
Invitation to Tender for *Cavu*



Date: [..] day of June 2011

1 PARTICULARS OF VESSEL

- 1.1 The Particulars attached hereto marked "Schedule A" are supplied by the Seller and have not been verified by Diverse Projects Ltd. All Tenders and the Purchaser must verify to their own satisfaction that the Particulars are accurate. No representation is given that the Particulars are accurate.

2 SPECIAL CONDITIONS

- 2.1 The Closing Date for Tenders to be received is prior to **17:00 (New Zealand time) on 22 July 2011.**

- 2.2 The Completion Date is 14 days following the Seller's written notification to the purchaser accepting the tender or such other date as mutually agreed (refer clause 4.1 below).

- 2.3 New Zealand goods and services tax ("GST") imposed under the Goods & Services Tax Act 1985 ("GST Act") will be payable by the Purchaser in relation to the supply of the Vessel, in addition to the Purchase Price payable pursuant to clause 4.1 and any amounts payable. As to the date of issue of this tender document the standard rate of GST is 15%, calculated by reference to the New Zealand dollar equivalent of the relevant consideration.

- 2.4 Notwithstanding clause 2.3, the supply of the Vessel may be able to be charged with GST at the rate of 0% if the supply is to a Purchaser who exports the Vessel under its own power to a place outside New Zealand within 60 days of the Purchaser or the Purchaser's agent taking physical possession of it, or within such longer period as the New Zealand Commissioner of Inland Revenue may allow. There are additional requirements that must also be met under the GST Act. If the Purchaser wishes to obtain such relief from GST in respect of the supply of the Vessel, then:

2.4.1 It must notify the Seller in writing on the Tenderer's response form; and

2.4.2 Clause 2.6 will apply.

- 2.5 If the Purchaser wishes to obtain relief from GST pursuant to clauses 2.4 and/or 2.5 then, as a condition precedent to settlement on the Completion Date, the Purchaser will either:

2.5.1 Pay to the Seller or as it may direct an amount in New Zealand dollars equal to 120% of the amount of GST which would be payable at the then prevailing standard GST rate (currently 15%) in respect of the aggregate of the Purchase Price and/or the amount payable in respect of fuel and lube oil, such amount to be held by or on behalf of the Seller as security for the Purchaser's obligation to pay GST to the Seller until the earlier of:

(a) the date upon which the Seller is satisfied that it is obliged to charge GST at the rate of 0% in respect of the relevant supplies; and

(b) the date upon which the Seller becomes aware that it is obliged to account for GST, and any applicable interest and penalties in relation thereto, in respect of the relevant supplies.

If (a) applies, such amount shall be repaid to the Purchaser. If (b) applies, such amount shall be applied in or towards the obligations of the Seller in respect of GST and interest and penalties on such supplies and any surplus paid to the Purchaser; or

- 2.5.2 Arrange for a standby letter of credit or bank guarantee to be issued by an approved financial institution to the Seller, satisfactory in all respects to the Seller and issued and/or confirmed by a reputable financial institution acceptable to the Seller, available for drawing at the Seller's sole and absolute discretion in New Zealand dollars in an aggregate amount at least equal to 120% of the amount of GST which would be payable at the then prevailing standard GST rate in respect of the aggregate of the Purchase Price and/or the amount payable in respect of fuel and lube oil, such letter of credit or bank guarantee to be discharged on the date that the Seller is satisfied that it is obliged to charge GST at the rate of 0% in respect of the relevant supplies.
- 2.6 New Zealand customs duty ("Duty") imposed under the Customs and Excise Act 1996 ("Customs Act") is payable on the Purchase Price by the Purchaser in addition to the Purchase Price payable pursuant to clause 4.1.
- 2.7 Notwithstanding clause 2.6, Customs Duty will not be payable if the Purchaser exports the vessel to a place outside New Zealand within 60 days of the Purchaser or Purchasers' agent taking physical possession of it, or such longer period as the New Zealand Customs Service may allow.

