CHAPTER 6

TENDER PROCEDURE

The parts of the PAH shown in blue and bold should only be updated by Works Branch of Development Bureau. Amendment No. 3/2009

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SYNOPSIS

This Chapter sets out the procedures for obtaining and assessing tenders for all capital works contracts which are basically in accordance with Stores and Procurement Regulations (SPR). These procedures also apply to tenders for term and maintenance contracts subject to any modifications set out in Chapter 8 “Maintenance and Minor Works and Works for and by Others”. In addition, these procedures apply to tenders for design and build contracts, subject to the modifications set out in the Administrative Procedures for Use with the Government of the Hong Kong Special Administrative Region (HKSAR) General Conditions of Contract for Design and Build Contracts, which can be found on the DEVB website (under Publications and Press Releases\Publications\Standard Contract Documents). The additional procedures for procurement covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA) are also set out.

Tenders for contracts may only be invited after obtaining authority, either by the inclusion of the project in Public Works Programme (PWP) Category (Cat.) A or D, or by approval from the respective Policy Secretaries. The Secretary for Financial Services and the Treasury (SFST) has delegated authorities to all Policy Secretaries to allow tenders for works projects, irrespective of type and value, to be invited before funding is secured subject to the conditions as set out in Financial Circular (FC) No. 2/2009 (Amendment No. 4/2009). However, tender action is normally subject to the availability of funds and of land, and the completion of legal and administrative procedures.

Tenders are normally invited from contractors in the appropriate categories and groups of Development Bureau (DEVB) Lists of Approved Contractors for Public Works or Approved Suppliers of Materials and Specialist Contractors for Public Works through notification in the Government of the HKSAR Gazette or through invitations published on the Internet. For occasions where the quality of service or product is a major consideration, a marking scheme in tender evaluation should be adopted. A separate exercise for prequalification of tenderers should only be employed in exceptional situation with sound justifications. Minor services and stores are procured in accordance with SPR. Supply-only tenders are normally handled by the Government Logistics Department. Government tender procedure is not required for Government works entrusted to non-government bodies, such as MTR Corporation Limited (MTRCL), who will themselves be responsible in accordance with their own tender procedure.
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# I. Abbreviation

I.01 The meaning of the abbreviations assigned in this Chapter of the Project Administration Handbook for Civil Engineering Works shall only apply to this Chapter.

I.02 The following list shows the meaning of the abbreviations for the common terms used in this Chapter of the Project Administration Handbook for Civil Engineering Work:

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<td>Agriculture, Fisheries and Conservation Department</td>
</tr>
<tr>
<td>Arch SD</td>
<td>Architectural Services Department</td>
</tr>
<tr>
<td>ASP</td>
<td>Authorized Services Providers</td>
</tr>
<tr>
<td>BJO</td>
<td>Beijing Office</td>
</tr>
<tr>
<td>BQ</td>
<td>Bills of Quantities</td>
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<td>Cat.</td>
<td>Category</td>
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<tr>
<td>CTB</td>
<td>Central Tender Board</td>
</tr>
<tr>
<td>COLO(Unit 4)</td>
<td>Chief Official Language Officer (Translation Unit 4)</td>
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<tr>
<td>CIO</td>
<td>Chief Information Officer</td>
</tr>
<tr>
<td>CEDD</td>
<td>Civil Engineering and Development Department</td>
</tr>
<tr>
<td>CSB</td>
<td>Civil Services Bureau</td>
</tr>
<tr>
<td>C&amp;D</td>
<td>construction and demolition</td>
</tr>
<tr>
<td>CITA</td>
<td>Construction Industry Training Authority</td>
</tr>
<tr>
<td>CMIS</td>
<td>Contractor Management Information System</td>
</tr>
<tr>
<td>D of J</td>
<td>Department of Justice</td>
</tr>
<tr>
<td>D&amp;B</td>
<td>Design and Build</td>
</tr>
<tr>
<td>DEVB TCW No.</td>
<td>DEVB Technical Circular (Works) No.</td>
</tr>
<tr>
<td>DEVB</td>
<td>Development Bureau</td>
</tr>
<tr>
<td>D of A</td>
<td>Director of Audit</td>
</tr>
<tr>
<td>D of Adm</td>
<td>Director of Administration</td>
</tr>
<tr>
<td>D of GL</td>
<td>Director of Government Logistics</td>
</tr>
<tr>
<td>D of GS</td>
<td>Director of Government Supplies</td>
</tr>
<tr>
<td>DHA</td>
<td>Director of Home Affairs</td>
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<tr>
<td>DSD</td>
<td>Drainage Services Department</td>
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<tr>
<td>EMSTF</td>
<td>Electrical and Mechanical Services Trading Fund</td>
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<tr>
<td>EDP</td>
<td>Electronic Dissemination Package</td>
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<td>ETWB</td>
<td>Environment, Transport and Works Bureau</td>
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<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EPD</td>
<td>Environmental Protection Department</td>
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<td>FSTB</td>
<td>Financial Services and the Treasury Bureau</td>
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<td><strong>Term</strong></td>
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<tr>
<td>ex-CITA</td>
<td>former Construction Industry Training Authority</td>
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<tr>
<td>GCC</td>
<td>General Conditions of Contract for Civil Engineering Works (1999 Edition)</td>
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<tr>
<td>GCT</td>
<td>General Conditions of Tender</td>
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<td>GEO</td>
<td>Geotechnical Engineers Office</td>
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<tr>
<td>HQ</td>
<td>Headquarters</td>
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<td><strong>HyD</strong></td>
<td><strong>Highways Department</strong> (Amendment No. 4/2008)</td>
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<td>HAD</td>
<td>Home Affairs Department</td>
</tr>
<tr>
<td>HKPF</td>
<td>Hong Kong Police Force</td>
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<tr>
<td>HKSAR</td>
<td>Hong Kong Special Administrative Region</td>
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<tr>
<td>HA</td>
<td>Housing Authority</td>
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<td>HD</td>
<td>Housing Department</td>
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<td>Housing, Planning and Lands Bureau</td>
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<td>I&amp;PR</td>
<td>Information and Public Relations Unit</td>
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<td>Lands and Works Branch Technical Circular No.</td>
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<tr>
<td>Lands D</td>
<td>Lands Department</td>
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<td>LAD(W)</td>
<td>Legal Advisory Division (Works)</td>
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<td>LCSD</td>
<td>Leisure and Cultural Services Department</td>
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<td>LD</td>
<td>Liquidated Damages</td>
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<td>Managing Review Committee</td>
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<td>MD</td>
<td>Marine Department</td>
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<td>MFC</td>
<td>Marine Fill Committee</td>
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<td>MTRCL</td>
<td>MTR Corporation Limited</td>
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<td>PP</td>
<td>Particular Preambles</td>
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<td>PS</td>
<td>Particular Specifications</td>
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<td>PSTsy</td>
<td>Permanent Secretary for Financial Services and the Treasury (Treasury)</td>
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<td>Plan D</td>
<td>Planning Department</td>
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<td>PIO</td>
<td>Principal Information Officer</td>
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<td>PAH</td>
<td>Project Administration Handbook for Civil Engineering Works</td>
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<tr>
<td>PFC</td>
<td>Public Fill Committee</td>
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<td>PWP</td>
<td>Public Works Programme</td>
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<td>Public Works Sub-Committee</td>
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<td>PWTB</td>
<td>Public Works Tender Board</td>
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<tr>
<td>SPO</td>
<td>Secretariat Press Officer</td>
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<td>SDEV</td>
<td>Secretary for Development</td>
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<td>SETW</td>
<td>Secretary for the Environment, Transport and Works</td>
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<td>Abbreviation</td>
<td>Term</td>
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<td>Secretary for Financial Services and the Treasury</td>
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<td>STH</td>
<td>Secretary for Transport and Housing</td>
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<td>S for Tsy</td>
<td>Secretary for the Treasury</td>
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<tr>
<td>S for W</td>
<td>Secretary for Works</td>
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<tr>
<td>SEO(PS)</td>
<td>Senior Executive Officer (Professional Services)</td>
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<td>SCC</td>
<td>Special Conditions of Contract</td>
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<td>Special Drawing Rights</td>
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<td>SPR</td>
<td>Stores and Procurement Regulations</td>
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<td>SMP</td>
<td>Sub-contractor Management Plan</td>
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<td>SO(Q)</td>
<td>Survey Officer (Quantity)</td>
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<td>THB</td>
<td>Transport and Housing Bureau</td>
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<td>Voluntary Sub-contractor Registration Scheme</td>
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<td>Water Supplies Department</td>
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<td>WBTC No.</td>
<td>Works Bureau Technical Circular No.</td>
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<td>WTO GPA</td>
<td>Agreement on Government Procurement of the World Trade Organization</td>
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II. GLOSSARY OF TERMS

II.01 Words and expressions to which meanings are assigned in this Chapter of the Project Administration Handbook for Civil Engineering Works (PAH) shall only apply to this Chapter.

II.02 In this Chapter of the PAH the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:

“Government” means the Government of the Hong Kong Special Administrative Region.

“project office” means the office responsible for the planning, design and construction of the project.
(Where these functions are performed by different offices at different stages, the project office shall mean the office responsible at each particular stage.)


“Schedule of Rates” and “Works Order” are as defined in the General Conditions of Contract for Term Contracts for Civil Engineering Works (2002 Edition).

II.03 Words importing the singular only also include the plural and vice versa where the context requires.
1. **TENDER PROCEDURE CHECKLIST**

This tender procedure checklist provides a general list of actions to be taken and it may not cover all situations. Individual departments/offices/divisions should extract this list, expand it if necessary to include internal procedures of the department/office/division concerned, and make it a standard requirement for a copy of the check-list to be kept in the relevant project file and project handbook. The project engineer should record in the “Remarks” column of the checklist the file reference and other relevant information when action on any item is completed.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Procedure</th>
<th>Reference</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>PRIOR TO TENDERING</td>
<td></td>
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<tr>
<td>1.1</td>
<td>Decide method of calling for tenders</td>
<td>Para. 2.1.1</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>Decide method of tender evaluation</td>
<td>Para. 2.1.5 &amp; 2.1.6</td>
<td></td>
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<tr>
<td>1.3</td>
<td>Seek policy support and obtain approval to use non-standard marking scheme (if required)</td>
<td>Para. 2.1.5</td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td>Prepare schedule for tender procedures</td>
<td>Para. 2.4</td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td>Obtain authority to call for tenders</td>
<td>Para. 3.1</td>
<td></td>
</tr>
<tr>
<td>1.6</td>
<td>Check availability of funds</td>
<td>Para. 3.2</td>
<td></td>
</tr>
<tr>
<td>1.7</td>
<td>Check availability of land</td>
<td>Para. 3.3</td>
<td></td>
</tr>
<tr>
<td>1.8</td>
<td>Complete legal and administrative procedures</td>
<td>Para. 3.4 &amp; Chapter 3</td>
<td></td>
</tr>
<tr>
<td>1.9</td>
<td>Complete tender documents</td>
<td>Para. 3.5 &amp; Chapter 5</td>
<td></td>
</tr>
<tr>
<td>1.10</td>
<td>Check interfacing and handover of land</td>
<td>Para. 3.6</td>
<td></td>
</tr>
<tr>
<td>1.11</td>
<td>Check estimated value of the contract in need for compliance with the WTO GPA tendering procedures</td>
<td>Para. 3.7</td>
<td></td>
</tr>
<tr>
<td>1.12</td>
<td>Decide if designs and alternative designs by tenderers are to be invited</td>
<td>Para. 3.10</td>
<td></td>
</tr>
<tr>
<td>1.13</td>
<td>Seek legal advice for restriction on the maximum number of contracts to be undertaken by the same contractor (if imposed)</td>
<td>Para. 3.11</td>
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</tr>
<tr>
<td>2.</td>
<td>CALLING FOR TENDER</td>
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</tbody>
</table>

(The following applies to normal tendering procedures. For single and restricted tendering and prequalified tendering, see Para. 4.2 and 4.3 respectively for general guidelines)
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Procedure</th>
<th>Reference</th>
<th>Remarks</th>
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</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Determine categories and groups of contractors eligible to tender</td>
<td>Para. 4.1.1</td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>Complete routing sheet, check-list and estimates summary</td>
<td>Para. 4.1.2</td>
<td></td>
</tr>
<tr>
<td>2.3</td>
<td>Obtain approval to proceed with tender invitation / Complete memo requesting publication of gazette notice (if required)</td>
<td>Para. 4.1.2</td>
<td></td>
</tr>
<tr>
<td>2.4</td>
<td>Arrange tender notice for publication on the Internet /</td>
<td>Para. 4.1.2</td>
<td></td>
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<tr>
<td></td>
<td>Arrange publication of gazette notice (if required) /</td>
<td></td>
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<tr>
<td></td>
<td><em>Arrange publication of tender notice in local press (if required)</em></td>
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<td></td>
<td><em>(Amendment No. 8/2010)</em></td>
<td></td>
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<tr>
<td>2.5</td>
<td>Arrange publication of press release (if required)</td>
<td>Para. 4.1.2</td>
<td></td>
</tr>
<tr>
<td>2.6</td>
<td>Issue tender documents (for procurement covered by WTO GPA, forward tender documents to tenderers upon receipt of a written request from tenderers)</td>
<td>Para. 4.1.1 &amp; 4.1.3</td>
<td></td>
</tr>
<tr>
<td>2.7</td>
<td>Issue Electronic Dissemination Package (EDP) with tender documents and to Authorized Service Providers (ASP)</td>
<td>Para. 4.1.3</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>ACTION DURING TENDER PERIOD</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Arrange pre-tender meeting (if necessary)</td>
<td>Para. 5.1</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Arrange tender addendum by circulation letter (if required)</td>
<td>Para. 5.2</td>
<td></td>
</tr>
<tr>
<td>3.4</td>
<td>Deal with queries from tenderers</td>
<td>Para. 5.3</td>
<td></td>
</tr>
<tr>
<td>3.5</td>
<td>Arrange sale of plans or drawings (if required)</td>
<td>Para. 5.4</td>
<td></td>
</tr>
<tr>
<td>3.6</td>
<td>Arrange legal vetting of substantial alteration to tender documents for contracts estimated to exceed $300 million in value (if necessary)</td>
<td>Para. 5.6</td>
<td></td>
</tr>
<tr>
<td>3.7</td>
<td>Arrange extension of time for tendering (if necessary)</td>
<td>Para. 5.7</td>
<td></td>
</tr>
<tr>
<td>3.8</td>
<td>Seek tenderers’ agreement to extension of tender validity period (if necessary)</td>
<td>Para. 5.8</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>EXAMINATION OF AND REPORT ON TENDERS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>Establish assessment panel to evaluate the technical submission for marking scheme approach</td>
<td>Para. 6.3</td>
<td></td>
</tr>
<tr>
<td>4.3</td>
<td>Declaration of conflict of interest by tender examination team</td>
<td>Para. 6.4</td>
<td></td>
</tr>
<tr>
<td>4.4</td>
<td>Check if all electronic files in the tender return has been</td>
<td>Para. 6.5</td>
<td></td>
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<tr>
<td></td>
<td>‘digitally signed’ (if necessary)</td>
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</tr>
<tr>
<td>Item No.</td>
<td>Procedure</td>
<td>Reference</td>
<td>Remarks</td>
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<td>---------------------------------------------------------------------------</td>
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<tr>
<td>4.4</td>
<td>Check electronic submission of tender return according to ETWB TCW No. 11/2005 (if necessary)</td>
<td>Para. 6.5 &amp; ETWB TCW No. 11/2005</td>
<td></td>
</tr>
<tr>
<td>4.5</td>
<td>Check if all tenderers contain the names and addresses of all the partners or offices as appropriate</td>
<td>Para. 6.6</td>
<td></td>
</tr>
<tr>
<td>4.6</td>
<td>Seek clarification from tenderers and request confirmation by writing (if required)</td>
<td>Para. 6.6</td>
<td></td>
</tr>
<tr>
<td>4.7</td>
<td>Check and correct errors in the pricing document according to ETWB TCW No. 41/2002</td>
<td>Para. 6.6, 6.9 &amp; ETWB TCW No. 41/2002</td>
<td></td>
</tr>
<tr>
<td>4.8</td>
<td>Bring to Engineer designate’s attention and investigate unreasonably low or high rates, missing rates and items of which any changes in quantity would materially affect the final contract price</td>
<td>Para. 6.8</td>
<td></td>
</tr>
<tr>
<td>4.9</td>
<td>Check all tenders for eligibility to tender</td>
<td>Para. 6.12</td>
<td></td>
</tr>
<tr>
<td>4.12</td>
<td>Conduct tender evaluation based on a marking scheme approach or a formula approach according to ETWB TCW No. 8/2004 respectively</td>
<td>Para. 6.14.2 &amp; ETWB TCW No. 8/2004</td>
<td></td>
</tr>
<tr>
<td>4.13</td>
<td>Assess designs and/or alternative designs by tenderers (if alternative designs/tenders are invited)</td>
<td>Para. 6.11</td>
<td></td>
</tr>
<tr>
<td>4.14</td>
<td>Check and evaluate technical submission</td>
<td>Para. 6.14.3</td>
<td></td>
</tr>
<tr>
<td>4.15</td>
<td>Calculate present value of contract prices (if required)</td>
<td>Para. 6.13</td>
<td></td>
</tr>
<tr>
<td>4.16</td>
<td>List tenders in order of the combined price/quality score</td>
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<tr>
<td>4.17</td>
<td>For the 3 tenderers with the highest combined price/quality</td>
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<tr>
<td>Item No.</td>
<td>Procedure</td>
<td>Reference</td>
<td>Remarks</td>
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<tr>
<td>4.17.1</td>
<td>Check if tenders have been signed by person authorized to sign tenders</td>
<td>Para. 6.14.4</td>
<td></td>
</tr>
<tr>
<td>4.17.2</td>
<td>Check amount of work allowed under probationary status (if necessary)</td>
<td>Para. 6.14.4</td>
<td></td>
</tr>
<tr>
<td>4.17.3</td>
<td>Check financial capability</td>
<td>Para. 6.14.4</td>
<td></td>
</tr>
<tr>
<td>4.17.4</td>
<td>Check return of certification for tender addenda</td>
<td>Para. 6.14.4</td>
<td></td>
</tr>
<tr>
<td>4.18</td>
<td>Decide correspondence to be formed as part of the Contract</td>
<td>Para. 6.16</td>
<td></td>
</tr>
<tr>
<td>4.19</td>
<td>Conduct tender negotiations (if necessary)</td>
<td>Para. 6.17</td>
<td></td>
</tr>
<tr>
<td>4.20</td>
<td>Complete tender report recommending acceptance of tender</td>
<td>Para. 6.15 &amp; 6.18</td>
<td></td>
</tr>
<tr>
<td>4.21</td>
<td>Obtain endorsement of tender report</td>
<td>Para. 6.19</td>
<td></td>
</tr>
<tr>
<td>4.22</td>
<td>Submit tender report to tender board (if required)</td>
<td>Para. 6.20</td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>Obtain authorization to accept tender</td>
<td>Para. 7.1</td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>Copy the approval memo to D of A and D of GL for information</td>
<td>Para. 7.1</td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>Arrange safe custody of all tenders returned with the tender report</td>
<td>Para. 7.1</td>
<td></td>
</tr>
<tr>
<td>5.4</td>
<td>Check availability of funds</td>
<td>Para. 7.2</td>
<td></td>
</tr>
<tr>
<td>5.5</td>
<td>Check availability of land</td>
<td>Para. 7.2</td>
<td></td>
</tr>
<tr>
<td>5.6</td>
<td>Review and notify tenderer of rate of Liquidated Damages (LD) entered in the tender documents</td>
<td>Para. 7.2</td>
<td></td>
</tr>
<tr>
<td>5.7</td>
<td>Fix date for execution of the Articles of Agreement</td>
<td>--</td>
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<tr>
<td>5.8</td>
<td>Send letter of acceptance to successful tenderer</td>
<td>Para. 7.3</td>
<td></td>
</tr>
<tr>
<td>5.9</td>
<td>Send letter to unsuccessful tenderers</td>
<td>Para. 7.4.1</td>
<td></td>
</tr>
<tr>
<td>5.10</td>
<td>Response to queries and arrange debriefing to unsuccessful tenderers (if necessary)</td>
<td>Para. 7.4.2 &amp; 11.6</td>
<td></td>
</tr>
<tr>
<td>Item No.</td>
<td>Procedure</td>
<td>Reference</td>
<td>Remarks</td>
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<td>---------------------------------------------------------------------------</td>
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<tr>
<td>5.11</td>
<td>Report tendering performance to Managing Departments</td>
<td>Para. 7.7</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>PREPARATION OF CONTRACT DOCUMENTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>Prepare, check and seal original, duplicate, triplicate (and quadruplicate, in case of consultant-managed contracts) and 3 certified true copies of contract documents</td>
<td>Para. 8.1 &amp; 8.2</td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td>Check and obtain approval of proposed bondsman and bond (if necessary)</td>
<td>Para. 8.3</td>
<td></td>
</tr>
<tr>
<td>6.3</td>
<td>Check Contractor’s business registration details</td>
<td>Para. 8.4</td>
<td></td>
</tr>
<tr>
<td>6.4</td>
<td>Check Contractor’s insurance policies and premium receipts (if required)</td>
<td>Para. 8.4</td>
<td></td>
</tr>
<tr>
<td>6.5</td>
<td>Check Contractor’s Power of Attorney (if required)</td>
<td>Para. 8.4</td>
<td></td>
</tr>
<tr>
<td>6.6</td>
<td>Check Contractor’s security deposit receipt (if required)</td>
<td>Para. 8.4</td>
<td></td>
</tr>
<tr>
<td>6.7</td>
<td>Check Joint Venture Guarantees (if required)</td>
<td>Para. 8.4</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>EXECUTION OF ARTICLES OF AGREEMENT</td>
<td></td>
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</tr>
<tr>
<td>7.1</td>
<td>Arrange publicity for contract signing (if necessary)</td>
<td>Para. 9.4</td>
<td></td>
</tr>
<tr>
<td>7.2</td>
<td>Signing of original and duplicate of contract documents (by the Contractor and Government signatories)</td>
<td>Para. 9.2</td>
<td></td>
</tr>
<tr>
<td>7.3</td>
<td>Record Contractor’s insurance policies (if required)</td>
<td>Para. 9.2</td>
<td></td>
</tr>
<tr>
<td>7.4</td>
<td>Retain/Return Contractor’s insurance policies (if required)</td>
<td>Para. 9.2</td>
<td></td>
</tr>
<tr>
<td>7.5</td>
<td>Issue acknowledgement letter to Contractor for receipt of documents (if required)</td>
<td>Para. 9.3</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>DISTRIBUTION OF CONTRACT DOCUMENTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td>Forward original and 3 certified true copies of contract documents together with the originals or certified true copies of any surety bond, insurance policies and premium receipts to departmental headquarters by hand (different arrangement for HyD)</td>
<td>Para. 10</td>
<td></td>
</tr>
<tr>
<td>8.2</td>
<td>Deliver duplicate of contract documents to the Contractor and check for its receipt</td>
<td>Para. 10</td>
<td></td>
</tr>
<tr>
<td>8.3</td>
<td>Forward triplicate of contract documents to the Engineer</td>
<td>Para. 10</td>
<td></td>
</tr>
<tr>
<td>8.4</td>
<td>Notify relevant tender boards for the awarding of contract</td>
<td>Para. 11.4</td>
<td></td>
</tr>
<tr>
<td>Item No.</td>
<td>Procedure</td>
<td>Reference</td>
<td>Remarks</td>
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<tr>
<td>8.5</td>
<td>Check EDP return notice by ASP</td>
<td>Para. 11.7</td>
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</table>
2. GENERAL

2.1 METHODS OF CALLING FOR TENDERS

2.1.1 For Contracts Generally

The methods of calling for tenders are listed in the following tables:

<table>
<thead>
<tr>
<th>NORMAL PROCEDURE</th>
<th>APPLICATIONS</th>
<th>ELIGIBLE TENDERERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method</td>
<td></td>
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</tr>
<tr>
<td>Tenders invited by notification in Government Gazette and on Internet (see Para. 4.1)*</td>
<td>For works generally</td>
<td>All contractors in the appropriate categories and groups of DEVB List of Approved Contractors for Public Works (see Section 2 of Contractor Management Handbook and Para. 4.1.1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For specialist works and supply of materials where an appropriate specialist category exists in DEVB List of Approved Suppliers of Materials and Specialist Contractors for Public Works</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SPECIAL PROCEDURE</th>
<th>APPLICATIONS</th>
<th>ELIGIBLE TENDERERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Method</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tenders invited by direct invitation (see Para. 4.2)</td>
<td>For emergency works under which curtailment of the normal tender procedure is essential, and for works where public invitation to tender is undesirable</td>
<td>Contractors chosen from DEVB Lists for their ability to carry out the works (see Para. 4.2)</td>
</tr>
<tr>
<td></td>
<td>For specialist works where there is no appropriate category in DEVB List of Approved Suppliers of Materials and Specialist Contractors for Public Works, and for works where invitation of tenders from Contractors on DEVB Lists generally is considered inappropriate (see Para. 4.2)</td>
<td>Contractors chosen after a prequalification exercise, which may be local or overseas and may not necessarily appear in DEVB Lists (see Para. 4.3)</td>
</tr>
</tbody>
</table>
* For procurements covered by WTO GPA, departments are required to publish the tender invitations in the Government Gazette and the tender notice in at least one local press.

2.1.2 For Minor Services and Stores

As stated in SPR 222, the procedures laid down in SPR 200 to 290 shall be followed as appropriate for the following procurement:

(a) The procurement of stores with a value not exceeding the financial limit stated in SPR 220(a).

(b) The procurement of services (other than consultancy services) with a value not exceeding the financial limits stated in SPR 220(b) and (c).

However, departments may consider making the above purchases through tendering as stipulated in SPR 225.

The tender procedures/consultants selection procedures laid down in Chapter III/Chapter IV of the SPR shall be followed as appropriate when making the purchases of stores and services/procurement of consultancy services exceeding the financial limits stated in SPR 220/SPR 221.

2.1.3 For Supply-only Tenders

Supply-only tenders are to be arranged through the Government Logistics Department following the procedures laid down in SPR. Supplies Officer of the department/office should be consulted regarding the arrangements.

2.1.4 For Government Works Entrusted to Outside Bodies

For Government works entrusted to outside bodies (e.g. MTRCL) tenders are obtained by the agencies using their own procedures. However, prior approval by SFST of the proposed arrangement must be obtained whenever funding by Government is involved.

2.1.5 Use of Marking Schemes in Tender Evaluation

SPR 350(f) specifies the types of contracts for which departments may consider adopting a marking scheme in tender evaluation. With a view to adopting a more transparent and systematic approach to tender evaluation, putting more emphasis on the quality of tender and eliminating the time-consuming prequalification process, ETWB TCW No. 8/2004 stipulates a wider application of the marking scheme method. For all works contracts (except design and build contracts) falling into the category which the quality of service or product is a major consideration, e.g. works contracts for high value or prestigious projects, works which are sensitive or have a bearing on public safety or convenience, works which are of unusual complexity or require a high level of co-ordination, technical expertise or unusual technology or works which are subject to very tight programme schedules, a marking scheme shall be used in the tender evaluations. A separate exercise for prequalification of tenderers should no longer be necessary and should only be employed in accordance with the guidelines for prequalification given in ETWB TCW No. 35/2004 and 35/2004A.
Guidelines on the use of marking schemes for tender evaluation are given in SPR Appendix III(G) and ETWB TCW No. 8/2004. Appendix C of ETWB TCW No. 8/2004 provides a standard marking scheme that has been agreed by the Permanent Secretary for Financial Services and the Treasury (Treasury) (PSTsy) and departments may proceed direct to tender invitation without seeking the prior approval of the relevant tender board. Only in very exceptional cases departments are permitted to deviate from the standard marking scheme. If departments wish to make any modifications to the standard marking scheme, they must seek policy support from the Works Policy Division of DEVB or Transport and Housing Bureau (THB) before they proceed to obtain approval from the relevant tender board. This procedure must be complied with prior to invitation to tender. In seeking policy support for the use of a non-standard marking scheme, departments should provide a brief description of the works, the special features of the contract, justification for the use of a non-standard marking scheme, respective weights for quality and price, assessment criteria and their relative weights, and passing mark for individual attributes. The departments should also provide detailed explanation on why the standard marking scheme is considered inapplicable. The department will only be allowed to proceed with submission to the relevant tender board for approval of a non-standard marking scheme after they have obtained the said policy support. No alteration to an approved marking scheme may be made without the prior approval of the relevant tender board. In case a marking scheme other than the standard one is to be used, departments should advise which documents the tenderers should submit in a sealed envelope marked with ‘Tender Price Documents’ and which documents in a separate sealed envelope marked with ‘Technical Submission’.

Notwithstanding the above, departments should not adopt marking schemes in tenders where in their opinion Electrical and Mechanical Services Trading Fund (EMSTF) may have an interest to bid in order to guard against potential bid challenges. In such case, for works covered by ETWB TCW No. 8/2004 where the quality of service is a major concern, procuring departments should, instead of using a marking scheme, adopt prequalified tendering procedures and recommend the acceptance of the most advantageous conforming tender subject to the usual requirement that the departments are satisfied that the recommended tenderer is fully (including technically, commercially and financially) capable of undertaking the contract. Alternatively, subject to policy support from the Works Policy Division of DEVB or THB, legal advice from the Legal Advisory Division (Works) (LAD(W)) of DEVB or THB and approval from the relevant tender board, departments may consider the use of a non-standard marking scheme by making the necessary modifications to the standard marking scheme above such as by taking out the attributes relating to performance assessments.

