

Tender Procedures for Government Procurement

(Chapter III of the Stores and Procurement Regulations)

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 (i.e. \$1.43 million for stores and services as well as revenue contracts, and \$4 million for services for construction and engineering works⁽¹⁾). 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) briefing out of legal work by the Secretary for Justice; and
 - (vi) employment of individual persons.
- (b) Where procurements are covered by WTO GPA⁽²⁾ 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://fb.host.ccg.hksarg/spr/spr.htm>.

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.
 - (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, departments shall send seven copies of the submission (for example, tender report, application for approval to use marking scheme or conduct prequalification exercise, application for approval of prequalified tenderers) including 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) A subsidiary tender board or a DTC considers and decides on the acceptance of specific tenders up to the financial limit authorised by the PS(Tsy) on CTB's advice.
 - (e) 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.

- (f) Up-to-date information on the membership, terms of reference and financial limits 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>.
- (g) 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 specified in SPR 220(a) with a value not exceeding \$5 million as set out in FC No. 4/2013 (as may be updated from time to time).
- (h) 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.
- (i) COs are authorised to personally approve —
 - (i) the award of all works contracts not exceeding \$21 million each and not subject to WTO GPA; and
 - (ii) the award of works contracts above \$21 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 and restricted tendering, and 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. Selective tendering is usually adopted for works contracts. Notices of tender invitations should be published in the Government Gazette and/or on the Internet, 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. Tenders received from contractors/suppliers/service providers not yet on the approved lists should also be considered, provided that there is sufficient time to complete the qualification procedure. Detailed procedures and requirements on publication of tender notice are set out in SPR 340.
- (b) 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.
- (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 assessment method 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 the ability of the contractors/suppliers/service providers to provide the required services or articles. 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 maintaining approved lists of qualified contractors/suppliers/service providers for selective tendering shall publish the up-to-date lists, the period of validity of the lists, the method of application and assessment and the method for renewal, where applicable, in the Government Gazette and/or the Internet annually, as the case requires. 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 should be allowed at any time and should be dealt with expeditiously. 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, 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 supplies or services or for procuring revenue contracts, for example —
- (i) where there is extreme urgency brought about by unforeseeable events and where the delay that would arise as a result of open tendering would seriously harm the public or security interests of the HKSAR;
 - (ii) where for reasons connected with the protection of copyrights or technical reasons, the products or services can only be supplied by a particular contractor/supplier/service provider and where no reasonable alternative or substitute exists;
 - (iii) where there is no response to an open or selective tender, or when the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from contractors/suppliers/service providers who do not comply with the conditions for participation, on condition that the requirements of the initial tender are not substantially modified in the contract as awarded;
 - (iv) where the equipment or services to be purchased must meet requirements of compatibility or interchangeability with existing equipment or services;
 - (v) where it can be demonstrated that “patent” or “proprietary” items are the only items which can meet the specification;
 - (vi) where services are to be provided by utility companies;
 - (vii) where maintenance is to be executed on patent or specialised equipment and where the warranty of the equipment gives the contractor/supplier/service provider of the equipment the exclusive right to carry out the maintenance service;

- (viii) where lease terms require that work must be executed by a particular firm; and
 - (ix) for tenders with a value not exceeding \$1.43 million (for stores and services) or \$4 million (for services for construction and engineering works), to save administrative costs, where it has been established that the existing contractor is a suitable and cost-effective source of supply.
- (b) Single or restricted tender procedures shall only be initiated with the prior approval of the PS(Tsy) (except in the case of GLD tenders and tenders for the supply of stores not exceeding \$5 million for which authority has been delegated to the DGL and his staff). Requests for inviting single or restricted tenders for the supply of stores exceeding \$5 million 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. Requests for single or restricted tendering should be signed or endorsed by a public officer at directorate level.
- (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; and
 - (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.

Prequalified tendering

330. (a) There may be circumstances which require the prequalification of a list of tenderers 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. If necessary, the invitation may also be published on the Internet, local press and selected overseas journals for the particular trade/product. 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.
- (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.

