

Tender Procedures for Government Procurement

(Chapter III of the Stores and Procurement Regulations)

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CHAPTER III

TENDER PROCEDURES

SCOPE AND COVERAGE

300. (a) The tender procedures set out in these Regulations shall be followed for procurement and disposal of stores, services, construction/engineering works and other items as well as for revenue contracts, with the exception of the following for which separate procedures shall apply —
- (i) procurement of stores, services and revenue contracts not exceeding the quotation limits specified in SPR 220. Quotation procedures are applicable;
 - (ii) franchises, concessions, leases, licences, tenancies and other items procured and disposed of by public auction or method laid down by statute, Government Regulations, or administrative procedure agreed by the PS(Tsy);
 - (iii) private treaty grants, exchanges, extensions and short-term tenancies of land under the approved “Abbreviated Tender System”;
 - (iv) procurement of consultancy services through quotation and consultants selection procedures in Chapters II and IV respectively;
 - (v) direct engagement of contractors/suppliers/service providers without recourse to tender procedures specified in SPR 331-333;
 - (vi) briefing out of legal work by the Secretary for Justice; and
 - (vii) employment of individual persons.
- (b) Where procurements are covered by WTO GPA and hence are subject to additional requirements, these are separately specified. Departments shall comply with the requirements of WTO GPA and related circulars/guidelines (as may be updated from time to time) which can be viewed at <http://portal.ccgo.hksarg/en/ia/DisplayIABByCat.jsf?cat=3766#3766> In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by WTO GPA, departments shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more contractors/suppliers/service providers, taking into account all forms of remuneration.

CLASSIFICATION OF INFORMATION

305. Information relating to tenders and contracts should be handled in the following manner —

- (a) All communications regarding tenders, from the time tender documents are prepared until a decision is made on the acceptance or otherwise of the tenders, must be classified as RESTRICTED (TENDER). Correspondence on prequalification and single/restricted tendering should also be classified as RESTRICTED (TENDER).
- (b) Contract documents and communications regarding contracts do not usually have a security classification. RESTRICTED will be an adequate classification for sensitive information relating to contract disputes, litigation, claims, etc. Information should only be classified as CONFIDENTIAL if its disclosure would be prejudicial to the interest of the Government of the Hong Kong Special Administrative Region (HKSAR).
- (c) COs and Chairmen of Tender Boards shall appoint public officers to open and handle classified correspondence relating to tenders and contracts on a need-to-know basis. Detailed instructions on the procedures for handling such correspondence shall be made in accordance with the provisions of the Security Regulations.

TENDER BOARDS AND OTHER APPROVING AUTHORITIES

- 310.
- (a) The Financial Secretary/SFST appoints the Central Tender Board (CTB), and has authorised PS(Tsy) to appoint subsidiary tender boards and COs to appoint DTCs each comprising not less than three persons to consider and decide on the acceptance of tenders or to advise on the acceptance of tenders up to the approved financial limits. The relationship amongst CTB, subsidiary tender boards and DTCs is provided in SPR 116.
 - (b) The CTB advises the PS(Tsy) on the acceptance of all tenders exceeding the financial limits of subsidiary tender boards. The CTB also advises or decides on matters concerning tenders, contracts and subsidiary tender boards generally in accordance with its terms of reference. In the case of serious disagreement among members of the CTB on the award of a contract, the Chairman, in his discretion, may refer the matter to the Financial Secretary/SFST for advice.
 - (c) In seeking advice or approval of the CTB (concerning, for example, tender reports, the use of a marking scheme for works contracts, deviation from the SMS Framework for the procurement of stores, services (excluding works contracts) and revenue contracts, or the conduct of prequalification exercise and the list of prequalified tenderers), departments shall send seven copies of the submission and the original copy to the Secretary, CTB. Submissions to the CTB must be signed or endorsed by the respective CO or his representative at directorate level. The CO concerned or his representative at directorate level may be requested or may himself request to attend CTB's meeting to present his recommendations or to answer any queries that the CTB may have (see also SPR 375).

- (d) There are currently two subsidiary tender boards, viz. the GLD Tender Board and the Public Works Tender Board. If there is a division of opinion on a contract award between members of a subsidiary tender board, the Chairman of the concerned subsidiary tender board should refer the matter to the CTB for advice. Subsidiary tender boards shall submit to the CTB at the end of the month concerned details of all contract awards where the lowest conforming offer (highest in the case of revenue contract), or the tender of the highest overall scorer in case a marking scheme is used in tender evaluation, has not been accepted and the reasons for making such awards.
- (e) Up-to-date information on the membership and terms of reference of the CTB and subsidiary tender boards is published in the Civil and Miscellaneous Lists of the Government of the HKSAR, which can be viewed at the website <http://www.info.gov.hk/cml/eng/cbc/c23.htm>.
- (f) COs shall establish in their departments a DTC consisting of not less than three persons and chaired by a directorate officer not lower than D2 rank who shall be at least one rank higher than the chairman of the TAP set up for that particular tender exercise to consider or decide on the acceptance of tenders for procurements within the financial limits specified in SPR 116.
- (g) If there is a division of opinion on a contract award between members of a DTC, the Chairman of the concerned DTC may refer the matter to his CO for ruling. DTCs shall submit to the relevant tender board at the end of the month concerned details of all contract awards where the lowest conforming offer (highest in the case of revenue contract), or the tender of the highest overall scorer in case a marking scheme is used in tender evaluation, has not been accepted and the reasons for making such awards.
- (h) COs are delegated the authority to personally approve —
 - (i) the award of all works contracts not exceeding \$30 million each and not subject to WTO GPA; and
 - (ii) the award of works contracts above \$30 million but not exceeding \$55 million each and not subject to WTO GPA provided they are awarded to the lowest conforming bidder or the highest overall scorer.

TYPES OF TENDERING

315. Departments should normally adopt open tendering for invitation of tenders. Under special circumstances and where approval from the concerned authorities have been obtained, departments may invite tenders in any of the alternative ways, namely selective tendering, single/ restricted tendering or prequalified tendering as provided for in SPR 320-330 below.

Open tendering

316. All interested contractors/suppliers/service providers are free to submit their tenders. Procedures and requirements on publications of tender notice for open tendering are set out in SPR 340.

Selective tendering

320. (a) Selective tendering is adopted when contractors/suppliers/service providers on the relevant approved lists of contractors/suppliers/service providers are invited to submit tenders.
- (b) It is a two-step, open bidding process which departments may establish lists of qualified contractors/suppliers/service providers for particular services or articles, where there is a frequent need to invite tenders for such services or articles but not all contractors/suppliers/service providers in the market are capable of providing the required services or articles. Normally, admission to the lists is accepted at any time and any contractor/supplier/service provider may submit an application. A contractor/supplier/service provider who has submitted a request for participation in a tender exercise but is not yet on the approved lists shall not be excluded from consideration on the grounds that there is insufficient time to examine the application for admission to the approved lists, unless, in exceptional cases, due to the complexity of the procurement, the department is not able to complete the examination of the application within the time-period allowed for submission of tenders. Notices of tender invitations should be published in the Government Gazette, on the Internet, and/or sent by letter to all contractors/suppliers/service providers on the relevant approved lists of qualified contractors/suppliers/service providers established for the purpose of selective tendering. For procurements covered by WTO GPA, in addition to SPR 340(c), departments shall notify and provide the notice of tender invitation to the contractors/suppliers/service providers on the relevant approved lists of qualified contractors/ suppliers/service providers that will be invited to tender. Detailed procedures and requirements on publication of notices of tender invitations are set out in SPR 340.
- (c) Except for the authority delegated for works contracts in (d) below, the PS(Tsy) is the approving authority for the establishment of lists of qualified contractors/suppliers/service providers for selective tendering. When applying to establish such lists, departments shall set out the justifications and provide information on the source of prospective applicants, qualification criteria, assessment panel and method of assessment. The qualification criteria and method of assessment shall not discriminate among foreign contractors/suppliers/service providers or between domestic and foreign contractors/suppliers/service providers. For procurements covered by WTO GPA, the qualification criteria shall be limited to those which are essential to ensure that the contractors/suppliers/service providers have the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurements. In establishing the qualification criteria, departments shall not impose the criterion that, in order for a contractor/supplier/service provider to participate in a procurement, the contractor/supplier/service provider has previously been awarded one or more contracts by an entity covered by the WTO GPA, but may require relevant prior experience where essential to meet the requirements of the procurement. Departments shall seek the prior approval of the PS(Tsy) before revising the qualification criteria and method of assessment.

- (d) For works contracts, the approving authority for the establishment of the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works and for revising the qualification criteria and method of assessment of the lists has been delegated to the Permanent Secretary for Development (Works). Departments shall follow supplementary procedures set out in relevant DEVB TC(W).
- (e) Departments establishing and maintaining approved lists of qualified contractors/suppliers/service providers for selective tendering shall publish a notice inviting interested contractors/suppliers/service providers to apply for admission to the lists in the home page on the Internet, which shall be posted continuously during the period of its validity. Such notice shall include, among other things, a description of the stores or services, or categories thereof, for which the lists may be used, the period of validity of the lists, the qualification criteria, the method of application and assessment and the means for renewal or termination, where applicable. A specimen is at Appendix III(A). Approved lists shall be reviewed regularly to ensure that new applications are processed promptly and that contractors/suppliers/service providers who cease to be qualified are deleted from the lists. In addition, new applications from contractors/suppliers/service providers for admission to the approved lists shall be allowed at any time and dealt with expeditiously. Departments shall promptly inform the contractors/suppliers/service providers of their decisions and, on request of the contractors/suppliers/service providers, promptly provide them with a written explanation of the reasons for their decisions. Updating of the lists according to the approved qualification criteria does not require further approval from the PS(Tsy).

Single and restricted tendering

325. (a) For single or restricted tendering (referred to as limited tendering under WTO GPA for which the conditions for invoking limited tendering are also specified therein), tenders are invited from only one or a limited number of contractors/suppliers/service providers. Single or restricted tender procedures shall only be used in circumstances when open competitive tendering would not be an effective means of obtaining the requisite stores or services or for procuring revenue contracts. They shall not be used for the purpose of avoiding competition among contractors/suppliers/service providers or in a manner that discriminates against non-local contractors/suppliers/service providers or protects local contractors/suppliers/service providers. Examples that may justify the use of single or restricted tendering procedures include —
- (i) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring department, the stores, services or revenue contracts could not be procured in time using open tendering or selective tendering;

- (ii) where the requirement is for a work of art, or where for the protection of patents, copyrights or other exclusive rights, or due to an absence of competition for technical reasons, the stores, services or revenue contracts can be supplied or provided only by a particular contractor/supplier/service provider and no reasonable alternative or substitute exists;
 - (iii) where no tenders were submitted or no contractors/suppliers/service providers requested participation, or no tenders that conform to the essential requirements of the tender documentation were submitted, or no contractors/suppliers/service providers satisfied the conditions for participation, or the tenders submitted have been collusive, provided that the requirements of the single or restricted tendering do not substantially differ from the previous requirements of open or selective tendering;
 - (iv) where the procurement is for additional deliveries by the original contractor/supplier/service provider of stores or services that were not included in the initial procurement, and a change of contractor/supplier/service provider for such additional stores or services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with the existing equipment, software, services or installations procured under the initial procurement, and that any change would cause significant inconvenience or substantial duplication of costs for the procuring department;
 - (v) where the procurement is for purchasing a prototype or a first good or service that is developed at the request of the procuring department(s) in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of the field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
 - (vi) where services are to be provided by utility companies; and
 - (vii) where lease terms require that work must be executed by a particular firm.
- (b) Single or restricted tender procedures shall only be initiated with the prior approval of the following officers –
- (i) COs personally for stores, services (excluding works contracts and consultancy) and revenue tenders invited by the department within the departmental limit specified in SPR 220(a). The same requirement also applies if departments choose to adopt single or restricted tender procedures for these procurements within the quotation limit;

- (ii) DGL or his delegated officers for tenders arranged by GLD (GLD tenders); and
- (iii) PS(Tsy) for tenders other than (i) and (ii) above.

Requests for inviting single or restricted tenders for the supply of stores exceeding the departmental limit specified in SPR 220(a) other than through a GLD contract should be routed via the DGL, who will forward them, with his recommendations, to the PS(Tsy) for approval.

COs should follow relevant guidelines set out in FC No. 2/2019 (as may be updated from time to time) in deciding whether single or restricted tendering should be initiated. Requests for single or restricted tendering, irrespective of value, should be signed or endorsed by a public officer at directorate level. After obtaining approval for the initiation of single or restricted tenders, departments shall submit their recommendations to the relevant tender board/DTC for consideration of the acceptance of tenders in accordance with the financial limits as set out in SPR 116.

- (c) Departments shall advise tenderers invited to tender under the single or restricted tender procedures to submit their tenders in the same manner as open or selective tender procedures. Tenderers shall not be informed that tenders are being invited on a single or restricted basis. Notices of tender invitation shall be sent by letter to the tenderers.
- (d) When seeking approval to adopt single or restricted tendering procedures, departments should —
 - (i) describe the background of the case, the stores or services to be procured or the source of revenue;
 - (ii) state the estimated cost or revenue;
 - (iii) explain why open tenders should not be invited;
 - (iv) if time constraint is the reason for proposing single or restricted tendering, explain why the tender exercise could not have been initiated earlier and why the additional time required for open tendering would harm the public interest;
 - (v) if a shortlist of contractors from whom tenders are to be invited is recommended, explain how the shortlist is drawn up, elaborating specifically on the criteria used for the shortlisting, and the professional capability and experience of all the contractors considered, including those not shortlisted;
 - (vi) obtain the support from the relevant policy bureau (for cases requiring approval from PS(Tsy));

- (vii) seek and attach the legal advice from D of J or Legal Advisory Division (Works) of DEVB (LAD(W)/DEVB) on the proposed single/restricted tendering from the WTO GPA perspective; and
- (viii) advise on how it plans to procure the contract in the longer term.