In conjunction with the use of the marking scheme and if considered necessary, departments may adopt Stage I Screening procedures given in Appendix A of ETWB TCW No. 8/2004 to ensure that the tenderer complies with the necessary minimum requirements before their tenders are considered further to avoid abortive work. In particular, to prevent throat-cutting bidding by poorly performing contracts for maintenance works contracts, departments should consider the need to adopt Stage I Screening in conjunction with the marking scheme tender evaluation method promulgated under ETWB TCW No. 8/2004 to ensure that the contract is awarded to technically competent contractors with good performance track records. Reference can be made to ETWB TCW No. 15/99B. If there are minimum requirements for which the tenderers must comply with before their tenders will be considered further, departments should include all the necessary details of these mandatory requirements and the consequence of non-compliance in the Notes to Tenderers.

(Amendment No. 8/2010)
For contracts involving tunnel works, the marking scheme for the tenderers’ technical submissions should contain elements and due weight for assessment against the minimum requirements governing the competence and experience of site supervision staff, including geotechnical/tunnelling/blasting specialists, that the contractor is required to employ under the contract (see ETWB TCW No. 15/2005).

2.1.6 A Formula Approach to Tender Evaluation

Since the use of marking schemes in tender evaluation has significant staff resource implications, which may not be warranted for contracts where quality of service is not so demanding, a simplified method of tender evaluation using a formula approach is available for such contracts. ETWB TCW No. 8/2004 provides guidelines on the formula approach and shall apply to all works contracts unless that contract adopts a marking scheme in accordance with ETWB TCW No. 8/2004 or the Administrative Procedures for Design and Build Contracts, which can be found on the DEVB website (under Publications and Press Releases\Publications\Standard Contract Documents\). Similar to the case for marking scheme approach, departments should not adopt the formula approach in tenders where in their opinion EMSTF may participate as a tenderer. They should simply recommend the acceptance of the most advantageous conforming tender having regard to the considerations listed in Appendix B of ETWB TCW No. 8/2004.

In conjunction with the use of the formula approach and if considered necessary, departments may adopt Stage I Screening procedures given in Appendix A of ETWB TCW No. 8/2004 to ensure that the tenderers comply with the necessary minimum requirements before their tenders are considered further to avoid abortive work. If there are minimum requirements for which the tenderers must comply with before their tenders will be considered further, departments should include all the necessary details of these mandatory requirements and the consequence of non-compliance in the Notes to Tenderers. (Amendment No. 8/2010)

2.2 TENDER BOARDS


The Financial Secretary has appointed several tender boards (the Central Tender Board and other subsidiary tender boards), each consisting of not less than three persons, to consider and decide on the acceptance of tender. Updated information on the membership and terms of reference of these tender boards can be found 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. The following tender boards mainly deal with public works:

(a) Central Tender Board

Central Tender Board is to deal with high value tenders, which exceed those values specified for the subsidiary tender boards. For construction services, tenders exceeding $30 million are considered by the Central Tender Board. It also advises on matters concerning tenders, contracts and subsidiary tender boards generally.
The Central Tender Board normally meets on every Thursday except near holidays and except when a Central Consultants Selection Board meeting, which is held monthly, is scheduled for the following week. However, the Chairman may, if necessary, fix a meeting on any weekday instead.

The Tender Box for the Central Tender Board (CTB) is located at the lift lobby on the Lower Ground Floor of the Central Government Offices (East Wing), 20 Lower Albert Road (at its junction with Garden Road), Hong Kong.

(b) Public Works Tender Board

Public Works Tender Board is to deal with tenders for works contracts not exceeding (Amendment No. 4/2009) $30 million.

The Public Works Tender Board normally meets on every Wednesday. However, the Chairman may, if necessary, fix a meeting on any weekday instead, or direct that certain tenders be circulated for consideration and approved by the Board Members.

The Tender Box for the Public Works Tender Board (PWTB) is located at the Room 4128f, 41/F., Queensway Government Offices, 66 Queensway, Hong Kong.

Under the simplified tendering arrangement promulgated in FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), Controlling Officers can approve the award of works contracts that fall within certain criteria. See Para. 7.1 for details.

2.3 DEVB LISTS OF APPROVED CONTRACTORS

DEVB maintains two lists of approved contractors for public works, namely:

(a) The List of Approved Contractors for Public Works, and

(b) The List of Approved Suppliers of Materials and Specialist Contractors for Public Works.

Contractors registered under (a) above are eligible to submit tenders for the respective category of contracts arising in the five works categories into which the majority of Government public works contracts fall, namely, Buildings, Port Works, Roads and Drainage, Site Formation and Waterworks. (See Section 2 of Contractor Management Handbook)

The List of Approved Suppliers of Materials and Specialist Contractors for Public Works is a register of suppliers of materials and specialist contractors eligible to submit tenders for contracts arising in the respective specialist categories in the List and in certain circumstances to act as sub-contractors to main contractors. Current categories of specialist suppliers/contractors contained in the List are given in Appendix 3A of Contractor Management Handbook.

Contractors included in the above Lists should be required to notify in writing immediately or in the tender submission of any factor that might affect their qualified status
to tender. The Government has the right to review their qualified status in the light of any new information provided on their qualifications.

A holding company and its subsidiaries shall be permitted to be included in the List, either in the same or different categories or groups. However, the holding company and all its subsidiaries who are included in the List shall each give an undertaking that only one company will submit a tender for a particular contract. (Ref. Para. 2.11 of Contractor Management Handbook) which can be found on the DEVB website: http://www.devb-wb.gov.hk/press_releases_and_publications/publications/management/index.aspx?langno=1&nodeID=1055

As promulgated in ETWB TCW No. 13/2004, all capital works and maintenance works contracts shall require the contractor to employ all sub-contractors (whether nominated, specialist or domestic) registered from the respective trades available under the Primary Register of the Voluntary Sub-contractor Registration Scheme (VSRS). Where the contractor is to sub-contract/sub-let part of the Works involving trades available under the Primary Register of the VSRS, he will be required to engage all sub-contractors (whether nominated, specialist or domestic), as stated in his latest updated submission of the Sub-contractor Management Plan (SMP), who are registered under the relevant trades in the Primary Register of the VSRS. Should the sub-contractors further sub-contract (irrespective of any tier) any part of the part of the Works sub-contracted to them involving trades available under the Primary Register of the VSRS, the contractor shall ensure that all sub-contractors (irrespective of any tier) as stated in the contractor’s latest updated submission of the SMP are registered under the relevant trades in the Primary Register of the VSRS.

2.4 TIMING FOR TENDER PROCEDURES

Sufficient time should be allowed for tender procedures. The timing shown in the following table provides guidance in this respect:

<table>
<thead>
<tr>
<th>Procedures</th>
<th>Normal Procedure</th>
<th>Special Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Time Allowed</td>
<td>Cumulative</td>
</tr>
<tr>
<td></td>
<td>(Weeks)</td>
<td>Total (Weeks)</td>
</tr>
<tr>
<td>Invitation to tender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Note 1)</td>
<td>0 – 1</td>
<td>0 – 1</td>
</tr>
<tr>
<td></td>
<td>(1 – 3 for WTO</td>
<td>(1 – 3 for WTO</td>
</tr>
<tr>
<td></td>
<td>GPA)</td>
<td>GPA)</td>
</tr>
<tr>
<td>Tendering period</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Note 2)</td>
<td>1 – 3</td>
<td>1 – 4</td>
</tr>
<tr>
<td></td>
<td>(6 for WTO</td>
<td>(7 – 9 for WTO</td>
</tr>
<tr>
<td></td>
<td>GPA)</td>
<td>GPA)</td>
</tr>
<tr>
<td>Recommendations submitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Note 3)</td>
<td>2 – 12</td>
<td>3 – 16</td>
</tr>
<tr>
<td></td>
<td>(9 – 21 for WTO</td>
<td>(9 – 21 for WTO</td>
</tr>
<tr>
<td></td>
<td>GPA)</td>
<td>GPA)</td>
</tr>
<tr>
<td>Contract signed</td>
<td>1 – 2</td>
<td>4 – 18 (10 – 23 for WTO GPA)</td>
</tr>
<tr>
<td>Works commencement</td>
<td>1 – 2</td>
<td>5 – 20 (11 – 25 for WTO GPA)</td>
</tr>
</tbody>
</table>

Note 1 The time allowed for invitation to tender under the ‘normal procedure’ is for the arrangement of publishing tender notice on the Internet, in the Government Gazette and if necessary, in the local press and in selected overseas journal for the particular trade/product. According to FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), tender invitations for all works contracts under $55 million (Amendment No. 4/2009) each need only be published on the Internet and therefore significant time can be reduced.

For works contracts covered by WTO GPA, it is still required to publish the tender invitations in the Government Gazette in accordance with SPR 340. Time should also be allowed for the arrangement of advertising press release on the local and/or international press.

The time allowed under the ‘special procedure’ covers that required for obtaining the necessary approval for single and restricted tendering or prequalification tendering. More time may be required for these tendering procedures due to extra consideration being necessary.

Note 2 According to SPR 340(d), a minimum of 3 weeks is normally required for the tendering period. For works contracts covered by WTO GPA, at least 40 days shall be allowed for receipt of tenders. The period allowed for submitting an application for prequalification shall not be less than 25 days from the date of invitation. In the case of extreme urgency, departments will have to seek the prior approval of Permanent Secretary for Financial Services and the Treasury (Treasury) for reducing the period of receipt of tenders to generally not less than 24 days and in any case not less than 10 days and a prior notice has to be published in compliance with Article XI 3(a) of the WTO GPA. (See ETWB TCW No. 33/2004). The prequalification in regard of WTO requirements is also applicable to design and build contracts. Under the simplified tendering arrangement promulgated in FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), a period of less than 3 weeks may be allowed for works contracts under $55 million (Amendment No. 4/2009).

Notwithstanding the above, the time allowed for the tendering period may be longer having regard to the nature, scope and complexity of the contract and may depend on the necessity for the tenderers to produce alternative designs or to arrange sub-letting of specialist works.

Departments should bear in mind that a longer tendering period and a longer tender validity period may be required if a marking scheme is adopted.

Note 3 Tender recommendation should be made as expeditiously as possible. The upper range of the time allowed is to cover cases where complication arises, e.g.
queries to tenderer, queries from tender board or tender negotiation is required.

Unless legal advice on the received tenders is required, tender evaluation should be completed within 2 to 3 weeks for works contracts under $55 million (Amendment No. 4/2009) in accordance with FC No. 3/2009 (Amendment No. 4/2008 & 4/2009). For those covered by WTO GPA, the time frame for submission to the relevant tender board stipulated in SPR 375(b) should be observed, particularly in relation to the timing of the tender board meetings.
3. PREREQUISITES TO CALLING FOR TENDERS

3.1 AUTHORITY TO CALL FOR TENDERS

For works in the Public Works Programme, authority to call for tenders is given automatically when Finance Committee or SFST approves the item for inclusion in Cat. A or D. With a view to expediting the delivery of the capital works projects, SFST through FC No. 2/2009 (Amendment No. 4/2009) has delegated authorities to all Policy Secretaries to allow tenders for works projects, irrespective of type and value, to be invited before funding is secured without separate recourse to Financial Services and the Treasury Bureau (FSTB). The authorization also extends to cover the initiation of prequalification exercises for works tenders. However, it should be noted that with the promulgation of the use of marking scheme according to ETWB TCW No. 8/2004, a separate exercise for prequalification of tenderers should normally be unnecessary and departments may adopt Stage I Screening in conjunction with a marking scheme in lieu of prequalification. References should be made to WBTC No. 15/99, ETWB TCW No. 15/99B, 35/2004 and 35/2004A.

However, in exercising the above delegated authorities, the relevant Policy Secretaries shall be accountable for their decisions in each case. They should satisfy themselves, before granting the requisite approvals, that the following conditions and obligations are met:

(a) for tendering to be initiated, the detailed design of the works project has been finalized and agreed within the Government;

(b) the approving authority has assessed the risks involved in initiating a procurement exercise before funding is secured. The risks to the Government of having to abort the procurement exercise due to lack of funding or substantive last-minute changes to the scope of the proposed work have been assessed as low. Alternatively, despite the perceived risks, the possibility of abortive costs and inconvenience to tenderers, the merits of fast tracking have been assessed as outweighing the potential demerits; and

(c) the procuring department reflects correctly in the tender documents the funding status of the project and reminds all bidders that Government is not responsible for their costs of preparing the bids.

3.2 AVAILABILITY OF FUNDS

Prior to tendering, the relevant division/regional office must check to ensure that funds will be available by the time the contract is expected to be awarded. In this connection, it is important to check that a subhead will be created in time for Cat. A items, whereas for Cat. D items that funds will be available in the Block Vote. For contracts undertaken by a works department on behalf of a client department, the relevant division/regional office has to check that the appropriate Letter of Intent will reach the works department before the contract is awarded. For other cases, reference should be made to Chapter 8 "Maintenance and Minor Works and Works for and by Others".

In any case, a procuring department must not enter into contractual commitments of any kind and must not notify the successful tenderer that the Government would accept his tender until funding has been approved.
3.3 AVAILABILITY OF LAND

Land required for the works may include works site, works area, borrow and fill areas etc. Land must be available by the time the contract is expected to commence, unless specific provision has been made in the tender documents for staged possession of the site by the Contractor. Where the contract works involve removal of unsuitable materials, such as sea mud or toxic materials, the confirmation of the availability of a suitable dumping site is necessary. Land clearance and resumption therefore must be arranged to suit, and confirmation of its availability included in the memo accompanying the draft Gazette Notification or other request for authority to invite tenders as appropriate. There may however be occasions where it is not possible to give confirmation of land resumption and clearance prior to tendering. In such cases, justification should be made to the approval authority for the necessity to start tender procedures before the normal confirmation can be given.

As far as practicable, site possession date must be agreed with the party who is accountable for the availability of site so that it can be held responsible for the consequences arising from its failure to handover the site on time. If all possible, it is beneficial to obtain a binding agreement from the third party concerned so that it can be held responsible for reimbursing the Government any prolongation cost arising from its failure to handover the site on time.

It should be noted that all public fill, being the inert portion of construction and demolition (C&D) material, shall be disposed of at designated public filling facilities and all C&D waste at designated landfills. Details of the trip-ticket system for disposal of construction and demolition materials are given in ETWB TCW No. 31/2004. Confirmation from the Public Fill Committee and/or the Director of Environmental Protection as appropriate for the disposal arrangement is required.

3.4 LEGAL AND ADMINISTRATIVE PROCEDURES

All legal and administrative procedures should have been completed to a stage where all necessary approvals and agreements have been obtained before inviting tenders. Reference should be made to Chapter 3 “Land Matters” for the relevant procedures.

3.5 TENDER DOCUMENTS

All tender documents must be completed prior to calling for tenders.

It should be the aim to have all designs and drawings, including structural designs and details, and Bills of Quantities completed and checked before tenders are invited, except for projects where designs by tenderers will be required. Where exceptional reasons prevent this aim being achieved, e.g. the allowable time for design is unusually short as in emergency works, every effort should be made to complete all principal designs and drawings and as much detail as possible before tenders are invited. The potential risk to Government in terms of subsequent contractual claims of not having the design fully completed and not having sufficient detailed drawings at the tender stage must be carefully evaluated. If the possible consequence is considered serious, it must be drawn to the attention of the relevant officer of D2 rank or above and his consent obtained before proceeding further with invitation of tenders. In any event, no tender should be invited without sufficient drawings.
to show to tenderers clearly the works involved.

For multi-contract projects, those parts of tender documents delineating the split of the works, particularly the drawings and bills of quantities, should be carefully checked to ensure consistency and that there is no omission or duplication of works at the interface.

All non-standard components of the tender documents, i.e. GCT, SCT, Form of Tender, SCC, PS, PP and BQ, for contracts estimated to exceed $300 million in value must be submitted via the Contract Adviser to the LAD(W) of DEVB or THB for vetting (see SPR 345(e)). Recommendations and amendments made by the LAD(W) of DEVB or THB should be incorporated into the documents before calling for tenders.

The formula to be entered into the Appendix to the Form of Tender for determining the rate of liquidated damages should be reviewed immediately before tender invitation, with reference to the latest available information.

According to SPR 345(d), departments should not disclose the estimated contract value to the tenderers. If, however, the estimated contract value has been disclosed to the public, departments should, in all fairness, inform the tenderers of the estimated contract value.

3.6 INTERFACING AND HANDOVER OF LAND

Interfacing with other projects and programmes for handover of any land to other parties during or at the end of the contract period (see Para. 5.1 of Chapter 3) should be agreed with all the relevant parties before the completion of the tender documents. The communications with organizations outside government, consultants and other government departments, including interfacing arrangement and handover dates, should be recorded in writing. The tender documents should set out clearly the obligations of the contractor, the extent of the works or areas affected, and the handover dates.

3.7 CONTRACTS ESTIMATED TO EXCEED 5,000,000 SPECIAL DRAWING RIGHTS

Hong Kong was acceded to the Agreement on Government Procurement of the World Trade Organization (WTO GPA) on 20 May 1997. For construction contracts of estimated tender sum made at the time of gazette, which includes all provisional sums, prime cost sums and contingency allowed in the contract, exceeding the threshold of 5,000,000 Special Drawing Rights (SDR), there are a few additional tendering procedures for compliance with the WTO GPA requirements. (See ETWB TCW No. 33/2004). The Special Drawing Rights of the International Monetary Fund is based on a basket of currencies. The threshold is recalculated at intervals of two years on the basis of the average of the daily HK$/SDR exchange rates and shall thereafter be effective for the following two calendar years. Departments will be notified of any revision in the equivalent HK$ threshold values.

Most of the information required under the WTO GPA is already provided in the tender documentation under the current practice, but additional information regarding the criteria for awarding the contract and the procedure for opening tenders, as promulgated in para. 21 of ETWB TCW No. 33/2004, must also be given in the Notes to Tenderers. If any
other special criteria for awarding the contract are to be adopted, prior approval has to be obtained from relevant tender board.

Departments should not sub-divide contracts merely to avoid the application of the WTO GPA.

Joint ventures satisfying the conditions laid down in ETWB TCW No. 50/2002 should always be permitted to tender for contracts, which are covered by the provisions of the WTO GPA. For contracts not covered by the WTO GPA, departments may decide whether or not to allow joint ventures to tender.

3.8 LANGUAGES TO BE USED FOR TENDER SUBMISSIONS

Article 9 of the Basic Law stipulates that “in addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature, and judiciary of the Hong Kong Special Administrative Region”. It is therefore inappropriate to state in the tender notices and tender documents that tenders should be submitted in English.

3.9 MINIMUM WAGE REQUIREMENTS

The former Secretary for the Treasury (S for Tsy) in his memo ref. (6) in FT 53/88/2 dated 28.2.2000 announces that departments should not stipulate minimum wage requirements in their tender exercises. If departments would like to secure quality services, more effective means should be used, e.g. by specifying in detail the qualifications, experience, training and skills required of the personnel concerned; requesting tenderers to provide references from their previous clients; or using a marking scheme for tender evaluation. Nevertheless, if a department really considers it essential to stipulate minimum wage requirements in a particular tender exercise, it should make a submission with full justifications to the Central Tender Board for prior approval (i.e. before tendering). This will prevent the need to cancel the tender exercise if the Board is not satisfied with the justifications provided.

3.10 DESIGNS AND ALTERNATIVE DESIGNS BY TENDERERS

Departments may, subject to the approval of an officer of D2 level or above, require tenderers to submit complete tenders incorporating their own proposals for the design of part of the Works, which is not covered by the Engineer's design, in the following cases:

(a) Where such part of the Works is in a specialist or developing field;
(b) Where such part of the Works includes materials and construction methods, the design of which requires the specialist experience of contractors or suppliers;
(c) Exceptionally, where the detailed design of such part of the project is insufficiently advanced and the completion of the project is urgent;
(d) For piling works where several solutions are available to implement the Works; and
(e) For works of a limited lifespan, e.g. a temporary footbridge within a larger
Where there is potential for better value for money, departments may, subject to the approval of an officer of D2 level or above, invite tenderers to submit tenders incorporating their own alternative designs for a certain part of the Works notwithstanding that a design for that part of the Works has been provided by the Engineer. Departments shall specify in the tender documents which part of the Works alternative designs are invited.

Where alternative designs for certain part of the Works are invited, tenderers may elect to submit a tender conforming to the Engineer’s design and/or in accordance with the invitation an alternative tender incorporating the tenderer’s alternative design for that part of the Works (hereinafter refer to conforming tender and alternative tender respectively). It is not necessary that an alternative tender must be accompanied by a conforming tender. Where there is no invitation for alternative tender or design, alternative tenders or designs shall not be considered. Departments are, however, encouraged to invite submission of alternative tenders or designs from the tenderers where there is a potential for better value for money.

Details of guidelines for inviting designs and alternative designs from tenderers and assessment of such tenders are given in ETWB TCW No. 25/2004 and SDEV’s memo ref. (02245-01-13) in DEVB(W) 510/34/01 dated 6 October 2009. (Amendment 11/2009)

3.11 MAXIMUM NUMBER OF CONTRACTS TO BE UNDERTAKEN BY THE SAME CONTRACTOR

There are occasions when procuring bureaux/departments invite tenders for more than one contract in a tender exercise and impose a restriction on the maximum number of contracts each tenderer may secure. Some procuring bureaux/departments have also imposed a restriction on the maximum number of a particular type of contracts (which may be tendered out at one go in the same tender exercise or separately in different tender exercises) that a contractor can undertake simultaneously. SFST in his memo ref. FT 53/88 Pt. 3 dated 18.11.2004 required Controlling Officers to revisit the need and justification for setting such a restriction. In particular, for tendering of contracts covered by WTO GPA, the procuring bureaux/departments should ensure that such restriction is legally in order and seek legal advice when necessary if they wish to impose such a restriction.
4. TENDERING

4.1 NORMAL TENDERING

4.1.1 Eligible Tenderers

In selective tendering, a tender will not be considered unless the tenderer has met certain qualification requirements, e.g. is on a particular List of Approved Contractors and not being suspended from tendering, by the date set for the close of tender, or if this has been extended, the extended date. See ETWB TCW No. 10/2004 and Contractor Management Handbook for details. The eligibility of tenderers can be broadly classified as:

(a) For works generally

Eligible tenderers are contractors in the appropriate categories and groups of the List of Approved Contractors for Public Works. Eligibility of contractors on the Approved List to tender for works is as summarized in the following table (see Para. 2.2 of Contractor Management Handbook):

<table>
<thead>
<tr>
<th>Estimated Contract Sum</th>
<th>Eligible Contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to $30M</td>
<td>Group A, B</td>
</tr>
<tr>
<td>Above $30M and up to $75M</td>
<td>Chosen according to the predominant nature of the works involved (may be more than one, see below)</td>
</tr>
<tr>
<td>Above $75M</td>
<td>Group C</td>
</tr>
</tbody>
</table>

Group C contractors will normally not be allowed to tender for contracts in Groups A and B unless the department considers that there may be inadequate tenderers as a result of the restriction. In such cases, prior approval must be obtained from a D2, or higher, level officer of the department concerned and notification given to the Managing Department of the intention to invite tenders from Group C contractors for lower group contracts.

The choice of groups and categories of contractors to be invited to tender for contracts is normally based on the value of the contract and the predominant nature of the work as set out in the above table. However, when the work involved is of a simple or repetitive nature, the span of groups invited to tender may be broadened at the discretion of the head of the department responsible for the contract, without immediate regard to the value of the contract. More careful consideration is required when different types of work are involved, particularly when there are small (in financial terms) elements of a specialist nature. In deciding the groups/categories of contractors to be invited to tender, the aim should be to limit eligibility to contractors who have the necessary experience and capability (as
demonstrated by inclusion in the appropriate groups/categories), but at the same time including a sufficient number of tenderers to ensure competition. Tender invitations extended only to contractors who are included in more than one category should be rare, but the nature of works in some contracts may require this treatment. The appropriate officer of D2 rank or above should be consulted if in doubt.

A contractor on probation is only allowed to hold a maximum number or total value of contracts as set out in the following table:

<table>
<thead>
<tr>
<th>List/Group/Status</th>
<th>Group Tender Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group A</td>
<td>Any number of Group A contracts provided the total value of works in any one category does not exceed $30 million</td>
</tr>
<tr>
<td>Probationary</td>
<td></td>
</tr>
<tr>
<td>Group B</td>
<td>Any number of Group A contracts and any number of Group B contracts provided the total value of the Group B works in any one category does not exceed $75 million</td>
</tr>
<tr>
<td>Probationary</td>
<td></td>
</tr>
<tr>
<td>Group C</td>
<td>A maximum of two contracts exceeding $75 million in any one category provided the total value of Group C works in any one category does not exceed $220 million</td>
</tr>
<tr>
<td>Probationary</td>
<td></td>
</tr>
</tbody>
</table>

Contracts awarded by the Housing Authority (HA) in the corresponding category will be taken into consideration when calculating the total number and total value of contract which may be awarded to probationary contractors.

The value of works undertaken by a probationary contractor as a participant or shareholder of a joint venture contractor should not be counted in determining his eligibility for award of Government contracts.

Although the total value of contracts allowed for probationary contractors to undertake as stipulated in the above table is the normal criterion for limiting eligibility for award of contracts, this criterion may be relaxed in circumstances that justify a more flexible approach. Such a flexible approach may be justified, for example, where a probationary contractor who is carrying out contract(s) wishes, towards the end of the contract(s), to submit a tender for another contract of the same category. Under such circumstances, the outstanding value of the existing contract(s) may be taken into account instead of the total value of the existing contract(s) in assessing the financial capability of the contractor. The limit of the value of outstanding work for assessing the financial capability of the contractor may also be raised in special circumstances. In considering the flexible approach as stipulated in
paragraph 2.5.5 of the Contractor Management Handbook, project officers should seek the endorsement of DEVB to ensure that the recommendations are in line with the policy intention before making submissions to the CTB. Sufficient time should be allowed for seeking such endorsement. A probationary contractor who may not be eligible for the award of further contracts by virtue of the restrictions on group tender limits, is permitted to take tender documents and to submit a tender. However, such a tender will not be considered if the contractor is not eligible for the award of a further contract by the date set for the close of tender of that further contract, or if this has been extended, the extended date.

A tenderer who has applied for admission or promotion to the group specified in the tender invitation or who has applied for confirmed status will be permitted to take tender documents in respect of a contract in the relevant group or status and to submit a tender. However, such a tender will not be considered unless his application for admission or promotion or confirmation is approved by the date set for the close of tender, or if this has been extended, the extended date.

It is not required to inform a probationary contractor or a contractor who has applied for promotion to the next higher group in the above cases that his tender will not be considered at the time of receipt of the tender. Such tenders should be rejected only after having obtained approval from the relevant authority.

The following matters regarding the eligibility of contractors to submit tenders have to be noted/checked:

(i) A contractor who is suspended under the provisions of Para. 5.4 to 5.8 and 5.13 of Contractor Management Handbook is allowed to collect tender documents and to tender. The tender will be considered provided that the suspension is lifted by date set for the close of tender, or if this has been extended, the extended date.

(ii) Parent and subsidiary companies included in the same category are not permitted to individually submit a tender for a particular contract. Only one tender submission is permitted from either one of them. Failure to observe this requirement will render the tenders submitted null and void.

(iii) The requirements on contractor to employ technician apprentices, ex-CITA trainee craftsmen and Building and Civil Engineering Graduates as prescribed in ETWB TCW No. 12/2003.

(iv) The requirements on contractor to employ the minimum number of Qualified Tradesmen and Intermediate Tradesmen as prescribed in WBTC No. 13/2002.

(v) Subject to Para. 5 of ETWB TCW No. 50/2002, departments should check whether or not joint ventures are allowed to tender for contracts that are not covered by the provisions of the WTO GPA. Joint
ventures should always be permitted to tender for all contracts covered by WTO GPA.

(vi) The requirements on contractor to obtain quality management system certification as prescribed in WBTC No. 13/2001 and ETWB TCW No. 13/2001A.

(vii) The regulatory actions against contractor convicted of site safety offences or environmental offences or incurring serious incidents on site as prescribed in DEVB TCW No. 3/2009 (Amendment No. 5/2009).

(viii) The regulatory actions against contractor repeatedly convicted of Section 27 of the Public Health and Municipal Services Ordinance (Cap. 132) regarding mosquito breeding offences as prescribed in ETWB TCW No. 22/2003 and 22/2003A.


(b) For specialist works and supply of materials

Where the specialist works or materials supply forms a main contract and where an applicable category exists in the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, the eligible tenderers are contractors/suppliers in the appropriate category (and group) of the said List. (See Section 3 of Contractor Management Handbook)

Eligibility of contractors/suppliers in different categories and groups of the said List to tender for works is given in Appendix 3A of Contractor Management Handbook.

Where the specialist works or materials supply forms only a part of a main contract, the contract conditions should require the main contractor to employ a sub-contractor who is on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works in the appropriate category (and group) to carry out such part of the work if:

(i) the specialist works or materials supply is of significant value or constitutes a substantial part of the main contract, e.g. a contract with substantial structural steelwork, or

(ii) the specialist works or materials supply can only be satisfactorily undertaken by an experienced specialist contractor, e.g. supply and installation of bridge bearings.