FUNDING

335. For non-works contracts, COs shall not invite tenders before funding is secured. This requirement does not apply to the funds required for the second and subsequent years. Exceptions have to be approved by the PS(Tsy).

336. For works contracts, the PS(Tsy) has authorised Directors of Bureaux (or their Permanent Secretaries if authorised in writing to do so) to approve applications to initiate tendering (including prequalification) for works contracts before funding is secured, provided the requirements set out in FC No. 2/2009 (as may be updated from time to time) are complied with.

TENDER NOTICES

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 or in the local and/or international press and journals in addition to the Government Gazette, if necessary. 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 prequalification of tenderers in the Government Gazette **and** on the Internet. 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 Nos. 3/2009 and 4/2013 respectively (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 address and telephone/fax number/e-mail address of the office from which forms of tender and further particulars may be obtained, 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 no late tenders will be accepted. They should also be informed of the alternative tender closing date/time as advised by the controlling authority of the respective tender box in the event of a black rainstorm warning signal or tropical cyclone signal No. 8 or above being hoisted 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 less than three weeks for the preparation and submission of tenders as set out in FC Nos. 3/2009 and 4/2013 respectively (as may be updated from time to time). 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 in respect of GLD tenders and tenders for the supply of stores not exceeding \$5 million.
- (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.

- (b) When using standard contract forms to invite tenders, departments may delete or amend any clauses appearing on the form by way of Special Conditions of Contract but only after consulting D of J or, in the case of works tenders, Legal Advisory Division (Works) of DEVB (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 the EU 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, etc.;
 - (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 to be signed and completed by the tenderer;
 - (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 at Appendix III(E)2 in the tender documents.

- (d) Normally, departments should not disclose the estimated contract value to the tenderers as it may become a main guiding factor in the preparation of their tender proposals, which may be reduced or, of even more concern, expand unnecessarily, thus undermining the principles of competition and value for money. If, however, the estimated contract value has been disclosed to the public, departments should, in all fairness, inform all potential tenderers of the estimated contract value.

- (e) If a contract has an estimated value exceeding \$100 million (for goods, services and revenue contracts) or \$300 million (for works contracts), 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 or, in the case of works tenders, LAD(W)/DEVB for vetting before the tender documents are issued to prospective tenderers. If the vetted documents have been substantially amended after they have been issued to tenderers, they should be legally vetted again before the contract is awarded. Any major alteration must be approved by the D of J or, in the case of works tenders, LAD(W)/DEVB.
- (f) COs may decide whether to recover the cost of the tender documents from tenderers.

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 principle of maintaining open and fair competition. Tender specifications shall not be prepared, adopted or applied with a view to or with the effect of creating obstacles to international trade or to competition amongst the potential tenderers.
 - (b) When inviting tenders under whichever tendering mode, departments shall word tender specifications in easily comprehensible general terms based on the functional and performance characteristics of the products 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 trade mark or name, patent, design or type, specific origin, producer or service provider, unless there is no 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 over single contractor. It may discourage the participation of innovative tenderers who are able to deliver the contractual requirements with 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 that will be applied in deciding on the suitability of tenders with distinction drawn between mandatory and desirable features in the tender specifications. Mandatory features are absolutely essential components without which a tender should be deemed non-conforming upfront. Desirable features are normally assessed as evaluation criteria under the technical assessment of the marking scheme.
- (e) For mission-critical or high-value contracts, departments may consider conducting 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. Such information is useful to ensure proper design of the mandatory and desirable features 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) For contracts where the quality of service or product is of paramount importance and needs to be taken into account in the tender evaluation, e.g. management contracts of a complex nature, Design-and-Build contracts for works requiring substantial design input and the purchase of a highly sophisticated equipment, departments may consider adopting a marking scheme in the tender evaluation in accordance with the Guidelines for Adopting a Marking Scheme for Tender Evaluation at Appendix III(G). Unless authority has been specifically delegated to departments or there exists a standard marking scheme for particular types of contracts authorised by the PS(Tsy), the use of a marking scheme for tender evaluation requires the prior approval of the relevant tender board or DTC, as appropriate. In the submission seeking approval for the use of a marking scheme, departments shall provide a brief description of the project or product to be procured, its estimated value, justifications for the use of a marking scheme, the respective weighting for technical and price assessment, the assessment criteria and their relative weighting with passing mark(s) if any.
- (i) 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 as much information as possible (including descriptions of assessment criteria and their individual technical marks, individual and/or overall passing marks set for technical assessment, formula to be used to calculate the technical/price scores, the technical to price assessment weighting, etc.) in the tender document to facilitate tenderers' preparation of competitive and quality tender submissions.
- (j) 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 mandatory 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

