

Authority, Policy and Responsibility of Government Procurement

(Chapter I of the Stores and Procurement Regulations)

STORES AND PROCUREMENT REGULATIONS

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CHAPTER I

AUTHORITY, POLICY AND RESPONSIBILITY

AUTHORITY FOR MAKING STORES AND PROCUREMENT REGULATIONS (SPRs)

100. These Regulations are made by the Financial Secretary/Secretary for Financial Services and the Treasury (SFST) under section 11(1) of the Public Finance Ordinance (Cap. 2), and should be read in conjunction with that Ordinance.

APPLICABILITY

105. The SPRs apply to all public officers except in so far as they are inconsistent with any enactment. They may be supplemented by Financial Circulars (FCs) and Financial Services and the Treasury Bureau Circular Memoranda (FSTBCM) which are of equal application and force as these Regulations.

PROCUREMENT POLICY AND PRINCIPLES

106. The policy of government procurement is to obtain stores and services at the best value for money in a publicly accountable manner to support Government's programmes and activities.

107. To make the best use of public resources and be accountable to the public, bureaux and departments (referred to as "departments" hereafter) should aim to achieve the best value for money in procurement. "Value for money" does not simply mean buying at the lowest price. "Value for money" should be assessed in terms of economy, effectiveness and efficiency, taking into account the total costs involved (measured on a whole-life costing basis) and the overall value to be created or brought about through the procurement. In other words, "value for money" means the optimal use of resources to achieve the best outcome. Controlling Officers (COs) should ensure that public funds are well spent in terms of the total positive value to be created or brought about by the procurement. The positive values may include (but are not limited to) social, environmental, economic and/or other positive values that serve the interest of the public.

108. Procurement decisions are subject to review by the relevant authorities. For procurements covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA) ⁽¹⁾, they are also subject to review by the Review Body on Bid Challenges. COs are accountable to the public for the purchasing decisions of their departments, and should ensure that the decisions are properly justified and documented.

109. The policy of government procurement is underpinned by the

(a) Open and fair competition

- (i) Competition is a reliable safeguard against bidders overcharging and holding Government to ransom. By encouraging participation through open and fair competition, the Government will be better able to obtain responsive and competitive bids that ensure value for money.
- (ii) As a norm, open bidding should be adopted as far as practicable. Single/restricted tendering or direct engagement of suppliers/service providers/consultants should be the exception and must be properly justified to the satisfaction of the relevant approving authority.
- (iii) All bidders should be treated on an equal footing. There should be no discrimination on the basis of the country of origin of the goods or service providers. Requirements, tender specifications and marking schemes (where applicable) should be drawn up in an objective manner, providing a level playing field for all to compete on an equal footing.
- (iv) For procurements with limited competition in past exercises, departments should explore measures to enhance competition and satisfy themselves that the tendering or consultants selection strategy to attract new bidders and innovative proposals is effective.

(b) Transparency

To uphold public accountability and fairness of the procurement process, government procurement should be conducted in a transparent manner. In a procurement exercise, potential bidders should be given the same information. Departments should make available tender notices for all open tenders and invitations for admission to suppliers/service providers' lists on their webpages. Tender documents or consultancy briefs should be clear, concise and easy to understand to avoid complicating and adding to the cost of the bidding process.

(c) Pro-innovation

Innovation is conducive to securing value for money in the long run. Departments should encourage and be receptive to new ideas from suppliers / service providers, and allow room for assessing innovative proposals in the procurement process. Outcome-based requirements should be adopted as far as possible. Over-specification and over-prescription in product requirements or mode of service delivery should be avoided. For the procurement of stores, services (excluding works contracts and consultancy) and revenue contracts, "innovation" includes –

- (i) technology related innovation, meaning the use of new technology or innovative application of existing technology in the supply of stores or services; and

- (ii) ideas or suggestions with no technology content which are not conventionally adopted or readily envisaged by departments that may create positive value to the Government or the public. These may include ideas or suggestions that are conducive to the delivery of public services (e.g. resulting in a cleaner environment in a street cleansing service contract), contribute to defined policy objectives of the Government (e.g. contribution to environmental protection in a facility management service contract, or employment of persons with disability in a vehicle maintenance service contract), or better serve the needs of endusers (e.g. meeting user-centric requirements, which are generated from design thinking process as per the guidelines provided by the Commerce and Economic Development Bureau / Efficiency Office (EffO) from time to time.).