In such cases, the main contractor shall enter into written sub-contracts with the specialist contractor of the approved list for the execution of the respective part of the Works. Appropriate SCC shall be incorporated into the contract document on sub-contracting. Standard SCCs in this respect are given in the
Library of Standard Special Conditions of Contract maintained by DEVB. As promulgated in memo ref. WB(W) 209/32/110 dated 2.5.2001 from the former Secretary for Works (S for W), it is no longer required to ask tenderers to submit with their tenders a letter of intent from specialist subcontractors.

(c) For procurement covered by WTO GPA

For procurement covered by WTO GPA, the qualification criteria for selecting contractors/suppliers are limited to those which are essential to ensure the contractors'/suppliers’ ability to provide the required services or articles. Departments shall provide open, fair, consistent and non-discriminatory treatment to products, services and contractors irrespective of their country of origin. Local and overseas contractors and suppliers should all be treated on an equal footing.

(d) For Term Contracts

Eligibility to tender for term contracts shall be determined by the estimated value of the term contract except where a specialist category has been created in the List of Approved Suppliers of Materials and Specialist Contractors for Public Works in which case tenders shall be invited from contractors in the specialist category. For the purpose of defining the eligibility to tender, the value of a term contract shall be taken to mean the total estimated expenditure under the contract.

There are restrictions on the award of some maintenance and minor works term contracts and the restrictions are set out at the Appendix of WBTC No. 24/99. Relevant restrictions should be specified in the tender documents so that all tenderers are made aware of the restrictions.

At the discretion of the head of the department responsible for the contract, contractors confirmed in Group B may be permitted to tender for term contracts above the limit of $50 million but which are of a simple and repetitive nature, provided the contractors can demonstrate adequate technical and financial resources and have satisfactory performance records. Group B contractors who are carrying out or have recently completed similar term contracts satisfactorily shall be considered under this rule. However, the total value of the Group C term contracts in any one category should not exceed the Group C probationary limit.

4.1.2 Tender Invitation

Prior to invitation to tender, the Secretary for Development (SDEV) should be alerted through Press Secretary to SDEV by the works department on the issue of important works tenders, especially those related to Chief Executive's initiatives in the policy address, via the departmental headquarters. Invitation to tender is normally made in the form of Gazette Notice and/or posting a tender notice on the Internet. Depending on the value of a contract, the procedures for tender invitation can be broadly classified as follows:

(a) For works contracts under $55 million (Amendment No. 4/2009)
Under the simplified tendering arrangements promulgated in FC No. 3/2009 (Amendment No. 4/2009) tender invitations for all works contracts under $55 million (Amendment No. 4/2009) each need only be published on the Internet. Controlling Officers may decide whether to also publish these in the Gazette, local press and journals, and whether to allow the full tender documents to be downloaded from the Internet. The date for tender invitation can be any day except those falling on public holidays. However, the tender closing date has to be a Friday or some other date announced by the relevant tender boards as all tenders shall still be submitted to the relevant tender boards.

Departments should devise their internal procedures for obtaining approval to proceed with tender invitation and for posting of tender notice on the Internet. The routing sheet, check list and estimates summary shown in Appendix 6.1 can be used for submitting supporting documents by division/regional office through office and departmental headquarters. Departments should post the tender notice (and subsequent corrigendum to such notice, where applicable) on the “tender page” of their Internet homepage. A sample of the tender notice to be published on the Internet is given in Appendix 6.2.

(b) For works contracts covered by the WTO GPA

All works contracts that fall within the provision of WTO GPA shall follow the procedures for tender invitation stipulated in SPR 340, S for Tsy’s memo ref. FT53/88 Pt. 2 dated 5.3.2002 and ETWB TCW No. 33/2004. For open and selective tendering, departments shall publish tender invitations and notice of prequalification of tenderers in Gazette and local press. Departments may, in addition, publish invitations in selected journals, send invitation letters to qualified contractors and notify consulates and trade commissions in Hong Kong of such invitations, if considered appropriate. A Gazette Notice for invitation to tender is normally published in two consecutive issues of the Gazette but if it is considered desirable to publish a particular notice in more than two issues, the originating department should recommend accordingly. Publication day is a Friday unless that Friday is a public holiday. Tender notices shall also be advertised in at least one of the local press in addition to the Government Gazette, and departments should make advertising arrangements with the Director of Information Services direct.

To publish tender notice in the Gazette, the procedures provided in General Regulations 103 – 105 shall be followed. Briefly, three copies of the draft Gazette Notice, in both Chinese and English, should be provided to the Official Languages Division, Civil Services Bureau (CSB) (Attn: COLO(UNIT 4)) by 3:30 p.m. on the Tuesday preceding the publication date, which is normally Friday. The Official Languages Division, CSB will, after vetting the Chinese translation, forward the notice to the Assistant Clerk to the Executive Council, who acts as the Editor. The department should also send an additional copy of the Gazette Notice directly to the Director of Government Logistics (D of GL) not later than 2:30 p.m. on the Tuesday preceding the publication date.
When Friday is a holiday, the Gazette appears on the nearest previous working day. The respective time limits for submissions stated in the above paragraph are then similarly adjusted. When holidays occur on days which do not affect the publication date of the Gazette, an adjustment to the time limits for submission should nevertheless be made to allow the usual number of full working days. Should any adjustment result in a time limit for submission falling on a Sunday or Saturday then the actual closing time will be 2:30 p.m. on the previous Friday.

A copy of the tender invitation (and subsequent corrigendum to the notice) should be sent to the relevant tender board, where appropriate, for tender collection and opening arrangements to be made.

Tender notice should be posted on the “tender page” of the department’s Internet homepage on the same day when the Gazette Notice is published. The notice should remain on the “tender page” until the respective closing date of the tender exercise. Departments are to ensure that the information contained in the electronic notice shall tally with that contained in the Gazette Notice. A sample of the tender notice to be published on the Internet is given in Appendix 6.2.

The routing sheet for submission of supporting documents, the memo requesting for publication of Gazette Notice and a specimen Gazette Notice with content pages are given in Appendices 6.1, 6.3 and 6.4 respectively. Departments shall ensure that all information required by the WTO GPA is included in the tender invitations.

Depending on the sensitivity of a project and the degree of public/media interest, a press release in layman terms for advertising on the local and/or international press may also be issued concurrently with the Gazette Notice. It is advisable to contact and discuss with Secretariat Press Officer (SPO) of DEVB on the necessity of a press release well in advance of gazette notification in order to save time and effort. If a press release is required, it should include at least one English and one Chinese newspaper and should be arranged with SPO or the Information & Public Relations Unit (I&PR) of Transport Department (for HyD projects), by the submission of a draft press release (Appendix 6.5) with the aforesaid documents.

Guidelines for the preparation of documents for Gazette notification and draft press release are given in Appendix 6.6. For preparation of the gazette notice for invitation to tender to be published in the Gazette, please refer to memo from D of GL dated 12 August 2005 (ref. (38) in PD/12/4). A copy of the guidelines on the format for government notices in the main Gazette (which is the annex to this memo) is attached as an annex to Appendix 6.6.

Limited tendering (i.e. single or restricted tendering) procedures should only be used in circumstances prescribed in Article XV of the WTO GPA and detailed in ETWB TCW No. 33/2004, and may be initiated only with the prior authority of PSTsy. Departments making application to PSTsy for initiation of single or restricted tendering should substantiate their request with full justifications. Departments shall send tender invitations by letter to
contractors/suppliers as approved by the PSTsy.

As promulgated in the former Secretary for the Environment, Transport and Works’ (SETW’s) memo ref. ETWB(PS) 111/9 dated 16.1.2003, if notices of tender/pre-qualification of tender are to be disseminated to the Mainland authorities/enterprises through the Beijing Office (BJO), departments should send the tender notices to Mr. WL Chow, Trade Officer of the BJO (Tel.: 86-10-6518 6318 Ext 21 & Fax.: 86-10-6518 6322) through an assigned departmental co-coordinator. Departments should also state the target group of distribution, if possible. A copy of the correspondence with the BJO should be copied to DEVB/THB for reference.

4.1.3 Issue of Tender Documents

Tender documents must be ready for collection on the first publication day of the tender invitation.

Pre-addressed envelopes or labels for the return of tenders should, as far as possible, be provided to tenderers.

Drawings are normally bound separately and they should be returned to the issuing office after submission of the tender.

Except for procurements covered by WTO GPA, only contractors in the appropriate group and category of the Lists should be allowed to collect tender documents. Tender documents may be issued, in accordance with the principles and procedures set out in Para. 4.1.1, to a probationary contractor who is holding the allowable maximum number or total value of contracts, or to a contractor who is not in the appropriate group stipulated for the tender but who has applied for inclusion in or upgrading to this group.

For procurement covered by WTO GPA, tender documents should continue to be collected by contractors according to current practice but shall be forwarded to interested contractors by courier, if requested in writing, in the case of both open and selective tendering. Such requests shall be answered promptly. Departments are empowered to recover the full delivery cost from tenderers for example by crediting their departmental general revenue accounts, by requesting contractors to provide their account numbers with the courier so that the delivery cost can be charged direct to the contractor’s account, or by other means.

A contractor who is suspended from tendering (voluntary or otherwise) is still allowed to collect tender documents but his tender will not be considered unless the suspension is lifted by the date set for the close of tender, or if this has been extended, the extended date. More detailed guidelines are given in Para. 4.1.1(a) (i) to (vii) which should be followed.

Contractors on the approved lists may be promoted, downgraded or deleted from the Lists or suspended from tendering at any time. It is essential therefore that up-to-date records of contractors’ status be referred to prior to the issue of tender documents to contractors.

An Electronic Dissemination Package (EDP) which comprises a collection of electronic files containing the contents of a set of tender documents should be disseminated
free of charge to eligible tenderers in accordance with the provisions stipulated in ETWB TCW No. 11/2005, in addition to the hard copy set. Request for additional electronic copies of tender drawings should be charged in accordance with the provisions of WBTC No. 7/2000 and ETWB TCW No. 7/2000A. Request for additional electronic copies of other types of tender documents should be charged at the rates prescribed from time to time by the relevant authorities. An EDP should be issued with the attachment of a set of licence conditions given in Appendix 2A of ETWB TCW No. 11/2005, duly completed by the department concerned in accordance with the footnotes therein. The hard copy and the EDP are each a complete set of the tender documents, bearing equal status.

In addition to the EDP issued to tenderers, the same EDP should also be distributed to Authorized Service Providers (ASP) using the issue notice stipulated in Schedule 2 to Appendix 3 of ETWB TCW No. 11/2005. It should be issued with the attachment of a set of licence conditions given in Appendix 2B of ETWB TCW No. 11/2005, duly completed by the department concerned in accordance with the footnotes therein. Hard copies of the tender documents shall not be issued to ASP. DEVB/THB will announce from time to time the current list of ASP (see DEVB website for projects under DEVB).

4.2 SINGLE AND RESTRICTED TENDERING

For works where normal invitation to tender is considered inappropriate or not feasible, it may be necessary to create a short-list of contractors/suppliers for tendering purpose. Single or restricted tender procedures should only be used in circumstances when open competitive tendering would not be an effective means of obtaining the requisite supplies or services, for example:

(a) Where there is extreme urgency brought about by unforeseeable events and where the delay that would arise as a result of open or selective tendering could seriously harm the public or security interests of the Hong Kong Special Administrative Region;

(b) Where for reasons connected with the protection of copyrights or technical reasons, the products or services can only be supplied by a particular supplier and where no reasonable alternative or substitute exists;

(c) Where there is no response to an open or selective tender, or where there is evidence that the tenders submitted have been collusive, or not in conformity with the essential requirements in the tender, or from contractors or suppliers who do not comply with the conditions for participation, but only on condition that the requirements of the initial tender are not substantially modified in the contract as awarded;

(d) Where the equipment or services to be purchased must meet requirements of compatibility or interchangeability with already existing equipment or services;

(e) Where it can be demonstrated that “patent” or “proprietary” items are the only items which can meet the specification;

(f) Where services are to be provided by utility companies;
(g) Where maintenance is to be executed on patent or specialized equipment and where the warranty of the equipment gives the supplier of the equipment the exclusive right to carry out the maintenance service;

(h) Where lease terms require that work must be executed by a particular firm;

(i) For tenders of contracts below $4 million (Amendment No. 4/2009), to save administrative costs, where it has been established that the existing contractor is a suitable and cost-effective source of supply; or

(j) Where additional works which are outside the terms of a contract but within the approved scope of a project, through unforeseeable circumstances, have become necessary and the separation of the additional works from the initial contract would be difficult for technical or economical reasons and would cause significant inconvenience. However, the total value of additional works to be awarded to the same contractor, other than variations ordered under the contract, must not exceed 50% of the original value of the contract. (for procurement of major works governed by the WTO GPA only according to ETWB TCW No. 33/2004)

Requests for single or restricted tendering should be signed or endorsed by an officer at directorate level. Subject to the prior approval of PSTsy upon the recommendation of the department, invitation letter can be sent to the short-listed contractors/suppliers for tendering. Departments should advise the tenderers to submit their tenders in the same manner as open and selective tender procedures. Tenderers should not be informed that tenders are being invited on a single or restricted basis. A sample letter of invitation to tender is shown in Appendix 6.7. It should not include any information that may prejudice Government’s interest in the tender. EDP should be distributed to the tenderers and the ASP in the same manner as described in Para. 4.1.3.

When seeking approval to PSTsy for adopting single or restricted tendering procedures, departments should provide the following details:

(i) The background of the proposed works;

(ii) The estimated cost;

(iii) Justification on why open tenders should or cannot be invited;

(iv) If the reason for the proposed single or restricted tendering action is urgency, explanation on why tender action have not been initiated earlier and on 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, explanation on how the shortlist was drawn up with elaboration on the criteria used for the short-listing and the professional capability and experience of all the contractors being considered (including those not having been short-listed).

Department shall keep a report in writing on each contract awarded under the single
or restricted tendering procedures. Such reports shall contain the name of the procuring entity, value and kind of goods or services procured, country of origin and a statement of the conditions which necessitate the use of single or restricted tendering.

4.3 PREQUALIFIED TENDERING

Reference should be made to ETWB TCW No. 35/2004 and 35/2004A regarding the guidelines on prequalification of tenderers for all public works contracts. Departments should consider if the use of a marking scheme, with or without Stage I Screening, according to ETWB TCW No. 8/2004 should be adopted in lieu of prequalification.

The main objective of prequalification is to identify those contractors who are interested and capable of undertaking the contract and to keep tendering cost to the minimum. Tenders will only be invited from the list of prequalified contractors. The qualification requirements shall be limited to those which are essential to ensure that the prequalified tenderers are capable of executing the contract and there shall be no discrimination against local or overseas contractors or contractors not yet on the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works.

With the introduction of the marking scheme in tender evaluation promulgated under ETWB TCW No. 8/2004, departments may incorporate any necessary qualification requirements on tenderers in a marking scheme and the need for a separate prequalification exercise should no longer exist except for some special situations e.g.:

(i) there is no relevant approved list;

(ii) it is envisaged that few contractors on the relevant approved list would meet the qualification requirements and therefore there is a need to invite those contractors who are not yet on that approved list to participate;

(iii) the qualification process is time consuming and there is a need to conduct the qualification process in advance, particularly for projects involving predominantly underground works such as tunnels where project officers will need more time for the examination of experience and past performance of overseas contractors or for seeking contractors’ views on the technical or contractual scheme of the projects;

(iv) where the qualification requirements are so complex that some tenderers may not know exactly whether they are qualified or not;

(v) where the cost of the tendering exercise is high or can be significantly reduced if tenderers are prequalified; and

(vi) mega-sized contracts (contracts which are of a routine nature; which have no special or difficult requirements, which do not have a high degree of complexity and which are primarily straightforward do not normally warrant prequalification although their contract values may be large. The value of a mega-sized contract may vary from department to department and the need for
prequalification will be left to be justified by the departments on a case by case basis having regard to the factors needed for consideration as listed.

However, where prequalified tendering is adopted in such exceptional situation, the use of marking scheme in tender evaluation remains applicable. A tailor-made marking scheme to suit the specific features of the works required by the contract shall be devised and shall be subject to prior approval from PSTsy and CTB, following policy support from DEVB/THB according to ETWB TCW No. 8/2004, 35/2004 and 35/2004A.

There are two types of prequalification:

(a) Type I prequalification: prequalifying only a limited number of contractors (say 3 or 4) i.e. those scoring the highest marks in the qualification exercise.

(b) Type II prequalification: prequalifying all contractors who meet the qualification requirements.

Type I prequalification generally applies to contracts where the likely costs of preparing the tender submission are high or design and build (D&B) contracts. For D&B contracts, the number of prequalified contractors shall normally be restricted to a maximum number of four. For D&B contracts with estimated value in excess of $500 million, the maximum number shall be three. Selection is done through the use of a marking and ranking scheme. In no case shall the selection criteria be relaxed merely to make up the recommended maximum number of prequalified contractors.

Type II prequalification applies to prequalification of contractors where Type I prequalification does not apply. It is not a shortlisting process and all contractors who meet the qualification requirements shall be considered qualified. Late applications will be considered provided that there is sufficient time to process the applications.

A request for authority to prequalify tenderers shall be made to the PSTsy who normally acts on the advice of the CTB. A specimen application for authority to prequalify tenderers is given in the SPR Appendix III(B).

Departments should note that the purpose of prequalification is to identify those contractors who are capable of undertaking the contract. It is not necessary to ask applicants to commit themselves to any resources proposal, method of construction, engagement of sub-contractors etc. at the prequalification stage. Normally, contracts warranting prequalification of tenderers are all subject to the use of a marking scheme in tender evaluation similar to the one promulgated under ETWB TCW No. 8/2004. However, for tender evaluation of tenders submitted by contractors on the prequalified list, it is generally not required to reassess the experience criteria under Section 1 of the marking scheme since this has already been assessed in the prequalification process. At the contract tender stage tenderers will be asked to submit technical and resource proposals and these proposals will be binding and form part of the contract.

For Type I prequalification, no applicant is permitted to submit more than one application for each prequalification either on its own behalf or as a participant or shareholder of a joint venture. For the avoidance of doubt, a holding company and its subsidiaries are considered as one and the same applicant. A holding company and its subsidiaries shall be allowed to submit only one application for prequalification from any one of the companies in
the group, either on its own behalf or as a participant or shareholder of a joint venture.

For Type II prequalification, a holding company and its subsidiary companies are permitted to submit applications for prequalification on its own behalf and as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture. However, in tendering for the contract, no tenderer is permitted to submit more than one tender for the contract either on its own behalf or as a participant or shareholder of a joint venture. For the avoidance of doubt, a holding company and its subsidiaries who are included in the list of prequalified contractors either on its own behalf or as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture shall be considered as one and the same tenderer.

Detailed guidelines for invitation, qualification requirements, preparation of prequalification documents, analysis of submission, selection of tenderers and other considerations for prequalified tendering are given in ETWB TCW No. 35/2004 and 35/2004A, and SPR 330. As stipulated in paragraph 36(a) of ETWB TCW No. 35/2004, it is not required to check applicants’ financial capability at the prequalification stage. Changes to the composition of a prequalified joint venture contractor may be permitted under the conditions stipulated in paragraphs 27 and 28 of ETWB TCW No. 35/2004 (see the revised version on 8.5.2008 or the latest revised version, if any, posted in DEVB’s website).

References should also be made to FC No. 2/2009 (Amendment No. 4/2009) regarding initiating works-related tendering and prequalification exercises for works tenders before funding is secured.

4.3.1 CONFLICT OF INTEREST

In preparing the prequalification report for submission to CTB, the requirements as stipulated in paragraph 47 of ETWB TCW No. 35/2004 and Appendix III(D) of SPR should be followed. Reference should also be made to the memo from SFST ref. (10) in FT 93/88 dated 19.12.2007 in which a standard form for declaration of no conflict of interest by Officers involved in the preparation of prequalification documents and in the prequalification exercise is promulgated. All officers should each complete one form and officer submitting the report should confirm in accordance with Paragraph H of Appendix III(D) of the SPR that all officers involved in the preparation of prequalification documents and in the prequalification exercise have already declared their interest and, where conflicts of interest (actual, potential or perceived) have been identified, appropriate remedial action has been taken. Sample confirmation statements on declaration of no conflict of interest are as follows:

(i) Prequalification reports prepared by Government officers

“I confirm that all officers involved in the preparation of prequalification documents and in the prequalification exercise have declared that there is no actual, potential or perceived conflict of interest for them to take part in the process in accordance with Stores and Procurement Regulation 186.”

(ii) Prequalification reports prepared by the project consultants

“We, (name of the project consultant), have declared our compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interest and confirmed that there was no actual, potential or perceived conflict of interest in connection with our services in the preparation of prequalification documents and in
the prequalification exercise.”

All declarations of interest in accordance with SPR 186 should be kept in file for record.

4.3.2 REPRESENTATIONS AT PRE-CONTRACT STAGE

Departments should always practise with great care when issuing information to any prospective contractor in the pre-contract stage. It should be borne in mind that such information, if issued, could amount to a pre-contract representation or even become a term of the contract thereby causing significant contractual implications if the information turns out to be incorrect. Whilst it is prudent to seek legal advice whenever doubts arise, project officers shall also follow the guidelines stated below (see SDEV’s memo ref. 01QXA-01-12 in DEVB(W) 546/70/02 dated 23 April 2008):

(a) Prequalification stage

Departments shall set out the scope of the contract, the essential requirements of the contract and the qualification requirements in the prequalification document to be issued to prospective applicants to assist them in preparing submissions seeking for prequalification. Reference shall be made to ETWB TCW No. 35/2004.

Any other “side information”, e.g. market conditions, source and/or availability of materials and commentaries on suitability of construction methods or current legal requirements, is rarely necessary or appropriate for inclusion in or issue with the prequalification document. Project officers should be conscious of the potentially major contractual implications that might result from incorrect information issued and allegedly having been relied upon by the contractor. There is also the risk that the originally correct information could become incorrect with the lapse of time or changes in circumstances after the information is issued.

Where the circumstances genuinely require the issue of specific side information to prospective applicants in the prequalification stage, consent from the relevant officer at D2 rank or above shall be obtained. Before issuing any such information to prospective applicants, the department shall also consult LAD(W) with regard to drafting any special disclaimer clauses for inclusion in the prequalification document and/or the Special Conditions of Contract which may be necessary having regard to the nature of the information and/or particular circumstances of the procurement so as to safeguard the Government’s interest.

(b) Subsequent doubt over the truthfulness of any information issued under (a)

Where a piece of information has been issued under (a) above but its truthfulness is subsequently found to be questionable due to change in circumstances or other reason(s), LAD(W) should be consulted as to the appropriate action to be taken (e.g. withdrawal of the information with or without extension of the date set for submission of prequalification applications or cancellation of the prequalification exercise) notwithstanding that a disclaimer may have already been incorporated in the prequalification document.

Note 1: Under the common law and the Misrepresentation Ordinance (Cap. 284), a
misrepresentation is a representation which does not accord with the true facts. The
representee who has entered into a contract in reliance on such representation may sue for
rescission (i.e. cancellation and putting the parties back to where they were before the
contract was made) and/or damages. Where a misrepresentation has become a term of the
contract, there is a right to terminate the contract (if the term is in the nature of a condition)
and sue for damages for breach of contract as well as a right to sue for rescission (see section
2 of the Misrepresentation Ordinance).
5. ACTION DURING TENDER PERIOD

5.1 PRE-TENDER MEETING

Pre-tender meetings should not be held if the existing procedures for communication are sufficient to obtain competitive tenders. If a pre-tender meeting is considered necessary, it should be arranged in the week following the last publication of the tender invitation, or in the case of restricted tendering at a suitable time before the date set for receipt of tenders.

At the pre-tender meeting, Contractors should be allowed to visit the site if possible and to raise any queries they may have. Contractors should however be informed at the beginning of the meeting that any oral information given at the meeting should not be taken as varying the information in the tender documents unless subsequently confirmed in writing. Important points raised should be covered in the form of questions and answers in a circulation letter to be sent to all tenderers, irrespective of whether they attended the meeting or not. Minutes are not required for the pre-tender meeting.

Further details for pre-tender meeting are given in WBTC No. 4/92.

5.2 TENDER ADDENDA (Ref.: WBTC No. 6/95 and ETWB TCW No. 6/95B)

If amendments to tender documents are found necessary after they have been issued to tenderers, such amendments shall be prepared and processed in accordance with the following guidelines.

(a) Preparation of addenda

The following principles shall be observed in preparing amendments:

(i) The Conditions of Tender shall only be amended by means of Special Conditions of Tender,

(ii) The General Conditions of Contract shall only be amended by means of Special Conditions of Contract,

(iii) The General Specification (GS) shall usually be amended by means of a Particular Specification (PS). In exceptional cases, for example, with alternative designs, amendments may be made by a letter,

(iv) The Standard Method of Measurement (SMM) shall only be amended by means of appropriate preambles to the Bills of Quantities (BQ), by way of replacement or additional clauses, as applicable, in the same format as that given in the SMM,

(v) Standard documents such as the General Specification and the SMM are updated/amended from time to time. The amendments are sometimes done by way of corrigenda. These amendments/corrigenda are usually available from the internet.
Where these are available, the tenderers' attention should be drawn to the specific websites. Otherwise, the amendments and corrigenda shall be incorporated in full in appropriate places in the tender documents. For example, they could be included as an appendix to the standard documents where these documents are included or where only references to the documents are made as an appendix to such references.

(vi) Should there be changes to the scope of the Works before the tender closing date which may affect the rate of liquidated damages or the associated special damages, the formula that have been entered into the Appendix to the Form of Tender for the determination of liquidated damages should be adjusted by means of a tender addendum.

(b) Method of making amendments

Care must be taken to ensure that any amendments to the documents do actually form part of the contract and also have the requisite effect on it. Tender addenda can be issued as:

(i) A replacement or additional page marked “Addendum No.....” which either replaces the original page or serves to amplify/amend the original document, or

(ii) An extra document or a letter amplifying or amending the original document.

The first method is the legally preferred way of making amendments and should be used whenever possible. Where it is not practical to provide a replacement/additional page, the amendment may be made by means of an extra document. Such an amendment must also be assigned a tender addendum number and be dealt with similarly.

(c) Processing amendments

The tender addenda should be bound separately to a letter for:

(i) Issuing to all tenderers who have collected tender documents, and

(ii) Attaching to all copies of tender documents which have not been collected at the time of issuing the tender addenda (for issue to further tenderers).

The letter (see sample at Appendix 6.8) should provide for:

(iii) An acknowledgement of receipt by the tenderer,

(iv) A certification by the tenderer that the addenda have been taken into account, and
A tender addenda sheet describing the amendments made. The letter should be signed by the Engineer designate (see Appendix 6.9).

Copies of all amendments shall be sent to other parties as required for the particular project.

During the tender period, a record of all acknowledgements of receipt returned shall be maintained and clarification shall immediately be sought from those tenderers who have not returned the acknowledgement within the time limit.

The procedures for preparing the Electronic Dissemination Package (EDP) for tender addenda are given in Appendix 1 of ETWB TCW No. 11/2005.


5.3 QUERIES FROM TENDERERS

All questions raised at the pre-tender meeting or put forward in writing by tenderers which suggest the existence of errors or ambiguities in the tender documents should be carefully examined and if found justified, a letter attaching the tender addenda should be issued to correct the errors or clarify the ambiguities. See Para. 5.2(c) for details.

5.4 SALE OF PLANS OR DRAWINGS TO TENDERERS

Tenderers may request additional copies of the drawings which are issued with the tender documents, or copies of those drawings which are available for inspection but not issued. There is no objection to a reasonable number of drawings being supplied to each tenderer in such cases but it must be on the basis of purchase by the tenderer at the rates currently charged for the sale of plans to the general public. The question of what is reasonable or unreasonable with regard to a tenderer’s request for drawings shall be determined by the division/regional office concerned. Reference can be made to PWDTC No. 11/76.

It should be stressed to tenderers that the copyright of the drawings remains with Government and the drawings must not be used for purposes other than the preparation of the tender concerned.

A tenderer may ask for the supply of additional copies of tender drawings in electronic form for the purpose of preparing his tender. The standard charges and guidelines for the supply of electronic drawings are given in WBTC No. 7/2000 and ETWB TCW No. 7/2000A. Basically, the following salient points should be noted when issuing electronic drawings to the tenderers:

a) the tenderers should be advised in writing and confirm their acceptance that the electronic drawings are not guaranteed to be free from computer viruses and the Employer will not be responsible for any damage arising therefrom;

b) the tenderer should be advised in writing and confirm their acceptance that the
Employer will not accept any liability arising from any discrepancies between the electronic drawings and the tender drawings in hard copy format; and

c) if the electronic drawings contain digital map data supplied by the Lands Department, the tenderer shall be required to provide a duly signed undertaking regarding the conditions in the use of Government digital map data as given in Appendix A of WBTC No. 7/2000.

5.5 AMENDMENTS TO TENDER DESIGNS

No alterations should be made to the basis of designs on which the tender documents have been prepared and tenders invited, except for purposes such as clarification of details or for the acceptance of alternative designs as permitted by the Conditions of Tender.

In the event that exceptional circumstances have arisen such that part or the whole of the tender designs must be altered, appropriate approval should be sought to make the necessary amendments or cancel the tendering exercise with a view to re-tendering. Under SPR 380(e), the decision not to accept any tender in a tender exercise must be made by the relevant tender board. This authority has been delegated to the Controlling Officer for works contracts under $21 million (Amendment No. 4/2009) each. The relevant tender board must still be consulted for the cancellation of tenders costing $21 million (Amendment No. 4/2009) or above each.