360. A tender deposit is not normally required. Where a tender deposit is required as a pledge of the tenderer's good faith (as in the case of revenue tenders), the tender documents shall specify the amount of the deposit and the methods of payment (whether by cheque, cashier order and/or presentation of original receipts along with the tender) and refund. The amount of tender deposit should not be excessive. Tender deposits 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 shall follow the guidelines on contract deposits and performance bonds laid down in the relevant DEVB TC(W).
- (b) For non-works contracts, departments shall determine the amount of contract deposit or performance bond having regard to the following guidelines —

Estimated contract value/other condition	Amount of contract deposit or performance bond normally required
(i) Under \$1.43 million	Not required
(ii) \$1.43 million or more, and where the tenderer has passed the financial vetting (for contracts over \$5 million) (see SPR 370(b)(i))	No more than 2% of the contract value
(iii) Over \$5 million and where the tenderer has failed the financial vetting or has not undergone any financial vetting	About 5% of the contract value
(c) If a department considers it essential to impose a contract deposit or performance bond, it shall stipulate in the tender documents 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) Except for tenders for procurements specified in SPR 220(a) with a value not exceeding \$5 million 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.
- (c) Where certain tender information is found missing or where a tender contains some technical 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 document and where such information is missing in a tender, the tender shall be considered as non-conforming. Departments shall not approach the concerned tenderer for the missing information.
- (f) Where the missing information relates to factual information which does not materially affect compliance with the essential requirements specified in the tender document, and where there is no room for manipulation by a tenderer by virtue of late submission of such information, departments may approach the concerned tenderers for such missing 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 specified in SPR 220(a) with a value not exceeding \$5 million, 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. To safeguard the integrity of government procurement exercises, the TAP should comprise only government officials. Departments should ensure that only properly qualified persons are appointed to assess technical submissions in their tender exercises. Where practicable, tender documents should be drawn up to allow assessment to be made without the TAP knowing the identity of the tenderers. 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, mandatory requirements, terms and conditions laid down in the 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 \$5 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$5 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 prior approval has been given for the use of a marking scheme in the evaluation of tenders, TAPs shall assess the tenders according to the criteria previously endorsed by the relevant tender board or DTC. To avoid any undue influence, members of TAPs are encouraged to score the tenders individually in accordance with the marking scheme. 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, mandatory requirements, terms and conditions laid down in the tender document 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, mandatory 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, mandatory requirements, terms and conditions laid down in the tender document, 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 tenders), only the three lowest (highest) tenders should be submitted. If the recommended tender is not the lowest (highest for revenue tenders), 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(i), 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 in the public interest not to do so, a procuring department should award a contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender is either the lowest (or highest for revenue tenders) tender or the tender which in terms of the specific evaluation criteria set forth in the tender documentation is determined to be the most advantageous.
- (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 XIII 4.(b) and Article XVIII 3. 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 tender exercise is not required when no tender is received after close of tender invitation.
- (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 \$21 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 mandatory 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 invitations to tender 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 designated directorate officers not having been involved in the concerned tender exercises for negotiations on works contracts not exceeding \$55 million each and not subject to WTO GPA; and

- (iv) DTCs for negotiations on tenders for procurements specified in SPR 220(a) not exceeding \$5 million which fall within their purview.
- (d) In addition, the PS(Tsy) has authorised COs or their designated directorate officers not having been involved in the concerned tender exercises to approve negotiations 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 PS(Tsy); 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 tender) 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 essential requirements contained in the invitation to tender to render the recommended tender non-conforming.
- (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 relation to the evaluation criteria. Where no one tender is clearly more advantageous 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. Wherever possible, the criteria for selection of tenderers for negotiations shall be stated in the invitation to tender. Where such criteria have not been set forth in the invitation to tender, 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 participating tenderers in the negotiations is carried out in accordance with the criteria for evaluation of tenders set forth in the invitation to tender;