Prequalified tendering

330. (a) There may be circumstances which require the prequalification of a list of tenderers that are financially and technically capable of undertaking a particular project or supplying a particular product. These include projects which require pre-testing of equipment to determine its suitability; projects of an extremely complex nature, high value or subject to very rigid completion programmes; projects which call for a high level of co-ordination, technical expertise, or a non-standard form of contract, e.g. Build-Operate-Transfer or specific types of Design-and-Build contracts; and products which are critical to the user departments.
- (b) PS(Tsy) approves, on the advice of CTB, for the use of prequalified tendering and the evaluation criteria for prequalifying applications. A request for approval to conduct prequalification should contain all necessary information as shown in the format at Appendix III(B).
- (c) Invitations for prequalification shall be published in the Government Gazette. The invitation may also be published on the Internet, local press and selected overseas journals for the particular trade/product or any other means deemed appropriate. Consulates and trade commissions in Hong Kong and known contractors/suppliers/service providers may be notified of the invitation by letter, where appropriate. A specimen Gazette notice is shown at Appendix III(C). For procurements covered by WTO GPA, please refer to SPR 340(c).
- (d) Applications may be received by the procuring department direct provided there are proper procedures for the receipt and registration of the applications. Procuring departments may also require applications to be deposited in the Government Secretariat Tender Box, in which case, the Secretary, CTB should be informed in advance and the closing time for submission of applications must be fixed as noon on a working Friday.
- (e) Having assessed all the applications according to the evaluation criteria previously endorsed by the CTB, the procuring department should make a recommendation to the CTB on a list of prequalified applicants from whom tenders will be invited. The submission (in the format shown at Appendix III(D)) should contain an analysis of the strengths and weaknesses of all the applicants and detailed reasons why an applicant should be prequalified or rejected.
- (f) Notice of tender invitation shall be sent by letter to the prequalified tenderers and contain information as specified in SPR 340(e) and Appendix III(E), where applicable.

- (g) Any changes in the material particulars of the prequalified tenderers which occur between the prequalification and final tendering exercise will require the endorsement of the CTB. Procuring departments shall advise prospective applicants in the prequalification document that the Government may permit changes to the status of a prequalified tenderer at its discretion and may disqualify a prequalified tenderer at any time prior to acceptance of the tender, if a prequalified tenderer has ceased to be able to meet the prequalification requirements.
- (h) Unless with the prior approval of PS(Tsy) who decides on the advice of the CTB, a prequalification exercise is conducted specifically for a particular project or product, and the list of prequalified tenderers will normally remain valid for one year.

DIRECT ENGAGEMENT

331. Direct engagement of a contractor/supplier/service provider without recourse to tendering procedures should only be used in circumstances when open/selective/restricted/single tendering would not be an effective means of obtaining the requisite stores or services or procuring revenue contracts, supported with very strong justifications. Where the procurement under a direct engagement is covered by the WTO GPA, procuring departments should refer to Article XIII of the WTO GPA, and seek legal advice from D of J or LAD(W)/DEVB if in doubt on the application of the relevant WTO GPA provisions.

332. The authority to approve the initiation of direct engagement and acceptance of offer under direct engagement rests with PS(Tsy). For direct engagement of a contractor/supplier/service provider for the procurement of stores, services (excluding works contracts and consultancy) and revenue contracts not exceeding the departmental limit specified in SPR 220(a), this authority has been delegated to COs personally. Requests for direct engagement, irrespective of value, should be signed or endorsed by a public officer at directorate level.

333. In exercising the delegated authority, the approving authorities should observe relevant guidelines set out in FC No. 2/2019 (as may be updated from time to time). When seeking approval to adopt direct engagement, in addition to those listed in SPR 325(d), as no bidding process is involved, departments should also include the contracting strategy having regard to the need to protect the Government's interest and public perception, as well as negotiation strategy with the baseline position on the cost or revenue, if applicable.

FUNDING

337. (a) For works contracts funded under the Capital Works Reserve Fund, COs shall adopt parallel tendering, i.e. invite tenders before funding is secured, unless they consider, upon the conduct of risk assessment, that the benefits of parallel tendering (in terms of time saving, greater certainty in the Approved Project Estimate to be sought, etc.) are outweighed by the risks involved (in terms of abortive tendering work in case the approving authority does not approve the project concerned or impose conditions not envisaged in the tender, risk of Government being seen to be pre-empting Finance Committee/ Legislative Council, etc.). For procurements of estimated value exceeding \$30 million, prior approval from the relevant Directors of Bureaux (or Permanent Secretaries if authorised by the Directors in writing to do so) is required for exemption from parallel tendering.
- (b) For other contracts, COs may adopt parallel tendering, i.e. invite tenders before funding is secured, provided they are satisfied, upon the conduct of a risk assessment, that the benefits of parallel tendering (in terms of time saving, greater certainty in the Approved Project Estimate to be sought, etc.) outweigh the risks involved (in terms of abortive tendering work in case the approving authority does not approve the project concerned or impose conditions not envisaged in the tender, risk of Government being seen to be pre-empting Finance Committee/ Legislative Council, etc.). If the estimated value of the procurement exceeds \$30 million, COs shall seek the prior approval of their Directors of Bureaux (or their Permanent Secretaries if authorised by the Directors in writing to do so) to adopt parallel tendering.

338. When parallel tendering is adopted, COs must reflect correctly in such tender invitations that funding approval has not been obtained and remind tenderers that Government is not responsible for their costs of preparing the bids. As a general principle, COs should not award a contract and should not indicate to the successful bidder that Government would accept its bid unless and until funding for that contract is secured. Conditions for contract award are set out in FC No. 3/2020 (as may be updated from time to time).

TENDER NOTICES AND TENDERING PERIOD

340. (a) Departments wishing to publish tender notices in the Government Gazette (normally published on Friday) shall follow the procedures set out in General Regulations 103-105, and forward three copies of the draft notice in Chinese and English by 3:30 p.m. on Tuesday to the Official Languages Division of Civil Service Bureau, which will forward them to the Assistant Clerk to the Executive Council after vetting the Chinese translation. Departments should also send an additional copy of the notice to the DGL not later than 2:30 p.m. on Tuesday. A specimen Gazette tender notice is at Appendix III(E). Such notices should generally appear in two consecutive issues of the Government Gazette but can be published in more than two issues, if the procuring department deems appropriate.

- (b) Procuring departments may publish tender notices on the Internet, in the local and/or international press and journals or any other means deemed appropriate in addition to the Government Gazette. For placement of advertisements in the press, departments should make arrangements with the Director of Information Services direct.
- (c) For procurements covered by WTO GPA, procuring departments shall publish the tender notices and the notices of invitations for prequalification in the Government Gazette. They should also consider notifying consulates and trade commissions in Hong Kong of the tender invitations, where appropriate.
- (d) For works contracts not exceeding \$55 million and other procurements which are not subject to WTO GPA, it would suffice to only publish tender notices on the Internet, as set out in FC No. 3/2009 (as may be updated from time to time). Publication in the Government Gazette, and/or local and/or international press and journals is optional.
- (e) Tender invitations shall indicate clearly the name and address and telephone/fax number/e-mail address of the office from which forms of tender and further particulars may be obtained and other information necessary to contact the office and obtain the relevant tender documents, the exact location of the tender box in which tenders are to be deposited, and the closing date and time for the receipt of tenders. For procurements covered by WTO GPA, departments will have to send to any interested tenderer a set of the tender documents upon receipt of a written request and may charge the tenderer for the cost of the delivery. Tender notices shall specify whether the intended procurement is covered by WTO GPA. Tenderers should be advised that late tenders or misplaced tenders by tenderers will not be accepted. They should also be informed of the possible extension of tender closing date/time in the event of tropical cyclone signal No. 8 or above being hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government being in force, or any possible scenarios of blockage of public access to the location of a tender box at the original tender closing date/time.
- (f) Adequate time shall be provided to allow both local tenderers and tenderers outside Hong Kong to prepare and submit tenders. A minimum of three weeks is normally required. As an exception, for works contracts not exceeding \$55 million and other procurements which are not subject to WTO GPA, COs may allow a period of less than three weeks for the preparation and submission of tenders as set out in FC No. 3/2009 (as may be updated from time to time) provided that it is commensurate with the complexity of tenders and normally not less than ten days. For procurements covered by WTO GPA, at least 40 days shall be allowed for receipt of tenders and no less than 25 days for applications to be prequalified to tender. In the case of extreme urgency, departments will have to seek the prior approval of the PS(Tsy) for reducing the period for receipt of tenders. This authority has been delegated to the DGL or his designated officers in respect of GLD tenders and tenders for the supply of stores not exceeding the departmental limit specified in SPR 220(a).

- (g) Tenderers must submit the required number of copies of tenders in a sealed cover. Tenderers should be advised not to give any indication on the cover of their tenders which may relate them to a particular contractor/supplier/service provider. Pre-addressed envelopes or labels for the return of tenders should, as far as possible, be provided to tenderers.

TENDER DOCUMENTS

345. (a) Departments should normally use the following standard contract forms when inviting tenders —
- (i) Tender for the Supply of Goods (GF 230).
 - (ii) Tender for Services (GF 231).
 - (iii) Tender for the Purchase of Articles or Materials from the Government of the HKSAR (GF 232).
 - (iv) Articles of Agreement and General Conditions of Contract for various types of works contracts.
 - (v) Standard Terms and Conditions (Tender for the Supply of Goods, Tender for the Provision of Services, Tender for Purchase of Articles or Materials from the Government of the Hong Kong Special Administrative Region) issued by GLD.
 - (vi) Standard Terms and Conditions for IT tenders for the design, supply, implementation and maintenance of IT systems issued by the Office of the Government Chief Information Officer.
- (b) When using standard contract forms to invite tenders, departments may delete or amend any clauses appearing on the forms by way of Special Conditions of Contract but only after consulting D of J or, in the case of works tenders, LAD(W)/DEVB. In case departments consider that the standard contract forms are not suitable for use in their tender exercises even if amendments to the clauses are made, they may design and use their own non-standard contract forms to meet specific requirements of their contracts. Departments must clear with the D of J or, in the case of works tenders, LAD(W)/DEVB regarding the terms and wordings of the non-standard contract forms before they can be used in tender exercises. Reference may also be made to A General Guide to Outsourcing prepared by EffO (as may be updated from time to time) for guidance.
- (c) Departments shall ensure that a complete set of tender documents covering the following is issued to all tenderers —

- (i) Terms of Tender including the conditions which a tenderer has to observe when submitting a tender, the tender validity period, the currency to be used for the contract, the dates for the delivery of goods or services, any limitation on the means by which tenders may be submitted, etc. and where the tenders may be submitted by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (ii) General Conditions of Contract covering the conditions which the contractor has to comply with in executing the contract;
- (iii) Special Conditions of Contract covering any conditions peculiar to the contract;
- (iv) Offer to be Bound or Form of Tender;
- (v) tender specifications (see SPR 350);
- (vi) bills of quantities or quantities required of the contract where applicable; and
- (vii) detailed price schedules or schedule of rates where applicable.

For procurements covered by WTO GPA, departments shall include the Note to Tenderers at Appendix III(E)1 in the tender documents. For procurements that a trading fund is likely to take part in the bidding exercise, departments should include the Note to Tenderers and Condition of Tender at Appendix III(E)2 in the tender documents.

- (d) If a non-works contract has an estimated value exceeding \$300 million, the department must send all the non-standard components of the tender documents, i.e. bills of quantities, particular specifications, special conditions of contract, to the D of J for vetting before the tender documents are issued to potential tenderers. If the vetted documents require substantial amendments after they have been issued to tenderers, they should be legally vetted again before the tender addendum is issued or, as the case may be, the contract is awarded. For a non-works contract with an estimated value not exceeding \$300 million, the CO (or his designated officer(s) at the rank not lower than Chief Supplies Officer/ Chief Executive Officer or equivalent) may decide if legal vetting is required for the non-standard components of the tender documents. If a department considers that the Special Conditions of Contract previously cleared with D of J pursuant to SPR 345(b) may be used with only insignificant and immaterial changes for a subsequent contract with an estimated value not exceeding \$300 million, the CO (or his designated officer(s) at the rank not lower than Chief Supplies Officer/ Chief Executive Officer or equivalent) may decide if the Special Conditions of Contract with the said changes need to be legally vetted. For legal vetting of works contracts, departments should refer to the relevant DEVB TC(W), memo or guidelines promulgated by DEVB.

- (e) Departments shall promptly make available tender documents to ensure that potential tenderers have sufficient time to submit responsive tenders and provide, on request, the tender documents to any potential tenderers. COs may decide whether to recover the cost of the tender documents from the tenderers.

ACCESS TO TENDER INFORMATION

346. Departments may receive requests for tender information from time to time. As a matter of principle, departments must ensure that the disclosure of tender information will not undermine the integrity of the tendering system, and that the prevailing Code on Access to Information is observed. Legal advice should be sought if in doubt.

347. In responding to questions or requests by tenderers, departments should observe SPR 346 and the following guidelines –

- (a) normally, departments should not disclose the estimated contract value to the potential tenderers as it may become a guiding factor in the preparation of their tender proposals, which may be reduced or, of even more concern, expanded unnecessarily, thus undermining the principles of competition and value for the money. If, however, the estimated contract value has been disclosed to the public, departments should, in all fairness, inform all potential tenderers known to the departments of the estimated contract value;
- (b) to facilitate submission of tenders, departments should respond to questions from tenderers in a timely manner. Responses to tenderers' questions should, as a general rule, be made within ten working days. An interim reply should be issued if a substantive reply cannot be made within the above timeframe;
- (c) information essential in enabling a tenderer to submit a conforming tender (e.g. clarifications on the terms, conditions and specifications of tender) should be provided. For fairness, departments should provide the same information to all potential tenderers known to the departments (or publish on department's website in case of open tender) as soon as possible and in any case before the closing date for receipt of tenders;
- (d) a tenderer can be advised of any previous record kept of his performance as he is entitled to know and to make representations against any adverse comments likely to be reflected in the assessment made to the relevant tender board/DTC;
- (e) an unsuccessful tenderer is entitled to know the reasons why his tender was unsuccessful. However, departments should ensure that the details provided do not touch on the tender information provided by another tenderer in confidence; and
- (f) any information relating to another tenderer could only be provided with the express agreement of the tenderer in question.

348. For requests for tender information made by the public, departments may provide, under the principle of SPR 346,–

- (a) particulars of a contract, the category of tenderers invited to tender for the contract, and the closing date/time for receipt of tenders; and
- (b) the number of tenders received for a particular contract, the name of the successful tenderer, the accepted tender sum and the date of the award of the contract. Information on the winning tender should only be provided after the contract has been executed with the successful tenderer.

349. Under no circumstances should a department make available the following information to either a tenderer or a member of the public –

- (a) minutes of the tender board/ committee recording the deliberations made on a certain contract; and
- (b) the method statement and plan proposed by the successful tenderer to execute the contract, the financial position and technical capability of a tenderer and any information provided in a confidential manner by a tenderer without the express agreement of the tenderer.