5.6 LEGAL VETTING OF SUBSTANTIAL ALTERATION TO TENDER DOCUMENTS

If during the tendering period any substantial alterations are made to the tender documents for contracts estimated to exceed $300 million in value, then details of the alterations including all correspondence and memoranda relating thereto must be submitted to the LAD(W) of DEVB or THB for vetting. Time must be allowed to obtain the approval for the alteration to the tender documents before the acceptance of the tender. Any major alteration must be approved by the Department of Justice (D of J).

5.7 EXTENSION OF TIME FOR TENDERING

The arrangement for extension of tender closing time due to typhoon and rainstorm should be as follows:

In case a black rainstorm warning or typhoon signal No. 8 or above is hoisted between 9 a.m. and 12 noon on Friday, the tender closing time for tenders to be deposited into Government Secretariat or Public Works Tender box will be extended to 12 noon on the first working day of the following week. An announcement of the extension of the tender closing time will be made by SFST through the radio immediately after 9 a.m. or immediately after the signal/warning has been hoisted.

The tender period may need to be extended if:

(a) Tenderers give substantive reasons showing why tenders cannot be properly
prepared within the specified period,

(b) Queries raised by the tenderers require significant time to resolve, or

(c) The timing or nature of a tender addendum is considered to be disruptive to the pricing of the Bills of Quantities.

In any event, consideration must be given to granting an extension due to any addendum, other than those of a very straightforward nature, issued during the last week of the tender period.

The length of any extension will also depend on the type and timing of the request, queries or addendum.

The justification for and the length of the extension to the tender period must be agreed by the Chief Engineer or Regional Office Head before action is taken.

When the need to extend the tender period and the length of the extension have been agreed, all tenderers who have taken out tender documents and the relevant tender board should be informed initially by telephone, followed by confirmation in writing. A sample letter informing the tenderers and a sample memo informing the tender board of the extension of tender period is given in Appendix 6.10 and 6.11 respectively. Copies of the letter notifying tenderers of the revised time for receipt of tenders must be attached to tender documents which have not been collected at the time the tender period is extended.

For tenders requiring gazetting, publication of the gazette notice for extension of tender period should be sent to the Assistant Clerk to the Executive Council through the Official Languages Division (Attn: COLO/Unit 4) by the submission of the following documents by division/regional office through the office and departmental headquarters:

(a) Memo requesting publication of Gazette Notice (Appendix 6.12) for extension of tender period, and

(b) Draft gazette notice (Appendix 6.13) with contents page.

Departments should also ensure that the relevant details on the “tender page” of their Internet homepage are updated accordingly.

5.8 EXTENSION OF TENDER VALIDITY PERIOD

The period for which tenders remain binding is stated in the Form of Tender (normally 90 days from the closing date for tenders). After the expiration of this period, a tender cannot be accepted without the written consent of the tenderer to extend the tender validity period.

If such an extension is anticipated before tender closing date, a tender addendum should be issued. If such an extension is required after tender closing date but before acceptance of tender, a letter enclosing a standard confirmation letter for reply (see Appendix 6.14) should be written to all tenderers asking for their agreement to extend the tender validity period without changing their original bid (tendered sum). The action should then
be recorded in the tender report. If such an extension is required after acceptance of tender, the letter should be written to the successful tenderer asking for agreement to extend the tender validity period without changing the original bid (tendered sum). If the tenderer does not agree to the extension unconditionally, it will be necessary to justify the acceptance of the additional cost and re-submit the case to the appropriate authority for approval. It should be noted that a tenderer’s refusal to extend would render his tender ineligible for acceptance after the expiry of the original tender validity period. On the other hand, a tenderer’s agreement to extend subject to conditions will be considered as a qualified bid and may be rejected.

Tenderers should be reminded that the letter seeking their agreement to an extension of the tender validity period does not signify either an acceptance or a rejection of their tenders, all tenders are still under consideration and Government does not bind itself to accept either the lowest or any other tender.
6. EXAMINATION OF AND REPORT ON TENDERS

Please refer to ETWB TCW No. 7/2004 for the procedures for examination of tenders and submission of tender reports for public works. These general procedures are also applicable to design and build contracts, subject to any additional requirements stipulated in the Administrative Procedures for Use with the General Conditions of Contract for Design and Build Contracts, which can be found on the DEVB website (under Publications and Press Releases/Publications/Standard Contract Documents). ETWB TCW No. 8/2004 sets out the various methods of tender evaluation in the procurement of all capital works contracts and term contracts, except design and build contracts.

6.1 CONFIDENTIALITY OF TENDERS

No unauthorized disclosure of any information and matter concerning tenders is permitted. From the time tenders are received and opened until the decision is made on the acceptance or otherwise, all oral and written communications regarding the tenders are classified as “RESTRICTED (TENDER)”. Communications on prequalification and single or restricted tendering, such as a request for authority to conduct a restricted tendering exercise, shall also be so classified. Care should also be exercised in the subsequent de-restriction of information to ensure that no sensitive matter, e.g. a remark made by the tender board, the disclosure of which may cause embarrassment is placed on an open file.

The authority to open and handle documents classified as “RESTRICTED (TENDER)” is vested in the following officers:

(a) The officer of D2 rank (or above) relevant to the tender;
(b) The departmental secretary and accountant;
(c) The officer in charge of the confidential registry;
(d) The consultants or the officer nominated by the D2 officer referred to above to deal with the processing of tenders; and
(e) Other officers authorized by the Head of Department or tender board.

The extent to which these officers should have access to the related materials shall be on a need-to-know basis. Officers entrusted with the checking of tenders shall ensure that the contents are treated in the strictest confidence. Typing, marking etc. of all correspondence, documents of and reports on tenders must be carried out in such a manner that no lapse of security is anticipated. The project engineer (or consulting engineer if appropriate) shall be responsible for the safe keeping and checking of the tenders but detailed checking may be delegated to assistant engineers or quantity survey officers who must be made fully aware of the confidential nature of the documents.

The transfer of documents marked “RESTRICTED (TENDER)” shall be by appropriate secure methods to prevent unauthorized access to the tender information. Envelopes containing “RESTRICTED (TENDER)” materials should be sealed using a red wafer seal and the originating officer should sign across the seal. Correspondence, in sealed
envelopes, could be dispatched by the normal receiving and dispatching channels.

6.2 OPENING AND LISTING OF TENDERS

Tenders are to be opened and listed by the tender board concerned. After tenders have been opened and authenticated by the tender opening team, one copy of the duplicates of the tenders received will be kept by the relevant tender board. The originals and the remaining duplicates of the tenders will be sent to the procuring department for assessment. The tenders should usually be ready for dispatching/collecting on the day after the tender closing date.

For works contracts adopting a marking scheme, the tender opening team of the tender board will place the originals of the tender price documents in a sealed envelope. The sealed envelope, together with the technical submissions, should be collected by the procuring department while the duplicates of the tender price documents should be kept by the tender board. In tender evaluation, departments should not open the envelope containing the tender price documents until the evaluation of the technical submissions has been completed except in some special circumstances where the technical and price submissions are to be assessed by two independent panels concurrently and in such a case, the two independent panels should not exchange any information about the technical or price submissions. Additional guidelines on the opening of tenders for contracts adopting a marking scheme approach are given in Para. 7 to 9 of Appendix C of ETWB TCW No. 8/2004.

Approval of cancellation of tender exercise is not required when no tender is received after close of tender invitation.

6.3 ASSESSMENT PANEL

For contracts adopting a marking scheme approach, an assessment panel shall be established to evaluate the technical submissions. The assessment panel shall consist of a chairman plus at least two other members. Normally the chairman will not mark the tenderer’s submissions in order to ensure that the meeting is considered orderly and impartially. The chairman shall be a directorate officer while the other members shall be public officers of professional rank or above coming from more than one department. For contracts administered by consultants, the consultants may be invited to serve as an adviser to the assessment panel but the consultants shall not be appointed as a member of the assessment panel. Further details for the operation of the assessment panel are given in Appendix C of ETWB TCW No. 8/2004.

6.4 CONFLICT OF INTEREST

The names of officers checking the tenders must be recorded in file and all checked documents should be signed and dated by the checking officers. All officers involved in preparing tender documentation including tender specifications and assessing tenders should observe the prevailing civil service guidelines including the provisions in Chapter IA (180 to 195) of the SPR on how to prevent or deal with conflict of interest situations, and the need to
declare any conflicts, whether actual, potential or perceived, arising between their official duties and their private interests, if any, at the start of deliberations or as soon as they become aware of a potential conflict. Departments should consider and if appropriate draw up supplementary guidelines to fit its circumstances on the avoidance of conflicts. A form of undertaking similar to that attached to SFST’s memo ref. (10) in FT 93/88 dated 19.12.2007 may be used for the declaration of interests by the officers involved in preparing tender documentation including tender specifications and assessing tenders. All declarations of interest in accordance with SPR 186 should be kept in file for record.

For contracts adopting a marking scheme approach, the assessment panel and the project team, as well as the officer responsible for the safe custody of the sealed envelope on tender prices, should observe the same procedures regarding conflict of interest.

6.5 EXAMINATION OF ELECTRONIC SUBMISSION OF TENDER RETURNS ON REMOVABLE MEDIA

All tenders, whether in the form of hard copy or in electronic files, shall be checked and evaluated on an equal basis. All electronic files in the tender return shall be ‘digitally signed’ by the tenderer. Organizational e-Cert used for the purpose of applying digital signatures shall be issued under the name of the tenderer and shall be valid as at the tender closing date. See ETWB TCW No. 11/2005 for guidelines on examination of electronic submission of tender return on removable media.

6.6 COMPLIANCE WITH CONDITIONS OF TENDER (Ref.: ETWB TCW No. 41/2002) (Amendment No. 4/2008)

The tender examiner should check that every tender, at the time of opening, complies with the essential requirements set out in the tender document and that it is from a tenderer who is eligible for submitting a tender. He should also check that the Form of Tender is duly completed and contains, inter alia, the names and residential 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. When there are errors or non-compliance, they shall be dealt with strictly in accordance with the relevant provisions in the conditions of tender. All endorsements and corrections made to tenders in accordance with the conditions of tender by the tender examiner shall be in red ink.

If errors in the pricing documents are found, they shall be corrected in accordance with Appendix 6.27. For the purpose of the correction rules, "error" means arithmetical error or any form of deviation from a conforming tender including without limitation omission to provide the required information pursuant to a condition of tender. The rules to be adopted in correcting errors and omissions depend on the type of contract. Endorsements and corrections made to tender documents should be marked in red (on printouts of the electronic part of the tender return if appropriate) for easy identification. (Ref.: ETWB TCW No. 41/2002) (Amendment No. 4/2008 & 3/2009)

Where certain tender information is found missing or where a tender contains technical ambiguities, departments will need to 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.

Normally, tenderers are permitted to correct unintentional errors of form (for instance, clerical errors) as long as the correction does not change the tender in substance or give an advantage or perceived advantage to the tenderer over other tenderers. The opportunities that may be given to tenderers to correct unintentional errors of form shall be made equally available to all tenderers and shall not be permitted to give rise to any discriminatory practice.

Where the provision of certain information is specified as an “essential requirement” in the tender document and where such information is missing or incomplete in a tender, the tender shall be considered as non-conforming. Departments should not approach the tenderer concerned to correct a non-conforming tender. Such non-conformance is regarded as an “inaccurate or incompetent” tender for the purpose of Para. 5.2.3(b)(i) of the Contractor Management Handbook and departments should take appropriate action accordingly.

Where any missing information or clarification relates to factual information which does not affect compliance with the essential requirements of the tender or the marking of a technical submission in the case of tender evaluation using a marking scheme, and where there is no room for manipulation by a tenderer by virtue of the late clarification or submission of such information, departments may approach the tenderers concerned for such clarification or missing information. In other cases, departments shall assess a tender as submitted. If departments are in doubt as to whether clarifications should be sought, LAD(W) of DEVB or THB should be consulted.

Departments should not accept any clarification or information submitted by a tenderer after close of tender irrespective of whether or not the clarification or information is submitted at the invitation of the Government if such clarification or information would alter the tender in substance or give the tenderer an advantage or perceived advantage over the other tenderers.

In approaching a tenderer for clarification, departments must not provide any information that may provide an opportunity for the tenderer to improve his tender and result in an advantageous position over the other tenderers.

In case of special circumstances requiring different consideration, departments shall seek the advice of LAD(W) and/or the relevant tender board.

6.7 FOREIGN CURRENCY CONVERSION

In general, contract sums for Government contracts should be quoted and paid in Hong Kong dollars. However, in order to avoid tenderers putting in an unreasonable amount of allowance in their quotations to cover risks in exchange rates during the contract period, tenderers may be allowed to quote in foreign currencies. The conditions under which a department may allow tenderers to quote their offers in foreign currencies are set out in the SPR 355(a). Where it is allowed and a tender has been priced in whole or in part in a foreign currency, the conversion rate used for tender comparison shall be based on the selling rate of the relevant currency quoted by the Hong Kong Association of Banks at the close of business on the tender closing date. Tender boards, 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 selling rates on the tender closing date and that on the date of reporting and whether the ranking of the tenders is affected as a result.

6.8 EXAMINATION OF TENDER PRICES AND RATES

The tender examiner shall draw the attention of the Engineer designate to items which are obviously and substantially over or under-priced or not priced at all, in particular to those items which have a potential for contract variations and which, in the event of variations, would have a significant bearing on the final contract sum. Unrealistic prices or rates should always be checked with other sources. ETWB TCW No. 8/2003 is relevant. If a department considers that a tender is unreasonably low in terms of price and may therefore affect the tenderer’s capability of carrying out the works in accordance with the terms of the contract, the department concerned should further consider the tenderer’s capability of undertaking the contract by making an overall assessment of the various risks associated with the acceptance of the unreasonably low tender, such as the risk of the tenderer defaulting (e.g. by claiming that there is a mistake in the pricing of certain items), the risk of the tenderer using sub-standard materials, and the risk of sub-standard workmanship. If a department considers that certain rates in a tender are unreasonably high and that there is a risk that the tenderer will take advantage of such rates in future claims, the departments should assess the risk that the Government will be exposed to in accepting such a tender. When a decision is made to either recommend or not recommend a tender, the tender report should explain the basis of such a decision.

6.9 PROCEDURE AFTER CORRECTION OF ERRORS AND EXAMINATION OF RATES

After the correction of tender errors and the identification of any substantially over or under-priced and unpriced items, the Engineer designate shall notify in writing each relevant tenderer of these corrections and irregularities. Before making a recommendation, the Engineer designate shall require each tenderer to confirm in writing that he is prepared to abide by the (corrected) tender. LAD(W) of DEVB or THB should be consulted on possible remedies available if a tenderer chooses not to abide by the tender.

Negotiation with the tenderer in this respect should not be conducted as this may be construed as giving the tenderer concerned an advantage over the other tenderers.

6.10 TENDER QUALIFICATION

It is generally stated in tender documents that any qualification of the tender may cause the tender to be disqualified and the Government may not consider the tender further. A tender may, however, be qualified inadvertently owing to different interpretation of particular statements or remarks made by the tenderer in the tender. Approval from the appropriate tender board is NOT required to approach a tenderer in seeking clarification on the purpose or meaning of particular statements or remarks in his tender; reminding him of possible disqualification of his tender; and seeking an unequivocal withdrawal of any qualifications by a reasonable deadline.
Care must be exercised in approaching tenderers for clarification of tender qualifications, and legal advice from LAD(W) of DEVB or THB should be sought where necessary. Under no circumstances can a qualified tender be rejected, expressly or otherwise, without the prior authority from the appropriate tender board.

6.11 DESIGNS AND ALTERNATIVE DESIGNS BY TENDERERS

Where alternative designs are not invited, alternative tenders shall not be taken into consideration.

Where alternative tenders are invited, such alternative tenders and those tenders conforming with the Engineer’s design should be similarly treated during tender assessment. The marking scheme for tender evaluation promulgated under ETWB TCW No. 8/2004 shall be used for the assessment of tenders. The assessment criteria of both the conforming tenders and alternative tenders must be clearly indicated in the marking standard disclosed to the tenderers. After all tenders have been checked for correctness and compliance with the Conditions of Tender, the three most advantageous conforming tenders should be determined. If there are alternative tenders that are found to be more advantageous than any of the three most advantageous conforming tenders, the best three of these alternative tenders will be given further consideration. In this regard, the suitability and merits of these alternative designs will be examined and it is likely that clarifications with the tenderers of these alternative tenders will be necessary during the tender assessment period with a view to identifying the strengths and weaknesses of the alternative tenders. Alternative designs which do not conform to the essential requirements of the specifications in the tender documents or alternative designs which have to be substantially amended in order to conform to the tender specifications shall be regarded as non-conforming but unintentional errors of forms or technical error of a minor nature may be corrected by the tenderer.

Alternative designs shall be assessed against the Engineer’s design, and guidelines for the assessment of alternative tenders are given in ETWB TCW No. 25/2004.

For a time-critical project, the risks of project slippage as a result of adopting an alternative design shall be critically assessed in accordance with the guidelines set out in ETWB TCW No. 6/2005. The risk assessment shall be included in the tender report for submission to the CTB/PWTB. (Audit Report No. 53 Ch. 10 - http://www.aud.gov.hk/pdf_e/e53ch10.pdf)

Where foundation works in the “Scheduled Areas” in the northwest New Territories and Ma On Shan is involved, the tenderers’ foundation design proposal shall be submitted to the GEO for comment in accordance with ETWB TCW No. 4/2004.

6.12 CONTRACTORS’ ELIGIBILITY TO TENDER

All tenderers, including EMSTF, should be checked to confirm their eligibility to tender with regard to whether they are subject to regulating actions due to convictions under the Employment Ordinance, Immigration Ordinance, site safety related offences or environmental offences etc.

A tenderer is eligible for tender submission if he meets the qualification requirement on
the date of tender submission. If a tenderer does not meet the qualification requirement on the date set for the close of tender or, if this has been extended, his extended date, his tender shall not be considered.

The financial limits in the eligibility check shall be equated with the Contract Sum which includes all Prime Cost and Provisional Sums, Contingency Sum and any other contingency allowed for in the contract.

6.13 EFFECT OF INCIDENCE OF PAYMENTS

In recommending the acceptance of a tender to a tender board, departments should have value for money in mind. If the tendered sums, or the overall scores when a marking scheme or formula approach is adopted in the tender evaluation, 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 should compare the tenders by discounting future payments to obtain the present value and use the present value to substitute the tender price in determining the ranking of the tenders. In assessing the present values of tenders, department may approach the Management Accounting Division of FSTB for advice.

6.14 EVALUATION OF TENDERS

6.14.1 General

The tender examiner should examine tenders against the technical specifications, 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 check the technical, commercial and financial capability of the tenderer in undertaking the contract, which should include their past performance records and the current performance ratings, conviction records for employing illegal workers, conviction records for site safety related offences, conviction records for environmental offences, conviction records under the Employment Ordinance, conviction records under S27 of the Public Health and Municipal Services Ordinance (Mosquito breeding offences), if applicable, and for contracts with a value exceeding $100 million any past history of claims pertaining to the honesty and integrity of the tenderers, where available. (Amendment No. 5/2009) There is no need to include the above conviction records in the tender report or to summarize the number of these convictions in the text of the tender report, unless special references to these records have been made in the report. (Amendment No. 8/2010)

Other than corrections made in accordance with the conditions of tender, departments should not accept any change in tender price offered by a tenderer after close of tender.

Tender evaluation, including financial vetting, normally takes four to six weeks. Under the simplified tendering arrangement promulgated under FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), Controlling Officers should aim to complete tender evaluation within two to three weeks for works contracts under $55 million (Amendment No. 4/2009).

6.14.2 Methods of Tender Evaluation

Basically, tender evaluation should be carried out by means of a marking scheme approach or a formula approach as detailed in ETWB TCW No. 8/2004. The marking
scheme approach involves systematic analysis of the technical capability of the tenderer using a standard assignment of scores on different attributes, namely the tenderer’s experience, past performance, technical resources and technical proposal. In conjunction with the tender price (corrected if necessary), an overall mark for each conforming tender should then be worked out based on 60/40 weights for price and technical score. On the other hand, the formula approach to tender evaluation only takes account the tender price and the tenderer’s past performance measured by the prevailing tenderer’s performance rating held in DEVB’s Contractor’s Performance Index System as on the date set for the return of tenders. Details of the Contractor's Performance Index System are given in ETWB TCW No. 3/2007. The combined price and performance score is also calculated on a 60/40 weighing as in the marking scheme approach.

In conjunction with the use of either the formula approach or the marking scheme and if considered necessary, departments may adopt Stage I Screening procedures given in Appendix A of ETWB TCW No. 8/2004 to ensure that the tenderer complies with the necessary minimum requirements before their tenders are considered further to avoid abortive work.

6.14.3 Technical Submissions

Where a marking scheme in tender evaluation is adopted, the tenderers are required to make a technical submission on technical resources and technical proposal, which shall form part of the contract. Normally, the technical submissions are to be evaluated first. If during the technical assessment it is revealed that it is necessary to deal with any tender qualifications and/or seek any clarifications on any matters in the technical submissions, they should be dealt with and resolved before the tender price documents are opened such that the technical submissions may be properly assessed. The sealed envelope that contains the tender price documents should only be opened after the assessment panel has completed the evaluation of all technical submissions based on the approved marking scheme. The evaluation of the technical submissions shall follow Appendix C of ETWB TCW No. 8/2004.

The technical submission shall be carefully studied in the tender evaluation process to ensure that it is compatible with all other provisions of the contract. The project officers shall check to ensure that the proposed technical resources such as managerial and technical staff, plant and equipment and the tenderer’s technical proposal such as quality assurance plan are essential and sufficient to complete the contract both in an efficient and in a good quality manner.

In order to enhance the quality of works delivery, it is beneficial that the project officers shall assess at the tender evaluation stage if adequate resources for site supervision and a structured site supervision system will be adopted by the tenderer, based on the technical submission being submitted.

For projects involving substantial underground works, consideration should be given to requiring tenderers to submit method statements with indicative costs for dealing with adverse ground conditions even if the occurrence of such conditions are considered rather unlikely by the Engineer. This would improve the chance of completing these projects even if unexpected adverse ground conditions do occur.

6.14.4 Other Checks to be carried out on Tenders (Ref.: WBTC No. 6/95)
The three tenders with the highest combined price-quality score should also be checked for the following:

(a) The tenders are signed by persons authorized and where applicable, details of partners etc. agree with those in DEVB’s Approved List;

(b) A tenderer who is on probation will not exceed the limit of work allowed if awarded the contract (Please refer to the 7th paragraph of Para. 4.1.1(a));

(c) The tenderers are believed to be financially capable of successfully carrying out the contract and any other Government contracts he may hold. A departmental responsibility in this respect shall be met by consulting the Finance Section of DEVB (a sample memo for financial checking is given in Appendix 6.15):

(i) In respect of contracts of value exceeding $3 million; and

(ii) In cases where there is reason to doubt the financial capability of tenderers for contracts with a value of $3 million or less; and

(d) Where tender addenda have been issued, a check should be made to ensure that the tenderers have submitted with their tenders all the required certification for tender addenda (Para. 5.2). If such certification has not been returned with any one of the tenders, it shall be obtained from the respective tenderer.

It should be noted that if a tenderer does not meet the qualification requirement by the tender closing date, his tender shall not be considered. (Amendment No. 2/2008 & 3/2009)

6.14.5 Unified Approach for Rounding Marks in Tender Evaluation and Prequalification Exercises of Works Contracts (Ref.: SDEV’s memo ref. DEVB(W)546/84/01 dated 27.1.2010)

There shall be “no rounding” of figures throughout the marking process. For avoidance of doubt, “no rounding” means the whole number including all digits to the right of a decimal separator shall be employed for calculation purposes. The level of precision recommended is 8 decimal places. Procuring departments may choose to adopt a different precision level if so justified.

As regards presentation in the hard-copy form (e.g. marking sheet and tender report, etc.), all figures shall normally be “shown” in 2 decimal places according to the following rule: “round” up the 3rd decimal place if it equals to or exceeds 5 and “round” down if it is below 5. Procuring departments shall choose to adopt more decimal places if so justified, e.g. in checking the passing mark or comparing the final scores. For instance, the final scores of two tenderers of 88.88440000 and 88.88450000 shall be shown as 88.884 and 88.885 respectively. (Amendment No. 5/2010)

6.15 TENDER RECOMMENDATIONS
Where it has been specified that the formula approach or a marking scheme is to be used in the tender evaluation, the tenders shall be evaluated strictly in accordance with the rules and the criteria specified. Normally, the tender which attains the highest overall score should be recommended, subject to the usual requirement that the recommended tenderer is fully (technically, commercially and financially) capable of undertaking the contract.

For tenders involving multiple contracts, there may be a cap on the maximum number of contracts that may be awarded to each tenderer. If a tenderer is successful in a number of contracts that exceeds the cap, the procuring department should recommend a tender award combination that would cost least to the Government, unless some other selection criteria have been specified in the tender documents. Reference should be made to S for Tsy’s memo ref. (107) in FT 53/88 Pt 2 dated 8.2.2002.

If none of the tenders received complies with the essential requirements of the tender, the department concerned should recommend to the relevant tender board, or the Controlling Officer as the case may be, to cancel the tender exercise (see SPR 380(e) and FC No. 3/2009 (Amendment No. 4/2009)) and re-tender with revised specifications, terms and conditions, where applicable. If exceptionally departments wish to recommend a non-conforming tender, SPR 370(g) should be followed. Procedures for cancellation of tender exercises under other circumstances should be referred to SPR 380.

6.16 NOT USED (Amendment No. 2/2008)

6.17 TENDER NEGOTIATIONS

In general, the Government policy is to seek competitive tenders and to select the offer representing the best value for money. Under certain circumstances, it would be in the Government’s best interest to negotiate the award of a contract. Any negotiation with a tenderer should be undertaken in accordance with SPR 385 and shall be conducted in a non-discriminatory manner among different tenderers.

SFST has delegated through SPR 385(c) the authority to approve tender negotiations to tender boards. Under the simplified tendering arrangement promulgated under FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), this delegation is transferred to Controlling Officers for works contracts under $55 million (Amendment No. 4/2009) each.

In addition, SFST has also authorized through SPR 385(d) Controlling Officers to approve negotiations for tenders of their own departments in any of the following circumstances:

(i) When a single tender has been invited with appropriate prior approval; or

(ii) When only one tender or very few tenders have been received in response to an open tender invitation and when the Controlling Officer concerned 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.

Further details and guidelines on preparing for and conducting negotiations are given in SPR 385 and Appendix III(J) of the SPR for general reference.

6.18 TENDER REPORT BY THE ENGINEER DESIGNATE

Tender reports for submission to the CTB/PWTB shall be prepared in accordance with the standard format in Appendix III(I) to the SPR together with any modifications as may be required by the PSTsy from time to time. If it is intended to make use of a tender report prepared by the project consultant for submission to a tender board, it should be accompanied by a covering memo containing an endorsement of the tender report including any other relevant information not covered in the tender report. The covering memo should also include a confirmation statement on declaration of no conflict of interest as described in Item (f)(i) below. The covering memo should be signed by the Head of Department or a directorate officer on his behalf. Where the procurement is governed by WTO GPA, it should be stated in the tender report whether the requirements of WTO GPA have been fully complied with and the reasons for any non compliance.

The tender report should be signed by the Engineer designate for the Contract (the practice in WSD is slightly different, as given in WSD’s internal documents). Key statements should be written in active voice in order not to blur accountability. For example:

- I recommend acceptance of the tender submitted by ....
- I consider the recommended tenderer is suitable to carry out the contract ....
- I confirm that the recommended tenderer is not suspended from tendering ....
- I consider it realistic to accept the recommended tender ....

In addition to the information required for a tender report as set out in Appendix III(I) of the SPR, the following statements/information should also be included where applicable:

(a) Any tenderer has written in to withdraw his tender.

(b) If, within the three tenders with the highest combined price-quality score, there are omissions/irregularities in the pricing of such magnitude which would potentially affect the final contract sum significantly due to substantial change in original estimated quantities or due to variations, then this should so stated.

(c) Any tenderer has been asked to correct the Schedule of Proportions for
calculating the Price Fluctuation Factor.

(d) If only a small number of tenders are received, an explanation should be given for the poor response.

(e) For prequalified tendering, it has to be confirmed that appropriate endorsement has been obtained for any changes in material particulars of the prequalified tenderers which occur between the prequalification exercise and the submission of the tender report.

(f) It should be stated that all officers involved in the tender assessment have already declared their interest and, where conflicts of interest (actual or perceived) have been identified, appropriate remedial action has been taken. Sample confirmation statements on declaration of no conflict of interest are as follows:

(i) Tender reports prepared by Government officers
   “I confirm that all officers involved in preparing tender documentation including tender specifications and assessing tenders have declared that there is no actual, potential or perceived conflict of interest for them to take part in the process in accordance with Stores and Procurement Regulation 186.”

(ii) Tender reports prepared by the project consultants
   “We, (name of the project consultant), have declared our compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interest and confirmed that there was no actual, potential or perceived conflict of interest in connection with our services in the preparation of tender and contract documents and in the tender exercise.”

(g) For tenders subject to WTO GPA, a statement should be included confirming whether the requirements of WTO GPA have been fully complied with and if not, why not. Department should consult D of J via LAD(W) of DEVB or THB if there is any doubt as to the requirements of WTO GPA in particular cases.

(h) For tenders of which the marking scheme approach is adopted, the approved marking scheme and the result of the evaluation should be highlighted in the tender report.

(i) For tenders with a restriction on the maximum number of contracts to be undertaken by the same contractor imposed (with reference to Para. 3.11 and SFST’s memo (ref. FT 53/88 Pt. 3 dated 18.11.2004), the tender reports should indicate justifications for setting the restriction and whether the restriction is supported by legal advice.