- (ii) should the procuring department introduce any modifications or variations to the evaluation criteria stipulated in the invitation to tender, the modifications and variations must be transmitted in writing to participating tenderers in the negotiations;
 - (iii) where the procuring department has introduced modifications or variations, participating tenderers in the negotiations must be afforded an opportunity to submit new or amended submissions on the basis of the revised evaluation criteria; and
 - (iv) when negotiations are concluded, tenderers remaining in the negotiations shall be permitted to submit final tenders in accordance with a common deadline.
- (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 tenders 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

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 and, where necessary, inviting him to sign the contract on a specified date. In notifying unsuccessful tenderers of the outcome of their tenders, departments will have to 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 should keep a record of all contracts awarded. In respect of procurements covered by WTO GPA, departments should separately (or additionally) keep a record of each contract awarded under single or restricted tendering (referred to as limited tendering in WTO GPA and for which they have been given authority to adopt) for the purpose of meeting the specific statistical reporting requirements of the WTO Committee on Government Procurement on limited tendering.
- (d) Tender boards 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 in the Gazette.

- (e) Departments should follow the procedures set out in SPR 505-510 in the execution of a contract.

Appendices

Appendix III

- (A) [Specimen Gazette 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](#)
(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 services are funded under 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](#)
- (H) [Guidelines for Financial Vetting of Recommended Tenderers for Service Contracts](#)
- (I) [Standard Tender Report Format](#)
- (J) [Guidelines for Tender and Contract Negotiations](#)

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

DEPARTMENT

The firms on the list of qualified contractors/suppliers/service providers for the provision of (service/article) maintained by the (title of department) are published below for general information. Firms on the list will receive invitations to tender and the list is valid for one year commencing (date).

(List of contractors/suppliers)

2. The following criteria are used for the selection of qualified contractors/suppliers/service providers for the approved list. Firms interested in providing(service/article) and meeting these criteria may apply to (title, address and telephone/fax number/e-mail address of the office) —

(List of criteria)

Date

Name of Head of Department

**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 Prospective Tenderers

F. Method of Selection of Tenderers

— Mandatory 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 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. 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 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, 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.

— Mandatory 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. Avoiding Conflict of Interest

- Confirm whether public officers involved in this prequalification exercise have declared their interest in accordance with SPR 186, and state, where conflict of interest has been identified, 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))

DEPARTMENT

1. It is hereby notified that sealed tenders in *duplicate/triplicate are invited for (state the name, nature and quantity, where applicable, of the project/service/article, the likely commencement and completion of the contract).
2. 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]. Late tenders will not be accepted.
3. Forms of tenders and further particulars are obtainable from (title, address and telephone/fax number/e-mail address of the office). *A sum of \$....., which will not be refunded, is required to cover the cost of the tender documents.
4. * Contractors on the (title(s) of the approved list(s)) are invited to tender. Contractors will be liable to have their names removed from the approved list(s) if they fail or refuse to implement an accepted tender.
5. * Contractors with (state qualification) are invited to tender.
6. * 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.
7. * This tender is covered by the Agreement on Government Procurement of the World Trade Organization.
8. 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.
9. Details of the award of this contract will be published in the Government of the Hong Kong Special Administrative Region Gazette and on the Internet.

Date

Name of Head of Department

* delete as appropriate or if not applicable

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

**(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 services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430)
(SPR 345(c))**

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 services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereinafter 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 tender exercise and where appropriate, independent consultant (who may be outside or within the Government) has been and will be engaged for the preparation of the tender documents, assessment of tenders and subsequent tender supervision.

- * [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.]