3 TERMS AND CONDITIONS OF TENDER

- 3.1 California Bank & Trust, of California, United States of America ("Seller") is inviting tenders for the purchase of the Vessel described in Section 1 above ("Vessel") in accordance with this Invitation to Tender. Attached to and forming part of this Invitation to Tender are:
- 3.1.1 Particulars of Vessel;
 - 3.1.2 Special conditions;
 - 3.1.3 Terms and conditions of tender;
 - 3.1.4 Terms and conditions of sale;
 - 3.1.5 Tenderer's response form.
- 3.2 Each tender submitted pursuant to this Invitation to Tender ("Tender") must be on the Tenderer's Response Form annexed to and forming part of this Invitation to Tender.
- 3.3 Each Tender must be accompanied by a deposit in cleared funds paid to the Seller's solicitor's Trust Account to be held by it as stakeholder, in an amount equal to 10% of the "Total Amount Tendered" as specified in such Tender. Deposits submitted with each unsuccessful Tender will be returned to the address specified in such Tender. All Tenders and the deposit must be in United States Dollars.
- 3.4 For the avoidance of doubt, deposits paid in accordance with clause 3.3 will be returned to an unsuccessful Tenderer after the period outlined in clause 3.7 to the address specified in that Tender.
- 3.5 Each Tender together with proof of payment of the deposit referred to in clause 3.3 above must be delivered to the Seller's agent, Diverse Projects Ltd ("Agent") in an envelope marked 'TENDER CAVU' prior to 5pm on the Closing Date specified in clause 2.1 above ("Closing Date") at the following address:

Diverse Projects Ltd
16 GR Market Place
PO Box 90607 AMSC
Auckland

- 3.6 Neither the Seller nor the Agent will be liable for any direct or indirect costs, expenses or losses incurred or sustained at any time by any person submitting a Tender ("Tenderer"), or any other person, directly or indirectly under, or in connection with, this Invitation to Tender or the acceptance or non-acceptance of any Tender.
- 3.7 Once the Seller has evaluated all Tenders received it may, if it wishes, select a preferred Tenderer or a short list of Tenderer's with whom to commence negotiations with a view to agreeing on a sale. The Seller reserves the right to discontinue negotiations with any or all Tenderers at any time without giving any reason.
- 3.8 Each Tender, once submitted, may not be modified without the prior written consent of the Seller. Each Tender will constitute an irrevocable offer to purchase the Vessel for the Amount Tendered as specified in the relevant Tender, on the Terms and Conditions of Sale in section 4 of this Invitation to Tender. Each Tender will remain open for acceptance by the Seller until the expiry of 21 days from (but excluding) the Closing Date.
- 3.9 While each Tender will be irrevocable in accordance with clause 3.7 above, the Seller will not have any obligation to any Tenderer unless and until the Seller accepts such Tender by countersigning a copy of the Tenderer's Response Form submitted by such Tenderer. The decision of whether to countersign any Tender will be for the Seller in its sole discretion.
- 3.10 In submitting a Tender, the Tenderer is deemed to have acknowledged that its Tender is made solely in reliance on its own judgement and not upon any representation, statement, advertisement or warranty made by or on behalf of the Seller, the Agent, or any of their respective officers, employees, agents or advisors.
- 3.11 The Seller is entitled to conduct the tender process in such manner as it, in its absolute discretion, sees fit. Without limiting the generality of the foregoing, the Seller is entitled to:
- 3.11.1 Accept any Tender;
 - 3.11.2 Set a reserve price;
 - 3.11.3 Negotiate with one or any number of Tenderer's to the exclusion of the other Tenderer's on such terms as the Seller considers appropriate;
 - 3.11.4 Re-advertise for Tenders;
 - 3.11.5 Reject any or all Tenders for any reason whatsoever, in which case the Seller is not required to give any reasons for such refusal or rejection;
 - 3.11.6 Waive any irregularities or informalities in the tender process;
 - 3.11.7 Negotiate and conclude, a contract with any person outside the tender process;
 - 3.11.8 Prior to submission of any Tenders, vary any of the terms of this Invitation to Tender; and/or
 - 3.11.9 Reject any Tender irrespective of what its terms are, including without limitation, the highest or lowest Tender.