(j) The contractors’ performance index ratings over the past two years for the three tenders with the highest combined price-quality score.

(k) If an alternative design is recommended for a time-critical project, the tender report should include the risk assessment of project slippage as a result of

Amendment No. 12/2009

The works department shall state in the tender report any special circumstances or important assumptions governing the tender recommendation (ref. Appendix III (I) of the SPR). For example, if a works department notes that there could be a site handover problem (e.g. mismatch of the date for return of a works area from the contractor to the Government under the works contract with the land grant conditions whereby the Government is under an obligation to hand over the land to a third party by a certain date), the department should inform the relevant tender board of the special circumstance accordingly.

The tender report should be submitted to an officer of D2 rank or above for his endorsement and submission to the appropriate tender board (see Appendix 6.16).

Where none of the tenders is recommended for acceptance, the report to be submitted to the appropriate tender board should contain:

(i) Background information;

(ii) Number of tenders received and their tender price;

(iii) Detailed reasons for not recommending acceptance of any of the received tenders; and

(iv) A recommendation on the way forward and whether a second tender exercise would be required, and if so, the timing and method of re-tendering.

The requirement to prepare and submit tender reports to tender boards does not apply to contracts awarded under the simplified tendering arrangements promulgated in FC No. 3/2009 (Amendment No. 4/2008 & 4/2009). Controlling Officers are authorized to approve the award of all contracts under $21 million (Amendment No. 4/2009) and of all contracts at or above $21 million but under $55 million (Amendment No. 4/2009) provided these are awarded to the highest combined price-quality scorer. If a works contract at or above $21 million but under $55 million (Amendment No. 4/2009) is not recommended to the highest combined price-quality scorer, the project office shall still follow the normal procedures to seek the approval of the relevant tender board.

In any cases, tenderers should only be informed of the result of the tender assessment after a decision from the appropriate authority is received.

6.19 ENDORSEMENT OF TENDER REPORT

The officer of D2 rank or above will forward the Engineer designate’s report (the practice in WSD is slightly different, as given in WSD’s internal documents) to the chairman of the relevant tender board with a covering memo containing the remark (Appendix 6.16):

“I support the (Engineer designate’s) recommendation in para….. of the attached tender report”. 
together with any other comment he may see fit to add in special cases. If there is a delay in putting forward a submission, department must state the reasons in the tender report for not being able to submit on time. In case of a tender report prepared by a non-directorate officer or consultants, and submitted under cover of a memo signed by a directorate officer on behalf of the Head of Department, the memo should contain an endorsement of the tender report in its entirety.

If the officer of D2 rank or above does not support the Engineer designate’s recommendation, he must give an alternative recommendation and reasons for such change.

The Head of Department concerned or his representative may be requested or may himself request to attend the relevant tender board meeting to present his recommendations or to answer any queries that the tender board may have (see SPR 310(c) and 375(c)).

6.20 SUBMISSION OF TENDER REPORTS

For contracts that require submission of tender report to tender boards, the following original tender documents plus six/four copies of the tender report and documents in item (b) below shall be submitted to the CTB/PWTB respectively. For tender report submitting to the CTB, one extra copy of the report should be submitted to SEO(PS) of DEVB or THB by hand at the same time.

(a) Original tender documents

(i) If the lowest (highest for revenue tenders) tender (in terms of price) or the tender with the highest overall score in formula approach or marking scheme cases is recommended for acceptance, the three lowest (highest) tenders or, as the case may be, the three tenders of the highest overall scores.

(ii) If the recommended tender is not the lowest (highest for revenue tenders), the lower (higher) tender(s), the recommended tender and the next two higher (lower) tenders or, where a formula approach or a marking scheme is adopted and the recommended tender is not of the highest overall score, the tender(s) of higher overall score, the recommended tender and the next two tenders of lower overall scores.

(b) Copies of correspondence

Copies of correspondence exchanged with the tenderers and the tenderers’ past performance records are not required for submission with the tender report unless special references to these correspondence or records have been made in the report. Normally, it is only necessary for the departments to provide a statement summarizing all the post-tender closing contacts such as missing information and clarifications submitted by the tenderers after close of tender and confirming that the tenderers have confirmed in writing that they are prepared to abide by their tenders within the relevant criteria together with a report on the contractors’ performance ratings.
The tender report must reach the Chairman, CTB/PWTB, by hand if necessary, five clear working days (Saturdays excluded) before the meeting of the tender board, and at least four weeks before, whichever is earlier, the expiry of the validity period of the recommended tender or the intended commencement date of the contract to be awarded. Any recommendation that is considered controversial should allow an extended period to permit the tender board to raise questions and request further information (See ETWB TCW No. 7/2004).

6.21 REJECTION OF TENDER

Departments should bear in mind that under no circumstances can a tenderer be advised that his tender is unsuccessful, even though his tender is non-conforming until a decision on tender award is made by the relevant tender board or the Controlling Officer where such authority has been delegated via FC No. 3/2009 (Amendment No. 4/2008 & 4/2009).

As promulgated in ETWB TCW No. 8/2003, one of the Government’s objectives in procurement is to obtain goods and services at the best value for money taking into account not only the competitiveness in prices, but also compliance with users’ requirements, reliability of performance, qualitative superiority, whole-life costs and after-sale support, where applicable. It is not in the interest of the Government to accept an unreasonably low bid. Departments should adopt a flexible approach and reject bids that have been priced unreasonably low. Factors to be taken in account in the assessment of the reasonableness of a bid are given in ETWB TCW No. 8/2003. The head of the procuring department must be personally satisfied with and agree to the recommendation made to the relevant Tender Board to reject an unreasonably low bid. The recommendation itself must be fully justified. Notwithstanding this, the tenderer with unreasonably low bid shall not be rejected until approval is obtained from the relevant tender board or the Controlling Officer where such authority has been delegated.
7. ACCEPTANCE OF TENDER

7.1 AUTHORITY TO ACCEPT TENDER

The authority to accept a tender shall be given from either the relevant tender board or the Controlling Officers, depending on the value of contracts and whether the contract is awarded to the highest combined price-quality scorer or not. The appropriate approval authorities are as follows:

<table>
<thead>
<tr>
<th>Contract Value</th>
<th>Approving Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Under $21 million [Amendment No. 4/2009]</td>
<td>Controlling Officers</td>
</tr>
<tr>
<td>(b) At or above $21 million but under $55 million [Amendment No. 4/2009] and contract is:</td>
<td>Controlling Officers</td>
</tr>
<tr>
<td>(i) To be awarded to the highest combined price-quality scorer</td>
<td>Relevant tender board (Public Works Tender Board for contracts not exceeding $30 million and Central Tender Board for contracts above $30 million)</td>
</tr>
<tr>
<td>(ii) Not to be awarded to the highest combined price-quality scorer</td>
<td>Controlling Officers</td>
</tr>
<tr>
<td>(c) At or above $55 million [Amendment No. 4/2009]</td>
<td>Central Tender Board</td>
</tr>
</tbody>
</table>

The Controlling Officer has the authority of awarding any tender under $50 million only if such tender exercises are under the simplified tendering arrangement in accordance with FC No. 3/2009 (i.e. for all works contracts that are not subject to the WTO GPA). After a decision has been made on the acceptance of a tender, the secretary of the relevant tender board or the Controlling Officers shall notify the project office of its approval and copy the approval memo to the Director of Audit (D of A) and the Director of Government Logistics for information. All tenders submitted with the tender report should be returned with this memo. No action from the project office should be taken until the appropriate approval is received. [Amendment No. 4/2008 & 4/2009]

7.2 CHECKS PRIOR TO ACCEPTING TENDER

Checks should be made to ensure that:

(a) Either funds are available for payments to the contractor or that the Finance Committee has approved funds and administrative action is in hand to obtain their release;

(b) Land required for the work will be available by the contract commencement date or, for staged possession of site, in accordance with the details given in the contract; and
(c) The rate of liquidated damages entered into the Appendix to the Form of Tender is a genuine pre-estimate of the Employer’s loss judged at the time of entering into the contract and notify the tenderer (with request of acknowledgement) of the rate of liquidated damages (LD) so calculated before tender acceptance and a copy of such notice shall be incorporated in the contract documents forming part of the contract. (see Para. 16 & 21 of ETWB TCW No. 4/2003).

7.2.1 Post Tender Correspondence Prior to the Issue of the Letter of Acceptance (Ref.: WBTC No. 6/95)

Where correspondence has been exchanged with a tenderer regarding his tender and it is decided to accept his tender, the Engineer designate for the contract shall decide and agree with the tenderer as to which correspondence shall form part of the contract.

(Amendment No. 2/2008 & 3/2009)

7.3 ACCEPTANCE OF TENDER (Ref.: WBTC No. 6/95)

A letter of acceptance shown in Appendix 6.17 shall be sent to the successful tenderer with the following content:

(a) A list of all correspondence exchanged with the tenderer both during the tender period and after receipt of the tender which has been agreed to form part of the Contract, if applicable;

(b) Details of insurance to be provided by the Contractor if applicable;

(c) Details of bond/security to be provided by the Contractor if applicable (one copy of the standard form of Performance Bond shown in Appendix B of WBTC No. 10/97A may be attached to the letter for the Contractor’s reference);

(d) Place, date and time for executing the Articles of Agreement;

(e) The requirement for a power of attorney for executing the Articles of Agreement if necessary;

(f) The title and address of the Engineer for the Contract;

(g) The requirement for submission of works programme as stated in GCC Clause 16 and the Safety Plan as stated in relevant SCC if necessary; and

(h) Any other relevant instruction or matters relevant to the acceptance of tender.

The letter shall be signed by the Government officers authorized to execute contracts on behalf of Government (Government signatory) (see Para. 9.1).

(Amendment No. 2/2008 & 3/2009)
7.4 FEEDBACK AND DEBRIEFING TO UNSUCCESSFUL TENDERERS

7.4.1 Notification (Ref.: LWBTC No. 22/85 and ETWB TCW No. 42/2002)

Immediately after the letter of acceptance has been sent to the successful tenderer or upon notification from tender board that no tender is to be accepted, all unsuccessful tenderers shall be notified in writing that their tenders have not been accepted. For contracts with an awarded contract sum or total estimated expenditure above $3 million, the procuring department shall disclose to the unsuccessful tenderers who have submitted valid tenders the following information where applicable:

(i) The awarded contract sum;
(ii) The overall quality score of the successful tenderer;
(iii) The highest score attained for each quality attribute in the tendering exercise; and
(iv) The unsuccessful tenderers’ own overall quality score and scores for each quality attribute.

For contracts with an awarded contract sum or total estimated expenditure above $100 million (including Design and Build Contract) and the use of a marking scheme is adopted in tender evaluation, the procuring departments shall also notify the unsuccessful tenderers that they can lodge a request for a debriefing if considered beneficial. However, to save manpower resources, unsuccessful tenderers to be debriefed shall be limited to those who have submitted conforming tenders with tender sums lower than the awarded contract price, or whose tenders are amongst the four highest overall scores. Debriefing need not be offered to unsuccessful tenderers where the formula approach is adopted in tender evaluation or tenderers who have failed in getting prequalified if applicable.

Request for debriefing shall be raised within 3 weeks from the date of the notification letter to the unsuccessful tenderers and late request shall not be entertained. The request shall include a list of questions or issues that the unsuccessful tenderer would like to have further feedback from the procuring department. A number of prerequisites as stipulated given in Appendix 6.28 have to be accepted by the unsuccessful tenderers before the requested debriefing should be arranged.

A sample letter to the unsuccessful tenderers is given at Appendix 6.18.


7.4.2 Debriefing (Ref.: ETWB TCW No. 42/2002) (Amendment No. 4/2008 & 3/2009)

Upon receipt of a request for debriefing, the procuring department shall fix the date, time and place of the debriefing. Separate debriefing session shall be arranged for each tenderer. Detailed guidelines and procedures for arranging and conducting debriefing session are given in Appendix 6.28 (Amendment No. 4/2008). Basically, the following salient points should be noted:
(i) The debriefing team shall be led by an officer of the rank of senior professional or above from the procuring department with at least one member of the team selected from the assessment panel or who has assisted directly in tender evaluation;

(ii) The number of representatives from the unsuccessful tenderer shall be not more than three;

(iii) No comparison of the unsuccessful tenderer’s submission with other submissions shall be discussed;

(iv) The debriefing should be conducted as informal discussion and no formal record or notes (including tape recording) should be prepared;

(v) Any information that would impede the law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between contractors should not be released; and

(vi) The debriefing shall not be taken as a means or an opportunity for the unsuccessful tenderers to lodge appeal or complaint against tendering result nor to re-open the tendering exercise.

In any case, Para. 6 and 7 of FC No. 11/97 should be strictly followed when responding to any request for information made by the tenderers.

7.5 DISPOSAL OF UNSUCCESSFUL TENDERS (Ref.: LWBTC No. 22/85)

Submissions from unsuccessful tenderers for contracts tendered under WTO GPA should be retained for a period of 3 years after execution of the contract. For tenders not covered by WTO GPA, submissions from unsuccessful tenderers shall be retained for a period of 3 months after execution of the contract on site, or, until receipt of a notification from tender board that no tender is to be accepted, after which they should be broken up, reusable documents retrieved and the remainder destroyed (see SPR 530(c))

(Amendment No. 2/2008 & 3/2009)

7.6 AMENDMENTS AFTER THE ISSUE OF THE LETTER OF ACCEPTANCE (Ref.: WBTC No. 6/95)

Any amendments required after issue of the letter of acceptance can only be made by means of a separate agreement with the tenderer (now Contractor). All such cases must be referred to the LAD(W) of DEVB or THB for advice.

(Amendment No. 2/2008 & 3/2009)

7.7 REPORTING OF TENDERING PERFORMANCE
When a department other than the Managing Department calls tenders in a category, the tenders shall be reported to the Managing Department after acceptance by the relevant approving authority. The Managing Department of the relevant category is to maintain the records of contractors’ tenders, whether accepted or not. The division/unit concerned of the department that calls tenders in a particular category or categories should report the tendering performance of all the contractors to the Secretary of the Managing Review Committee (MRC) of the predominated category within one week after acceptance of the tenders. A sample memo for the reporting of tendering performance is given at Appendix 6.19. However, the procuring department (if it is not the Managing Department of the predominated category) should be responsible for uploading the tendering performance onto the Contractor Management Information System (CMIS). The CMIS is intended to maintain central records for the better management of the contractors’ list, including the tracking of the contractors’ tendering performance.
8. **ACTION PRIOR TO EXECUTION OF THE ARTICLES OF AGREEMENT**

8.1 **PREPARATION OF COPIES OF DOCUMENTS (Ref.: LWBTC No. 22/85)**

Identical sets (number to suit Departmental requirements) of documents comprising the contract (i.e. those referred to in the Articles of Agreement) shall be prepared.

6 sets of contract documents shall be prepared as set out in the following table:

<table>
<thead>
<tr>
<th>Sets of Documents</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Original</strong> (comprising the booklet and/or electronic files returned by the successful tenderer with all the other documents and correspondence comprising the Contract with the exception of GS and SMM)</td>
<td>For signing and subsequent submission to the Account Section of the departmental headquarters (HQ) (or the Finance Section for WSD contracts or Account Section of respective Office/Region for HyD contracts) for safe custody</td>
</tr>
<tr>
<td>Duplicate</td>
<td>For signing and passing to the Contractor</td>
</tr>
<tr>
<td>Triplicate</td>
<td>For certifying as true copy and retention by the Engineer for the Contract</td>
</tr>
<tr>
<td><strong>3 complete sets</strong></td>
<td></td>
</tr>
<tr>
<td><strong>3 sets</strong></td>
<td>For certifying as true copy and distribution to:</td>
</tr>
<tr>
<td>(i)  Director of Audit</td>
<td></td>
</tr>
<tr>
<td>(ii)  Contract Adviser of the department/office</td>
<td></td>
</tr>
</tbody>
</table>
| (iii)  Account Section of the departmental HQ (except for HyD where the certified true copy should be sent to the relevant Account Section responsible for processing payment for that contract.) |}

Other sets of contract documents shall be prepared for the division/regional office administering the Contract, the Engineer’s Representative and his staff as necessary. In particular, for contracts administered by consultants, a quadruplicate copy of the contract documents identical with the original shall be prepared for
certifying as true copy for retention by the division/regional office.

The documents shall be bound into separate sets, each set in one volume if practicable, although drawings are normally bound together in a separate volume. Tape shall be threaded through holes punched in the documents and knotted. The knots shall be sealed with wax and the office seal applied. The Contractor should also be given the opportunity of fixing his seal to the end of the tape.

If the set of documents comprises more than one volume, each volume shall be similarly taped and clearly marked to indicate the total number of volumes in the set (e.g. volume 1 of three volumes). Moreover, the front sheet of each volume (except for the volume containing the Articles of Agreement) of both the original and the duplicate sets of documents should have provisions made for signatures in the same form as the signature section of the Articles of Agreement.

(Amendment No. 2/2008 & 3/2009)

8.1.1 Incorporation of Amendments and Post Tender Correspondence into Formal Contract Documentation (Ref.: WBTC No. 6/95 & 6/95A)

Copies of all documentation that is to form part of the contract must, together with copies of the letter of acceptance, be bound into the formal contract documents.

The following rules should also be followed for the incorporation of amendments and post tender correspondence into contract documents:

(a) Those parts of the documents that are amended or affected by correspondence exchanged with the tenderer and that have neither been altered in the document nor replaced by an addendum sheet shall be marked “see correspondence”. Where the GCC have been amended by SCC, the affected clauses shall be marked “See Special Conditions of Contract”.

(b) Any correspondence exchanged with the tenderer (who is now the Contractor) that has neither been dealt with in accordance with Para. 5.2 nor been referred to in the letter of acceptance and yet is intended to form part of the Contract must be referred to in the Articles of Agreement. This requires amendments to the standard Articles of Agreement which must not be made without reference to the LAD(W) of DEVB or THB.

(c) The amendments and correspondence shall be incorporated into the first volume (if there is more than one volume) of the contract documents containing the Articles of Agreement. Where the number of amendments and correspondence is such that it would not be feasible to have them bound into the first volume of the contract documents, copies of all the amendments and correspondence may be placed in a separate volume to the remainder of the documents with an index and a “signature and witness” sheet (in the same form as the signature section of the Articles of Agreement) at the front of the volume. The “signature and witness” in this volume is to be completed at the time of executing the Articles of Agreement. The various volumes comprising the contract documents should be referenced so that it is quite clear how many
volumes are involved and an index should be placed in the first volume making it quite clear that the copies of the correspondence and amendments are in a separate volume.

The sample attestation clauses in a deed for use by the respective parties in a contract given in ETWB TCW No. 54/2002 should be used for all the “signature and witness” sections in the contract documents. The format to be signed by the Contractor differs slightly depending on whether it is an unincorporated body, company incorporated in or outside Hong Kong, or company incorporated in Mainland China. Different attestation clause shall also be used if the Contract is to be executed under a power of attorney. Execution of the Contract should all be witnessed and the witness shall sign and his/her name, occupation and address shall be stated in the attestation clause.

(Amendment No. 2/2008 & 3/2009)

8.2 CHECKING OF COPIES OF DOCUMENTS

The officer responsible for the preparation of the copies of documents should check that the copies to be signed are all made up correctly and should flag up all places where signatures are required.

The duplicate copy should also be carefully checked independently by another officer against the original documents to ensure its correctness.

The certified true copies should also be completed and checked for correctness by the officer responsible for the preparation of the copies of documents. These copies should be marked “Certified True Copy (signature)” at the top right hand corner of the front cover of the documents.

8.3 APPROVAL OF BONDSMAN

If the Contract requires a bond (see WBTC No. 10/97 & 10/97A) and the Contractor elects to provide a bond instead of security money, he should submit the name of his proposed bondsman.

Bondsmen on the Government approved list maintained by DEVB and as notified from time to time by circular memo from the Director of Accounting Services are deemed to be approved automatically. Otherwise, the name of the proposed bondsman must be submitted to the Director of Accounting Services for his approval. Should the Director of Accounting Services not approve the proposed bondsman, then the Contractor must be notified accordingly and instructed to submit the name of another bondsman or deposit the security money within seven days.

8.4 OTHER CHECKS PRIOR TO EXECUTING THE ARTICLES OF AGREEMENT (Ref.: LWBTC No. 22/85)

Prior to signing the Articles of Agreement, the Contractor should submit and the officer responsible for the preparation of the documents shall ensure the following:
(a) Details given by the successful tenderer and information stated in the Articles of Agreement regarding the names and addresses are in order by checking against his business registration record. This may include checking the Business Registration Certificate, the Certificate of Incorporation, the Certificate of Registration of Oversea Company or the Articles of Association, depending on whether the successful tenderer is an unincorporated body, company incorporated in or outside Hong Kong, or company incorporated in Mainland China. The guidelines given in ETWB TCW No. 54/2002 should be followed.

If the successful tenderer is on the list of approved contractors maintained by departments, the department may already have such records indicating the company’s business registration certificate number, the date of expiry of the certificate and other relevant information. In such cases, verification will only be necessary annually when the business registration certificate is due for renewal.

(b) Any insurance policies and receipts for the payment of their premiums that are required by the Contract.

(c) The power of attorney produced by the successful tenderer is valid, if the Articles of Agreement are to be executed pursuant to such. The procedures for checking the power of attorney would be different if the company concerned is incorporated in or outside Hong Kong. A sample certification of a copy of the power of attorney and checklists for examining a power of attorney are given in ETWB TCW No. 54/2002.

(d) Any other item required by the Contract prior to signing.

(e) The bond, if required in the Contract and the Contractor has elected to provide one (refer to WBTC No. 10/97A) (which should be retained and subsequently sent to the Accounts Section of departmental headquarters for safe custody), or the receipt for payment of the security deposit (in which case the receipt number shall be entered in the space provided on the Form of Tender).

(f) Joint Venture Guarantee, where applicable. (see ETWB TCW No. 50/2002 as amended by SETW’s memo ref. (01656-01-3) in ETWB(W) 511/34/01 dated 4.8.2006).

(g) If common seal is used, check that it is a metallic seal with the name of the company engraved in legible characters.

If the Articles of Agreement are to be signed under a power of attorney and the Contractor’s representative fails to produce an acceptable power of attorney prior to the signing, then the signing must be postponed until either an acceptable power of attorney is produced or the person authorized to sign Government contracts on the Contractor’s behalf signs in person.

In case of doubt as to the power of a company to enter into a contract or as to the
authority of the person signing a contract on the company’s behalf, the department may, if necessary, seek the advice of the Registrar of Companies, preferably at the time the file is being inspected. Most contracts are in a standard form, and their general method of execution will be apparent from the form. Any queries or points of doubt about executing of contracts should be addressed to the LAD(W) of DEVB or THB but some guidance notes are provided at Appendix V(A) of the SPR and checklists are given in ETWB TCW No. 54/2002 to assist departments as to specific details.

If the Contractor fails to provide any of the other items referred to above, then the signing should be postponed until they are available unless it is recognized that there may be circumstances which, in the opinion of the Government signatory, dictate that the signing should proceed.

(Amendment No. 2/2008 & 3/2009)
9. EXECUTION OF THE ARTICLES OF AGREEMENT

9.1 SIGNATORIES (Ref.: LWBTC No. 22/85)

Refer to ETWB TCW No. 54/2002 and any subsequent amendments with regard to person(s) authorized to sign Articles of Agreement on behalf of the Government and Contractor.

Contracts shall be signed on behalf of the Government by officers at the directorate level unless the SFST has authorized otherwise. The normal practice is as follows:

<table>
<thead>
<tr>
<th>Department/Office</th>
<th>Types of Contract</th>
<th>Officer nominated to sign contracts for and on behalf of Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEDD/HyD/DSD/WSD divisions/regional offices/offices headquarters</td>
<td>Contracts arising in the divisions/regional offices/offices headquarters for which the respective nominees are responsible</td>
<td>Officer of D2 rank or above</td>
</tr>
<tr>
<td>Development Offices of CEDD</td>
<td>All contracts arising in Development Offices of CEDD including contracts managed by consultants</td>
<td>Chief Engineer or above</td>
</tr>
</tbody>
</table>

Note: The officer nominated to sign a contract for and on behalf of Government should not be the same person who will also be nominated as the Engineer for that particular Contract.

The Contractor’s signatories for a contract should be in accordance with the following table (see also Appendix V(A) of the SPR and ETWB TCW No. 54/2002):

<table>
<thead>
<tr>
<th>Contractor Organization</th>
<th>Signatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole proprietor</td>
<td>Owner (in person)</td>
</tr>
<tr>
<td>Partnership</td>
<td>All partners (jointly)</td>
</tr>
<tr>
<td>Company incorporated in Hong Kong</td>
<td>Signatory in accordance with the Articles of Association of the company and executed under common seal</td>
</tr>
<tr>
<td></td>
<td>Signatory conferred with the requisite power to execute the Articles of Agreement by a power of attorney</td>
</tr>
</tbody>
</table>
Normally overseas companies would execute the Articles of Agreement by a power of attorney. It must be properly notarized and authenticated by the appropriate authorities. Refer to ETWB TCW No. 54/2002 for details.

Joint venture

Depending on nature of the joint venture – incorporated joint venture or unincorporated joint venture. Refer to ETWB TCW No. 50/2002 for details

9.2 SIGNING OF CONTRACT (Ref.: LWBTC No. 22/85)

If the requisite signatories are present at the date fixed for the signing of the Contract, the signing shall proceed. All signatories of the Contractor should be asked for production of identity card for verification of identity. A note should also be made on file that such verification has been made. Execution of the Contract should be witnessed and the witness(es) should sign accordingly.

The original and the duplicate of the contract documents (Para. 8.1) should be executed as follows:

(a) the Articles of Agreement signed by all the requisite signatories and the witness(es);

(b) a wafer applied alongside the Government’s signature and

(i) where common seal is applied in the Articles of Agreement, the Contractor’s company seal applied alongside his signature(s);

(ii) where common seal is inapplicable, a wafer applied alongside the Contractor’s signature(s).

(c) if a set comprises more than one volume, the top sheet of each volume other than that containing the Articles of Agreement shall be signed by all the signatories and the witness(es) and dated.

After the signing of the Contract, all documents that are not required for keeping by the department shall be returned to the Contractor.

The details of any insurance policies should be noted in a standard form (see Appendix 6.20) signed by the Engineer for the Contract and attached to the front cover of the original and the certified true copies of the Contract. If the policies are annual policies, the above details should also be recorded in the relevant contract file. The annual policies and the premium receipts shall then be returned to the Contractor. If the policies are specific to the Contract in hand (i.e. other than an annual policy), then the original or certified true copies of the policies and the premium receipts shall be forwarded to the departmental headquarters for retention.

If the requisite signatories are not present, a new date for signing shall be

(Amendment No. 2/2008 & 3/2009)
arranged and in the event of the Contractor’s failure to comply, the matter shall be referred through office and departmental headquarters to DEVB or THB.

(Amendment No. 2/2008 & 3/2009)

9.3 RECEIPT FOR DOCUMENTS FROM CONTRACTOR

A letter to acknowledge receipt of the original or certified true copies insurance policy(ies) and/or surety bond from the Contractor should be issued if such are to be retained by the department. (see Appendix 6.21)

9.4 PUBLICITY FOR SIGNING CONTRACTS OF PUBLIC INTEREST

Contracts with a significant social, economic or political impact are of great public interest. The signing of such contracts should receive good publicity and SPO of DEVB or Principal Information Officer (PIO), I&PR of TD (for HyD projects) should be requested to arrange this.

These contracts should preferably be signed by the Head of Office or Head of Department personally.
10. DISTRIBUTION OF CONTRACT DOCUMENTS  
(Ref.: LWBTC No. 22/85)

The set of signed and sealed documents incorporating the Contractor’s original submission together with the bond (if any) shall be kept in the Managing Department for safe custody. The duplicate of the contract documents shall be delivered by the division/regional office to the Contractor by registered post, or given by hand and a receipt obtained. A certified true copy of the contract documents shall be forwarded to the Director of Audit.

The division/regional office should forward the following to Accounts Sections of the departmental headquarters (or the Finance Section for WSD contracts) by hand with a covering memo as shown in Appendix 6.22:

   (a) Original of the executed contract documents, including drawings if any;

   (b) Original and a copy of the surety bond, if any;

   (c) Original or certified true copies of insurance policies and premium receipts, if any; and

   (d) Three certified true copies of the contract documents (without drawings).

Distribution of the documents by departmental headquarters will be as follows:

   (a) One certified true copy of the Contract to Director of Audit;

   (b) One certified true copy of the Contract to Contract Adviser of the department/office; and

   (c) The original and one certified true copy of the Contract, and the original or certified true copies of the insurance policies and premium receipts and the surety bond (if any) to be retained by Accounts Section of the departmental headquarters or the Finance Section for WSD contracts.

The triplicate of the contract documents should be delivered to the Engineer for the Contract.

The remaining sets of contract documents shall be used as required to suit Departmental requirements.

For HyD and DSD, the method of distribution is slightly different. Appendix 6.22 is not used. The Office/Region/Division shall distribute the documents to Director of Audit and the Contract Adviser directly. In addition, the Office/Region/Division shall also provide one certified true copy of the contract documents to its Account Section who will be responsible for processing payment for that contract. For HyD, the original of the contract documents shall be retained in the Account Section of the respective Office/Region and the Office/Region shall send to the Account Section of the departmental headquarters only the original or certified true copies of the insurance policies and premium receipts (if any) and the surety bond and its copy (if any). For DSD, the Division shall forward to the Departmental Administration Division only the original of the executed contract documents, including drawings if any.