X X X X X

- * applicable where the Electrical and Mechanical Services Department is 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 principles of transparency, openness and fairness.
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 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) 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 resistance to abrasion and have a given 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 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 critical or high-value contracts, departments should follow the following steps —

- (a) 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. This might occasionally involve the department discussing with suppliers/service providers how particular functional and performance requirements can best be met;
- (b) use functional and performance characteristics in the specifications, with a distinction drawn between mandatory and desirable features. Mandatory features are so essential to the acceptability of the tender that the department would not wish to proceed with the procurement if the features could not be provided. Failure to meet any of the mandatory features will render the tender not to be considered further. Desirable features are normally presented as 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;
- (c) where departments consider it appropriate to allow tenderers to make alternative proposals which could better meet their requirements, they should include in the tender documents a standard clause that alternative proposals will be considered by the Government and may be offered; and

- (d) 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 contracts of shorter duration, or to include break clauses, to give flexibility to take advantage of favourable trends and avoid being committed to products that may become obsolete quickly. On the other hand, 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 material costs or other major determinators of market prices are prone to rapid and substantial fluctuation. 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 take into account the outcome of the past tender exercises to consider whether the tender specifications or evaluation criteria should be refined to encourage more 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 to enter the market and hence more choices for the Government.

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

Introduction

As a general rule, departments shall award contracts to tenderers who comply fully with the tender specifications, terms and conditions as specified and who are fully capable of undertaking the contracts and whose prices are the lowest tenders (and the highest for revenue tenders). However, there are occasions where the quality of the goods or services to be provided is of such importance that separate assessments of the technical and price aspects, with pre-determined relative weighting attached to assessment criteria, would result in a better value-for-money offer. Circumstances in which procuring departments may consider adopting a marking scheme include, but are not confined to, the following —

- (a) procurement of high-value, complex equipment where there is rapid technological advancement or goods with environmental requirements such as improved recyclability, high recycled contents, greater durability, cleaner fuels and less energy consumption; and
- (b) service contracts which are high-value or involve complex requirements or which are sensitive and call for a high degree of reliability or co-ordination.

2. When a marking scheme is used to assess the tenders, departments shall award contracts to tenderers with conforming offers that meet all the mandatory requirements, attain the passing marks (if any) and obtain the highest overall score (i.e. the sum of price and technical scores) under the marking scheme.

3. Departments are encouraged to adopt a marking scheme to assess tenders for service contracts that rely heavily on the deployment of non-skilled workers and to include in their assessment criteria the evaluation of tenderers' proposed wage rates and working hours for the non-skilled workers. Departments shall also observe the guidelines promulgated in FCs No. 4/2006 and No. 2/2011 (as may be updated from time to time) when designing the marking schemes for the assessment of tenders for these service contracts.

Design of Marking Schemes for Tender Evaluation

4. The assessment criteria of a marking scheme may take various forms, from criteria over and above mandatory requirements, tenderers' past performance in delivery of similar contracts, to desirable features of the goods or services to be procured and practicality of implementation and contingency plans submitted by tenderers. They should be consistent with basic government procurement principles of fairness and promoting competition. 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.

5. When determining the relative weightings for technical and price assessments, departments should normally adopt a 30%-40% weighting for technical score, as against a weighting of 60%-70% for price score. Departments should note that a higher technical weighting would not necessarily ensure a higher quality of the service or goods to be delivered by the successful tenderer. The setting of relevant mandatory requirements and passing marks under the marking scheme would instead guarantee that only those capable tenderers with quality proposals would be awarded with the contracts. Departments proposing a weighting higher than 30%-40% for technical score should provide full justification in their submissions to the relevant tender boards or DTCs.

6. If considered appropriate, departments may seek the approval of the relevant tender board or DTC for adoption of a standard marking scheme for particular types of contracts. The standard marking scheme, if approved, can be used in future procurement exercises for the same type of contracts.

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

Authority and Procedures

8. All marking schemes, including deviations from standard ones, have to be approved by the relevant tender board or DTC. Once endorsed, departments shall adhere to the same tender-specific marking scheme.

9. Submissions to tender boards or DTCs on the use of a marking scheme shall provide a brief description of the goods or service to be obtained, its estimated value, justifications for the use of a marking scheme, proposed weighting for technical and price assessments, assessment criteria and their relative weighting, and individual and/or overall passing marks for assessment criteria, where appropriate.