- 3.12 This Invitation to Tender, each Tender and any resulting contract will each be governed by the laws of New Zealand. In submitting its Tender, each Tenderer is deemed to submit to the non-exclusive jurisdiction of the Courts of New Zealand in respect of any dispute or proceedings between the Tenderer, the Seller or the Agent arising out of or in connection with this Invitation to Tender, any Tender or any resulting contract.
- 3.13 References to time in this Invitation to Tender are to New Zealand time.
- 3.14 Each Tenderer agrees to at all times keep confidential, and not directly or indirectly make or allow any disclosure or use of, information relating in any way to this Invitation to Tender, or any information directly or indirectly obtained from the Seller, the Agent, the Mortgagee or any person acting on behalf of the Seller, the Agent, or the Mortgagee or in connection with this Invitation to Tender except to the extent:
- 3.14.1 Required by law; or
 - 3.14.2 That the Seller otherwise agrees in writing; or
 - 3.14.3 That the information is, or becomes, available in the public domain without breach by such Tenderer of its obligations under this clause.
- 3.15 Each Tenderer acknowledges that:
- 3.15.1 The Seller intends whenever reasonably appropriate to consult with the Agent as the sale process proceeds; and
 - 3.15.2 Such consultation will not give rise to any liabilities as between the Seller and the Agent nor will it give rise to any liability of the Agent to any participant in the tender and sale process; and
 - 3.15.3 Should the Seller set a reserve price and that reserve price is met, no obligation will arise on the part of the Seller or Agent to accept the tender.
- 3.16 Notwithstanding anything to the contrary in these terms and conditions, where the Seller concludes to the best of the Seller's judgment that bringing proceedings in New Zealand against any Tenderer in connection with this Invitation to Tender, each Tender and any resulting contract, will to all practical purposes be ineffective, the Seller may elect to bring proceedings against such Tenderer in a jurisdiction other than New Zealand.
- 3.17 Other than as permitted by clause 4.15, no Tenderer may assign or attempt to assign all or any of its rights or interests under this Invitation to Tender, its Tender or any resulting contract without the prior written consent of the Seller.
- 3.18 This Invitation to Tender, a Tender or any resulting contract contains the entire agreement of the parties with respect to its subject matter. It constitutes the only conduct relied on by the parties (and supersedes all earlier conduct by the parties) with respect to its subject matter. Except as expressly set out in this Invitation to Tender, its Tender or any resulting contract, there are no representations or warranties that have been relied on by the Tenderer in submitting its tender.
- 3.19 The rights and obligations of the parties will not merge on completion of any transaction contemplated by this Invitation to Tender and will survive the execution and delivery of any Bill of Sale or other document entered into for the purpose of implementing any such transaction.
- 3.20 No amendment to a Tender or any resulting contract will be effective unless it is in writing and signed by the Tenderer and the Seller.

- 3.21 No failure to exercise and no delay in exercising any right, power or remedy under this Invitation to Tender, its Tender or any resulting contract will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 3.22 Each party shall bear its own costs arising out of its Tender and any resulting contract and completion of the transaction contemplated by this Tender.
- 3.23 If any of the provisions of this Invitation to Tender, its Tender or any resulting contract becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 3.24 The Tenderer's Response Form may be signed in counterparts, each of which when taken together will constitute one and the same instrument. Each party may enter into the resulting contract by signing any such counterpart copy.
- 3.25 The transmission by facsimile by a party to the other of a counterpart copy of the Tenderer's Response Form signed by that party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original.
- 3.26 The Tenderer irrevocably designates, appoints and empowers the Process Agent named in the Tenderer's Response Form as its process agent, and any writ, judgment or other notice of legal process in relation to its Tender and any resulting contract shall be sufficiently served on the Tenderer if delivered to such agent at its address for the time being. If for any reason, such agent no longer serves as agent of the Tenderer to receive service of process, the Tenderer shall promptly appoint another agent and promptly advise the Seller of the details of the new agent.