TENDER SPECIFICATIONS

350. (a) Departments shall ensure that tender specifications which define the requirements of the contract are drawn up in a manner which meets the government procurement policy and principles specified in SPR 106-109. Tender specifications shall not be prepared, adopted or applied and conformity assessment procedures shall not be prescribed with the purpose or the effect of creating unnecessary obstacles to international trade or to competition amongst the potential tenderers. To encourage competition and minimise entry barriers (particularly for start-ups and Small and Medium-sized Enterprises (SMEs)), as a general rule, tenderer's experience should not be set as an essential requirement in non-works tenders, irrespective of value. If it is absolutely necessary, prior approval must be sought from the relevant tender board/DTC for procurements adopting marking schemes under tendering procedures, or public officers (normally at directorate level) designated by COs for procurements not adopting marking schemes under tendering procedures. The justifications for seeking exception from the general rule and the grounds for approval should be properly recorded. Where appropriate, tenderer's experience may be set as an assessment criterion in the marking scheme as a desirable feature.
- (b) When inviting tenders under whichever tendering mode, departments shall set tender specifications in easily comprehensible general terms based on the functional and performance requirements of the stores or services required, and not around the technical data of a certain model of the goods or equipment to be purchased. There shall be no requirement for or reference to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, supplier or service provider, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and words such as "or equivalent" are included in the tender documents. Where standards are referred to, departments shall use, where practicable, international standards.

- (c) While specifications need to be comprehensive providing sufficient information for tenderers to formulate their bids, departments should guard against over-prescribing requirements. Departments are also encouraged to adopt output- or performance-based, rather than input-based, specifications. Over-prescription or input-based requirements may perpetuate incumbent advantage inhibiting competition and leading to over-reliance on a single contractor. It may discourage the participation of innovative tenderers who are able to deliver the contractual requirements with alternative methods or fewer resources than those proposed in the tender document, hence not conducive to obtaining the best value for money for Government.
- (d) Departments shall set out in tender document all requirements and evaluation criteria that will be applied in deciding on the suitability of tenders.
- (e) Departments are encouraged to conduct a market research or non-binding EOI exercise to better understand the goods or services likely to be available in the market, technological trends, number of potential bidders, etc., in particular for procurements involving mission-critical or high-value contracts, or contracts with poor tender response in the past procurement exercise, or the potential for innovation of the procurement needs to be further assessed. Such information is useful to ensure proper design of the tender specifications including essential requirements in order to obtain responsive and competitive tenders. Some guidelines for drawing up tender specifications are provided for general reference at Appendix III(F).
- (f) When tenders are called for the execution of a project or the provision of services on the basis of a schedule of prices or rates, departments shall provide in the tender document some indication of the estimated quantity, value and scope of the contract and any other related information in order to obtain realistic and competitive tenders. Likewise, tender documents for term contracts should provide details of quantities based on past contracts (if any). But in both cases, it should be made clear that such figures are quoted only for the reference of tenderers, and that the Government cannot guarantee that the requirements under the proposed contract will be comparable.
- (g) For term contracts involving a large number of items and for which it would be impracticable to state the approximate quantities, the schedule of items shall be pre-priced, enabling the tenderers to express their offers in terms of a flat percentage variation. In such cases, tenderers shall be advised of the likely expenditure under the proposed or previous contract, with the proviso that the Government does not commit itself to the estimated expenditure under the proposed contract. When the tenders received are subsequently evaluated, the same estimates and requirements as those of which tenderers have been informed in the documents shall be employed in calculating the estimated total value of each tender.
- (h) To ensure adequate room will be in place in the tender evaluation process to assess innovative suggestions, departments are encouraged to adopt marking schemes. Marking schemes should be clear and objective so as to provide a level playing field for bidders and encourage innovative suggestions. In formulating marking schemes, departments should bear in mind user-

friendliness and ensure that they are commensurate with the nature, scale and value of the tender concerned. Departments should follow the Guidelines for Adopting a Marking Scheme at Appendix III(G) in formulating marking schemes. For non-works tenders, COs should designate officers (normally at directorate level) to approve cases not using a marking scheme for tender evaluation.

- (i) For non-works tenders, departments should formulate marking schemes based on the SMS Framework promulgated in FC No. 2/2019 (as may be updated from time to time). The normally allowed range of technical weighting is 50%-70%, and that of the price weighting is 30%-50%. Departments are required to reserve a minimum percentage of technical marks for assessing innovative suggestions as per FC No. 2/2019. No prior approval from the relevant tender board/DTC will be required if marking schemes are formulated according to the SMS Framework. Any deviation from the SMS Framework, such as adopting a technical weighting above 70%, or departing from the permitted range of marks for specified types of assessment criteria, will be subject to the prior approval from the relevant tender board/DTC before tender invitation. However, for service contracts that rely heavily on the deployment of non-skilled workers, no exception will be allowed for adopting a technical weighting below 50%, or assigning lower than 25 marks (out of a total technical marks of 100) (i.e. 25% of the total technical marks) for the assessment criterion on “wages”.
- (j) For works tenders, unless authority has been specifically delegated to departments or there exists standard marking schemes for individual procurement set out in relevant DEVB TC(W) and guidelines, the use of a marking scheme or deviation from the standard marking scheme requires the prior approval of the relevant tender board. When seeking approval for the use of a marking scheme or deviation from the standard marking scheme for individual procurements, departments shall provide a brief description of the contract/project to be procured, its estimated value, justifications for the use of the proposed marking scheme or deviation from the standard marking scheme, the respective weighting for technical and price assessment, the assessment criteria and their relative weighting with passing mark(s) if any. Departments shall follow guidelines on the use of standard marking schemes set out in the relevant DEVB TC(W) and administrative procedures relating to design and build contracts.
- (k) For tenders for service contracts that rely heavily on the deployment of non-skilled workers, departments shall observe the guidelines promulgated in FC No. 2/2019 and FC No. 3/2019.
- (l) Departments should state in the tender documents the use of a marking scheme in tender evaluation with an outline of the evaluation criteria. In line with the basic government procurement principle of transparency, departments should provide information (including descriptions of assessment criteria and their individual technical marks, passing marks (if any) set for technical assessment, formula to be used to calculate the technical/price scores, the technical to price assessment weighting, etc.) in the tender documents to facilitate tenderers' preparation of competitive and quality tender submissions.

- (m) In case of re-tender, departments should, in the light of the degree of market competition in the past procurement exercises, review and refine the tender specifications as well as essential requirements and marking scheme with a view to encouraging competition.

TENDERS IN FOREIGN CURRENCIES

355. (a) In general, contract sums for government contracts should be quoted and paid in Hong Kong dollars. In order to avoid tenderers putting in an unreasonable amount of allowance in their quotations to cover exchange risks for the contract period, departments may allow tenderers to quote in foreign currencies subject to the following conditions —
- (i) the goods or equipment offered are manufactured outside Hong Kong and form a significant part of the contract or the estimated total value of the “overseas” element exceeds HK\$500,000;
 - (ii) unless otherwise agreed by the department concerned, the foreign currency quoted must be the currency of the country supplying the goods or equipment, and more than one currency may be quoted if items from more than one foreign country are involved;
 - (iii) local materials and labour should be priced in Hong Kong dollars, which generally should include materials manufactured outside Hong Kong but which require a substantial amount of further processing in the HKSAR; and
 - (iv) services provided by personnel based outside Hong Kong and salaried in a foreign currency may be quoted in that foreign currency.
- (b) Tenders likely to cost HK\$10 million or more cannot be quoted in a foreign currency, other than US dollars, unless with the prior approval of the PS(Tsy), who must be satisfied that a refusal to allow tenderers to quote in a foreign currency other than US dollars will significantly reduce the degree of competition in tendering to the detriment of the public interest.
- (c) For tender comparison purpose, quotations in foreign currencies must be converted to Hong Kong dollars. The conversion is to be based on the selling rate of the relevant currency quoted by the Hong Kong Association of Banks on the tender closing date. Tender boards/DTCs, in considering recommendations for the award of contracts, will also take into consideration any significant fluctuations in exchange rates after the tender closing date. Departments should state in tender reports the converted tendered sums based on the exchange rates of the tender closing date and the date of tender report and should indicate whether the ranking of the tendered sums has changed as a result of these two bases.

TENDER DEPOSITS/ BONDS

360. A tender deposit/ bond is not normally required. Where a tender deposit/ bond is required as a pledge of the tenderer's good faith (as in the case of revenue contracts), the tender documents shall specify the amount of the deposit/ bond and the methods of payment (whether by cheque, cashier order, a bond in the form of guarantee arranged by a bank and/or presentation of original receipts along with the tender) and refund. The amount of tender deposit/ bond should not be excessive. Tender deposits/ bonds will be refunded to unsuccessful tenderers without interest.

CONTRACT DEPOSITS/PERFORMANCE BONDS

361. Successful tenderers may be required to pay a contract deposit (in the form of cash) or submit a performance bond to the Government within a specified period before contract signing (rather than at the time of tender submission) as security for the due and faithful performance of the contract. A performance bond may be in the form of a guarantee arranged by a bank, insurance company, or the parent company (which has been assessed to be financially capable) of the tenderer.

362. (a) For works contracts, departments should follow the guidelines on contract deposits and performance bonds laid down in the relevant DEVB TC(W). COs may adopt a flexible and pragmatic approach in considering whether contract deposit or performance bond or other options of performance guarantee is needed.
- (b) For non-works contracts, unless otherwise personally approved by the CO, successful tenderers are required to pay a contract deposit or provide a performance bond as follows —

Contract value		Contract deposit or performance bond*
(A)	Stores contracts	
	<ul style="list-style-type: none"> ● ≤ \$1.4 million ● > \$1.4 million 	<ul style="list-style-type: none"> ● Not required ● 2%
(B)	Service contracts ≤ \$1.4 million	● Not required
	> \$1.4 million and ≤ \$15 million	● 2%
	> \$15 million [#]	<ul style="list-style-type: none"> ● 2% if passes financial vetting ● 5% if fails financial vetting for low risk contracts ● 6% if fails financial vetting for high risk contracts <p>Periodic financial vetting + closer contract monitoring needed for high risk and long duration contracts</p>

(C)	Revenue contracts	Not required but departments may conduct financial vetting and/or require contract deposit in individual cases if considered necessary.
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* Expressed in terms of % of contract value. The stipulated percentage should apply unless personally approved by the CO.

Including contracts for supply of stores which require also the provision of services of a value exceeding \$15 million.

(c) Requirements on contract deposit or performance bond shall be stipulated in the tender documents, including the amount required, the payment method and the rights of the Government to decide whether the guarantor is acceptable and to refuse the offer from any tenderer which fails to meet the Government's requirements.

(d) Contract deposits shall not be refunded until the contract has been completed according to the terms of the contract. Likewise, performance bonds must be maintained in force until the contractor has duly performed all his obligations under the contract.

RETENTION MONEYS

363. To protect the interest of the Government, departments may include in the payment schedule for the contractor a right for the Government to hold back a certain sum as retention money, which will not be released to the contractor upon completion of the contract until the Government is fully satisfied, after a period of time, with the goods delivered or the service provided. The amount of retention money is normally pitched at no more than 5% of the contract value. For works contracts, departments shall follow guidelines in the relevant DEVB TC(W).

RECEIPT AND CLARIFICATION OF TENDERS

365. (a) Tender opening procedures should commence immediately when the deadline for tender submission is due. Except for tenders for procurements with a value not exceeding the departmental limit specified in SPR 220(a) received by departments which have set up their own tender boxes, one copy of the duplicates of the tenders received will be kept by the relevant tender board after the tenders have been opened and authenticated by the tender opening team. The originals and the remaining duplicates of the tenders will be sent to the procuring department for assessment.

- (b) After receipt of the original tenders from the tender opening team, the procuring department should check that the tenders contain, inter alia, the names and addresses of all partners (if the tender is submitted by a partnership) or offices (if the tender is submitted by an unincorporated body) and the number of the business registration certificate (or documentary evidence showing that the tenderer is exempted from business registration under the Business Registration Ordinance (BRO) (Chapter 310)).
- (c) Where certain tender information is found missing or where a tender contains some ambiguities, qualifications or counter-proposals, departments should consider carefully whether to seek the missing information or clarification from the relevant tenderer. In general, departments shall keep such post-tender closing contacts with tenderers to the minimum. They shall record clearly and in full all such contacts. Most importantly, they must ensure that such contacts will not give a tenderer any advantage or perceived advantage over other tenderers.
- (d) The opportunities that may be given to tenderers to correct unintentional errors of form (for instance, clerical errors) shall not be permitted to give rise to any discriminatory practice.
- (e) Where the provision of certain information is specified as an “essential requirement” in the tender documents and it is stipulated that non-compliance with it will render the tender non-conforming, the tender shall be considered as non-conforming if such information is not submitted. Departments shall not approach the concerned tenderer for the missing information. For instance, submission of an execution plan which will be taken into account in the tender evaluation is by its nature an essential requirement. Hence, it should be so specified in the tender documents with the stipulation that any non-compliance of this requirement will render the tender non-conforming. Where submission of certain information is not specified as an essential requirement but it is specified in the tender documents that failure to provide such information will render the tender non-conforming, the tender shall also be considered as non-conforming if such information is not submitted.
- (f) Where the provision of certain information is not specified as an “essential requirement” in the tender documents and there is no stipulation that its non-compliance will render the tender non-conforming, departments may approach the concerned tenderer for such missing information if it relates to factual information and there is no room for manipulation by a tenderer by virtue of late submission of such information. In other cases, departments shall assess a tender with certain information missing as it is.
- (g) In approaching a tenderer for clarification, departments must not provide any information that may assist the tenderer to improve his tender to the level of tenders from other tenderers.
- (h) In case of special circumstances requiring different consideration, departments shall seek the advice of the D of J or, in the case of works tenders, LAD(W)/DEVB and/or the relevant tender board or DTC.

- (i) If a clarification or correction results in an adjustment of the tendered sum, the department shall ask the tenderer to confirm whether he is prepared to abide by the adjusted tendered sum. If the tenderer refuses to so abide, the department shall consult the D of J or, in the case of works tenders, LAD(W)/DEVB on how to deal with the tender. Under no circumstances may a department reject a tender as a qualified bid (expressly or otherwise) without the approval of the relevant tender board, except that for works tenders with a value not exceeding \$55 million each which are not subject to WTO GPA and tenders for procurements with a value not exceeding the departmental limit specified in SPR 220(a), the authority to reject a tender as a qualified bid has been transferred to COs and DTCs respectively. For works contracts, departments shall observe further guidelines on the clarification of tenders and correction of errors as laid down in relevant DEVB TC(W).