(d) Integrity

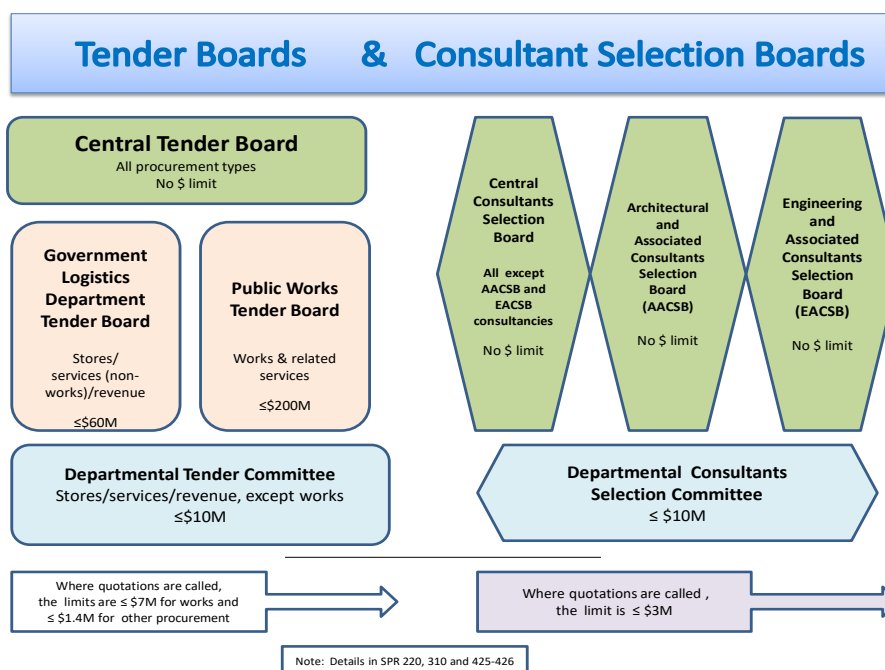
To uphold the integrity of government procurement, procurement decisions should be made in an impartial manner and public funds spent in an accountable way.

RESPONSIBILITIES OF PUBLIC OFFICERS

110. (a) No public officer will be relieved of any portion of his responsibility if he deposes to his subordinates the performance of duties for which he has overall responsibility. Any public officer contravening any of these Regulations, FCs or FSTBCM may be subject to disciplinary proceedings.
- (b) Any person who is or was employed as a public officer may be liable to be surcharged in the circumstances detailed in section 32 of the Public Finance Ordinance. COs who become aware of any of these circumstances shall investigate the matter fully and, as soon as practicable, shall forward a detailed report to the Permanent Secretary for Financial Services and the Treasury (Treasury) (PS(Tsy)) with copies to the Secretary for the Civil Service, Director of Accounting Services (DAS) and Director of Audit (D of A).
115. The respective responsibilities of the Director of Government Logistics (DGL) and D of A for checking and reporting any shortcomings in connection with procurement activities and government stores do not absolve any public officer from his responsibility for complying, or ensuring compliance, with instructions within the scope of his own duties.

AUTHORITY AND RESPONSIBILITIES OF THE TENDER BOARDS/ COMMITTEES AND CONSULTANTS SELECTION BOARDS/COMMITTEES

116. The structure for the approval of tenders and consultancies and the key financial limits for tender boards/ consultants selection boards and COs are summarised below –



AUTHORITY AND RESPONSIBILITIES OF THE DIRECTOR OF GOVERNMENT LOGISTICS

120. (a) DGL is responsible for advising departments on implementing good practice on their management of stores and procurement activities and for conducting compliance checks on such activities according to prescribed criteria to ensure compliance with these Regulations and other relevant instructions.
- (b) In the exercise of his duties, DGL shall have access to all records, books, vouchers, documents and receipts relating to procurement exercises conducted by and government stores in the possession of any public officer.
- (c) DGL may issue Government Logistics Department (GLD) Circulars and Circular Memoranda to supplement these Regulations, FCs and FSTBCM relating to the procurement of stores and services and management of government stores. With the approval of PS(Tsy), the instructions contained therein are of equal application and force to these Regulations.