4 TERMS AND CONDITIONS OF SALE

Purchase Price

- 4.1 The "Amount Tendered" by the Tenderer whose Tender is accepted by the Seller (such Tenderer being the "Purchaser") as specified in the Tender submitted by the Purchaser ("Purchase Price"), will be payable by the Purchaser to the Seller in cleared funds within 7 days after the Seller or the Agent has notified the Purchaser in writing of the Seller's acceptance of the Purchaser's Tender or such other date as mutually agreed ("Completion Date"). Time shall be of the essence. Notification by the Seller or the Agent to the Purchaser under this clause is deemed to have occurred, in the case of notification by post, five days after the notification is posted and in the case of notification by fax, upon receipt of the correct receipt code. All taxes payable in respect of the purchase of the Vessel, including without limitation any GST and customs duty, shall be payable by the Purchaser on the Completion Date in addition to the Purchase Price unless otherwise specified in the Special Conditions (Section 2 above).
- 4.2 The deposit paid by the Purchaser at the time of submission of the Purchaser's Tender under clause 3.3 above will be held by the Agent, or the Seller's solicitor, as stakeholder until the Completion Date and from that date will be deemed to be on account of payment of the Purchase Price. If the Purchaser fails to make payment of the Purchase Price in accordance with clause 4.1 above and without prejudice to all other rights the Seller may have against the Purchaser under these Terms and Conditions of Tender and Sale or at law, the Seller is entitled to exercise any one or more of the following rights and remedies:
- 4.2.1 Forfeit the deposit;
- 4.2.2 Cancel the sale of the Vessel to the Purchaser and sue the Purchaser for damages;

- 4.2.3 Resell the Vessel or cause it to be resold and the Purchaser will pay the Seller any resulting deficiency between the Purchase price and the sum for which the Vessel is eventually sold. Any surplus will belong to the Seller. Any extra costs to the Seller including, without limitation, expenses, fees, legal costs suffered or incurred in connection with the default of the Purchaser and the resale of the Vessel will be paid by the defaulting Purchaser;
 - 4.2.4 Sue the Purchaser for specific performance;
 - 4.2.5 Charge interest for late settlement at the interest rate of 15% per annum calculated on a daily basis from the Completion Date until the day of payment of all amounts due the Seller.
- 4.3 If GST is payable in respect of the supply of the Vessel then:
- 4.3.1 The Purchaser will pay to the Seller the GST in addition to the Purchase Price and Customs Duty referred to in 4.5 below in one sum on the Completion Date unless and to the extent the Purchaser has made arrangements as contemplated by the Special Conditions (Section 2 above).
 - 4.3.2 Where any GST is not so paid to the Seller, the Purchaser will pay to the Seller:
 - 4.3.3 Interest at the interest rate for late settlement specified in these Terms and Conditions of Sale on the amount of GST unpaid from the date the GST is due for payment until payment; and
 - 4.3.4 Any default GST. Default GST means any additional GST, penalty or other sum levied against the Seller under the GST Act by reason of non-payment of GST payable in respect of the supply made under the Purchaser's Tender.
- 4.4 The Seller will provide the Purchaser with a GST tax invoice on or prior to the Completion Date.
- 4.5 If Customs Duty is payable in respect of the Vessel or its equipment, then:
- 4.5.1 The Purchaser will pay to the Seller the Customs Duty in addition to the Purchase Price and GST in one sum on the Completion Date unless and to the extent the Purchaser has made arrangements as contemplated by the Special Conditions (Section 2 above).
 - 4.5.2 Where any Customs Duty is not so paid to the Seller, the Purchaser will pay to the Seller:
 - (a) Interest at the interest rate for late settlement specified in these Terms and Conditions of Sale on the amount of customs duty unpaid from the date the customs duty is due for payment until payment; and
 - (b) Any default customs duty. Default Customs Duty means any additional Customs Duty, penalty or other sum levied against the Seller under the Customs and Excise Act 1996 by reason of non-payment of Customs Duty payable in respect of the supply made under the Purchaser's Tender.