EVALUATION OF TENDERS

370. (a) Tender evaluation should normally be conducted by a TAP consisting of not less than two persons. Departments should observe the guidelines on the establishment and operation of the TAP set out in Appendix III(G)1. For works tenders, departments should also follow the guidelines laid down in the relevant DEVB TC(W) currently in force issued by the DEVB.
- (b) The TAP shall examine tenders against the technical specifications, essential requirements, terms and conditions laid down in the notices of tender invitations and tender documents to determine whether they are fully conforming. In recommending a tender for acceptance, the department should also take into account the following in the evaluation, as appropriate —
- (i) technical and financial capability of the tenderers and their past performance records. For works contracts, the guidelines laid down in the relevant DEVB TC(W) currently in force issued by the DEVB shall be followed. For service contracts of a value exceeding \$15 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$15 million, financial vetting shall be conducted of a tenderer who is being considered for the award of the contract in order to ensure that the tenderer is financially capable of fulfilling the contract requirements (see Appendix III(H));
 - (ii) timely delivery or completion;
 - (iii) compatibility with existing or planned purchases;
 - (iv) after sale support and service including maintenance and spare parts provision, warranty and/or guarantees;
 - (v) running and maintenance costs; and
 - (vi) fair market prices.

Requirements (ii)-(iv), where applicable, should be included in the tender specifications. In respect of requirement (v), departments should ask tenderers to provide an estimate of running and maintenance costs for the equipment or system supplied to enable a fair price comparison to be made.

- (c) Where a marking scheme is used in the evaluation of tenders, TAPs shall assess the tenders according to the criteria set out in the tender documents. Normally, the tender which attains the passing marks (if any) and the highest overall score under the marking scheme should be recommended. The methods for evaluating technical and price proposals are set out at Appendix III(G).
- (d) In normal circumstances, departments shall determine the ranking of the tenders received according to the original tender prices or the adjusted tender prices made in accordance with SPR 365(i), or the overall scores they have attained when a marking scheme is used in tender evaluation. Where price negotiations are undertaken under SPR 385, departments shall use the negotiated prices to determine the ranking of the tenders or their price scores. Departments may only consider other proposals on discounts by a tenderer if his tender is recommended for acceptance.
- (e) Any negotiation with a tenderer shall be undertaken in accordance with SPR 385. Such negotiations may also be used to seek resolution of any qualification or counterproposal put forward by a tenderer and if the qualification seeks to reduce the tenderer's risk or to construct payment terms which are more to his advantage, departments should seek a corresponding adjustment in the tender price before formally recommending the tender for acceptance.
- (f) In recommending the acceptance of a tender to a tender board or DTC, departments shall have value for money in mind. If the tendered sums are very close or if the contract to be awarded involves payments over a number of years, e.g. interim payments to the contractor, the department shall compare the tenders by discounting future payments to obtain the present value. The present value of the tendered sum should prevail in determining the ranking of tenders. In assessing the present values of tenders, departments may approach the Management Accounting Division (MA Division) of Financial Services and the Treasury Bureau (The Treasury Branch) (FSTB) for advice.

- (g) If none of the tenders received is fully conforming with the technical specifications, essential requirements, terms and conditions laid down in the tender documents and/or attains the passing marks (if any) of the marking scheme, departments shall cancel the tender exercise (see SPR 380(e)) and re-tender with revised specifications, essential requirements, terms and conditions, where applicable. If exceptionally departments wish to recommend a non-conforming tender, they shall state clearly in the tender report any deviation of the recommended tender from the specifications, essential requirements, terms and conditions laid down in the tender documents, the assessment criteria under the marking scheme, and the reasons for so recommending. As a general practice, departments should clear their tender recommendations with the D of J, or in the case of works tenders, LAD(W)/DEVB if they wish to recommend a non-conforming tender. A copy of the relevant legal advice should be attached to the tender report for relevant tender board or DTC's reference.

TENDER REPORTS

375. (a) Departments shall prepare a tender report containing a clear recommendation in the standard format as at Appendix III(I). Tender reports for consideration by the CTB and subsidiary tender boards must be signed or endorsed by the Head of Department concerned or his representative at directorate level. Tender reports for consideration by DTCs should be signed by the chairman of TAP of the procuring department. For submissions to the tender boards, the originals of the tenders received should be submitted together with the tender report to the tender board as follows —
- (i) when the ranking of tenders is based on the tendered prices, i.e. no marking scheme is used in tender evaluation —
- if the recommended tender is the lowest (highest for revenue contracts), only the three lowest (highest) tenders should be submitted. If the recommended tender is not the lowest (highest for revenue contracts), the lower (higher) tenders, the recommended tender and the next two higher (lower) tenders should be submitted; or
- (ii) when the ranking of tenders is based on the overall scores, i.e. a marking scheme is used in tender evaluation —
- if the recommended tender is the highest overall scorer, only the tenders of the three highest overall scorers should be submitted. If the recommended tender is not the highest overall scorer, the tenders of the higher scorers, the recommended tender and the tenders of the next two lower overall scorers should be submitted.

- (b) Departments shall forward sufficient copies of the tender report to the relevant tender board at least four weeks before the expiry of the validity of the recommended tender or before the intended commencement date of the contract to be awarded. If there is a delay in putting forward a submission, departments must state the reasons in the tender report for not being able to submit on time. Departments should forward their submissions to the relevant tender board at least five clear working days prior to a board meeting. Failure to do so may result in submissions being deferred to a later meeting. For submission to DTCs, departments should draw up their own departmental procedures.
- (c) Tender boards and DTCs should normally meet to deliberate; decisions reached through circulation of papers should be the exception. Subject colleagues are to attend meetings of tender boards and DTCs if requested.
- (d) For works contracts to be approved personally by CO in SPR 310(h), SPR 375(a)-(c) do not apply and COs may devise their own tender report formats.

CANCELLATION OF A TENDER EXERCISE OR CONCLUDING A SERVICE LEVEL AGREEMENT WITH A TRADING FUND DEPARTMENT

380. (a) Unless it is not in the public interest to award a contract, a procuring department shall award the contract to the tenderer that the department has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted the most advantageous tender or where price is the sole criterion, the lowest tender (or highest for revenue contract).
- (b) Where a procuring department has invited a tender from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government whose services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereinafter referred to as “the relevant trading fund department”), and where the relevant tender board or DTC has accepted that the lowest or most advantageous tender is the one submitted by the relevant trading fund department, the procuring department shall —
- (i) enter into a service level agreement with the relevant trading fund department; and
 - (ii) promptly inform all tenderers of its decision not to issue a “contract” in the “public interest” (in line with the requirements set out in Article XV 5. and Article XVI 1. of WTO GPA, whether or not the tender is itself subject to the WTO GPA).

- (c) It is not possible to list out definitively and exhaustively all matters that contribute to “public interest”. Other than the circumstances in (b) above, matters concerning the integrity, confidentiality, security and safety of the Government, and the effective use of government resources would be relevant. Relatively small sums of money saved and/or the retention of government staff can also be contributing factors that support “public interest”. If in doubt, legal advice should be sought.
- (d) Approval of cancellation of a tender exercise is not required when no tenders are received after the close of tender invitation, or in the case of parallel tendering, if the relevant funding application is not approved by the Finance Committee of the Legislative Council before expiry of the tender validity or extended tender validity period (if applicable).
- (e) Other than the circumstances described in items (b) and (d) above, if a procuring department proposes to cancel a tender exercise once the tenders have been invited or not to award a contract following a tender evaluation, it shall seek the prior approval of the relevant tender board or DTC for the cancellation of the tender exercise following the report format set out at Appendix III(I). Departments shall provide detailed justifications for cancelling a tender exercise and state whether and when a second tender exercise will be conducted. For works contracts not exceeding \$30 million each and not subject to WTO GPA, COs have delegated authority to personally approve the cancellation of a tender exercise.

TENDER NEGOTIATIONS

385. (a) In general, it is the Government’s policy to procure stores, services or revenue contracts on the basis of competitive tendering, with the contract being awarded to the tenderer that conforms with the tender specifications and essential requirements, attains the passing mark(s) if a marking scheme is adopted, and offers the most advantageous terms to the Government. Where it would be in the Government’s best interest to negotiate with a tenderer or tenderers, such negotiations shall be conducted in a non-discriminatory manner among different tenderers.
- (b) To facilitate negotiations, all notices of tender invitations shall contain a standard clause stating that the Government reserves the right to negotiate with any or all tenderer(s) about the terms of the tender.
 - (c) PS(Tsy) is the approving authority for tender negotiations and has delegated this authority to —
 - (i) subsidiary tender boards for negotiations on tenders which fall within their purview;
 - (ii) DGL or his designated officers for negotiations on GLD tenders;
 - (iii) COs or their designated directorate officers not having been involved in the concerned tender exercises for negotiations on works tenders not exceeding \$55 million each and not subject to WTO GPA; and

- (iv) DTCs for negotiations on tenders for procurements not exceeding the departmental limit specified in SPR 220(a) which fall within their purview.
- (d) In addition to SPR 385(c), the PS(Tsy) has delegated the authority to COs or their designated directorate officers not having been involved in the concerned tender exercises to approve negotiations with potential contractors/suppliers/service providers for tenders of their own departments in any of the following circumstances —
- (i) when a single tender within the meaning of SPR 325 has been invited with the prior approval of the relevant approving authority; or
 - (ii) when only one tender or very few tenders have been received in response to an open tender invitation and the procuring department considers the tenders received may not be sufficiently competitive, whether in terms of price or other key quality attributes; or
 - (iii) when the tender price to be recommended is too high (or too low in the case of a revenue contract) in comparison with the price of similar procurement in the past or in relation to other market information; or
 - (iv) when the tender to be recommended contains counter-proposals to the tender terms which are disadvantageous to the Government but are not sufficiently substantial or do not cause substantial deviation from the requirements contained in the tender invitation to render the recommended tender non-conforming; or
 - (v) when two or more tenderers have submitted conforming tenders which are equal in all aspects in terms of the evaluation criteria set out in the notice of tender invitation or tender documents and are equally the most advantageous to the Government.
- (e) Negotiations under items (d)(ii)-(iv) above shall **normally** be conducted only with the **single conforming tenderer** or with the conforming tenderer whose tender has been found to be **clearly the most advantageous** to the Government in terms of the evaluation criteria set out in the notice of tender invitation or tender documents. Where no single tender is clearly the most advantageous in terms of the evaluation criteria set out in the notice of tender invitation or tender document or where the most advantageous tender cannot be determined until the counter-proposals have been resolved or withdrawn, it may be necessary to hold negotiations also with the tenderers who have presented the second or the third lowest (highest for revenue contracts) conforming tenders. The criteria for selection of tenderers for negotiations shall be stated in the tender documents. Where such criteria have not been set forth in the tender documents, the selection of tenderers for negotiations must be based on objective and reasonable criteria.
- (f) Where negotiations are conducted with more than one tenderer, whether or not under item (d) above, officers authorised to conduct the negotiations shall ensure that —

- (i) any elimination of tenderers participating in the negotiations is carried out in accordance with the evaluation criteria set forth in the notice of tender invitation or tender documents;
 - (ii) should the procuring department introduce any modifications to the criteria or requirements set out in the notice of tender invitation or tender documents, the modifications must be transmitted in writing to participating tenderers in the negotiations and also in adequate time to allow such tenderers to modify and re-submit amended tenders, as appropriate; and
 - (iii) when negotiations are concluded, the remaining participating tenderers shall be provided with a common deadline to submit any new or revised tenders.
- (g) For the avoidance of doubt, price may be the subject of negotiations as it is an essential element in determining the strength and weakness of a tender. Before negotiations are initiated, however, the procuring department shall take a view as to whether any reduction of price or increase in revenue that may be achieved would exceed the cost of undertaking the negotiations, or would adversely affect the quality of goods or services to be procured.
- (h) The public officers authorised by a CO to conduct negotiations shall be at directorate level, unless otherwise approved by PS(Tsy). In the case of contracts awarded by GLD, the DGL shall determine the rank of the negotiating officers, having regard to the complexity and importance of the negotiations.
- (i) Public officers authorised to conduct negotiations shall, where necessary, seek the advice or assistance from the DGL on commercial aspects and the D of J on legal aspects.
- (j) For a high value or complex tender, negotiations shall be conducted by a team led by an experienced negotiator. The negotiation team shall consist of the following, where applicable —
 - (i) a member from the GLD for commercial aspects;
 - (ii) a member from the D of J for legal aspects;
 - (iii) a member from the user department for user requirement aspects; and
 - (iv) a member from the relevant service department for technical aspects e.g. Office of the Government Chief Information Officer.
- (k) The negotiator and negotiation team shall be authorised in advance to commit the Government, if necessary, within limits set by the relevant tender board or DTC, or the concerned CO or the designated directorate officer authorising the negotiations.

- (l) Proper procedures, including keeping proper records of the negotiations, shall be established and adhered to. Negotiations may be conducted by exchange of correspondence and/or meetings. Under no circumstances shall negotiations be conducted orally by a single negotiator without the presence of another public officer of an appropriate rank.
- (m) In all cases, only public officers with no real or potential conflict of interest shall lead or participate in negotiations.
- (n) Some guidelines on preparing for and conducting negotiations are provided at Appendix III(J) for general reference. They are not intended to be comprehensive.