AUTHORITY AND RESPONSIBILITIES OF CONTROLLING OFFICERS

125. COs are responsible for the procurement of stores, services and revenue contracts within the financial limits set out in the SPRs, and the management of the stores and services procured and the contracts awarded. COs shall observe the policy and principles set out in SPRs 106 – 109 and uphold a culture of compliance with the requirements set out in the SPRs, regularly remind all the staff concerned about their need to always comply with the SPRs and closely monitor their compliance.

126. COs may develop departmental instructions as appropriate to guide public officers in the department in conducting government procurement and stores management, provided that such instructions comply with SPRs and have been approved by DGL. For works and works-related consultancy contracts, COs may also develop departmental instructions with reference to Development Bureau Technical Circular (Works) (DEVB TC(W)). Within the departmental procurement and stores management system, there should be institutional safeguards designed with adequate checks and balances as well as clear segregation of roles and duties. On procurement, COs or designated officers should agree on the segregation of duties before tenders are invited. COs should ensure that public officers involved in the procurement exercises are alert to actual, potential and perceived conflict of interest and sufficient safeguards are in place to avoid or manage such conflict of interest situations in accordance with Chapter IA.

127. For procurement covered by WTO GPA, COs shall observe the provisions therein.

128. On stores management, COs should ensure the effective and efficient use of government stores to support Government's programmes and activities. COs should put in place the necessary measures to ensure that government stores are properly kept and accounted for and that regular and surprise inspections are conducted to examine the adequacy of security arrangements for stores management.

130. COs should reply promptly to any queries addressed to them by the D of A or DGL, giving fully the particulars, explanations and information required.

135. COs should appoint a Departmental Stores Manager (DSM) to assist them in supervising all procurement and stores management matters within their purview. The DSM may be assisted by Supplies Grade staff and/or non-Supplies Grade staff. Purchasing and stores management functions should normally be performed by Supplies Grade staff. COs should make available sufficient Supplies Grade staff to discharge these functions in an appropriate manner.

HANDLING OF COMPLAINTS

160. (a) Contractors, suppliers, firms or organisations may lodge complaints about the process or result of a procurement exercise to the procuring department, the relevant tender board/consultants selection board, or the Office of The Ombudsman. If there is suspected corruption, complaints may be made to the Independent Commission Against Corruption.

- (b) For procurements covered by WTO GPA, contractors/suppliers/service providers may also make a challenge against alleged breaches of WTO GPA to the Review Body on Bid Challenges.
- (c) COs should put in place an effective complaint-handling system in accordance with SPR and other relevant government regulations/ circulars/ guidelines. On receipt of a complaint or the referral of a complaint, CO of the procuring department should personally ensure that the complaint is to be handled in an impartial and timely manner, and that an early and substantive reply is to be provided to the complainant direct or through the referral office within ten working days. An interim reply should be sent to the complainant if a substantive reply cannot be issued within the above timeframe. All complaints and the substantive replies should be brought to the attention of the relevant tender board or consultants selection board.
- (d) If the CO has been personally involved in the procurement exercise and an apparent conflict of interest may arise, he should refer the complaint to the relevant tender board or consultants selection board (depending on the value and the nature of procurement) for consideration after investigation by his department. The CO or a designated directorate officer should present the complaint, the outcome of the investigation and recommendations on way forward to the relevant tender board or consultants selection board. The relevant tender board or consultants selection board will decide on how the complaint should be taken forward.
- (e) If the relevant tender board or consultants selection board believes that there is scope for changing the procurement policy or system, it should make a recommendation to the PS(Tsy) and for works-related items, the Permanent Secretary for Development (Works) for consideration.

Note (1): For full text of the “Agreement on Government Procurement of the World Trade Organization (WTO GPA) of 2012”, please visit:
http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm

Glossary

CO	: Controlling Officer
D of A	: Director of Audit
DAS	: Director of Accounting Services
DEVB TC(W)	: Development Bureau Technical Circular (Works)
DSM	: Departmental Stores Manager
EffO	: Efficiency Office
FC	: Financial Circular
FSTBCM	: Financial Services and the Treasury Bureau Circular Memoranda
GLD	: Government Logistics Department
PS(Tsy)	: Permanent Secretary for Financial Services and the Treasury (Treasury)
SFST	: Secretary for Financial Services and the Treasury
SPRs	: Stores and Procurement Regulations
WTO GPA	: Agreement on Government Procurement of the World Trade Organization