Condition of Vessel

- 4.6 The Purchaser acknowledges that it has inspected the Vessel and its equipment and tenders, and agrees to purchase the Vessel solely on its own judgment, and not in reliance on any statement, warranty or representation whether verbal or pictorial, made by or on behalf of the Seller, the Mortgagee, the Agent, or their respective officers, employees, agents or advisors, relating to the Vessel, or any description of the Vessel.
- 4.7 The Vessel will be sold on an "as is, where is" basis. No warranty whatsoever regarding the Vessel is given or made by or on behalf of the Seller, the Mortgagee, the Agent, or their respective officers, employees, agents or advisors. Without limiting the generality of this clause, the Seller gives no warranty as to:
- 4.7.1 Fitness of the Vessel, its machinery, rigging, electronics, tenders etc for particular purpose;
 - 4.7.2 The quality or condition of the Vessel, its machinery, rigging, electronics its tenders etc;
 - 4.7.3 The accuracy of any statements in this Invitation to Tender;
 - 4.7.4 The compliance of the Vessel with any applicable laws or other contractual commitments into which the Purchaser may enter; and
 - 4.7.5 The registration and/or classification of the Vessel.
- 4.8 The Vessel is sold with all equipment on board as further described at <http://www.diverseprojects.com/page/2464/> as at the Completion Date and includes equipment stored onsite by Oceania Marine Ltd on behalf of the Seller.
- 4.9 The Seller gives no warranty as to:
- 4.9.1 Fitness of the equipment for particular purpose;
 - 4.9.2 The quality or condition of the equipment;
 - 4.9.3 The accuracy of the information describing the equipment.
- 4.10 The Purchaser is solely responsible for ensuring that the Vessel complies with any applicable laws or contractual terms of delivery.
- 4.11 The Purchaser is solely responsible for all costs arising as a result of any necessary deletion of the Vessel from its current registry, if necessary, and effecting registration thereof in the Purchaser's name in any other registry. The Seller is not responsible for obtaining any deletion certificate for the Vessel. Neither the Seller nor any person acting on behalf of the Seller is liable for any delays and/or consequences arising therefrom in obtaining any necessary deletion of the Vessel from its current registry or the re-registration of the Vessel elsewhere, howsoever caused. However, the Seller will offer all reasonable assistance to the Purchaser at the Purchaser's cost in effecting any necessary deletion of the Vessel from its current registry.

Completion

- 4.12 On the Completion Date, upon receipt of the Purchase Price and taxes payable under clause 4 above, the Seller will deliver to the Purchaser a bill of sale executed by the Seller evidencing that the Vessel is free from all liens, claims and debts whatsoever.

4.13 Risk in, and title to, the Vessel will pass to the Purchaser upon delivery of the bill of sale in accordance with clause 4.10 above and payment of the full amounts due under clause 4 above.

4.14 It is the Purchaser's sole responsibility to take delivery of the Vessel from the Port of Whangarei on the Completion Date. The vessel is to be removed on the Completion Date unless the Purchaser has entered into a berthage contract with the Port of Auckland.

General

4.15 The vessel is on the hardstand at the premises of OCEANIA MARINE LIMITED, 4 Fraser Street, Whangarei, New Zealand and all inspections must be arranged with Diverse Projects Ltd.