(Amendment No. 2/2008 & 3/2009)
11. MISCELLANEOUS

11.1 NOMINATED SUB-CONTRACT

Guidelines set out in Sections 1 to 6 apply generally to tenders for nominated sub-contracts. Gazette notice, tender invitation, prequalification notice etc. should clearly specify that the tender invited or intended to be invited is for a nominated sub-contract.

The procedure for the acceptance of a tender from a nominated sub-contractor is different to that for other contracts as the contract is between the main contractor and the nominated sub-contractor.

Whilst Government nominates the nominated sub-contractor, it is the main contractor who accepts his tender. Consequently, the tender from the sub-contractor who is nominated by Government must be sent to the main contractor to enable him to accept it. A standard letter to the nominated sub-contractor advising him that he has been nominated is given at Appendix 6.23 and a standard letter to the main contractor requesting him to accept the tender and to make arrangements for it to be formally signed and executed is given at Appendix 6.24.

The main contractor is requested to send certified true copies of the executed nominated sub-contract to Government and the Engineer for the Contract.

11.2 HANDLING OF COMPLAINTS (See SPR 160)

Contractors may lodge complaints about the process or the result of a tender exercise. On receipt of a complaint or the referral of a complaint from other offices, the Controlling Officer responsible for the contract should personally deal with the complaint in an impartial and timely manner, and provide an early and substantive reply to the complainant direct or through the referral office. An interim reply should be sent to the complainant if a substantive reply cannot be issued shortly.

For contracts covered by WTO GPA, contractors may make a challenge against alleged breaches of WTO GPA to the Review Body on Bid Challenge. For the rules of operation of the Review Body on Bid Challenges, see the following website for reference:


11.3 ACCESS TO TENDER INFORMATION

See FC No. 11/97 for the types of tender information that may be disclosed and the guidelines for handling requests for tender information.
11.4 NOTICE TO TENDER BOARDS FOR DETAILS OF THE CONTRACT AWARDED

For contracts tendered under WTO GPA, departments should provide the relevant tender board with the details as prescribed in Appendix 6.25 within two weeks after the contract has been awarded.

11.5 NOTICE TO GOVERNMENT LOGISTICS DEPARTMENT FOR DETAILS OF THE CONTRACT AWARDED

For contracts under HK$ 55 million (Amendment No. 4/2009) handled through the simplified tendering arrangements promulgated in FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), Controlling Officers are required to notify the Government Logistics Department on contracts awarded by them through the delegated authority to enable the Director of Government Logistics to arrange to publish the details of the contracts awarded on the Gazette.

To facilitate the Government Logistics Department in making the necessary arrangement, the procuring department should provide the information on the contracts awarded in the prescribed format under the cover of a memo as in Appendix 6.26. The list of contracts awarded in a particular month should reach the Government Logistics Department at least two weeks before the end of the following month for publication in the Gazette. Departments may make necessary arrangements to assign an officer to coordinate the return for the whole department regularly. Reference can be made to D of GS (now renamed as D of GL)’s memo ref. (20) in GR/11/1/36-5 dated 12.12.2001.

11.6 OBLIGATIONS OF DEPARTMENTS

For contracts tendered under WTO GPA, on request from a contractor, the department shall collect necessary information and provide the contractor with:

(a) An explanation of its procurement practices and procedures;
(b) The reasons why its application to qualify was rejected, or why its existing qualification was brought to an end or why it was not selected; and
(c) (To an unsuccessful tenderer) the reasons why its tender was not selected and pertinent information on the characteristics and relative advantages of the winning tender selected as well as the name of the successful tenderer. Para. 7.4.1, 7.4.2 and Appendix 6.28 (Amendment No. 4/2008) provides the guidelines and procedures on debriefing to unsuccessful tenderers. However, departments may decide that certain information on the contract award be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, whether public or private, or might prejudice fair competition between contractors or suppliers.
11.7 CESSATION OF THE USE OF ELECTRONIC DATA

If the tenderer has provided an undertaking on the use of Government digital map data as described in Para. 5.4, departments should check whether the relevant cessation notice has been returned by the required date. The cessation notice is given in Appendix B of WBTC No. 7/2000.

Similarly, the Authorized Service Providers being distributed with an EDP should also be required to submit within 7 days a return notice as given in Schedule 3 to Appendix 3 of ETWB TCW No. 11/2005. Departments should retain the return notices for record purpose.

11.8 CONTRACT RATE DATABASE SYSTEM

The Contract Rate Database System was launched by DEVB to provide a convenient access to contract rates of works contracts let by CEDD, DSD, HyD and WSD. The system comprises two different databases, one for civil engineering works and another for electrical and mechanical works. User manual of the system can be obtained through DEVB's intranet portal.

A departmental coordinator in each of the said departments has been assigned to oversee the compilation of the databases. Project engineers of the said departments shall follow the guidelines of their respective departments to submit data files containing the unit rates of major items of awarded contracts to their departmental coordinators. The departmental coordinators shall consolidate and disseminate the data through the Contract Rate Database System.

(Amendment No. 7/2009)
12. REFERENCES

PWDTC No. 11/76  Sale of Plans to Tenderers for PWD Projects

LWBTC No. 27/83  Appointment of Nominated Sub-contractors and Specialist Contractors and the Vetting of the Financial Capability of Contractors to Undertake Public Works Contracts

LWBTC No. 22/85  Contract Signing Procedures

WBTC No. 4/92  Pre and Post Tender Meetings

WBTC No. 6/95, WBTC No. 6/95A & ETWB TCW No. 6/95B  Incorporation of Amendments into Contract Documentation

WBTC No. 10/97 & WBTC No. 10/97A  Use of Performance Bonds Security and Retention Moneys and Standard Form of Bond

WBTC No. 15/99, WBTC No. 15A/99 & ETWB TCW No. 15/99B  Improvement to Quality of Maintenance Works

WBTC No. 24/99  Restrictions on the Award of Maintenance and Minor Works Term Contracts

WBTC No. 31/99  Administrative Procedures for Use with the Government of the Hong Kong Special Administrative Region General Conditions of Contracts for Design and Build Contracts 1999 Edition, which can be found on the DEVB website (under Publications and Press Releases\Publications\Standard Contract Documents\).

WBTC No. 7/2000 & WBTC No. 7/2000A  Electronic Drawings

<table>
<thead>
<tr>
<th>Document Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>WBTC No. 24/2001</td>
<td>Simplified Tendering Arrangement for Capital Works</td>
</tr>
<tr>
<td>WBTC No. 25/2001 &amp; ETWB TCW No. 25/2001A</td>
<td>Admission of EMSTF onto the List of Approved Suppliers of Materials and Specialist Contractors for Public Works under 25 Categories of E&amp;M, Electronics and Building Services</td>
</tr>
<tr>
<td>WBTC No. 13/2002</td>
<td>Employment of Qualified Tradesmen and Intermediate Tradesmen by Contracts of Public Works Contract</td>
</tr>
<tr>
<td>WBTC No. 26/2002</td>
<td>Special Conditions of Contracts for Use in Mega Project Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 41/2002</td>
<td>Correction Rules for Tender Errors</td>
</tr>
<tr>
<td>ETWB TCW No. 42/2002</td>
<td>Feedback and Debriefing to Unsuccessful Bidders for Consultancy Agreements and Works Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 50/2002</td>
<td>Contractors’ Joint Ventures</td>
</tr>
<tr>
<td>ETWB TCW No. 54/2002</td>
<td>Guidance on Execution of Public Works Contracts under Seal</td>
</tr>
<tr>
<td>ETWB TCW No. 4/2003</td>
<td>Assessment of Liquidated Damages</td>
</tr>
<tr>
<td>ETWB TCW No. 5/2003</td>
<td>Joint and Several Liability of Partners and Unincorporated Joint Venture Participants</td>
</tr>
<tr>
<td>ETWB TCW No. 8/2003</td>
<td>Rejection of Unreasonably Low Bids</td>
</tr>
<tr>
<td>ETWB TCW No. 12/2003</td>
<td>Employment of Technician Apprentices and Building &amp; Civil Engineering Graduates by Contractors of Public Works Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 22/2003 &amp; ETWB TCW No. 22/2003A</td>
<td>Additional Measures to Improve Site Cleanliness and Control of Mosquito Breeding on Construction Sites</td>
</tr>
<tr>
<td>ETWB TCW No. 4/2004</td>
<td>Checking of Foundation Works in the Scheduled Areas of Northwest New Territories and Ma On Shan and the</td>
</tr>
<tr>
<td>Document No.</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>ETWB TCW No. 7/2004</td>
<td>Examination of Tenders and Submission of Tender Reports</td>
</tr>
<tr>
<td>ETWB TCW No. 8/2004</td>
<td>Tender Evaluation of Works Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 10/2004</td>
<td>Tenderer’s Eligibility for the Award of Works Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 13/2004</td>
<td>Engagement of Sub-contractors registered from Voluntary</td>
</tr>
<tr>
<td>ETWB TCW No. 25/2004</td>
<td>Contractors’ Designs and Alternative Designs</td>
</tr>
<tr>
<td>ETWB TCW No. 26/2004</td>
<td>Library of General Conditions of Tender, Special Conditions</td>
</tr>
<tr>
<td>ETWB TCW No. 31/2004</td>
<td>Trip Ticket System for Disposal of Construction &amp; Demolition Materials</td>
</tr>
<tr>
<td>ETWB TCW No. 33/2004</td>
<td>Tender Procedures for Procurement Governed by the Agreement on Government Procurement of the World Trade Organization</td>
</tr>
<tr>
<td>ETWB TCW No. 35/2004 &amp; ETWB TCW No. 35/2004A</td>
<td>Prequalification of Tenderers for Public Works Contracts</td>
</tr>
<tr>
<td>ETWB TCW No. 6/2005</td>
<td>Implementation of Systematic Risk Management in Public Works Projects</td>
</tr>
<tr>
<td>ETWB TCW No. 9/2005</td>
<td>Contractor Management Handbook – Revision B</td>
</tr>
<tr>
<td>ETWB TCW No. 11/2005</td>
<td>Electronic Dissemination of Tender Documents and Electronic Submission of Tender Returns on Removable Media</td>
</tr>
<tr>
<td>ETWB TCW No. 15/2005</td>
<td>Geotechnical Control for Tunnel Works</td>
</tr>
<tr>
<td>ETWB TCW No. 4/2006</td>
<td>Delivery of Capital Works Projects</td>
</tr>
<tr>
<td>ETWB TCW No. 3/2007</td>
<td>Contractors’ Performance Index System</td>
</tr>
<tr>
<td>DEVB TCW No. 3/2009</td>
<td>Regulating Action against Contractors for Occurrence of a Serious Incident or Conviction for Site Safety or Environmental Offences (Amendment No. 5/2009)</td>
</tr>
<tr>
<td>FC No. 10/97</td>
<td>WTO Agreement on Government Procurement</td>
</tr>
<tr>
<td>FC No. 11/97</td>
<td>Access to Tender Information</td>
</tr>
<tr>
<td>FC No. 3/99</td>
<td>Airport Core Programme Projects</td>
</tr>
</tbody>
</table>
FC No. 2/2009   Initiating Works-related Tendering and Consultant Selection Procedures Before Funding is Secured
FC No. 3/2009   Simplified Tendering Arrangement for Capital Works (Amendment No. 4/2009)

Treasury Circular Memorandum No. 11/99   Procedures for Payments to Government Creditors

Stores and Procurement Regulations

S for W’s memo ref. (9) in WB(W) 272/31/02(C) (98) Pt. 4 dated 31.12.98
S for W’s memo ref. WB(W) 272/31/02(98) Pt. 12 dated 24.6.99
S for Tsy’s memo ref. (2) in FIN 33/581/69 VI dated 12.8.99
S for W’s memo ref. (70) in WB(PS) 105/11(97) XI dated 9.12.99
S for Tsy’s memo ref. (6) in FT 53/88/2 dated 28.2.2000
S for W’s memo ref. WB(W) 209/32/110 dated 2.5.2001
D of GS’s memo ref. (20) in GR/11/1/36-5 dated 12.12.2001
S for Tsy’s memo ref. (107) in FT 53/88 Pt. 2 dated 8.2.2002
S for Tsy’s memo ref. FT 53/88 Pt. 2 dated 5.3.2002
S for W’s memo ref. WB(W) 272/31/04 dated 7.5.2002
S for W’s memo ref. WB(W) 272/31/02D dated 31.5.2002
S for Tsy’s memo ref. (119) in FT 53/88 II dated 27.6.2002
SETW’s memo ref. ETWB(W) 272/31/19 dated 19.7.2002
SETW’s memo ref. ETWB(W) 272/31/19 dated 23.8.2002
SETW’s memo ref. ETWB(W) 272/31/21 dated 29.8.2002
DHA’s memo ref. ref. (31) in HAD/D/1/376 Pt. 10 dated 5.9.2002
SFST’s memo ref. (21) in FT 51/88 Pt. 3 dated 5.9.2002
SETW’s memo ref. ETWB(W) 546/83/01 dated 11.12.2002
SETW’s memo ref. ETWB(PS) 111/9 dated 16.1.2003
D of Adm’s circular memo ref. L/M(1) to CSO/AW/GR/26/4/1 Pt. 8 dated 30.6.2003
PWTB Chairman’s memo ref. (44) in L/M(3) in PW1 TB/PRO/82 dated 2.12.2003
SETW’s memo ref. (005H7) in ETWB(W) 546/83/02 dated 24.5.2004
SDEV’s memo ref. (01QXA-01-12) in DEVB(W)546/70/02 dated 23.4.2008
SFST’s memo ref. FT 53/88 Pt. 3 dated 18.11.2004
D of GL’s circular memo ref. (38) in PD/12/4 dated 12.8.2005
SFST’s memo ref. (10) in FT93/88 dated 19.12.2007
SETW’s memo ref. (01656-01-3) in ETWB (W) 511/34/01 dated 4.8.2006
SDEV’s memo ref. DEVB(W) 545/83/02 dated 30.7.2008

SDEV’s memo ref. (01PBB-01-6) in DEVB(W) 546/84/01 dated 15.2.2008 (Amendment No. 10/2009)
SDEV’s memo ref. DEVB(W) 546/84/01 dated 30.10.2009 (Amendment No. 10/2009)
SDEV’s memo ref. (02245-01-13) in DEVB(W) 510/34/01 dated 6.10.2009 (Amendment No. 11/2009)
SDEV’s memo ref. DEVB(W)546/84/01 dated 27.1.2010 (Amendment No. 5/2010)
SDEV’s memoranda (2nos.) both ref. DEVB(W)546/83/01 dated 4.12.2009 (Amendment No. 8/2010)
SDEV’s memo ref. DEVB(W) 545/83/02 dated 17.12.2009 (Amendment No. 8/2010)
**APPENDIX 6.1 CALLING FOR TENDERS - SAMPLE ROUTING SHEET**

Contract No.:
Title:

<table>
<thead>
<tr>
<th>From</th>
<th>Signature/ Date</th>
<th>To</th>
<th>Action</th>
<th>Action by D³ minus Note 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td></td>
<td>CE (tho' SE)</td>
<td>Please approve the checklist, estimates summary and draft documents as follows: (i) * Memo requesting publication of gazette notice for invitation to tender Note 3 (ii) * Draft tender notice for posting on Internet and, if required, advertising in local press (Amendment No. 8/2010) Draft Gazette Notice ( copies) (iii) * Draft press release ( copies) Note 2 (iv) Contract general layout drawings ( copies)</td>
<td>18– 21 WD</td>
</tr>
<tr>
<td>CE</td>
<td></td>
<td>E (tho’ SE)</td>
<td>Checklist, estimates and documents (i) to (iv) are agreed. Please fair the documents.</td>
<td>15– 18 WD</td>
</tr>
<tr>
<td>E</td>
<td></td>
<td>CE (tho’ SE)</td>
<td>Documents (i) to (iv) are fairied and attached. Please sign the Memo Note 3</td>
<td>12 – 15 WD</td>
</tr>
<tr>
<td>CE</td>
<td></td>
<td>D2 or D3 Officer as appropriate (Thro’ Tech Sec/SE Note 4)</td>
<td>I attach Documents (i) to (iv) for tender invitation, as well as the checklist and estimates summary for your information. Please sign the Memo Note 3 for tender invitation.</td>
<td>10 – 13 WD</td>
</tr>
<tr>
<td>D2 or D3 Officer as appropriate</td>
<td>Director of Department</td>
<td>Documents (i) to (iv), checklist and estimates summary are submitted herewith. Please sign the Memo Note 3 for tender invitation.</td>
<td>8 – 11 WD</td>
<td></td>
</tr>
<tr>
<td>Director of Department</td>
<td>Appropriate Tech Sec/ SE Note 4</td>
<td>I have approved the tender invitation. Please invite tenders. All documents, checklist and estimates summary are returned herewith.</td>
<td>6 – 9 WD</td>
<td></td>
</tr>
<tr>
<td>Appropriate Tech Sec/ SE Note 4</td>
<td>E</td>
<td>I have completed tender invitation</td>
<td>5 – 8 WD</td>
<td></td>
</tr>
</tbody>
</table>

D³ = Date of first Tender Invitation
WD = Working Days (excluding Saturday, Sunday and public holidays). The numbers of WD are to be determined by project offices.

* Delete or modify as appropriate

Notes:
1. The action dates are given for guidance only and should be set according to the departmental procedures on invitation to tenders. The upper ranges of the action dates are to allow more time for contracts that require tender invitation by Gazette Notice.
2. The total number of copies required depends on the method of tender invitation.
3. Using sample memo given in Appendix 6.3, PAH (The distribution list may be modified to accord with simplified tendering arrangement in FC No. 3/2009 (Amendment No. 4/2008 & 4/2009) viz. tender invitation for contract under $55M (Amendment No. 4/2009) need only be published on the Internet.)
4. The appropriate Technical Secretary/Senior Engineer of individual project office subject to its arrangement.
### CALLING FOR TENDERS - CHECK-LIST

1. **Documents attached:**

   * (i) Memo requesting for invitation to tender / publication of Gazette Notice
   * (ii) Draft tender notice for posting on the Internet / Draft Gazette Notice
   * (iii) Draft press release
   * (iv) General layout drawing
   * (v) Draft tender documents and drawings
   * (vi) Project file
   * (vii) Calculation file
   * (viii) Quantities file

2. **Procedure completed:**

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Folio/File Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Legal</td>
<td></td>
</tr>
<tr>
<td>(i) Roads (Works, Use and Compensation) Ordinance</td>
<td></td>
</tr>
<tr>
<td>(ii) Water Pollution Control Ordinance – Water Pollution Control (Sewerage) Regulation</td>
<td></td>
</tr>
<tr>
<td>(iii) Foreshore and Sea-bed (Reclamations) Ordinance</td>
<td></td>
</tr>
<tr>
<td>(iv) EIA Ordinance</td>
<td></td>
</tr>
<tr>
<td>(v) Others (Please specify)</td>
<td></td>
</tr>
<tr>
<td>(b) Land</td>
<td></td>
</tr>
<tr>
<td>Works site, and disposal sites for surplus fill and mud works/borrow areas confirmed by :</td>
<td></td>
</tr>
<tr>
<td>(i) Public Fill Committee (PFC)</td>
<td></td>
</tr>
<tr>
<td>(ii) Marine Fill Committee (MFC)</td>
<td></td>
</tr>
<tr>
<td>(iii) District Land Conference or District Lands Office</td>
<td></td>
</tr>
<tr>
<td>(iv) Others (Please specify)</td>
<td></td>
</tr>
<tr>
<td>(c) Tree removal agreed by</td>
<td></td>
</tr>
<tr>
<td>(i) District Land Conference</td>
<td></td>
</tr>
<tr>
<td>(ii) LCSD/AFCD</td>
<td></td>
</tr>
<tr>
<td>(d) General layout agreed (see PWSC Submission Check-List in Project File)</td>
<td></td>
</tr>
<tr>
<td>(e) Works programme agreed by Utilities/circulated to Utilities</td>
<td></td>
</tr>
<tr>
<td>(f) Setting out drawing agreed by Lands Department</td>
<td></td>
</tr>
<tr>
<td>(g) Standard SCT and non-standard SCT approved by an officer of D1 rank or above and an officer of D2 rank or above respectively</td>
<td></td>
</tr>
<tr>
<td>(h) SCC approved by Head of Department/an officer of D2 rank or above/an officer of D1 rank (see Para. 5.2.3 of Chapter 5 as appropriate, who has been delegated with this responsibility</td>
<td></td>
</tr>
<tr>
<td>(i) Design agreed in principle by (Division/Office responsible for future maintenance)</td>
<td></td>
</tr>
<tr>
<td>(j)* Facilities for Persons with Disabilities (PWDs) have been designed to the established standard. or</td>
<td></td>
</tr>
</tbody>
</table>
(j)* The Rehabilitation Advisory Committee Sub-committee on Access was consulted pursuant to PAH Chapter 4 Para. 4.3.2.

* Delete where appropriate

3. Attention is drawn to the following special requirements of the Particular Specification:

4. Estimates summary attached.

________________________________________
Project Engineer

(for HyD : (tel. no. : ))
### CALLING FOR TENDERS – ESTIMATES SUMMARY

#### I. Estimated Cost of Contract and Related Works

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigations</td>
<td>$</td>
</tr>
<tr>
<td>Other Divisions</td>
<td>$</td>
</tr>
<tr>
<td>Other Offices</td>
<td>$</td>
</tr>
<tr>
<td>Other Departments</td>
<td>$</td>
</tr>
<tr>
<td>Resumption and Clearance</td>
<td>$</td>
</tr>
<tr>
<td>Reprovisioning</td>
<td>$</td>
</tr>
<tr>
<td>Utilities</td>
<td>$</td>
</tr>
<tr>
<td>Contracts</td>
<td>$</td>
</tr>
<tr>
<td>Consultants’ Fees etc.</td>
<td>$</td>
</tr>
<tr>
<td>Stores and Equipment</td>
<td>$</td>
</tr>
<tr>
<td>Landscaping and Amenities</td>
<td>$</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>$</td>
</tr>
</tbody>
</table>

**TOTAL COMMITMENT:** $ 

#### II. Project Estimate

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Approved Estimate</td>
<td>$</td>
</tr>
<tr>
<td>Completed &amp; current commitments</td>
<td>$</td>
</tr>
<tr>
<td>(a)</td>
<td>$</td>
</tr>
<tr>
<td>(b)</td>
<td>$</td>
</tr>
<tr>
<td>(c)</td>
<td>$</td>
</tr>
<tr>
<td>Estimated commitment for this contract and related works</td>
<td>$</td>
</tr>
<tr>
<td>Estimated cost of future works</td>
<td>$</td>
</tr>
<tr>
<td>(a)</td>
<td>$</td>
</tr>
<tr>
<td>(b)</td>
<td>$</td>
</tr>
<tr>
<td>(c)</td>
<td>$</td>
</tr>
</tbody>
</table>

**TOTAL 2. to 4.:** $
III. Current Financial Year

1. Funds provided
   
   (a) in Printed Estimates $ 
   
   (b) by supplementary provision $ $ 

2. Estimated Expenditure

   (a) Existing expenditure and commitments $ 
   
   (b) this contract and related works $ 
   
   (c) Other $ $ 

Supplementary provision has been/will be sought if found necessary.

________________________

Project Engineer

(for HyD : (tel. no. : ))
APPENDIX 6.2  SAMPLE TENDER NOTICE FOR PUBLISHING ON THE INTERNET ON THE DEPARTMENT’S HOME PAGE

Tender Details

Tender Reference: (tender reference/contract number/PWP Item No.)

Procuring Department: (name of department)

Subject: (the subject of the tender or prequalification exercise)

Description: (a brief description in one or two sentences on the goods or services to be procured, or in respect of works contracts, the scope of project [The description should be the same as given in the Gazette Notice if appropriate], the contract period and the scheduled date for the contract commencement.)

Estimated quantity: (estimated quantity of goods or services to be procured, if applicable, or in respect of works contracts, state “not applicable”)

Contact: (name and/or post title of a contact officer to whom enquiries may be directed, and from whom tender or prequalification documents may be obtained)

(address)

(telephone number)

(fax number)

(e-mail address)

Closing date/time:  (closing time and date for the submission of tender or prequalification applications)

Submission of Tenders Applications:  *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 (specify the relevant tender board and the location of the tender box). Late tenders will not be accepted.

*Applications for prequalification are to be submitted to (specify the address to whom prequalification applications should be submitted). Late applications will not be accepted.
Remarks:

a. Contractors on the (specify the types/categories/groups of companies/contractors) are invited to tender. Contractors will be liable to have their names removed from the approved list if they fail or refuse to implement an accepted tender.

b. Contractors on the (specify the types/categories/groups of companies/contractors) who also meet the following requirements are invited to tender: (state minimum requirements). Details of these requirements are stipulated in the Notes to Tenderers. Contractors will be liable to have their names removed from the approved list if they fail or refuse to implement an accepted tender. (Amendment No. 8/2010)

c. Contractors on the (specify the types/categories/groups of companies/contractors) are invited to apply in writing for pre-qualification documents.

d. Contractors meeting the following requirements are invited to apply for the prequalification documents: (state qualifications)

e. In the event a typhoon signal No. 8 or above or a black rainstorm warning is hoisted between 9 a.m. and 12 noon on Friday, (date), the tender closing time will be postponed to 12 noon on the first working day of the following week. An announcement of the change will be made through the radio.

f. This tender is covered by the Agreement on Government Procurement of the World Trade Organization.

g. A charge will be levied for the delivery of tender documents where the delivery of tender documents is requested by a tenderer. A written request must be made.

h. The Government of the Hong Kong Special Administrative Region does not bind itself to accept any tender (or any application for prequalification, as appropriate) irrespective of whether the tender is the lowest bid or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender has the highest overall mark.

i. The Government of the Hong Kong Special Administrative Region reserves the right to negotiate with any tenderer about the terms of the offer.

j. Details of the award of this contract will be published in the Government of the Hong Kong Special Administrative Region Gazette and made available on the Internet.

k. The closing date has been extended from .............. to ....................

* delete where inappropriate
SAMPLE TENDER NOTICE/NOTICE FOR PREQUALIFICATION FOR PUBLISHING ON THE INTERNET ON THE DEPARTMENT'S HOME PAGE (CHINESE VERSION)

招標詳情

投標書編號：(招標編號／合約編號／工務計劃項目編號)

採購部門：(部門名稱)

項目：(招標項目名稱或投標資格預審項目名稱)

詳情：(簡述所需採購貨品或服務的資料。如屬工程合約，簡述工程的範圍（須與刊載於香港特別行政區政府憲報的敘述相同）、合約期及工程的預計展開日期)

估計數量：(估計所需採購貨品或服務的數量。如屬工程合約，填上「不適用」)

聯絡：(可供投標者查詢及索取投標文件或投標資格預審文件的人員之姓名／職位名稱)

(地址)

(電話號碼)

(傳真號碼)

(電郵地址)

截標日期／時間：(遞交投標書或投標資格預審申請書的截止日期及時間)

遞交投標書或投標資格預審申請書： *投標者必須在信封面註明招標編號、投標項目(但不得有任何記認，使人認出投標者的身分)及「中央投標委員會主席收」。逾期的投標概不受理。

*申請人須把投標資格預審申請書送交(註明遞交投標資格預審申請書的地址)。逾期的申請概不受理。
備註：

a. 現邀請名列（有關的認可名冊名稱）內獲准承投________工程的(____組)承建(*造)商承投這次招標項目。投標一經採納，承建(*造)商如未能或拒絕履行投標書內的規定，其名稱有可能從認可名冊上刪除。

b. 現邀請名列(有關的認可名冊名稱)內獲准承投________工程的(____組)承建(*造)商承投這次招標項目。投標一經採納，承建(*造)商如未能或拒絕履行投標書內的規定，其名稱有可能從認可名冊上刪除。

*現邀請名列(有關的認可名冊名稱)內獲准承投________工程的(____組)承建(*造)商承投這次招標項目。

(Amendment No. 8/2010)

*b. 若????年??月??日星期五上午9時至中午12時期間發出8號或以上颱風信號或黑色暴雨警告，截標日期將延至下一個星期首個工作天中午12時。這項更改會在電台公布。

c. 是次招標受世界貿易組織政府採購協定規管。

d. 有意投標者如要求送遞招標文件，必須以書面提出，並須繳付送遞費用。

e. 香港特別行政區政府不一定採納任何投標書(或任何投標資格預審申請書)，包括索價最低的投標書。如投標書評估是按照評分計劃或公式計算，香港特別行政區政府亦不一定採納其中整體得分最高的投標書。

f. 香港特別行政區政府有權與任何投標者商議批出合約的條款。

g. 批出是項合約的詳情，將刊載於香港特別行政區政府憲報，並在互聯網上公布。

*h. 截標日期已由????年??月??日延至????年??月??日。
務投標委員會收」。

* 刪去不適合者
APPENDIX 6.3  MEMO REQUESTING PUBLICATION OF GAZETTE NOTICE FOR INVITATION TO TENDER

MEMO

From ................................................................. To ..................................................
Ref. ........ in .......................................................... (Attn.: .............................................)
Tel. No. ................................................................. Your ........ in .............................................
Fax. No. ................................................................. dated .............................................. Fax. No. .............................................
Date. ................................................................. Total Pages ........................................

Contract No. : ...............  
Title : ..............................

I forward herewith notification for insertion in the Government of the Hong Kong Special Administrative Region Gazette on..............................................