ACCEPTANCE OF TENDERS AND AWARD OF CONTRACTS

390. (a) Unless authority has been specifically delegated to departments or tender boards, the PS(Tsy) is the approving authority for acceptance of a tender. Subsidiary tender boards and DTCs are delegated with the authority to accept tenders under their purview and not exceeding the financial limits of the respective tender board and DTC. After a decision has been made on the acceptance of a tender, the relevant tender board secretary will notify the procuring department by memorandum, copying it to the D of A. Originals and duplicates of tenders will also be returned to the procuring department. For contracts awarded by DTCs or COs under delegated authority, the approving authority will notify the D of A of the acceptance of a tender.
- (b) The procuring department will then send a letter to the successful tenderer accepting his offer or, as the case may be, inviting him to sign the contract on a specified date. The department should also notify unsuccessful tenderers of the outcome of their tenders and the contract award decision promptly, and include in the letters the reasons why their tenders were unsuccessful. If the sum of the accepted tender exceeds the approved estimates, the CO concerned should ensure that it is not accepted before approval for an increase in commitment or project estimate has been obtained. The letter should be copied to the secretary of the respective tender board or DTC.
- (c) Departments shall publish a notice of contract award in their home pages on the Internet and keep a record for all contracts awarded. Departments shall separately (or additionally) keep a record of each contract awarded under single or restricted tendering as well as direct engagement of contractor/supplier/service provider, which shall include the name of the procuring department, the value and kind of goods or services procured and a statement indicating the circumstances that justified the use of single/restricted tendering and direct engagement. For procurements covered by WTO GPA, a statement indicating the conditions described in the provisions on limited tendering in WTO GPA that justified the use of limited tendering should also be included for the purpose of meeting the specific reporting requirements of WTO GPA.

- (d) Tender boards, DTCs or the approving authority should send to the DGL a list of all the contracts awarded by them or on their recommendation in a particular month at least two weeks before the end of the following month for publication on the Internet.

Appendices

- Appendix III
- (A) [Specimen Notice for Approved Lists of Qualified Contractors/Suppliers/Service Providers for Selective Tendering](#)
 - (B) [Specimen Application for Authority to Prequalify Tenderers](#)
 - (C) [Specimen Gazette Notice for Prequalification of Tenderers](#)
 - (D) [Specimen Application for Approval of Prequalified Tenderers](#)
 - (E) [Specimen Gazette Tender Notices](#)
 - (E)1 [Note to Tenderers](#)
(to be included in tender documents for tenders covered by WTO GPA)
 - (E)2 [Note to Tenderers and Condition of Tender](#)
(to be included in tender documents for tenders invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430)
 - (F) [Guidelines for Drawing Up Tender Specifications](#)
 - (G) [Guidelines for Adopting a Marking Scheme for Tender Evaluation](#)
 - (G)1 [Guidelines on Tender Assessment Panel](#)
 - (H) [Guidelines for Financial Vetting of Recommended Tenderers for Service Contracts](#)
 - (I) [Standard Tender Report Format](#)
 - (J) [Guidelines for Tender and Contract Negotiations](#)

**Specimen Notice for Approved Lists of Qualified
Contractors/Suppliers/Service Providers for Selective Tendering
(SPR 320(e))**

Firms on the approved list of qualified contractors/suppliers/service providers for the provision of (a description of goods, services, or categories thereof) maintained by the (name of department) are published below for general information —

(List of contractors/suppliers/service providers)

Tender invitations will be (#published in the Government Gazette, on the Internet, and/or sent by letter to firms on the approved list). The approved list is valid *for (number of years) year(s) commencing (date) or until it is terminated by separate notice. The approved list shall be reviewed regularly to ensure that firms who cease to be qualified are deleted from the list. The concerned contractors/suppliers/service providers will be informed of the deletion in writing separately.

The following criteria and method of assessment are used for the selection of qualified contractors/suppliers/service providers for the approved list —

(State the qualification criteria and method of assessment)

Firms interested in providing (a description of goods, services, or categories thereof) and meeting the above criteria may apply to and obtain all relevant documents relating to the list from (state the name, address and telephone/fax number/e-mail address of the office, and other information necessary to contact the office and obtain all relevant documents).

* The approved list may be used for procurements covered by the Agreement on Government Procurement of the World Trade Organization.

* This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

Date

Name of Head of Department

to be amended by the procuring department as appropriate

* delete if not applicable

**Specimen Application for Authority to Prequalify Tenderers
(SPR 330(b))**

RESTRICTED (TENDER)

MEMO

From : Head of Department

To : Chairman, Central Tender Board

Contract Title
Request for Authority to Prequalify Tenderers

A. Type and Duration of Contract

B. Brief Description of Contract

C. Authority to Call for Tenders

D. Reasons for Prequalification

E. Source of Potential Tenderers

F. Method of Selection of Tenderers

— Essential requirements and marking scheme including assessment criteria, weighting attached to each criterion and passing mark(s) for qualification.

— Number of tenderers to be prequalified.

— Selection process including membership of selection panel, normally chaired by a public officer of D2 rank or above.

— Relevant parts of the prequalification document pertaining to the method of selection of tenderers. (A specimen format of prequalification document is appended.)

G. Availability of Funds

— Approved project estimate (if applicable) \$

— Sum allowed for this contract in the approved \$
project estimate (if applicable)

— Funds in (financial year) Estimates \$
(Head Sub-head)

H. Declaration of Interest

- Confirm whether public officers involved in preparing prequalification documentation (including specifications and marking scheme(s)) have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.
- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of prequalification documents and in the prequalification exercise.

I. Name and Telephone Number of Contact Officer

- Public officer(s) who will answer questions from the tender board or attend board meetings for this item, if necessary.

()
Signed by a directorate officer
for Head of Department

Specimen Format of Prequalification Document

Contract Title
Contract No. /Public Works Programme No.

I. Information to Applicants

- State the eligibility for application, method of application, closing time for submission of applications and selection criteria for the prequalification exercise.
- State how late submissions, unsuccessful applications, and changes to the status and proposals of a prequalified tenderer will be handled.

II. Information on Contract

- State the scope of the contract, tender documentation, tender programme, implementation programme, delivery requirements, etc.

III. Information Required from Applicants

- Relevant information, including the applicant's technical and financial capability for assessment purpose.

**Specimen Gazette Notice for Prequalification of Tenderers
(SPR 330(c))**

G.N.

DEPARTMENT

Contract Title

Contract Number /Public Works Programme Number

NOTICE OF PREQUALIFICATION OF TENDERERS

It is intended to invite tenders in (month and year) from prequalified tenderers for (state the name, nature and quantity (or where the quantity is not known, the estimated quantity) of the project/services/goods). *The tenders to be invited will be covered by the Agreement on Government Procurement of the World Trade Organization and will not involve electronic auction. *This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

* Contractors/suppliers/service providers on the (title(s) of the approved list(s) and state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the prequalification documents that are made available to contractors/suppliers/service providers)) are invited to apply for prequalification and the prequalification documents are obtainable from (state the name, address and telephone/fax number/e-mail address of the office, and other information necessary to contact the office and obtain the prequalification documents). Contractors/suppliers/service providers not yet on the (title(s) of the approved list(s)) may also apply for prequalification if they submit a request for participation by (deadline) to (address) and meet (state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the prequalification documents that are made available to contractors/suppliers/service providers)). *A sum of \$....., which will not be refunded, is required to cover the cost of the prequalification documents.

(State the number) of applicants will be selected for tender invitations on the basis of the following criteria —

(List of criteria)

Completed prequalification applications shall be submitted not later than (time) on (date) to (state name and address of the office/tender board). If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force at any time between (time) and (time) on (closing date for receipt of prequalification applications), the closing time will be postponed to (time) on the first working day after the tropical cyclone signal No. 8 is lowered, or the black rainstorm warning signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force. In case of blockage of the public access to the location of the relevant office/tender board at any time between (time) and (time) on (closing date), the Government will announce extension of the closing time until further notice. Following removal of the blockage, the Government will announce the extended closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

* Joint ventures with other firms will be considered.

The Government of the Hong Kong Special Administrative Region reserves the right to reject any application and to negotiate with any applicants about the terms of their offers.

Date

Name of Head of Department

* delete if not applicable

**Specimen Application for Approval of Prequalified Tenderers
(SPR 330(e))**

RESTRICTED (TENDER)

MEMO

From : Head of Department

To : Chairman, Central Tender Board

Contract Title

Request for Approval of the Prequalified Tenderers

A. Type and Duration of Contract

B. Brief Description of Contract

C. Authority

— Authority to call for tenders

— Authority to prequalify tenderers

D. Details of Invitation

— Dates of Gazette notifications.

— Dates and media of advertisements or other means of invitation, if any.

— Any restrictions on applicants, e.g. Approved Contractors for Public Works only.

— Closing date and office for submission of applications.

— A copy of the prequalification document should be attached for inspection.

E. Details of Applications

— Number of firms obtaining prequalification documents.

— Number of firms submitting applications.

— Essential requirements, marking scheme including assessment criteria, weighting attached to each criterion, and passing mark(s) required for qualification approved by the PS(Tsy) on the advice of the CTB.

- Details of assessment of applications : composition of selection panel, method of assessment, assessment of specific items by bodies other than the panel, e.g. financial assessment by Chief Treasury Accountant of DEVB (Works Branch), etc.

F. Recommendation

- Names of firms recommended for inclusion in the list of prequalified tenderers.
- A summary of the results of assessment showing the relative merits of all applicants under each selection criterion and an overall assessment on individual applicants as a conclusion.
- The assessment reports of individual panel members should be attached, where necessary, drawing specific attention to any opinion which is contrary to the general recommendation.
- Results of the financial vetting of the prequalified tenderers, if applicable.

G. Availability of Funds

- Approved project estimate, if applicable \$
- Sum allowed for this contract in the approved \$
project estimate, if applicable
- Funds in (financial year) Estimates \$
(Head Sub-head)

H. Declaration of Interest

- Confirm whether public officers involved in this prequalification exercise have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest has been identified, and if yes, what remedial action has been made.
- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of prequalification documents and in the prequalification exercise.

I. Name and Telephone Number of Contact Officer

- Public officer(s) who will answer questions from the tender board or attend board meetings for this item, if necessary.

()
Signed by a directorate officer
for Head of Department

Specimen Gazette Tender Notices
(SPR 340(a))

G.N.

DEPARTMENT

It is hereby notified that sealed tenders in *duplicate/triplicate are invited for (state the tender reference, name, nature and quantity (or where the quantity is not known, the estimated quantity) of the project/services/goods and the time-frame for delivery of project/services/goods or the duration of the contract, whichever is applicable, and, where applicable, a description of any option).

Tenders must be clearly marked with the tender reference and the subject of the tender on the outside of the envelope (but should not bear any indication which may relate the tender to the tenderer) addressed to the Chairman, (state the name of the tender board to be addressed, address of the relevant tender box, and the closing date and time for receipt of tenders). Tenders must be deposited in the tender box as specified in this tender notice (“Specified Tender Box”) before the tender closing time. Late tenders or tenders not deposited in the Specified Tender Box will not be accepted. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force at any time between (time) and (time) on (tender closing date), the tender closing time will be postponed to (time) on the first working day after the tropical cyclone signal No. 8 is lowered, or the black rainstorm warning signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force. In case of blockage of the public access to the location of the Specified Tender Box at any time between (time) and (time) on (tender closing date), the Government will announce extension of the tender closing time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

Forms of tenders and further particulars are obtainable from (state the name, address and telephone/fax number/e-mail address of the office, and other information necessary to contact the office and obtain the tender documents). *A sum of \$....., which will not be refunded, is required to cover the cost of the tender documents.

*Open tendering is adopted. All interested contractors/suppliers/service providers are invited to tender. (State a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers).)

*Selective tendering is adopted. Contractors/suppliers/service providers on the (title(s) of the approved list(s) and state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers)) are invited to tender. Contractors/suppliers/service providers not yet on the (title(s) of the approved list(s)) may also submit a tender if they submit a request for participation by (deadline) to (address) and meet (state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith) (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers). Contractors/suppliers/service providers will be liable to have their names removed from the approved list(s) if they fail or refuse to implement an accepted tender.

*Tenderers must attach to each tender a cheque/cashier order/the original copy of a receipt for the sum of \$..... as a pledge of the bona fides of their tenders, which amount shall be forfeited to the Government of the Hong Kong Special Administrative Region if any tenderer fails or refuses to implement an accepted tender. The amount will be returned to the unsuccessful tenderers without interest.

*This tender is covered by the Agreement on Government Procurement of the World Trade Organization and will not involve electronic auction. *This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

The Government of the Hong Kong Special Administrative Region does not bind itself to accept the *lowest/highest (for revenue) tender or any tender, and reserves the right to negotiate with any tenderer about the terms of the offer.

Details of the award of this contract will be published on the Internet at http://www.gld.gov.hk/eng/services_2_c.htm.

Date

Name of Head of Department

* delete as appropriate or if not applicable. Where a marking scheme is adopted for tender evaluation, the reference to “lowest/highest (for revenue) tender” should be changed to “tender with the highest overall score”.

NOTE TO TENDERERS
(to be included in tender documents for tenders covered by WTO GPA)
(SPR 345(c))

This tender is covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA) and the provisions of the WTO GPA will apply to this tender. Tenderers are requested to note that a Review Body on Bid Challenges (under WTO GPA) (“the Review Body”) has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA and the relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (“the Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties upon request. In the event that a tenderer believes that a breach of the WTO GPA has occurred, the supplier may, within ten working days after he/she knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless, the tenderer is encouraged to seek resolution of its complaint in consultation with the procuring department before lodging a complaint to the Review Body. In such instances, the procuring department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.

Tenderers should note that the Review Body may receive and consider a late challenge but a challenge shall not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known.

NOTE TO TENDERERS and CONDITION OF TENDER
(to be included in tender documents for tenders invited from
contractors/suppliers/service providers in both the private and public sectors including
department(s) of the Government of the Hong Kong Special Administrative Region
whose operation of the services is managed and accounted for by trading funds
established pursuant to the
Trading Funds Ordinance, Cap. 430)
(SPR 345(c))

Note to Tenderers

Tenderers should note that tenders are invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereafter referred to as “the relevant trading fund department”).

All tenders will be evaluated on a fair basis. Every effort has been and will be made by the Government to ensure that the relevant trading fund department would not undertake both the role of consultant and contractor in this tendering exercise and where appropriate, independent consultant has been or will be engaged for the preparation of the tender documents, assessment of tenders and subsequent monitoring on the performance of the contractor/supplier/service provider.

[Where the Electrical and Mechanical Services Trading Fund may submit a tender.] The Electrical and Mechanical Services Trading Fund may submit a tender for this contract. A code of conduct for staff of the Electrical and Mechanical Services Department seconded to other department(s) is also in place for the staff to observe to avoid conflict of interest and is available for inspection by tenderers.

Condition of Tender

Tenderers should note that tenders are invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereafter referred to as “the relevant trading fund department”).

Unless it is in the public interest not to do so, the Government will award the contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of others, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in this tender documentation is determined to be the most advantageous. In the situation where the tenderer selected in accordance with the foregoing criteria is the relevant trading fund department, the Government may, instead of issuing a contract, enter into a service level agreement with the relevant trading fund department.