10. Departments should state in the tender document the use of a marking scheme in tender evaluation, including an outline of the evaluation criteria to assist tenderers in preparing their tenders. In line with the principle of transparency, departments should provide as much information as possible (including descriptions of assessment criteria and their individual technical marks, individual and/or overall passing marks set for technical assessment, formula to be used to calculate the technical/price scores, technical to price assessment weighting, etc.).

Two-envelope Approach for Submission of Tenders

11. 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 or DTC has to be obtained for any such arrangement. For works contracts, departments should follow the guidelines promulgated in relevant DEVB TC(W).

12. Departments should normally establish a TAP for tender evaluation. Where a two-envelope approach is used, departments should consider whether the same TAP should conduct both the technical evaluation and the price comparison to arrive at the respective technical and price scores. Departments shall ensure that only properly qualified persons are appointed to the assessment panel to assess technical submissions in their tender exercises.

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 11 above should be fully justified and require the prior approval of the relevant tender board or DTC.

14. TAPs should apply pre-determined weighting given to the technical and price assessment. In normal circumstances, the contractor meeting the mandatory 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 : 70 : 30

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 : $\frac{90}{90} \times 30 = 30$

Tenderer B's technical score : $\frac{60}{90} \times 30 = 20$

(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 : 70 : 30

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 : $\frac{\$5,000,000}{\$5,000,000} \times 70 = 70$

Tenderer B's price score : $\frac{\$5,000,000}{\$6,000,000} \times 70 = 58.33$

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 \$5 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 service of a value above \$5 million. These guidelines should be read together with the Financial Vetting Guideline published by the Treasury.

Financial Vetting

3. When inviting tenders for a service contract of a value exceeding \$5 million, departments should include in the tender document the condition that tenderers have to demonstrate their financial capability before they can be considered for the award of the contract.

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 disclosure requirements of the Companies Ordinance, Cap. 32; and
- (b) projected statement of 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.

7. In the case where a tenderer (e.g. a newly established company) is unable to provide adequate financial information for a meaningful assessment to be conducted, the procuring department may require the tenderer 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) in lieu of financial vetting. In the case where a tenderer fails the financial vetting, the procuring department may also require the tenderer to pay a contract deposit or submit a performance bond.

8. Where a contract deposit or a performance bond is required, the procuring department shall determine the amount of contract deposit or performance bond having regard to the value of the contract and other relevant factors (if any). As a general guideline, the amount of contract deposit or performance bond required should be set at about 5% of the contract value where the tenderers have not undergone any financial vetting or have failed the financial vetting. Tenderers who have passed the financial vetting will be required to pay a contract deposit or submit a performance bond at no more than 2% of the contract value as an additional protection of the Government's interest. 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.

Exception

9. 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 for details.

Tender Report

10. 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.

11. In the case where a contractor fails to complete a service contract because of a financial problem, the procuring department should conduct a review to form a view on whether the financial problem should have been revealed in the assessment of the financial capability of the contractor at the tendering stage and to 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 major changes in 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, 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.
- 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 the number of tenders received and withdrawn, if any. If only one or very few tenders have been received, whether pre-tender market research or non-binding EOI exercise has been conducted and the estimated number of potential tenderers.
- 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.

- State the evaluation criteria under the terms of tender, and provide details of the approved marking scheme, 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.
- 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 \$5 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$5 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 (i.e. at about 5% if the tenderer has failed or has not undergone the financial vetting and at no more than 2% if the tenderer passed the financial vetting). Where financial vetting has not been conducted, explain why.
- 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 those in similar contracts (month/year of award), 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.
- 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 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.

K. Declaration of Interest

- Confirm whether public officers involved in preparing tender documentation (including tender specifications and marking schemes), assessing tenders and conducting negotiations have declared their interest in accordance with SPR 186, and state, where conflict of interest (actual, potential or perceived) has been identified, 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.

()
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 385(n), 455(e) and 525)

Public officers authorised (under SPR 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.

Note (1): 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 <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=9&Lg=1>

Note (2): For full text of the “Agreement on Government Procurement of the World Trade Organization (WTO GPA)”, please visit: http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm