deed.
- 7.3 The Recipient acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the CIC is entitled to injunctive relief to prevent a breach of this Deed and to compel specific performance of this Deed.
- 7.4 An indemnity under Clause 7.2 above, is independent and survives the termination of this Deed.

8. No Warranties

- 8.1 The CIC does not make or give any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information.
- 8.2 The Recipient acknowledges and accepts that it and its Representatives are not entitled to rely on the accuracy or completeness of the Confidential Information.

9. Assignment

- 9.1 The Recipient and/or its Representatives shall not assign or transfer to any person any of its rights or obligations under this Deed without the prior written consent of the CIC, which consent may be given or withheld in the absolute discretion of the CIC.
- 9.2 The CIC may assign or transfer to any person any or all of its rights and obligations under this Deed at any time by giving written notice to the Recipient.

10. Notice

Any written notice provided pursuant to this Deed shall be deemed to have been received by the other Party:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Hong Kong); or
- (c) if sent by facsimile, at the time and date shown on a record generated by the sender's facsimile system confirming successful transmission of the entire notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00pm on a Business Day, the notice is taken to be received at 9:00am on the next Business Day.

11. Severability

Any portion of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining portions of this Deed shall continue in full force and effect.

12. Waiver

- 12.1 No right under this Deed shall be taken to be waived except by notice in writing signed by the CIC. A waiver by the CIC under this clause shall not prejudice its rights in respect of any subsequent breach of this Deed.
- 12.2 Any failure by the CIC to enforce any part of this Deed, or any forbearance, delay or indulgence granted by the CIC shall not be construed as a waiver of the CIC's rights under this Deed.
- 12.3 The CIC's right to enforce any provision of this Deed on any one occasion shall not affect its right to enforce another provision or the same provision on another occasion.

13. Amendment

This Deed shall not be amended except in writing, signed and witnessed by both Parties.

14. Entire Agreement

This Deed constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

15. Contracts (Rights of Third Parties) Ordinance

Except as expressly provided in this Deed, any person or entity who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap 623) to enforce any term or condition of this Deed.

16. Governing Law

This Deed shall be governed by and construed exclusively in accordance with the laws of Hong Kong.

17. Dispute Resolution

- 17.1 The Parties agree to negotiate in good faith to resolve any dispute between them regarding this Deed. If the negotiations do not resolve the dispute to the satisfaction of the Parties within thirty (30) days, Clause 17.2 below shall apply.
- 17.2 In the event the Parties are unable to settle a dispute between them regarding this Deed in accordance with Clause 17.1 above, such dispute shall be referred to and finally resolved by arbitration in Hong Kong in accordance with the UNCITRAL Arbitration Rules in effect, which rules are deemed to be incorporated by reference into this clause. The arbitral tribunal shall consist of one arbitrator to be appointed according to the UNCITRAL Arbitration Rules. The appoint authority shall be the Hong Kong International Arbitration Centre. The place of arbitration shall be Hong Kong. The language of the arbitration shall be English. The Parties understand and agree that this clause regarding arbitration shall not prevent any party from pursuing equitable or injunctive relief in a judicial forum to compel another party to comply with this clause, to preserve the status quo prior to the invocation of arbitration under this clause, or to prevent or halt actions that may result in irreparable harm. A request for such equitable or injunctive relief shall not waive this arbitration clause.

Signing page

Signed, sealed and delivered as a deed

for and on behalf of the Construction Industry
Council:

Post *(delete if not applicable)

Post *(delete if not applicable)

Name

Name

in the presence of:

Name of witness: _____

Signed, sealed and delivered as a deed

for and on behalf of [*name of Recipient*]:

Post *(delete if not applicable)

Post *(delete if not applicable)

Name

Name

in the presence of:

Name of witness: _____