Guidelines for Drawing up Tender Specifications (SPR 254, 280(a), 295(a) and 350(e))

These notes provide guidelines for the preparation of tender specifications. They supplement any specific instructions given by the body/public officer authorising the tender.

User Requirements

2. A tender specification defines the requirements of the procuring department and consequently, what the tenderer is expected to provide. As a rule, tender specifications should meet the basic government procurement policy and principles specified in SPR 106-109.
3. Public officers drawing up tender specifications should have regard to the following —
 - (a) specifications form the basis for seeking tenderers' response and should be easily comprehensible. They should be precise and concise and should not render the preparation of bids by tenderers an unduly time-consuming and costly process;
 - (b) specifications form the framework for evaluating the suitability of offers received from tenderers. They should be framed in terms that encourage open and fair competition by providing potential tenderers an equal opportunity to develop solutions capable of satisfying the procuring departments' requirements. They shall not include any feature which could be perceived as discriminatory because it is specific to a trademark or trade name, patent, copyright, design, type, origin, producer, supplier or brand of product, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation;
 - (c) they should be comprehensive and should contain sufficient information for the tenderers to determine the nature, scope and estimated quantity or value of goods or services required, their characteristics, standards to be met, performance under specified conditions and other relevant information in order to obtain conforming and competitive bids;

- (d) departments should guard against over-prescribing requirements. Output- or performance-based (rather than input-based) specifications should be adopted. Over-prescription or input-based specifications may perpetuate incumbent advantage, inhibiting competition and leading to over-reliance on single contractor. It may reduce the scope for innovative responses and exclude some potential tenderers who would be capable of meeting the performance levels required in a more cost effective manner, depriving Government of the chance to obtain more competitive tenders. It may also require products to be custom designed at additional cost rather than making use of goods available in the market, hence not conducive to achieving the best value for money for Government; and
- (e) to encourage competition and minimise entry barriers (particularly for start-ups and SMEs), as a general rule, tenderer's experience should not be set as an essential requirement in non-works procurements, irrespective of value. If it is absolutely necessary, prior approval must be sought from the relevant tender board/DTC (for procurements adopting marking schemes under tendering procedures) or public officers (normally at directorate level) designated by COs (for procurements not adopting marking schemes under tendering procedures or for procurements under quotation procedures irrespective of the use of marking schemes). The justifications for seeking exception from the general rule and the grounds for approval should be properly recorded. Where appropriate, tenderer's experience may be set as an assessment criterion in the marking scheme as a desirable feature.
- (f) consideration should be given, as far as possible and where economically rational, to avoiding single-use disposal items and procuring stores —
 - (i) with improved recyclability, high recycled content, reduced packing and greater durability;
 - (ii) with greater energy efficiency;
 - (iii) utilising clean technology and/or clean fuels;
 - (iv) which result in reduced water consumption;
 - (v) which emit fewer irritating or toxic substances during installation or use; or
 - (vi) which result in smaller production of toxic substances, or of less toxic substance, upon disposal.

4. In general, there are four categories of specifications —

- (a) *Functional Specifications*

These outline the proposed function or role to be performed by the goods, services and revenue contracts in helping the end-user to achieve the desired outcome. They focus on what is to be achieved rather than how it is to be done.

(b) *Performance Specifications*

These detail the required performance characteristics and performance parameters by specifying details of operating input or output required, but not the method to achieve them or how they should be manufactured or provided. For example, the performance specifications for wire may require it to withstand a given temperature, have a designated level of resistance to abrasion and have a given level of conductive capability. No mention needs to be made of the material to be used or how the wire is to be manufactured.

(c) *Material Specifications*

These state the physical characteristics of the specific materials to be used for manufacturing the goods.

(d) *Technical Specifications*

These provide a physical description of the items required, such as size, capacity, tolerances and strength. Technical specifications may include detailed plans, designs and technical drawings.

5. The use of material and/or technical specifications is unavoidable in some tenders, particularly where compatibility with existing equipment is required. However, the use of such specifications at the outset might limit innovative solutions or new technologies or products which tenderers might be able to offer, and restrict competition. In preparing tender specifications, departments should use functional and performance specifications, supplementing them by a material or technical specification only if absolutely necessary. Where design or descriptive characteristics are used in the technical specifications, departments should indicate, where appropriate, that it will consider tenders of equivalent goods or services that can be demonstrated to fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documents. Where dimensions or other measurable characteristics are critical to performance, a permitted range rather than a fixed dimension should be used wherever possible.

6. In drawing up specifications, particularly for mission-critical or high-value contracts, departments —

- (a) are encouraged to research the market or conduct non-binding EOI exercises for likely sources of supply and other relevant information on current features of the goods or services to be procured and technological trends. Market research or EOI may be particularly warranted for contracts with poor tender response in the past procurement exercise, or for cases where the potential for innovation of the procurement needs to be further assessed. This might occasionally involve the department discussing with contractors/suppliers/service providers how particular functional and performance requirements can best be met;
- (b) should use functional and performance requirements in the specifications, with a distinction drawn between mandatory and desirable features. Mandatory features are those features that are so fundamental or essential to the acceptability of the tender that non-compliance with any of them will render the tender non-conforming. Desirable features are not standards or specifications that must be met but normally take the form of assessment criteria in the marking scheme and more technical scores will be given if the tenderer can provide more desirable features with performance better than the specified level. Once accepted, the successful tenderer will be required to incorporate the desirable features in providing the stores or services, or in performing the revenue contracts;
- (c) should specify in the tender document all the essential requirements as well as the consequences that non-compliance with any of the specified essential requirements will render the tender non-conforming. These requirements must be made known to the potential bidders in the invitation for procurements. Mandatory features which must be proposed and met, requirements which must be complied with and documents which must be submitted at the time of tender opening must be specified as “essential requirements”. Given that non-compliance with a requirement specified as an “essential requirement” will render the tender non-conforming, departments should vigorously assess whether a requirement should be specified as an “essential requirement”. Use of separate sealed envelopes for technical and price proposals should not be specified as an “essential requirement” since, subject to appropriate measures being adopted to ensure the integrity of the tender evaluation process, permission of compliance after tender opening will neither give rise to manipulation nor affect the outcome of the tender evaluation. Those requirements which can be complied with after tender opening should be specified as “requirements”, but not “essential requirements”. To discourage late submission of missing documents (such as copies of required documents where the original has been submitted, certificates, licences or proof of minimum experience) which should be requirements but not essential requirements, departments may state in the tender document that failure to comply with the requirements may (but not “will”) render the tender non-conforming. If in doubt whether a tenderer should be disqualified for such failure, advice from the D of J or, in the case of works tenders, LAD(W)/DEVB should be sought;

- (d) where departments consider it appropriate to allow tenderers to make alternative proposals which could better meet their requirements, should include in the tender documents a standard clause that alternative proposals will be considered by the Government and may be offered; and
- (e) should determine the evaluation criteria before inviting tenders and include an outline of the evaluation criteria in the tender documents to assist tenderers in preparing their tenders. Where departments consider it necessary to evaluate the technical and price aspects of tenders separately, including the use of a marking scheme, they should follow guidelines set out at Appendix III(G) and adopt a two-envelope approach where appropriate.

Other Considerations

7. Apart from tender specifications, departments, in drawing up the terms and conditions for inclusion in tender documents, should have special regard to the following —

(a) *Duration of contract*

Market conditions should be taken into account in determining the length of the contract. Where market developments are characterised by the presence of a large number of potential tenderers and rapid technological improvements, it may be appropriate to adopt break clauses to give flexibility to take advantage of favourable trends and avoid being committed to products that may become obsolete quickly. When the barriers to enter into the market are high for a tenderer, such as the requirement to invest substantially in capital assets, the department should consider letting a longer contract in order to generate more interest among potential tenderers and to enable them to offer more competitive prices.

(b) *Price adjustment*

A price adjustment clause may be used where wages, material costs or other major determinators of market prices are prone to rapid and substantial fluctuation or adjustment. For non-works contracts of a duration of one year or less, it is usually not necessary to provide for a price adjustment. For capital works contracts, provisions for price adjustment may be made irrespective of the contract duration.

(c) *Payment schedule*

Where applicable, milestone payments related to performance targets should be used. A contract may be divided into several stages and payment be made after the completion of a particular stage.

(d) *Over-reliance on single contractor*

In case of re-tender, departments should, in the light of the degree of market competition in the past procurement exercises, review and refine the tender specifications as well as essential requirements and marking scheme with a view to encouraging competition.

(e) *Bundling vs splitting into smaller contracts*

While larger contracts created through bundling of say different geographical districts or venues may achieve better economy of scale, considerations should also be given to whether splitting them up into smaller ones will enable more new comers, such as start-ups or SMEs, to enter the market and hence more choices for the Government. In no circumstances should a contract be spilt with the intention of totally or partially excluding it from the application of the WTO GPA.

(f) *Exclusion of a contractor/supplier/service provider*

Departments may consider including a clause to reserve the right for the Government to exclude a contractor/supplier/service provider from a tender exercise on grounds such as:

- (i) bankruptcy;
- (ii) false declarations;
- (iii) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (iv) final judgements in respect of serious crimes or other serious offences;
- (v) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the contractor/supplier/service provider; or
- (vi) failure to pay taxes.

Guidelines for Adopting a Marking Scheme for Tender Evaluation (SPR 221A, 350(h), 370(c) and 445(d))

Introduction

To ensure adequate room will be in place in the tender evaluation process to assess innovative suggestions, departments are encouraged to adopt marking schemes. Marking schemes should be clear and objective so as to provide a level playing field for bidders and encourage innovative suggestions. In formulating marking schemes, departments should bear in mind user-friendliness and ensure that they are commensurate with the nature, scale and value of the tender concerned.

Standard Marking Scheme Framework (SMS Framework) for the procurement of stores, services (excluding works contracts) and revenue contracts

2. The SMS Framework is provided in FC No. 2/2019 (as may be updated from time to time). The SMS Framework sets out the limitations on the use of essential requirement(s), the normal range of technical and price weightings, the permitted range of marks in respect of different assessment criteria and the guidelines on giving marks and setting passing marks, etc. It is applicable to the procurement of stores, services (excluding works contracts) and revenue contracts. For the avoidance of doubt, if a marking scheme is adopted for stores, services (excluding works contracts) and revenue contracts under quotation procedures set out in Chapter II, departments should also follow the SMS Framework.

3. Marking schemes formulated according to the SMS Framework do not require approval from the relevant tender board/DTC (or directorate officer for adopting marking schemes under quotation procedures). Any deviation from the SMS Framework will be subject to the prior approval of the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures). Justifications for the proposed deviations must be provided and recorded.

4. Departments are encouraged to adopt marking schemes to assess bidders' proposals for service contracts that rely heavily on the deployment of non-skilled workers. If departments opt to adopt a marking scheme for this type of contract under the tender procedures or quotation procedures, the SMS Framework should be followed, unless otherwise approved by the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures). For this type of contract, departments should observe other requirements set out in FC No. 3/2019.

5. Departments may draw up their own departmental procedures on the endorsement of marking schemes to ensure compliance with the SMS Framework. The procedures should be approved by DGL in accordance with SPR 126. As specified in SPR 350(a) and SPR 350(h), non-works tenders not adopting marking schemes or setting essential requirements on tenderer's experience for procurement should be approved by public officers (normally at directorate level) designated by COs.

6. Submission to the relevant tender boards/DTCs (or directorate officers for adopting marking schemes under quotation procedures) to approve any deviation from the SMS Framework shall include a brief description of the goods or service to be procured, its estimated value, tentative tender program, findings of a market research (if any), details of the deviations from the SMS Framework and justifications for such deviations, where appropriate.

Marking Scheme for Works Tenders

7. For works tenders, departments should follow the provisions in the relevant DEVB TC(W) and any subsequent amendments issued by DEVB from time to time in deciding whether and how to apply marking schemes for evaluating such tenders.

8. All marking schemes, including deviation from the standard ones (i.e. paragraph 9 of the Appendix), have to be approved by the relevant tender boards. Submissions to the relevant tender boards on the use of a marking scheme or deviation from the approved standard marking scheme shall include a brief description of the scope of works, its estimated value, tentative tender program, findings of the market research (if any), justifications for the use of the marking scheme, proposed weighting for technical and price assessments, assessment criteria and their relative weighting, and passing marks for assessment criteria (if any), where appropriate.

Standard Marking Scheme for Individual Procurement

9. If considered appropriate, departments may seek the approval of the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures) for adoption of a standard marking scheme (including marking schemes that deviate from the SMS Framework) for particular types of works or non-works contracts. The standard marking scheme, if approved, may be used in future procurement exercises for the same type of contracts.

Design of Marking Schemes for Tender Evaluation

10. In formulating a marking scheme, the assessment criteria should be drawn up in consistent with basic government procurement principles set out in SPRs 106 – 109. They should be able to differentiate the relative merits of tenderers' technical proposals and obtain better value for money for Government. The assessment criteria should be objective and as far as possible quantifiable. Assessment criteria that may have the effect of favouring incumbent contractors should be avoided. Proposals committed by the recommended tenderer under the marking scheme should be incorporated into the contract and enforceable by the procuring department as part of contract management. The enforceability of these proposals and the administrative costs involved should hence be taken into account by the department in developing the assessment criteria.

11. Departments should state in the tender documents the use of a marking scheme in tender evaluation with an outline of the evaluation criteria to assist tenderers in preparing their tenders. In line with the basic government procurement principle of transparency, departments should provide information including descriptions of assessment criteria and their individual technical marks, passing marks set for technical assessment (if any), formula to be used to calculate the technical/price scores, technical to price assessment weighting, etc. Once the marking scheme is published, departments should adhere to the evaluation basis set out in the marking scheme in deciding on the award of contract.

Two-envelope Approach for Submission of Tenders

12. Since the use of a marking scheme invariably involves a technical evaluation conducted separately from the tendered sum comparison, a two-envelope approach should be adopted when requiring the tenderers to submit their tenders, i.e. technical and price information should be submitted in separate envelopes. Under the two-envelope approach, departments shall ask the tenderers to enclose all the information and documents required for price assessment in sealed envelope(s) with the clear indication that it contains the price information; and to enclose all the other information including those required for technical assessment in separate sealed envelope(s) with the clear indication that it contains the technical information. Normally departments should not open the envelopes containing the price information until the completion of technical assessment. When departments, having regard to exceptional circumstances, consider it necessary to open the price envelope(s) prior to completion of the technical assessment because of the urgency of the exercise, departments should ensure that assessment of the technical and price proposals should be carried out by separate teams which should not communicate with each other until after completion of their assessment. The prior approval of the relevant tender board/ DTC (or directorate officer for adopting marking schemes under quotation procedures) has to be obtained for any such arrangement. For works contracts, departments should follow the guidelines promulgated in relevant DEVB TC(W).