4.16 If there is more than one Purchaser the liability of each Purchaser is joint and several.

4.17 If the Tenderer executes the Tendering Response Form with provision for a nominee, or as agent for an undisclosed principal, or on behalf of a company to be formed, the Tenderer (who has signed the Tendering Response Form) will at all times remain liable for all obligations on the part of the Purchaser.

4.18 In the event of any conflict between the provisions in the Special Conditions in Section 2 of this Invitation to Tender and any other provision in this Invitation to Tender, the provisions of the Special Conditions in Section 2 of this Invitation to Tender prevail.

TENDERER'S RESPONSE FORM

The Tenderer named below hereby submits to the Seller a Tender for the above-named Vessel.

The Tenderer named below acknowledges that it has read and understood, and that this Tender is submitted in accordance with and subject to, the Invitation to Tender of which this Tenderer's Response Form forms part.

AMOUNT TENDERED: US\$

Plus Customs Duty (if applicable) US\$

Total US\$

Plus GST (if any) on total US\$

(calculated at 15% of the NZ\$ equivalent of the Amount Tendered)

The Tenderer will seek zero-rating of GST pursuant to the Special Conditions in clauses 2.4 and 2.5.

Full name of Tenderer: (print name using BLOCK letters)

Contact Name:

Signature of Tenderer:

Postal Address:

Phone No: _____ Mobile No: _____

Fax No: _____

Email address: _____

Process Agent (in New Zealand)
(name and physical address):

Dated: _____

Signature of Seller: _____ Date: _____

SCHEDULE A
Vessel Particulars

Vessel identity: Named 'Cavu' with the port of current Marshall Islands registry, Bikini, marked on the transom. A ship's bell as well as numerous documents and items of crew clothing etc. bear the same name. No registration number was found carved into the vessel's structure.
HIN¹ RTSM192S0383 engraved on transom starboard side.
Radio call sign - V7GU5
MMSI No. 538070089

Details of vessel:

Designed	Sparkman & Stevens, New York, USA
Built	1983 by Stephens Marine Inc, Stockton, Ca, USA
Construction	Transversely framed; plated and decked in welded aluminium alloy. Watertight subdivision at: - Crew cabin, forward bulkhead entrance - Engine room forward and aft bulkheads - Owner's suite, forward bulkhead entrance
Type	Motor sailing, cutter-rigged sloop
LOA.....	29.57m / 97ft 2ins
Beam	7.01m / 23ft 0ins
Draft	3.96m / 13ft 0ins
Tonnages ²	GRT 95; NRT 28 - as recorded on Marshall Islands registration document
Propulsion	Single Caterpillar 3604 straight 6-cylinder turbo-charged diesel engine; S/No. 4 TBO 8098; arrangement No. 177 8867; Recorded hours ³ 2686 on 19 January 2010
Cont. power.....	440HP / 328kW
Gearbox	Twin Disc MG-5091 SC RH; S/No. 5HV334; reduction ratio 2.49:1
Drive.....	Ø2¾" stainless steel tail shaft / plummer block support to mechanical seal glanded stern tube
Propeller.....	Not seen
Fuel capacity.....	5 integral tanks: engine room port wing 1776 litres; port & starboard midships and port & starboard aft 2653 litres each; Total 12,388 litres
Generators	No. 1 port side: Northern Lights 3-phase 41kVA / 33kW; 120 / 208V at 60 Hz; S/No. 9842 34806; recorded hours 9281; No. 2 stbd side: Northern Lights 3-phase 40kVA / 32kW; 120 / 208V at 60Hz; S/No. LM-323392-0998 ⁴ ; recorded hours 9450;
History	Built for James Baldwin of Irvine, CA, launched under the name Osprey ON 662024; identity of registry or Class, if any, unknown. Extensively refitted in an Asian yard at some time unknown; photographic record found of work done includes re-decking and re-powering. Departed Port Denerau, Fiji on 17 December 2008 with 6 persons aboard; arrived Marsden Cove Marina on 21 December 2008 where she has remained since. Attended by a former crew member until early December 2009. No other details are known.