2. The scheme for which tenders are to be called for the above Contract forms the *whole/part of Project No. ........ in the *PWP/......... and complies in all essentials with that which was *upgraded to Category A by Finance Committee at its Meeting held on ............... / included in Category D by................ on ............

3. The estimated cost of this contract is $ ............... for which funds are available under Head ............ Sub-head ..............

4. #Authority to call for tenders ..............................................................

5. All necessary legal procedures have been completed *and possession of the land has been arranged.

6. In addition, the following is relevant: General Layout Drawing No(s)......................

7. As advised by SPO, *a press release is required and a draft press release is attached / a press release is not required.

..........................................................................................

(Designation of Chief Engineer/Regional Office Head)

* Delete where inapplicable
# Authorization to call for tender before funding is secured is allowed under FC No. 2/2009 (Amendment No. 4/2009)
To: *Director of Civil Engineering and Development  
   *Director of Highways  
   *Director of Drainage Services  
   *Director of Water Supplies

In order, Gazette notification submitted for signature please.

....................................................
(Designation of Head of Office)

To: Assistant Clerk to the Executive Council  
thro’ Official Languages Division, CSB (Attn: COLO/Unit 4) [- Fax: 2868 4955]

Please find attached the draft notification [in triplicate] for publication in the Gazette on the required dates given at paragraph 1 of the attached memo.

....................................................
*Director of Civil Engineering and Development  
*Director of Highways  
*Director of Drainage Services  
*Director of Water Supplies

c.c. #with gazette notification  
^Director of Government Logistics (Attn.: Senior Proof Reader (Gazette)) – by email: pd-gazette@gld.gov.hk - w/ soft copy of draft notification in the form of *MS Word/ *MS Excel/ *text file AND scanned image of draft notification in PDF format

Secretary, (the relevant Tender Board) [- please note that a marking scheme for tender evaluation is adopted for this contract. Tenderers are required to submit “Tender Price Documents” and “Technical Submission” in separate envelopes.]*

With gazette notification, draft press release* and notice on the Internet  
Division/Regional Office [- For open and selective tendering of Works contracts falling within the provision of WTO GPA, please arrange with DIS to publish tender invitations in at least one of the local press. ](Amendment No. 8/2010)

*DLO/...............  
*Consulting Engineer .................

*with gazette notification, draft press release and general layout drawing  
CIO, SPO, DEVB – Please return the finalised version of the press release, if amended, to CE/GE/GGE/PM … for agreement before issuing to the Press  
PIO, I&PR, TD (for HyD projects)
Departmental headquarters
Office headquarters

# For tenders that need to be distributed to consulates and/or overseas trade commissions, the gazette notification should also be copied to the Economic Affairs Department of the Liaison Office of the Central People’s Government in the HKSAR.

For tenders that need to be distributed to the Mainland authorities/enterprises, the gazette notification should also be copied to the Trade Officer of the Beijing Office and SDEV. Please refer to Para. 4.1.2 for details)

* Delete where inapplicable

@ As an initiative to reduce paper consumption, one copy of the draft notification shall be sent by fax only to the specified fax no., as far as practicable. Should the draft notification consist of more than 20 pages, the draft notification shall be sent in triplicate by normal dispatch.

^ Refer to the Circular Memorandum from Director of Government Logistics dated 12 August 2005 attached at Annex to Appendix 6.6 regarding the alternative arrangements if soft copy or PDF format of the draft notification cannot be sent by e-mail. Please also refer to Appendices 6.4 and 6.6 regarding the format of the gazette notifications.

++ Departments may, in addition, publish tender invitations in selected journals, send invitation letters to qualified contractors and notify consulates and trade commissions in Hong Kong of such invitations, if considered appropriate. (Amendment No. 8/2010)
APPENDIX 6.4  GAZETTE NOTICE FOR INVITATION TO TENDER
[Based on SPR Appendix III (E)]

It is hereby notified that sealed tenders in *duplicate/triplicate are invited for Contract No. __________ — __________, (*Public Works Programme Item No. __________). The works include __________ and *will take about __________ months to complete / for completion in ____________.

The works are scheduled to commence in __________ and *will take about __________ months to complete / for completion in ____________.

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, Central Tender Board, and placed in the Government Secretariat Tender Box situated in the lift lobby on the lower ground floor of the Central Government Offices (East Wing), 20 Lower Albert Road (at its junction with Garden Road), Hong Kong, before 12 noon on Friday, __________ (date). Late tenders will not be accepted.

*In the event a typhoon signal No. 8 or above or a black rainstorm warning is hoisted between 9 a.m. and 12 noon on Friday, __________ (date), the tender closing time will be postponed to 12 noon on the first working day of the following week. An announcement of the change will be made through the radio.

Forms of tender and further particulars are obtainable from (office, address, *responsible officer) (Telephone No.: __________, Fax No.: __________). *A sum of $________, which will not be refunded, is required to cover the cost of the tender documents.

*Contractors on the (title(s) of the approved list(s)) (*in Group __________ for __________) (*confirmed) 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.

*Contractors with (state qualification) are invited to tender.

*Tenders must attach to each tender *a cheque/cashier order/or the original copy of a receipt showing that they have deposited at the collection offices of the Treasury the sum of $________ as a pledge of the bona fides of their tenders, which sum 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 deposits will be returned to the unsuccessful tenderers without interest.

* This tender is covered by the Agreement on Government Procurement of the World Trade Organisation.

*A charge will be levied for the delivery of tender documents where the delivery of tender documents is requested by a tenderer. A written request must be made.

The Government of the Hong Kong Special Administrative Region does not bind itself to accept any tender irrespective of whether the tender is the lowest bid or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender with the highest overall mark.

The Government of the Hong Kong Special Administrative Region reserves the right to negotiate with any tenderer about the terms of the offer.

Details of the award of this contract will be published in the Government of the Hong Kong Special Administrative Region Gazette and made available on the Internet.

Date

*Director of Civil Engineering and Development
*Director of Highways
*Director of Drainage Services
*Director of Water Supplies
Notes

1. If other than the Central Tender Board, specify the particular tender board, e.g., Public Works Tender Board, and insert information on the appropriate tender box for depositing tender.

2. For Public Works Tender Board, insert “the Government Public Works Tender Box situated in the Room 4128f, 41/F., Queensway Government Offices, 66 Queensway, Hong Kong”.

3. For tender received during typhoon season (say from April to October).

* Delete where inapplicable/inappropriate

Notes:

1. The guidelines on the format (both English and Chinese) for the above government notice in the main gazette should follow the annex to the memo from the Director of Logistics dated 12 August 2006 (ref. (38) in PD/12/4). This memo is attached as an annex to Appendix 6.6. For the format on content, please refer to the Government Gazette at http://www.gld.gov.hk/egazette.

2. A sample (in both English and Chinese) of CEDD Contract No. CV/2005/01 – Delivery of reclamation material to mainland (G.N. 2333 dated 7 April 2006) downloaded from the above website is attached at the following annex to this appendix for reference.
GAZETTE NOTICE FOR INVITATION TO TENDER (CHINESE VERSION)

憲報招標公告樣本

第????號公告

憲報招標公告樣本

現招標承投合約編號??????的「________工程」/的工程——________(*工務
計劃項目第????號)。工程包括__________。工程預計於????年??月展開，約
需時??月完成 / ????年??月完成。投標者必須填具一式*兩份/三份的投標表格，
並將填妥的投標表格放置信封內封密。

投標者必須在信封面註明招標編號、投標項目(但不得有任何記認，使人認出投標
者的身分)及「中央招標委員會主席收」。投標者必須於????年??月??日星期五
中午12時前，把投標書放入「香港下亞厘畢道20號(近花園道口)」中區政府合署東座
地下低層電梯門廊的「政府總部投標箱」內。逾期的投標書不受理。

若????年??月??日星期五上午9時至中午12時期間發出8號或以上颱風信號或黑
色暴雨警告，截標日期將延至下一個星期首個工作天中午12時。這項更改會在電台
公布。

投標表格和其他資料可於/可向(辦事處名稱、地址、*負責人)(電話號
碼:???? ???? ,傳真號碼:???? ???? )索取。索取投標表格者須繳付???元(不會
退還)，以彌補印製招標文件的開支。

現邀請名列(有關的認可名冊名稱)內獲准承投工程的(*組)承建
(*造)商(*經確認者)承投這次招標項目。投標一經採納，承建(*造)商如未能或拒
絕履行投標書內的規定，其名稱有可能從認可名冊上刪除。

現邀請(註明資格)的承建商投標。

是次招標受世界貿易組織政府採購協定規管。

有意投標者如要求送遞招標文件，必須以書面提出，並須繳付送遞費用。

香港特別行政區政府不一定採納任何投標書，包括索價最低的投標書。如投標書
評估是按照評分計劃或公式計算，香港特別行政區政府亦不一定採納其中整體得分
最高的投標書。

批出是項合約的詳情，將刊載於香港特別行政區政府憲報，並在互聯網上公布。

日期

*土木工程拓展署署長
*路政署署長
*渠務署署長
*水務署署長
註1 適用於工程名稱較短的工程項目
註2 適用於工程名稱較長的工程項目
註3 如非「中央投標委員會」，請詳細註明有關的投標委員會，例如「工務投標委員會」。
註4 如屬工務投標委員會，請填上香港金鐘道66號金鐘道政府合署41樓4128f室的「工務投標箱」內。
註5 於颱風季節附加(約四月至十月)
註6 適用於只列明辦事處的情況
註7 適用於同時列明辦事處和負責人的情況

*删去不適用者/不適合者
Annex

Sample of Gazette Notice for Invitation To Tender

English Version:

G.N. 6379

CIVIL ENGINEERING AND DEVELOPMENT DEPARTMENT

It is hereby notified that sealed tenders in duplicate are invited for Contract No. CV/2007/03—Development at Anderson Road—Site formation and associated infrastructure works. The works include site formation to provide about 20 hectares of land at the site between Anderson Road and Sau Mau Ping Road and the construction of associated infrastructure works, including slopes, roads, bridges, drains, watermains and landscaping. The works are scheduled to commence in January 2008 and will take about 78 months to complete.

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, Central Tender Board, and placed in the Government Secretariat Tender Box situated in the lift lobby on the Lower Ground Floor of the Central Government Offices (East Wing), 20 Lower Albert Road (at its junction with Garden Road), Hong Kong before 12.00 noon on Friday, 9 November 2007. Late tenders will not be accepted.

In the event a typhoon signal No. 8 or above or a black rainstorm warning is hoisted between 9.00 a.m. and 12.00 noon on Friday, 9 November 2007, the tender closing time will be postponed to 12.00 noon on the first working day of the following week. An announcement of the change will be made through the radio.

Forms of tender and further particulars are obtainable from Ove Arup & Partners Hong Kong Limited at Level 5 Festival Walk, 80 Tat Chee Avenue, Kowloon Tong, Kowloon, Hong Kong (Contact Person: Mr. Y. W. YEUNG, Telephone No.: (852) 2268 3594, Fax No.: (852) 2268 3953).

Either (i) contractors on the List of Approved Contractors for Public Works confirmed for Group C in both the Roads and Drainage Category and Site Formation Category or (ii) joint ventures with participation of local and/or overseas contractors, collectively satisfying the above requirements, and both (i) or (ii) above who also meet the following requirements, are invited to tender:

(a) having completed at least one site formation contract with the contract value not less than HK$200 million within the past 12 years, counting from the original date set for the close of tender; and

(b) having completed at least one roads and drainage contract with the contract value not less than HK$200 million within the past 12 years, counting from the original date set for the close of tender.

The detailed requirements on the tenderer’s qualification and those for joint ventures with participation of local and/or overseas contractors, if applicable, are stipulated in the tender particulars. Contractors will be liable to have their names removed from the approved lists if they fail or refuse to implement an accepted tender.

This tender is covered by the Agreement on Government Procurement of the World Trade Organization.

A charge will be levied for the delivery of tender documents where the delivery of tender documents is requested by a tenderer. A written request must be made.

The Government of the Hong Kong Special Administrative Region does not bind itself to accept any tender irrespective of whether the tender is the lowest bid or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender with the highest overall mark.

The Government of the Hong Kong Special Administrative Region reserves the right to negotiate with any tenderer about the terms of the offer.

Details of the award of this contract will be published in the Government of the Hong Kong Special Administrative Region Gazette and made available on the Internet.

28 September 2007 Adrian NG Director of Civil Engineering and Development (Acting)
第 6379 號公告

土木工程拓展署

現招標承投合約編號 CV/2007/03 的工程——安達臣道發展計劃——地盤平整及相關基建工程。工程包括在介乎安達臣道及秀茂坪道之間的地盤進行地盤平整工程，以提供面積約 20 公頃的用地，及進行相關的基建工程，包括斜坡、道路、梯樑、車橋、泵房、水務及環境美化。工程預計於 2008 年 1 月展開，約需時 78 個月完成。投標者必須填具一式兩份的投標表格，並將填妥的投標表格放置信封內密封。

投標者必須在信封上註明招標編號、投標項目及「中央投標委員會主席收」。投標者必須於 2007 年 11 月 9 日星期五中午 12 時前，把投標書放入香港下亞厘畢道 20 號 (近花園道口) 中區政府合署東座地下低層電梯門廊的「政府總部位投標箱」內。逾期的投標概不受理。

若 2007 年 11 月 9 日星期五上午 9 時至中午 12 時期間發出 8 號或以上颱風信號或黑色暴雨警告，裁標日期將延至下一個星期首个工作日中午 12 時。這項更改會在電台公布。

投標表格和其他資料可向香港九龍九龍塘達之路又一城 5 樓奧雅納工程顧問有限公司 (聯絡人：楊耀永先生，電話號碼：(852) 2268 3594，傳真號碼：(852) 2268 3953) 索取。

現邀請 (i) 名列認可公共工程承建商名冊上獲准承投道路及渠務工程及地盤平整工程的丙組承建商 (經確認者)，及 (ii) 由本地和／或海外承建商所組成的合營企業 (須符合以下要求)，以上 (i) 之承建商或 (ii) 之合營企業並同時符合以下條件者，承投這次招標項目：

(a) 自原訂裁標日期起計的過去 12 年內，完成最少一項地盤平整工程的合約，其中合約價值不少于 2 億港元；及
(b) 自原訂裁標日期起計的過去 12 年內，完成最少一項道路及渠務工程的合約，其中合約價值不少于 2 億港元。

有關投標者的資料及由本地和／或海外承建商所組成的合營企業 (如適用) 的要求，詳列於投標資料中。投標一經採納，承建商如未能或拒絕履行投標書內的規定，其名稱有可能從認可名冊上刪除。

是次招標按世界貿易組織政府採購協定規管。

有意投標者如要求送遞投標文件，必須以書面提出，並須繳付送遞費用。

香港特別行政區政府不承擔任何投標，包括索價最低的投標書。如投標書評估是按照評分計劃或公式計算，香港特別行政區政府亦不承擔其中整體得分最高的投標書。

香港特別行政區政府有權與任何投標者商議條約的條款。

批出是項合約的詳情，將刊載於香港特別行政區政府憲報，並在互聯網上公布。

2007 年 9 月 28 日

署理土木工程拓展署署長伍國基

### CONTENT PAGE FOR GAZETTE NOTICE FOR INVITATION TO TENDER

<table>
<thead>
<tr>
<th>Government Notice No.</th>
<th>Subject</th>
<th>Page</th>
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<tbody>
<tr>
<td>TENDERS</td>
<td>XX Department</td>
<td>(Title of Contract)</td>
</tr>
</tbody>
</table>

N.B.: “Gazette No.”, “Government Notice No.” and “Page” should be left blank. The details will be inserted by the Director of Government Logistics.
<table>
<thead>
<tr>
<th>政府公告</th>
<th>有關事項</th>
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<tr>
<td>招標</td>
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(合約名稱)

註： "憲報期號"、 "政府公告編號" 及 "頁數" 留待政府印務局填上。
APPENDIX 6.5    DRAFT PRESS RELEASE FOR GAZETTE NOTIFICATION

Draft Press Release

Tenders are about to be invited for (state the contract title).

2. (Brief description of the scope, location, purpose of the works, and the anticipated contract commencement and completion dates).

3. The works have been designed and construction will be supervised by (state relevant division, office, department or consultants) *for (state client department).

* Delete where inapplicable
新聞公報草稿

（部門名稱）將招標承投「________工程」。

2. （簡短介紹有關工程的範圍、地點、目的和預計施工及完工日期）。

3. （有關部門辦事處名稱或顧問工程師名稱）負責設計及監督有關之建造工程。
These guidance notes are for the preparation of the following documents for invitation of tenders by gazette notice:

1. Routing sheet, check-list and estimates summary.
2. Memo requesting publication of gazette notification.
3. Gazette notice (with contents page).

1. Routing sheet, check-list and estimates summary

The preparation of these documents is self-explanatory. It is however crucial to observe the timing for the processing of the documents for gazette notification stated in the routing sheet.

2. Memo requesting publication of gazette notice

The memo shown in Appendix 6.3 is divided into 3 parts:

Part 1

This part should be signed by the Chief Engineer or Regional Office Head and addressed to the Head of the Office through, if applicable, a designated officer (e.g. Technical Secretary) in the office headquarters. The paragraphs should be completed as follows:

Para. 1 – Enter the dates on which publication is required, which should normally be the dates for two consecutive issues of the gazette. Publication day is a Friday unless otherwise notified when that Friday is a public holiday.

Para. 2 – Fill in the details as appropriate, i.e. the project no, whether the works is in the PWP, whether the work was upgraded to Cat. A or included in Cat. D.

Para. 3 – Enter the contract sum and funding source as appropriate. If the contract includes work for more than one project, modify as:

“The estimated cost of this contract is $ ............... for which funds are available under Head ......... Sub-head ......... ($.................) and Head ......... Sub-head ......... ($.................).”
If no subhead exists but arrangements have been made for funds to be provided in the following financial year, delete Para. 3 and replace with:

“The estimated cost of this contract is $ ............... for which funds will be provided in 20.../....”.

The estimated cost of the contract should be at current prices. If the funds provided in the vote are inadequate to cover any increased estimated cost, then a footnote should be made stating that action will be taken to revise the project estimate after tenders are received and before the contract is awarded.

Para. 4 – State the authority for which approval to call for tender has been given. If tender invitation is to proceed before funding is secured as allowed under FC No. 2/2009 (Amendment No. 4/2009), the particulars should be given here.

Para. 5 – If approval for tendering before confirmation of land clearance and resumption has been obtained, delete “and possession of the land has been arranged” and state the reference and date of such approval for tendering as appropriate.

Para. 6 – Enter general layout drawing no. and any other relevant information if necessary.

Para. 7 – The need of a press release will depend on the sensitivity of the project and the degree of public/media interest.

Part 2

This part should be signed by the Head of Office if documents for gazette notification are considered to be in order.

Part 3

This part should be signed by the Director of the Department if documents for gazette notification are considered to be in order. Distribution of copies of memo and enclosures to the relevant parties should be made by departmental headquarters.

(3) Gazette notice

1st para. – Enter the contract no. and title in the first sentence. Give PWP item number in brackets if appropriate. Give a brief description of the nature and location of the works in the second sentence. Enter the contract commencement date and contract completion date / contract duration in the last sentence.

2nd para. – Enter the name of the tender board and the name and address of the tender box.
The tender closing date should normally be 3 weeks (6 weeks for WTO GPA) after the date of the first publication of the gazette notice. Under the simplified tendering arrangement promulgated under FC No. 3/2009 (Amendment No. 4/2008 & 4/2009), a period of less than 3 weeks may be allowed for works contracts under $55 million (Amendment No. 4/2009). However, due consideration should be given to allow longer periods for large and complicated jobs and when the contractor is allowed or required to submit his own/alternative design.

3rd para. – Include this paragraph for tender to be received during typhoon season (say from May to October).

4th para. – State designation/name and address of office of the Engineer designate for the contract.

5th para. – State as appropriate the group(s) (according to the estimated cost of the contract) and the category(ies) of approved contractors/specialist contractors/suppliers of materials permitted to tender. The minimum requirement for which the tenderer must comply with should be stated in this paragraph when necessary. (Amendment No. 8/2010)

6th para. – State other qualification to tender if it is intended not to invite tenders from the approved list.

7th para. – Tender deposit is not normally required except for special circumstances where the contract warrants.

8th para. – Include this paragraph for contracts covered by WTO GPA.

9th para. – Include this paragraph if delivery of tender documents is anticipated.

Print the name of the Director of the Department above the Director’s designation.

A content page giving the title of the contract and/or a brief description of the works to be tendered should be attached to the front of the gazette notice for inserting into the “CONTENTS” pages of the Gazette.

Gazette notice and content page are to be prepared in both English and Chinese. Attention should be paid to the format (in both English and Chinese) as required by the Director of Government Logistics, whose memo dated 12 August 2005 is attached at the annex to this Appendix 6.6. For the format on content, please refer to the Government Gazette at http://www.gld.gov.hk/egazette/ or the General Regulation 100-127 for reference, where the notices published can serve as examples.

(4) Contract general layout drawing (not required for WSD contracts)
The contract general layout drawing should show the extent of the works site, works area, borrow and dumping areas as appropriate, and should give an indication of the scope of the works. Where appropriate, cross sections of the works should be shown. The contract general layout drawing should be coloured. Street names and familiar names of places etc. should, whenever possible, be inserted on the plan, such references as Road R4 should be avoided.

(5) Draft press release

The draft press release should be prepared in both English and Chinese and be forwarded to CIO, SPO, DEVB or PIO, I&PR, TD (for HyD projects) through departmental headquarters.

The object of the press release is to inform the public what is being done by Government. When drafting, the following should therefore be borne in mind:

(i) The press release should be written in such a way that it is interesting and meaningful to the layman. References such as Road P, Area 6 etc. should be avoided as far as possible. Location of the works should be described by referring to existing streets, major buildings, public facilities, villages or town centers, etc.

(ii) When the job merits it, they should be accompanied by a plan suitable for publication, (no colouring should be used and all lines and printing should be thick enough to be fully legible when the drawing is photo reduced in size).

(iii) for CEDD/HyD/DSD/WSD projects, the draft should describe, in layman terms, the purpose of the work and the benefits it will bring to the community. It should commence with the phrase “Tenders are about to be invited for” and finish with a sentence to the effect that “the works have been designed and construction will be supervised by (state relevant division, office, department or consultants) for (state client department, if applicable)”.

(iv) For development projects of CEDD, the draft press release should be written so as to:

- emphasize that Development Office of CEDD is building the new towns, and
- describe in journalistic terms the content of the work and its contribution to the development of the town.

The draft press release should have an opening paragraph similar to:

“The Civil Engineering and Development Department (state also the Development Office concerned) is inviting tenders for another project as part of the continuing programme for the development of (state
name of new town). It should be finished with a sentence similar to that for draft press release for CEDD/HyD/DSD/WSD projects.

(v) Copy the draft press release to CIO or PIO as appropriate with a remark as follows:

“Please return the finalised version of the press release, if amended, to CE/GE/GGE/PM ... for agreement before issuing to the Press.”

Draft press releases regarding works in politically sensitive locations of the urban area should be agreed with the Director of Information Services (DIS). In all cases the assistance of DIS may be sought in preparing the press release.

Any public enquiry about the works to be tendered should be referred to a nominated officer in the office headquarters (normally the Technical Secretary of the office) for processing. CIO, SPO of DEVB or PIO, I&PR of TD (for HyD projects), will assist in arranging radio, television and press interviews where appropriate, after obtaining approval from the Head of Office.
Submission of Government Notices to be Published in the Gazette

The purpose of this circular memorandum is to request responsible officers in Bureaux/Departments (B/D) to submit to the Printing Division of this Department their copies (manuscripts) of the Government Notices to be published in the Gazette in the form of electronic file (soft copy) latest by 1 September 2005. This is in line with the spirit of e-government and will reduce typesetting work to be undertaken by the Printing Division to enhance cost-effectiveness.

2. The soft copy should be sent to the Senior Proof Reader (Gazette) by e-mail: pd-gazette@gld.gov.hk together with a scanned image of the hard copy saved as PDF file attached to the same e-mail to facilitate proof reading by the Printing Division. This is necessary to safeguard against any possible discrepancy between the output of the softcopy by the Printing Division and that of the originating B/D such as missing fonts or distorted image. If a PDF file cannot be attached for any reason, the B/D should send to the Printing Division a hard copy of the Notice for the attention of Senior Proof Reader (Gazette) by fax at 2579 1156 for proof reading purpose.

3. The soft copy can be submitted in the form of MS Word, MS Excel or simply a text file. Please follow the guidelines on the format to be used at Annex. Senior Proof Reader (Gazette) will acknowledge receipt by e-mail once the file is received. Just in case the soft copy cannot be sent by e-mail for any reason, B/D may also submit the soft copy on a disk with a printed copy of the notice and deliver to the Printing Division.

4. Any enquiry regarding this circular memo should be referred to Mr D S Ng, Chief Proof Reader at telephone No. 2564 9532 or e-mail: cpr@gld.gov.hk

(Miss Ivy Hong)
for Director of Government Logistics
Annex

GUIDELINES ON THE FORMAT FOR GOVERNMENT NOTICES IN THE MAIN GAZETTE

English Version

1. In General
8/9 pt Times, maximum text area 176 mm height x 118 mm width
No indentation on first paragraph, indent one pica starting from second paragraph; 0.5 line for space between paragraphs.

2. Font
Appointment & Notices
Department name - Times Roman capital/small capital quad right
Main title - Times Bold capital centred
Sub-title - Times Roman capital/small capital centred
Text - Time Roman justify
Column - Times Roman quad left, Times Italic for running head
Signature - Times Italic quad left for date, Roman for Signature and Italic for post title

For the format on content, please refer to the Government Gazette at www.gld.gov.hk/egazette or the General Regulation 100-127 for reference.

中文版

1. 一般格式
8/11 pt 字身，最大正文版度 176 mm 高 x 118 mm 深
正文第一段齊左起排，第二段起縮入一字身位起排，每段之間開 0.5 行距

2. 字款
委任及公告
部門名稱 - 細明體(宋體) 分中
主標題 - 粗體 分中
副標題 - 細明體 分中
內文 - 細明體 齊左右
欄 - 細明體 齊左 欄目用斜體
下款 - 細明體 日期齊左 發文人姓名及職銜齊右

招標
部門名稱 - 粗體 分中
主標題 - 粗體 分中
內文 - 細明體 齊左右
欄 - 細明體 齊左 欄目用斜體
下款 - 細明體 日期齊左 發文人姓名及職銜齊右

內文格式可參考憲報或瀏覽憲報網址 www.gld.gov.hk/egazette 及總務規則第 100 至 127 條。

Note: -
A sample in English and Chinese of a CEDD Contract No. CV/2005/01 – Delivery of reclamation material to mainland (G.N. 2333 dated 7 April 2006) is shown at Appendix 6.4.
Dear Sirs,

Contract No. : ……………………

Title : ………………………………..

*You are hereby invited to submit a sealed tender in *duplicate/triplicate for the above contract. The works include ________________________________________________ and are scheduled to commence in (month, year) and *will take about (no. of months) months to complete / for completion in (month, year).

*The tender documents will be available for collection on (date) from (office, address, *responsible officer) (Telephone No. : __________, Fax No. : __________).

*The tender documents are enclosed herewith and consist of the following:

(a) One copy of booklet containing:

  (i) Conditions of Tender comprising the General Conditions of Tender and the Special Conditions of Tender,

  (ii) Form of Tender,

  *(iii) Conditions of Contract comprising General Conditions of Contract and the Special Conditions of Contract,

  *(iv) Articles of Agreement,

  *(v) Particular Specification,

  *(vi) Plant and Labour Schedule/*Equipment Schedule,

  *(vii) Particular Preambles and Bills of Quantities,

  *(viii) Schedule of Proportions to be used in calculating the Price Fluctuation Factor,

(b) One duplicate copy of the Form of Tender,

*(c) One set of drawings as listed in Particular Specification Clause ……….,

*(d) General Specification for Civil Engineering Works (…. Edition),

*(e) Standard Method of Measurement for Civil Engineering Works (…. Edition),
Your tender shall be completed in accordance with the Conditions of Tender and returned in the pre-addressed envelope, clearly marked with the tender reference and the subject of the tender on the outside of the envelope, and placed in the (name of tender box) situated at (location of tender box) / returned by post to the Chairman of the (name of tender board) at (address of tender board) before 12:00 noon on Friday, (Date). Late tenders will not be accepted.

*In the event a typhoon signal No. 8 or above or a black rainstorm warning is hoisted between 9 a.m. and 12 noon on Friday, ______ (date), the tender closing time will be postponed to 12 noon on the first working day of the following week. An announcement of the change will be made through the radio.

*This tender is covered by the Agreement on Government Procurement of the World Trade Organisation.

*A charge will be levied for the delivery of tender documents where the delivery of tender documents is requested by a tenderer. A written request must be made.

The Government of the Hong Kong Special Administrative Region does not bind itself to accept any tender irrespective of whether the tender is the lowest bid or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender has the highest overall mark.

The Government of the Hong Kong Special Administrative Region reserves the right to negotiate with any tenderer about the terms of the offer.

*Contractors will be liable to have their names removed from the list of approved contractors if they fail or refuse to implement an accepted tender.

*You are invited to attend a pre-tender meeting at (venue, date and time). Please acknowledge receipt of this letter.