Scoring Methodology for Technical and Price Proposals

13. Price proposals should only be opened and assessed after completion of the technical assessment. Any exceptional arrangement such as those in paragraph 12 above should be fully justified and require the prior approval of the relevant tender board/DTC (or the relevant directorate officer under quotation procedures).

14. TAPs should apply pre-determined weighting given to the technical and price assessment. In normal circumstances, the contractor meeting the essential requirements in full and obtaining the highest overall score should be recommended.

15. The following method should be adopted for calculating the technical and price scores in tender evaluation —

(i) Technical score

Formula :
$$\frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark among the conforming tenders}} \times \text{Technical weighting}$$

Example :

Price to technical weighting : 50 : 50

Maximum mark for technical assessment in the marking scheme : 100

Tenderer A obtains 90 marks
(the highest mark of all conforming tenderers)

Tenderer B obtains 60 marks

Tenderer A's technical score : $\frac{90}{90} \times 50 = 50$

Tenderer B's technical score : $\frac{60}{90} \times 50 = 33.33$

(ii) Price score

Formula :

$$\frac{\text{Lowest tender price among the conforming tenders}}{\text{Tender price of the tender being assessed}} \times \text{Price weighting}$$

Example :

Price to technical weighting : 50 : 50

Tenderer A's price proposal
(the lowest price of all conforming tenderers) : \$5,000,000

Tenderer B's price proposal : \$6,000,000

Tenderer A's price score : $\frac{\$5,000,000}{\$5,000,000} \times 50 = 50$

Tenderer B's price score : $\frac{\$5,000,000}{\$6,000,000} \times 50 = 41.67$

Contract Award

16. When a marking scheme is used to assess tenders, departments shall follow the evaluation basis set out in the tender documents to award the contracts for that procurement. The tenderer who has submitted a conforming offer with the highest overall score (i.e. the sum of price and technical scores) under the marking scheme should normally be awarded the contract. For tenders for service contracts that rely heavily on the deployment of non-skilled workers, if two or more tenderers obtain the same overall score after technical and price assessments, the tenderer which obtains the highest score in technical assessment should normally be awarded the contract.

Guidelines on Tender Assessment Panels (TAP) (SPR 370(a) and 440(c))

Establishment of TAP

Departments should normally establish a TAP¹ for the evaluation of tenders/ consultancy proposals. A TAP should consist of not less than two persons. Where necessary, departments may set out specific terms of reference for the TAP (e.g. whether the Chairman is a marking or non-marking member at the appointment of the TAP, and the role and responsibilities of TAP members if not all TAP members will take part in the scoring of a particular assessment criterion).

2. To safeguard the integrity of the procurement exercise, a TAP should comprise government officials only. Departments should ensure that only properly qualified persons are appointed to assess the technical submissions. Where a two-envelope approach is used, departments may consider whether separate teams should be set up within the TAP to assess technical and price proposals respectively.

3. Under special circumstances such as handling innovative proposals from tenderers, advice may need to be sought from technical experts outside the Government. In determining the need to engage an outside technical expert, the department should explore and ascertain whether the expertise is available within the Government, the merits and the cost-effectiveness of engaging the outside technical expert. Outside technical experts may be engaged only if the required expertise is not available within the Government. If it is considered necessary to engage an outside technical expert to serve as a technical advisor, departments should set out clearly the role of the technical advisor in the procurement process and the specific assessment criteria that require advice from him. The technical advisor may be engaged before or after receipt of tenders, to be agreed by the TAP having regard to the need of the operation of the TAP. To enable the technical advisor to render useful advice, he may have access to tender information relevant to the assessment criteria that his advice is required. In any case, the technical advisor should not give marks to any assessment criteria or have access to price proposals submitted by tenderers.

4. TAP Chairman and members should observe the requirements laid down in Chapter IA of SPR and avoid conflict of interest in government procurement. TAP Chairman and members should declare any actual, potential or perceived conflict of interests as soon as they take up the duties and as soon as they become aware of such actual, potential, or perceived conflict of interest. If a technical advisor outside the Government is engaged, departments should ensure that sufficient safeguards are in place to avoid conflict of interest in the procurement exercise. In particular, the technical advisor should sign an undertaking to confirm, amongst others, the absence of any actual, potential or perceived conflict of interest situations in the procurement exercise. A sample of the undertaking is at Appendix I(C).

¹ Include both Tender Assessment Panel for tender exercises and Assessment Panel for consultants selection exercises.

5. Declarations/undertakings of TAP members and technical advisor should be drawn to the attention of TAP Chairman while the declaration of the TAP Chairman should be drawn to the attention of his supervisor. All such declarations/undertakings and follow-up actions taken (if any) must be recorded and filed properly before proceeding to the next stage of the tender process/ consultants selection process.

6. The membership of the TAP, the declarations/undertakings made by the TAP and the technical advisor as well as the specific terms of reference of the TAP (if any) should be covered in the submission(s) to the DTC, DCSC, tender board or consultants selection board when seeking approval in relation to the marking scheme (if applicable) and for the proposed award of the tender / appointment of consulting firm. The procuring department should take into account comments offered by the DTC, DCSC, tender board or consultants selection board as appropriate.

Evaluation by TAP

7. The assessment criteria adopted in a marking scheme should be objective and quantifiable as far as possible. Where practicable, tender documents / consultancy briefs should be drawn up to allow assessment to be made without the TAP knowing the identity of the bidders.

8. TAP members should be conversant with the assessment criteria. To facilitate the assessment of technical proposals by TAP members on a consistent basis according to the pre-determined assessment criteria, the TAP Chairman may arrange briefing for TAP members as appropriate before evaluation of tenders / consultancy proposals.

9. TAP members should score the technical proposals submitted by tenderers individually in accordance with the approved marking scheme. For non-works procurements, in case the procuring department considers that a collective assessment by the full TAP in accordance with the marking scheme is necessary, it should seek prior exceptional approval from the DTC, DCSC, tender board or consultants selection board (or the relevant directorate officer if a marking scheme is used under quotation procedures) before evaluation of technical proposals.

10. Before proceeding to evaluation, TAP should agree on the mechanism for consolidating the marks given by individual TAP members to derive the overall technical score for a tenderer. For example, TAP may take the average mark given by TAP members as the overall technical score awarded to a tenderer.

11. To facilitate better understanding of the tender proposals (such as the innovative suggestions), TAP may invite the bidders to make a verbal presentation/demonstration after the tender closing date. Bidders may introduce, explain and clarify their tender proposals during the presentation/demonstration. In no circumstances should additional information or new/amended proposal not set out in their tender submissions be accepted. If a technical advisor outside the Government has been engaged, the bidders should be informed of the presence of the technical advisor. Unless the presentation/demonstration is an essential requirement set out in tender documents, bidders refusing to offer presentation/demonstration should not be disqualified on ground of their refusal. TAP should evaluate the tenders according to the assessment criteria set out in the tender documents. Normally, the presentation/demonstration will not be taken into account in marking. If the presentation/demonstration will be taken into account in the marking as pre-determined and specified in the marking scheme and tender documents, TAP should ensure that the evaluation of the presentation/demonstration should be based on the tender specifications and the pre-determined assessment criteria.

12. Normally, TAP members should meet to deliberate the tenders / consultancy proposals received. The TAP Chairman may decide whether the technical advisor outside the government should be invited to join the TAP meeting or provide input in writing. In the former case, the outside technical advisor should only take part in the deliberation of the areas where his expertise is required. The TAP Chairman should facilitate deliberation amongst TAP members with a view to making recommendations to the DTC, DCSC, tender board or consultants selection board. In case there are substantial differences in marks given by individual TAP members according to the marking scheme, the TAP Chairman should check whether the assessment was based on the same understanding of the marking scheme or the information contained in the tenders/ consultancy proposals received. This is to ensure that evaluation is made on a consistent basis. If the differences remain after checking, the marks given by individual TAP members should be consolidated based on the agreed mechanism referred to in paragraph 10 above. TAP's deliberations and decision should be properly documented.

13. A TAP is responsible for making recommendation(s) to the DTC, DCSC, tender board or consultants selection board for the tender / consultants selection exercise under its purview. If there is a division of opinion on a contract award between TAP members, the differing views should be submitted by the TAP along with TAP's recommendation(s) for review by the DTC, DCSC, tender board or consultants selection board.

**Guidelines for Financial Vetting of Recommended Tenderers
for Service Contracts
(SPR 370(b)(i))**

Introduction

To safeguard Government's interest, we have to ensure that a tenderer recommended for the award of a service contract of a significant value is, in addition to its technical capability, financially capable of completing the contract by conducting financial vetting in respect of the recommended tenderer by a public officer of the Treasury Accountant grade including a non-civil service contract staff who is performing accounting/financial duties.

Applicability

2. Except for consultancy services and works contracts, these guidelines apply to all service contracts of a value exceeding \$15 million. Examples of service contracts include contracts for the management and operation of carparks, provision of cleaning services, etc. For the purpose of these guidelines, a contract for supply of stores is classified as a service contract if the contract requires also the provision of services of a value above \$15 million. These guidelines should be read together with the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time). Departments may also draw reference to these guidelines if financial vetting is considered necessary for revenue contracts.

Financial Vetting

3. When inviting tenders for a service contract of a value exceeding \$15 million, departments should include in the tender document the conditions that tenderers have to demonstrate their financial capability and/or provide the specified contract deposit before they can be considered for the award of the contract. For contracts where periodic financial vetting is required, departments should also stipulate the frequency of the financial vetting in the tender document.

4. For the purpose of financial vetting, departments should require tenderers to provide the following information —

- (a) audited financial statements of the tenderer, and the audited consolidated financial statements of the group if the tenderer is a subsidiary of another company, for the past three years. The financial statements shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in the HKSAR and the requirements of the Companies Ordinance, Cap. 622; and

- (b) projected statement of profit and loss and other comprehensive income and statement of cash flows of the contract for each contract year and pre-operating period (if applicable), and if necessary, of the company during the contract period, showing the revenue, operating expenses, capital expenditure including the initial investments and the sources of finance.

5. For contracts which require significant working capital for financing its operation, such as the management contract for tunnels let by the Transport Department, the following information will also be required of the recommended tenderer —

- (a) supporting letter(s) from the tenderer's banker(s) as to the availability of credit facilities and the undrawn balance as at a particular date (shortly before the submission of tenders) and/or a commitment in principle to provide credit facilities for the contract; and
- (b) guarantee by the major shareholder(s) of the tenderer as security for the due and faithful performance of the contract, as and when required. In determining the amount of guarantee required, departments should consider, inter alia, the additional costs to be incurred by Government in the event that the successful tenderer fails to commence operation or defaults during the term of the contract.

6. In assessing the financial capability of a tenderer, departments should establish the following of the tenderers —

- (a) the past and projected earning performance;
- (b) the financial strength; and
- (c) the financial arrangements including the degree of the tenderer's financial commitment to finance the investment and operation of the contract.

Departments should refer to the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time) for details when conducting financial vetting for service contracts.

7. Tenderers who have passed the financial vetting should be required to pay a contract deposit (in the form of cash) or submit a performance bond (in the form of a guarantee arranged by a bank, insurance company, or the parent company which has been assessed to be financially capable) at 2% of the contract value as an additional protection of the Government's interest. For tenderers who have failed the financial vetting, or who are unable to provide adequate financial information for a meaningful assessment to be conducted (e.g. newly established companies), they should be required to pay a contract deposit or submit a performance bond at 5% of the contract value for low risk contracts, or 6% for high risk contracts.

8. The contracts or contract types which are considered to be high risk include, without limitation mission-critical, emergency-related or health-related contracts (for example, systems that relate to law and order, life and death and social security payments), and contract types with high concentration risks (for example, where the lion's share of contracts for like services awarded by the same department is dominated by one or two contractors, where there was only one conforming bid in the past two consecutive tender exercises, or where the award of a high-value contract will render the successful tenderer dominant). COs or designated directorate officers would be the authority to determine, **before** tender invitation, whether a contract or contract type is high risk and whether a 5% or 6% contract deposit should be required.

9. Procuring departments are required to conduct periodic financial vetting for contracts of high risk and long duration, with a view to ensuring that the contractor concerned remains financially healthy. As a general guideline, periodic financial vetting should be conducted for contracts lasting more than five years at three-year intervals. If a contractor fails the periodic financial vetting, procuring departments should check if any obvious irregularities have emerged (such as a drastic or continuous reduction in profitability, working capital and/or employed capital, discontinuation of related business operations, increase in customer complaints, etc.), and step up monitoring measures where necessary, such as conducting regular interviews with employees under the contract to see if their wages are paid in a timely manner, expanding the sample size for checking the service records (e.g. attendance log books), with a view to detecting early signs of default and taking appropriate actions if warranted.

Exception

10. Where the recommended tenderer has a net worth of 20 times more than the value of the contract, the financial vetting procedures described in paragraph 6 above may be waived on condition that it has passed the profitability, liquidity and gearing ratio tests. Please refer to the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time) for details. Exceptions to the arrangements on financial vetting and contract deposit are allowed, but only where the Controlling Officer is personally satisfied that the deviation is justified and such decisions are to be recorded.

Tender Report

11. In making their recommendation on the award of a service contract, departments should confirm in the tender report that financial vetting of the recommended tenderer has been carried out based on the information submitted and that the tenderer is considered financially capable. Where financial vetting has not been conducted, the tender report should include an explanation as to why this was not undertaken.

12. In case a contractor fails to complete a service contract because of a financial problem, the procuring department should review whether the financial problem should have been revealed in the assessment of the financial capability of the contractor at the tendering stage and assess the loss to the Government as a result of the contractor's failure to complete the service contract. The result of the review should be sent to the DAS.

**Standard Tender Report Format
(SPR 375(a) and 380(e))**

(Note : Departments may provide additional information having regard to the individual circumstances of their tenders and delete those part(s) in this tender report format which is/are not applicable to their tenders.)

RESTRICTED (TENDER)

MEMO

From : Head of Department/Chairman, To : Chairman, Tender Board/
Tender Assessment Panel of Departmental Tender Committee
Procuring Department

**Contract Title
Tender Reference/Contract Number**

A. Type and Duration of Contract

— Example : This is a 3-year service contract at an estimated value of HK\$26.9 million with provision for price fluctuation adjustment based on Consumer Price Index (A).

B. Brief Description of Contract

- For goods or service tenders, give a brief description of the goods or services required, user departments, delivery schedule, etc.
- For revenue tenders, give a brief description of the venue or location, method to calculate revenue, etc.
- For works tenders, give a brief description of the scope of works and location of the project, and state whether the contract is subject to the “pay for safety and environment” scheme.
- State the importance and sensitivity of the contract and any special tendering and contract requirements which have affected the tender recommendation, if applicable.
- Highlight the initiatives that have been incorporated in the tender requirements to promote innovation, if any, the major changes in essential requirements, the marking scheme used (including deviations from the SMS Framework, if applicable), tender requirements and specifications as compared with the previous tender exercise, if applicable, and provide reasons for such changes.

- Provide details of any observations/comments made by the tender board/DTC in the previous tender exercise, if applicable, and state how such observations/comments have been addressed.

C. Authority to Invite Tenders

- For prequalified, restricted or single tendering, or when parallel tendering is adopted for contracts other than works contracts funded under the Capital Works Reserve Fund, quote the approving authority and provide a summary of reasons. When parallel tendering is not adopted for works contracts funded under the Capital Works Reserve Fund, quote the approving authority and provide a summary of reasons.
- For selective tendering, state the title(s) of the approved list(s).
- State whether the tender is subject to WTO GPA.

D. Details of Invitation

- Date(s) and mode(s) (e.g. Gazette, internet, newspaper, etc.) of tender invitation.
- The number of invitations issued (if not by Gazette notification).
- Closing date (original and extended, where applicable) for receipt of tenders, and if extended, the reasons.
- Date of expiry of validity, and if extended, the revised date of expiry and the reasons for extension.
- Expiry date of patent, if there is a patent.
- Reasons for delay in submitting the tender report, if applicable.

E. Details of Tenders

- State whether pre-tender market research or non-binding EOI exercise has been conducted. If positive, the tender requirements that have been incorporated to promote competition and innovation arising from the market research or non-binding EOI exercise.
- State the number of tenders received and withdrawn, if any. If only one or very few tenders have been received, state the estimated number of potential tenderers, the reasons for the poor tender response (if known) identified in the pre-tender market research or non-binding EOI exercise and the measures that will be taken to enhance tender participation in future tender exercises.

- List the tenderers in the form of a comparative statement showing the tendered sums quoted by each tenderer, starting with the lowest for goods or services tender or the highest for revenue tender, discrepancies in tenders, etc., supplemented by an enclosure if necessary. If there are corrections to the tendered sums, provide details and attach copies of tenderers' letters confirming their willingness to abide by the corrected tendered sums. List the tenders according to the corrected tendered sums alongside the original tendered sums.

F. Tender Evaluation

- State the composition of the TAP and the advice obtained from technical advisor outside the Government, if any.
- State the specific terms of reference of the TAP, if any.
- State the evaluation criteria and basis of acceptance under the terms of tender, and provide a copy of the marking scheme, and restriction on contract award, if applicable. Give reasons for not using marking schemes, if applicable.
- Provide details of each stage of the tender evaluation. Give reasons for not considering tenders with non-compliance with tender requirements and specifications, supplemented by an enclosure, if necessary.
- Provide details of innovative suggestions proposed by tenderers and the TAP's assessments, if applicable.
- If the tendered sums are very close and there are considerable differences in the pricing of individual items or when tenders are considered 'front-loaded', conduct a discounted cash flow analysis to confirm that the net present values of the tendered sums do not change the position of the recommended tenderer. If however the position changes after the discounted cash flow analysis, the present value of the tendered sums should prevail in determining the ranking of tenders. If there are reasons for not conducting a present value calculation, state these reasons.
- Confirm that post-tender closing contacts/clarifications with tenderer(s), if any, were conducted in accordance with the relevant tender terms and SPR 365 and explain briefly why such clarifications are required.
- Provide details and results of any negotiations with tenderer(s) if prior approval to conduct tender negotiations has been obtained from the appropriate authority.

G. Recommendation

- State the recommendation on the tender to be accepted.
- Provide detailed reasons for not recommending acceptance of the lowest (highest for revenue contracts) conforming tender, or the tender of the highest overall scorer when a marking scheme is used for tender assessment.

- Confirm that the tender recommended for acceptance complies with the tender terms, conditions and specifications. If not, state where the tender fails to comply and explain.
- Confirm that the recommended tenderer is suitable for performing the contract having regard to its performance records, if any. For works tenders, check all the performance reports of government contracts and relevant Housing Authority contracts undertaken by the recommended tenderer during the preceding five years and state the total number of these contracts together with a summary of any adverse report(s) issued under these contracts. State the reasons why a tender is recommended despite the tenderer has been given adverse report(s) for other contract(s). If the recommendation is a controversial one, e.g. if a recommendation is made against the advice of consultants or if the lowest (highest for revenue contracts) conforming tender or highest overall scorer as appropriate is not recommended for acceptance, departments/TAP should comment on the suitability of other tenderers whose tenders are nearest to the lowest (highest for revenue contracts) conforming tender or highest overall scorers as appropriate so that the relevant tender board/DTC may decide on the acceptance without referring the tender report back to the department/TAP.
- State any other special circumstances or important assumptions/considerations governing the recommendation, any complaint(s) received relevant to the tender exercise and how such complaint(s) has/have been handled.
- For works tenders, confirm that the recommended tenderer has been financially vetted by Chief Treasury Accountant, DEVB (Works Branch), and state the vetting result.
- For service contracts with a value exceeding \$15 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$15 million, confirm that the recommended tenderer has been financially vetted in accordance with the terms of tender and that the tenderer is considered financially capable. State the vetting result and the amount of contract deposit or performance bond, as a percentage of the contract value, that is required from the tenderer. Where financial vetting has not been conducted, or where the stipulated percentage under SPR 362(b) is not followed, explain why.
- For revenue contracts, in case financial vetting has been conducted, state the vetting result and the amount of contract deposit or performance bond, as a percentage of the contract value, that is required from the tenderer.
- For works tenders, confirm the status of the recommended tenderer on the respective approved list(s) of contractors and that the recommended tenderer is not suspended from tendering under the provisions of the prevailing DEVB TC(W) relating to the employment of illegal workers or having illegal workers on sites under its control, site safety, Employment Ordinance, etc.

- If special references to a tenderer's conviction records have been made in the report (e.g. as a major consideration for not accepting its tender even though it is the lowest conforming tender/highest overall scorer), attach a list of convictions for the related offences under the relevant Ordinances and summarise the number of such convictions in respect of the concerned tenderer during the specified period (as promulgated in relevant FCs, FSTBCM or other relevant memoranda issued by FSTB, or concerned DEVB TC(W) issued by DEVB which would be updated from time to time) prior to the tender closing date.
- For works tenders, state the aggregate value of the outstanding works of the contracts which the recommended tenderer has in hand if the recommended tenderer is of probationary status or subject to a financial limit on contract values for other reasons, and whether the value of the contract in question exceeds the allowed limit.
- For cancellation of tender exercise, state the reasons, the way forward and the legal advice obtained.
- For tenders subject to WTO GPA, confirm that the requirements of WTO GPA have been complied with.

H. Comparison with the Estimate and Similar Contracts

- For works tenders, state the following sums and compare the recommended tendered sum with the sum allowed for the contract and the pre-tender estimate. Explain the reasons for any significant difference (i.e. with a difference of $\pm 10\%$ or more), where applicable —
 - (a) Recommended tendered sum : \$
 - (b) Sum allowed for this contract in the approved project estimate (month/year of approval) : \$
 - (c) Pre-tender estimate (month/year of preparation) : \$
- Explain the basis on which the pre-tender estimate is drawn up.
- Compare the recommended tendered sum/rates with the pre-tender estimate and the award contract sum of the previous contract or those in similar contracts (month/year of award), whichever is applicable, and explain the difference, where applicable. If a price comparison cannot be made, this should be stated and explained.
- Compare the recommended tendered sum with the second and third lowest (highest for revenue contracts) conforming tenders/highest combined scorers, where appropriate.

- Confirm with analysis that the recommended tendered sum is fair and reasonable, and explain why it is considered realistic to accept the tender if the tendered sum is significantly higher or lower than the pre-tender estimate, the award contract sum of the previous contract or the sum allowed for the contract in the approved project estimate.

I. Claims History (for works tenders exceeding \$100 million in value only)

- State the number of performance reports on the recommended tenderer with claim attitude marked as unreasonable in the preceding five years. Confirm whether the recommended tenderer has demonstrated a reasonable claim attitude, or otherwise, on an overall basis taking account of any reported ‘claims-conscious’ attitude, frivolous or vexatious claims or unjustified pressure on the Government in the manner in which claims were pursued. Where there is no record, this should be stated in the report.

J. Availability of Funds

- For works tenders, state the following and confirm whether a revision of the approved project estimate will be required, if the tendered sum is greater than the sum allowed for the contract —
 - (a) Recommended tendered sum : \$
 - (b) Approved project estimate (month/year of approval) : \$
 - (c) Sum allowed for the contract in the approved project estimate : \$
 - (d) Funds in (financial year) Estimates under
Head ____/Subhead ____ : \$
- For other tenders (except revenue contracts), confirm that funds are available and the vote to be charged.
- For tenders invited before funding is secured, state the expected date of obtaining the funding approval.

K. Declaration of Interest

- Confirm whether public officers involved in preparing tender documentation (including tender specifications and marking scheme), assessing tenders and conducting negotiations have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.
- Confirm whether the outside technical expert(s), if any, involved in assessing tenders have declared their interest in accordance with Appendix III(G)1, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.

- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of tender and contract documents and in the tender exercise.

L. Name and Telephone Number of Contact Officer

- Nominate public officer(s) to answer questions from the tender board/DTC or attend board/committee meetings for this item, if necessary. The telephone numbers of the nominated officer(s) should be provided.

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Signed by a directorate officer*
for Head of Department/
Chairman, TAP of Procuring Department

- * Tender reports which are submitted for consideration by CTB and subsidiary tender boards should be signed by a directorate officer. Tender reports which are submitted for consideration by DTCs should be signed by the Chairman, TAP of the procuring department.

Guidelines for Tender and Contract Negotiations
(SPR 296, 385(n), 455(e) and 525)

Public officers authorised (under SPR 296, 385, 455(e) or 525) to conduct negotiations with tenderers and contractors shall observe the following guidelines when preparing for and conducting negotiations with tenderers and contractors —

- (a) Be clear about what is intended to be achieved from the negotiation. For example, this can be a reduction of tender price, a change to the payment terms, removal of a counter-proposal (e.g. restriction of liability) from the tenderer or adjustment to the price for additional requirements of items or service.
- (b) Draw up a checklist of the items to be discussed. The tenderers and contractors participating in the negotiations may be given a copy of this checklist so that they know what to discuss and bring the right people to the meeting.
- (c) Determine what the baseline for negotiation should be and seek prior clearance as necessary.
- (d) Consider what fall back positions Government would need to adopt in case the negotiation fell through and plan ahead, for example, by considering the need to extend the contract period of existing contracts, cancel the tender exercise, conduct a re-tender exercise, etc.
- (e) Keep the negotiation team small and limit the number of staff to those who are absolutely essential. There is no need to match the other party in numbers.
- (f) Include a representative from the GLD and/or LAD(W)/DEVB or D of J, if necessary.
- (g) Hold the negotiation in a government office as a normal practice.
- (h) Ensure that the government negotiation team as well as the tenderers and contractors participating in the negotiations know who the leader of the government negotiation team is, and make sure there is only one.
- (i) Hold a pre-meeting so that members of the government negotiation team familiarise themselves with the ground rules and the relative strengths and weaknesses of the parties to the negotiation.
- (j) Do not reveal to tenderers and contractors participating in negotiations the Government's baseline unless a deadlock persists after repeated rounds of negotiations and the negotiation team is satisfied that the disclosure is necessary.

- (k) Do not give tenderers and contractors participating in negotiations conditional treatment based on past or future procurements, except for those already indicated in the tender document.
- (l) Do not furnish to tenderers and contractors participating in negotiations information about other tenderers' prices or technical proposals.
- (j) Keep proper record of the negotiations for audit purpose.

Note (1): The prevailing quotation limits specified in SPR 220 : \$1.4 million for stores and services as well as revenue contracts and \$7 million for services for construction and engineering works. Services for construction and engineering works only cover those services which fall under Division 51 of the United Nations Provisional Central Product Classification Code which is accessible at:

https://www.wto.org/english/tratop_e/serv_e/cpc_provisional_complete_e.pdf

Note (2): 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

AACSB	: Architectural and Associated Consultants Selection Board
CCGO	: Central Cyber Government Office
CCSB	: Central Consultants Selection Board
CO	: Controlling Officer
CTB	: Central Tender Board
D of A	: Director of Audit
DAS	: Director of Accounting Services
DCSC	: Departmental consultants selection committee
DDA	: Departmental disposal authority
DDC	: Departmental disposal committee
DEVB	: Development Bureau
DEVB TC(W)	: Development Bureau Technical Circular (Works)
DGL	: Director of Government Logistics
D of J	: Department of Justice
DSM	: Departmental Stores Manager
DTC	: Departmental tender committee
EACSB	: Engineering and Associated Consultants Selection Board
EDB	: Education Bureau
EffO	: Efficiency Office
EMSD	: Electrical and Mechanical Services Department
EOI	: Expression of interest
FC	: Financial Circular
FSTB	: Financial Services and the Treasury Bureau (The Treasury Branch)

FSTBCM	: Financial Services and the Treasury Bureau Circular Memoranda
GLD	: Government Logistics Department
HKSAR	: Hong Kong Special Administrative Region
LAD(W)/DEVB	: Legal Advisory Division (Works) of the Development Bureau
MA Division	: Management Accounting Division of the Financial Services and the Treasury Bureau (The Treasury Branch)
PS(Tsy)	: Permanent Secretary for Financial Services and the Treasury (Treasury)
SFST	: Secretary for Financial Services and the Treasury
SMEs	: Small and Medium-sized Enterprises
SMS Framework	: Standard Marking Scheme Framework
SPRs	: Stores and Procurement Regulations
TAP	: Tender assessment panel
WTO GPA	: Agreement on Government Procurement of the World Trade Organization