Yours faithfully,

..........................................................
(Designation of officer who would sign the contract on behalf of Government)

c.c. without encl.
Secretary of the relevant tender board
Director of Audit
CIO, SPO, DEVB or PIO, I&PR, TD (for HyD projects)
Office Headquarters
Departmental Headquarters
*Consulting Engineer

* delete where inapplicable/inappropriate
APPENDIX 6.8 SAMPLE LETTER FOR TENDER ADDENDUM

Dear Sirs,

(Contract Title)

I enclose Tender Addendum No. ........ in respect of the above contract. I also enclose an additional copy of this letter with a certification added. You are required to sign this certification and attach it together with the addendum to your tender.

In addition I enclose an acknowledgement letter which you are required to sign and return within two days of receipt of this letter.

Yours faithfully,

................................................
(Designation of the Engineer designate for the Contract)

CERTIFICATION

I certify that Tender Addendum No. ........ forwarded with this letter has been taken into account in my tender.

Authorized Signature of Tenderer .........................
(with Company chop)

Name of Tenderer .............................................
ACKNOWLEDGEMENT

(To be signed and returned within two days of receipt of the Tender Addendum)

Date ………………

To: (Designation of the Engineer designate for the contract or Consultant’s Project Officer as appropriate)

Dear Sir,

(Contract Title)

Tender Addendum No.

We hereby acknowledge receipt of Tender Addendum No. ……….. for the above contract.

Yours faithfully,

……………………………………………

(Authorized Signature with Company chop)

Name of Company …………………….
BILLS OF QUANTITIES

Replace Page 2/1 with the enclosed page marked ‘ADDENDUM No. __________’.

The item for demolition of groups of buildings and structures in Area C is deleted.
APPENDIX 6.9   THE ENGINEER FOR CONTRACTS

For CEDD, DSD and WSD contracts

(1) Contracts administered by Divisions/Regional Offices/Branches: Chief Engineers/Chief Geotechnical Engineers
(2) Contracts administered by consultants: Consulting Engineers
(3) WSD Term Contracts for civil works: Assistant Directors

For HyD contracts

(1) Contracts administered by consultants: Consulting Engineers
(2) Contracts administered in-house
   - Contracts of value not exceeding $50M: Senior professionals
   - Contracts of value $50M to $500M: D1
   - Contracts of value exceeding $500M: D2

Where there is no appropriate rank officer, the ‘Engineer’ shall normally be an officer at one rank higher but the responsible Head of Office may exercise his discretion to appoint a lower rank officer if good justifications exist. The minimum rank for appointment as the ‘Engineer’ shall be senior professionals.

Notwithstanding the above general guidelines, contracts of special complexity or sensitivity may demand a higher rank officer to act as the ‘Engineer’.
To All Tenderers

Dear Sirs,

(Contract Title)

In connection with (state the reason for extension of tender period), it is decided that the tender period for the above Contract will be extended by (no. of weeks) . The closing date for receipt of tenders shall be 12 noon on Friday, (date).

I also enclose an acknowledgement letter which you are required to sign and return within two days of receipt of this letter.

Yours faithfully,

(Designation of the Engineer designate for the Contract)
ACKNOWLEDGEMENT

(To be signed and returned within two days of receipt of the notification letter for extension of tender period)

Date....................

To: (Designation of the Engineer designate for the Contract or Consultant’s Project Officer as appropriate)

Dear Sir,

(Contract Title)

Extension of Tender Period

We hereby acknowledge receipt of notification letter dated (date) for extension of tender period for the above contract.

Yours faithfully,

...........................................................

(Authorized Signature with Company chop)

Name of Company .................................
APPENDIX 6.11  MEMO TO TEDNER BOARD FOR EXTENSION OF TENDER PERIOD

RESTRICTED (TENDER)

MEMO

From: .................................................................
Ref.:  in ............................................................
Tel. No.: ..............................................................
Fax. No.: ..............................................................
Date: .................................................................

To: Chairman of Tender Board
(Attn.: ..............................................................)
Your in ..............................................................
dated  Fax. No. ..............................................................

Total Pages ..............................................................

Contract No. ..............................................................
(Title)

Extension of Tender Period

Please be advised that the closing date for receipt of tenders for the above Contract will be extended from (date) to (date) due to (state the reason for extension of tender period).

2. The tenderers have been informed accordingly.

..............................................................
(Designation of the Engineer designate for the Contract)
MEMO REQUESTING PUBLICATION OF GAZETTE NOTICE FOR EXTENSION OF TENDER PERIOD

MEMO

From: .................................................................

To: (Head of Office) *(thru’ ……)

Ref.: in .................................................................

(Attn.: .................................................................)

Tel. No.: .................................................................

Your in .................................................................

Fax. No.: .................................................................

dated Fax. No. .................................................................

Date. .................................................................

Total Pages .................................................................


Contract No. .................................................................

(Title)

Extension of Tender Period

I forward herewith notification for insertion in the Government of the Hong Kong Special Administrative Region Gazette on ....................... for an extension of time for return of tenders for the above contract from ....................... to ....................... .

2. The extension is considered necessary because (give justification for extension of tender period).

3. The tenderers have been informed accordingly.

..........................................................................................

(Designation of Chief Engineer/Regional Office Head)

* Delete where inapplicable

To: *Director of Civil Engineering and Development

*Director of Highways

*Director of Drainage Services

*Director of Water Supplies

In order, Gazette notification submitted for signature please.

..........................................................................................

(Designation of Head of Office)
To: Assistant Clerk to the Executive Council

thru’ Official Languages Division (Attn: COLO/Unit 4)

Please find attached the draft notification in triplicate for publication in the Gazette on the required dates given at paragraph 1 above.

..........................................................

*Director of Civil Engineering and Development
*Director of Highways
*Director of Drainage Services
*Director of Water Supplies

c.c. with gazette notification

Director of Government Logistics (Attn: Chief Printing Supt.)
Secretary, (the relevant Tender Board)
Division/Regional Office
*Consulting Engineer
CIO, SPO, DEVB or PIO, I&PR, TD (for HyD projects)
Departmental headquarters
Office headquarters

* Delete where inapplicable
APPENDIX 6.13  GAZETTE NOTICE FOR EXTENSION OF TENDER PERIOD

G.N.  
*CIVIL ENGINEERING AND DEVELOPMENT DEPARTMENT
*HIGHWAYS DEPARTMENT
*DRAINAGE SERVICES DEPARTMENT
*WATER SUPPLIES DEPARTMENT

With reference to the Government of the Hong Kong Special Administrative Region Notice No. ______ of ______ (date) and ______ (date) inviting tenders for the (title of Contract and/or brief description of Works and the PWP Item Number in brackets if appropriate) , it is hereby notified that the closing date for receipt of tenders shall be extended to 12 noon on Friday, ______ (date)_____.

Note: In the event a typhoon signal No. 8 or above or a black rainstorm warning is hoisted between 9 a.m. and 12 noon on Friday, ______ (date)_____, the tender closing time will be postponed to 12 noon on the first working day of the following week. An announcement of the change will be made through the radio.

*Director of Civil Engineering and Development
*Director of Highways
*Director of Drainage Services
*Director of Water Supplies

Note: For tender received during typhoon season (say from April to October)

* Delete where inapplicable
GAZETTE NOTICE FOR EXTENSION OF TENDER PERIOD
(CHINESE VERSION)

第????號公告

*土木工程拓展署
*路政署
*渠務署
*水務署

有關招標承投_________________ __________________一事，已在????年??月??日及????年??月??日的香港特別行政區政府公告第????號內公布。現特通知，該項招標的截標日期將延至????年??月??日星期五中午12時。

**若????年??月??日星期五上午9時至中午12時期間發出8號或以上颱風信號或黑色暴雨警告，截標日期將延至下一個星期首個工作天中午12時。這項更改會在電台公布。**

*土木工程拓展署署長
*路政署署長
*渠務署署長
*水務署署長

註 於颱風季節附加(約四月至十月)
APPENDIX 6.14 LETTER FOR EXTENSION OF TENDER VALIDITY PERIOD

RESTRICTED (TENDER)

(Contractor) ............................

(Address) ..............................

Dear Sirs,

Contract No. : .........................

Title : ....................................

I should be grateful if you would confirm that you agree to abide by your tender for the above contract for an extended period of ........ days in addition to the ........ days period stipulated in Clause ........ of the Form of Tender, by signing and returning the enclosed letter.

Please note that this letter should not be construed as either an acceptance or a rejection of your tender. All tenders are still under consideration and the Government of the Hong Kong Special Administrative Region does not bind itself to accept any tender irrespective of whether the tender is the lowest bid or, where the assessment of the tenders is based on a marking scheme or formula approach, the tender has the highest overall mark.

Thank you for your co-operation.

Yours faithfully,

........................................

(Designation of the Engineer designate for the Contract)
AGREEMENT TO EXTENSION
OF TENDER VALIDITY PERIOD

Date ………………..

To: (Designation of the Engineer designate for the contract
or Consultant’s Project Officer as appropriate)

Dear Sir,

Contract No. : ………………………

Title : ………………………………..

I confirm that I agree to extend the validity period of my tender for the above contract
from .......... days to ........ days. The tender validity period will therefore expire on
(date) . I agree to abide by my tender until that date.

Yours faithfully,

………………………………………………
(Authorized Signature with Company chop)

Name of Company ……………………..
**MEMO TO DEVB FOR FINANCIAL CAPABILITY CHECKING**

**RESTRICTED (TENDER)**

<table>
<thead>
<tr>
<th>From</th>
<th>Ch TA, Finance Section, DEVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ref.</td>
<td>(Attn.:)</td>
</tr>
<tr>
<td>Tel. No.</td>
<td></td>
</tr>
<tr>
<td>Fax. No.</td>
<td></td>
</tr>
<tr>
<td>Date.</td>
<td></td>
</tr>
</tbody>
</table>

**Contract No.**

(Title)

**Financial Capability Enquiry**

Tenders for the above contract have been received and the three tenders with the highest combined price-technical score are as follows:

<table>
<thead>
<tr>
<th>Name of Contractor</th>
<th>Tender Price (*corrected/uncorrected)</th>
<th>Technical Score</th>
<th>Overall Score (price to technical weighing: 60/40)</th>
</tr>
</thead>
</table>

2. The anticipated commencement date is ………… and the anticipated completion date is …………. The contract period is ………. months.

3. Please advise the financial capabilities of these contractors to carry out the above work.

4. *Copies of the schedules of work in hand as submitted by Group C Contractors are attached.*

    *My records show that ………………… holds only a probationary status in Group…. Please advise if the permitted workload will be exceeded should this tender be accepted.*

………………………………..……………………….

(Designation of Chief Engineer/Regional Office Head)

or (Signed by a directorate officer for Head Office or Head of Department)

or (for HyD: Signed by an officer for Head of Office or Head of Department)

* Delete or modify as appropriate
## APPENDIX 6.16 COVERING MEMO FOR ENDORSEMENT OF TENDER REPORT

### RESTRICTED (TENDER)

**MEMO**

<table>
<thead>
<tr>
<th>From</th>
<th>Chairman of Tender Board (thro’ Head of Office)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ref.</td>
<td>(Attn.:)</td>
</tr>
<tr>
<td>Tel. No.</td>
<td></td>
</tr>
<tr>
<td>Fax. No.</td>
<td>dated in</td>
</tr>
<tr>
<td>Date.</td>
<td>Total Pages</td>
</tr>
</tbody>
</table>

**Contract No.**

**__________**

**(Title)**

### Tender Report

*Memo ……………… from the Secretary of *Central Tender Board / Public Works Tender Board refers.

2. I submit herewith #4/6 copies of the tender report from *(the Engineer designate for the contract)* for the above contract.

3. *I support the (Engineer designate’s) recommendation in para. …… of the attached tender report.*

   *I support the tender report in its entirety. [It is necessary only when the tender report is prepared by a non-directorate officer or consultants]*

   *I do not support the recommendation in para …. of the report. I recommend that *none of the tenders be nominated / the ………… tender submitted by …………………………. in the sum of $………………. be nominated. The reasons for my recommendation are [Detail reasons as well as the suitability of the recommended tender, the tender recommended by the Engineer designate and other relevant tenders shall be given so that tender boards may be able to decide without referring the tender report back to departments]:*

4. I confirm that all officers involved in preparing tender documentation including tender specifications and assessing tenders have declared that there is no actual, potential or perceived conflict of interest for them to take part in the process in accordance with Stores and Procurement Regulation 186.

5. The *(No.)* tenders are returned herewith.

…………………………………………………………………………………………………………………………

(Designation of an Officer of D2 Rank or above)

or Director of ……………………………………….
* Delete where inapplicable

# 4 copies of the tender reports (including the original) are required by Public Works Tender Board whereas 6 copies of the tender reports (including the original) are required by Central Tender Board.

Copy to (with copy of tender report)

SEO(PS), DEVB

Departmental HQ

Initiator of Report

CEDD HQ

DSD HQ

HyD HQ

Consultant

Vote Controller

Secretary, PWSC

(only for tender reports submitting to the Central Tender Board) – Urgent by Hand

) (all contracts)

) (if the tender with highest price-quality score is not recommended) – without enclosures to the tender report

) (for project managed by consultant)

) (if project is carried out on agency basis for another department)

) (if approved estimate is exceeded)
APPENDIX 6.17  
SAMPLE LETTER OF ACCEPTANCE
TO SUCCESSFUL TENDERER

(Contractor) ............................

(Address) ............................

Dear Sirs,

Contract No. : ....................

Title : .................................

In accordance with the decision made by the *Central Tender Board / Public Tender Board / Director of ..........., I hereby notify you that your *(corrected) tender which totals (words and figures) is accepted.

(If the tender contains alternatives or post-tender correspondence that has modified the tender, then set out what is being accepted. Where the alternatives can only be accurately referred to by reference to sums of money, then these sums should be referred to as being adjustments to the sum given in the Form of Tender.)

* The following correspondence forms part of this Contract:

(List relevant correspondence giving dates and reference numbers together with any enclosures to that correspondence. Pre-tender correspondence is invariably confirmed by a letter or note of acknowledgement but must nevertheless be included. Post-tender correspondence which is to form part of the contract must be agreed to between the two parties in advance of this letter.)

* You should now proceed to effect the following insurance policy(ies):

(i) Third Party Insurance in accordance with Clause ........ of the Special Condition of Contract and Clause ........ of the Particular Specification.

(ii) (Any other special insurance required under the Contract).

The policy(ies) is/are to be submitted to me three working days prior to the date set for executing the Articles of Agreement.

* You should now pay the attached Demand Note No. .......... for $.................. being the security deposit called for by the General Conditions of Contract.

* You are to inform me by return of the name of the Bondsman who has agreed to act as your guarantor in respect of this Contract. For the purpose of providing the bond two copies of the Government of the Hong Kong Special Administrative Region form of bond are enclosed. The bond must be duly executed under seal and must be submitted to me three working days prior to the date set for executing the Articles of Agreement.
You or your authorized representative are required to attend a meeting held ___(place, date, time)___ for the purpose of executing the Articles of Agreement, bringing with you *(the receipt for security deposit together with) the necessary documents in accordance with the Appendix to this letter.

The Engineer for this Contract will be ___(title only), (address)___ who will write to you separately regarding the delegation of authority to the Engineer’s Representative and the date for commencement of the Works.

You are to submit to the Engineer the programme as required by Clause 16 of the General Conditions of Contract and *the Safety Plan in accordance with Special Condition of Contract Clause …………

Yours faithfully,

...........................................
(Designation of officer who would sign the contract on behalf of Government)

c.c. without enclosure

Secretary, Central Tender Board / Public Works Tender Board
Director of the Managing Department for the relevant category

Director of Audit
Ch TA, DEVB or THB
Commissioner for Labour
Director of Immigration
Departmental Headquarters/Office Headquarters
Senior Engineer/Contract Adviser

* Delete where inappropriate
APPENDIX

REQUIREMENTS FOR EXECUTING THE ARTICLES OF AGREEMENT

You are reminded that the Articles of Agreement are to be executed under seal.

Except where a power of attorney is utilized, if you are an individual, you must sign and seal the documents in person, if you are a partnership all the partners must sign and seal the documents, if you are a company the company seal must be affixed in accordance with your Articles of Association.

If you utilize a power of attorney the power of attorney itself must be under seal and must confer upon the signatory the requisite power to execute the Articles of Agreement.

If your Partnership Agreement or Articles of Association in any way differs, with respect to execution of Articles of Agreement, from the information you last supplied to the Development Bureau you must correct this information at least seven days before the date given for executing the Articles of Agreement.
(Contractor) ..............................
(Address) ...............................  

Dear Sirs,

Contract No. : .................................  
Title : ............................................  

Further to my letter of .........., I regret to advise that your tender has not been accepted.

For the purpose of administration of the List of Approved Contractors for Public Works/List of Approved Suppliers of Materials and Specialist Contractors for Public Works, your tender is regarded as:**

** a competitive tender  
** a non-competitive tender as it is more than 25% above the average of tenders received for the contract  
** an invalid tender because (describe briefly the reasons why it is considered invalid)

@ In accordance with Paragraph 7.4.1 of Chapter 6 of the Project Administration Handbook for Civil Engineering Works (PAH), we provide the following information for your reference:

<table>
<thead>
<tr>
<th>Description</th>
<th>Highest Value/Score</th>
<th>Your Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Awarded contract sum#</td>
<td>$</td>
<td>-</td>
</tr>
<tr>
<td>Technical score of the successful tender*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Highest score attained for each quality attribute in tenders submitted in this exercise*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) Contractor’s experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Contractor’s past performance (technical)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(c) Contractor’s past performance (general obligation)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Contractor’s resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Contractor’s technical ability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(f) (add in any other items in the marking scheme)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In accordance with Paragraph 7.4.1, 7.4.2 and Appendix 6.28 of Chapter 6 of the PAH (Amendment No. 4/2008), we will, at your request, conduct a debriefing in an informal manner with you or your representatives (no more than 3 persons). If you wish to have a debriefing, please lodge your request in writing within 3 weeks from the date of this letter. You are also required to state expressly in your request your agreement to abide by the conditions and ground rules stipulated in this letter. Your request will not be entertained if you fail to do so or refuse to abide by the conditions and ground rules. With a view to enabling us to better prepare for the debriefing session, you are requested to provide a list of specific items related to this tender exercise which you would like our feedback.

The debriefing session shall not be used as an opportunity to lodge appeal/complaint against the award of the works contract. You should also note that our decision on the award of the contract is final and the debriefing cannot be used to change the choice of contractor nor to re-open the selection procedure. The main purpose of a debriefing session is for us to provide feedback to you on any shortcomings of your tender so as to enable you to improve your competitive performance in future tender exercises. Please also note the following ground rules for the debriefing, if held:

(a) the debriefing will be informal;
(b) you will be told of the perceived strengths and weaknesses of your tender and your responses will be noted;
(c) the merits of other bids, including the winning bid, will not be discussed;
(d) the debriefing is not to be taken as a means or an opportunity for you to lodge appeal or complaint against the bidding result;
(e) tape recording during the debriefing will not be allowed;
(f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained; and
(g) you shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

Last but not least, your effort in submitting the tender for this Contract is very much appreciated.

Yours faithfully,

……………………………………………….

(Designation of the Engineer for the Contract)

# For tender evaluated using the formula approach (ETWB TCW No. 8/2004 refers), it is only required to give the awarded contract sum; the performance rating of the winning tenderer is NOT required to be made known.
* Delete where appropriate
** Include whichever is relevant; if the tender is invalid, it is not necessary to state whether it is competitive or non-competitive.
@ In case of an invalid tender, the 3rd, 4th and 5th paragraphs should be deleted. The 4th and 5th paragraphs shall be deleted if a debriefing is not to be conducted. In case of a consultants-managed contract, the 4th and 5th paragraphs shall be included in a separate letter to be sent by the procuring department.
APPENDIX 6.19 SAMPLE MEMO FOR THE REPORTING OF TENDERING PERFORMANCE

RESTRICTED (TENDER)

MEMO

From ......................................................... To Secretary for the MRC concerned#
Ref. ................................. in ......................................................... (Attn.: .........................................................)
Tel. No. ......................................................... Your in .........................................................
Fax. No. ......................................................... dated ......................................................... Fax. No. .........................................................
Date. ......................................................... Total Pages .........................................................

Contract No. ______________

(Title)

Reporting of Tendering Performance

Tenders have been called for the above contract. Details are given below for your record:

(a) Predominant category of works – (insert the category of works concerned)

(b) Tenders were invited by *gazette notification / invitation on Internet to contractors on the List of Approved Contractors for Public Works in Group ______ for the Category of (insert the category of works concerned).

(c) Tender invitation date: __________
Tender closing date: __________

(d) The (total no. of tenders) tenders received are listed below in descending order of their combined price and *technical/performance score based on a 60/40 weightings:

<table>
<thead>
<tr>
<th>Tenderer</th>
<th>Group status</th>
<th>Overall score</th>
<th>Corrected tender price</th>
<th>Technical score</th>
</tr>
</thead>
</table>

(e) *None of tenders was withdrawn / _____ tenders was/were withdrawn.

*(f) The tender submitted by ____________________ is non-competitive as its tendered price is more than 25% above the average of all the tenders received.
(g) Following the decision of the *Central Tender Board / Public Works Tender Board at its meeting on ___(date)___ / Director of __________ in the Tender Committee at its meeting on ___(date)___, the contract was awarded to __________ with the *highest combined price and *technical/performance score / second highest combined price and *technical/performance score.

(h) The relevant tendering performance *has been/will be uploaded onto the Contractor Management Information System (CMIS).

(Designation of Chief Engineer/Regional Office Head)

# CEDD
- all contracts where contractors belonging to Port Works Category are invited to tender
- all contracts where contractors belonging to Site Formation Category are invited to tender

HyD
- all contracts where contractors belonging to Roads & Drainage Category are invited to tender

WSD
- all contracts where contractors belonging to Water Works Category are invited to tender

Arch SD
- all contracts where contractors belonging to Buildings Category are invited to tender

* Delete where inapplicable
Type of Policy: *General/Specific

Insurance Policy No.: ................................................................................................................
issued by : ...................................................................................................................................
covering period from ............... to ...............

for Contract No.: .........................

Brief particulars & special conditions:
....................................................................................................................................................
....................................................................................................................................................
....................................................................................................................................................
....................................................................................................................................................
....................................................................................................................................................
....................................................................................................................................................

Examined by  ............................................................
(Designation of the Engineer for the Contract)

* Delete where inapplicable
APPENDIX 6.21 LETTER OF ACKNOWLEDGEMENT OF RECEIPT OF CONTRACTOR’S DOCUMENTS

(Contractor) ............................

(Address) ...............................  

Dear Sirs,

Contract No. : ............................

Title : .................................

This is to acknowledge receipt of the following documents which you passed to me on ....................

*(a) *Original/certified true copies of the insurance policy(ies) required under the Contract including Policy(ies) No. ...................; and

*(b)  *Original/certified true copies of the surety bond in the sum of $..................

Yours faithfully,

........................................

(Designation of the Engineer for the Contract)

* Delete where inapplicable
APPENDIX 6.22  SAMPLE MEMO TO DEPARTMENTAL HQ FOR SUBMISSION OF CONTRACT DOCUMENTS (Amendment No. 2/2008)

MEMO

From  .................................................................  To  .................................................................
Ref.  in  .................................................................  (Attn.: .................................................................)
Tel. No.  .................................................................  Your  in  .................................................................
Fax. No.  .................................................................  dated  .................................................................  Fax. No. .................................................................
Date.  .................................................................  Total Pages  .................................................................

Contract No.  .................................................................
(Title)  .................................................................

Submission of Contract Documents

I enclose herewith for your safe custody the original signed contract documents including drawings for the above Contract.

2. Also enclosed for your distribution and retention are:

(i) three certified true copies of the contract documents without drawings;

*(ii) *original/certified true copies of the insurance policies and premium receipts; and

*(iii) *original/certified true copies of the surety bond.

………………………………………………………………
(Designation of Chief Engineer/Regional Office Head)

* delete where inapplicable

Note: This sample memo is not used for HyD and DSD. See Section 10.
APPENDIX 6.23  SAMPLE LETTER TO SUCCESSFUL NOMINATED SUB-CONTRACTOR

(Nominated Sub-contractor) ................................

(Address) ................................

Dear Sirs,

Contract No. : .......................  

Title : .....................................

Nominated Sub-contract for ................................

You have been nominated by the Government of the Hong Kong Special Administrative Region for the execution of the above work and your tender dated .................. (of the amount $..................) will be forwarded shortly to the Main Contractor, Messrs. ..........................

On acceptance of your tender by the Main Contractor, you will be a Nominated Sub-contractor within the terms of the Main Contract and will be required to enter into a formal Sub-contract with the Main Contractor who will make the necessary arrangements with you in consultation with the Engineer for the Main Contract, .......................... (Designation and Address) ..........................

Payments for the work will be included in the certificates issued under the Main Contract and will be made to you in accordance with the terms of the Main Contract.

Yours faithfully,

..............................................................

(Designation of Government Officer authorized to sign Main Contract on behalf of Government)

c.c.  The Engineer for the Main Contract
APPENDIX 6.24    SAMPLE LETTER TO MAIN CONTRACTOR ON
ACCEPTANCE OF NOMINATED SUB-CONTRACTOR

(Main contractor) ............................

(Address) .................................

Dear Sirs,

Contract No. : ............................

Title : ......................................

Nominated Sub-contract for ..............................

I enclose herewith a copy of letter ref. ...................... dated ................. addressed to
Messrs. ................................. who have been nominated by the Government of the Hong
Kong Special Administrative Region under the terms of the Main Contract.

Sub-contract documents for the above work containing tender of Messrs. .....................
dated ...................... are also enclosed herewith.

You are hereby instructed to enter into a sub-contract with
Messrs. ................................. before *(date) using the forms of Sub-contract
provided by the Government of the Hong Kong Special Administrative Region.

A certified true copy of the executed Sub-contract should be forwarded to me and to
the Government of the Hong Kong Special Administrative Region for retention.

Yours faithfully,

..............................................
(The Engineer for the Main Contract)

c.c.  Designation of Government Officer authorized to sign the Main Contract

* Insert the date of expiry of the tender validity period for the Nominated Sub-contractor’s
tender
APPENDIX 6.25  SAMPLE MEMO TO TENDER BOARDS FOR DETAILS OF THE CONTRACT AWARDED

### MEMO

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Secretary of Relevant Tender Board</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ref.</th>
<th></th>
<th>(Attn.:)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in</td>
<td>------------------------------</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tel. No.</th>
<th></th>
<th>Your  in</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fax. No.</th>
<th></th>
<th>dated Fax. No.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Date.</th>
<th></th>
<th>Total Pages</th>
</tr>
</thead>
</table>

### Contract No.

(Title)

### Notice of Award of Contract

I refer to your memo ref. dated __________________________. I confirm that the contract has been awarded by this Department on ________________ with the details at Annexes A and B.

(Designation of Chief Engineer/Regional Office Head)

* Delete where inapplicable
Notes:

1. Open, selective, prequalified, limited as appropriate.
2. Tender subject.
3. Name(s) and address(es) of the successful tenderer(s).
4. Quantity of products or services covered by the contract.
5. The value of the contract awarded to the successful tenderer. In case of a term contract, the estimated contract value should be stated.
<table>
<thead>
<tr>
<th>招標編號</th>
<th>招標種類</th>
<th>項目</th>
<th>承包商/承造商名稱及地址</th>
<th>數量</th>
<th>價值($)</th>
</tr>
</thead>
</table>

備註:

1. 從列選其合適者 - 公開(open)、選擇性(selective)、資格預審(prequalified)、局限性(Limited)。
2. 招標項目名稱。
3. 中標者的名稱及地址(如中標者沒有中文名稱或地址，此欄用英文填寫亦可)。
4. 貨品的數量或提供服務的年期。
5. 已批准訂立的合約的價值，如為定期合約則只須列出預計的合約價值。
APPENDIX 6.26 SAMPLE MEMO TO GOVERNMENT LOGISTICS DEPARTMENT FOR DETAILS OF THE CONTRACT AWARDED

MEMO

From  .........................................................  
Ref.  .........................................................  
Tel. No. .........................................................  
Fax. No. .........................................................  
Date. .............................................................  

To  Director of Government Logistics  
(Attn.: CSO(PA))  
Your in GR/11/1/36-5  
dated Fax. No. .........................................................  

Total Pages .........................................................  

(Name of Department)

Works Contracts Awarded in (Month and Year)

I forward at the Annex (Amendment No. 2/2008) a list of works contracts awarded in (Month and Year) (with English and Chinese versions) on the recommendation of (state the approving authority).

2. Please co-ordinate the publication of the above list in the Government of the Hong Kong Special Administrative Region Gazette.

3. A soft copy is also attached for your necessary action, please.

( ) for
Notice of Award of Contract

The following contracts awarded during the month of (Month and Year) are published for general information.

__________________________ (Name of Department)

__________________________ (Address)

<table>
<thead>
<tr>
<th>Tender Reference</th>
<th>Tendering Procedure</th>
<th>Particulars</th>
<th>Contractor(s) &amp; Address</th>
<th>Item/Quantity</th>
<th>Amount</th>
</tr>
</thead>
</table>

Note:

1. Open, selective, prequalified, limited as appropriate.
2. A brief description of the nature of product or services.
3. Name(s) and address(es) of the successful tenderer(s).
4. Quantity of products or services covered by the contract.
5. The value of the contract awarded to the successful tenderer. In case of a term contract, the estimated contract value should be stated.
APPENDIX 6.27  CORRECTION RULES FOR TENDER ERRORS

Section 1 - General

1.1 For errors which have been specifically addressed in the general or special conditions of tender, the errors shall be dealt with strictly in accordance with the relevant conditions of tender. The following rules shall only apply where the errors have not been specifically addressed in the conditions of tender.

1.2 Subject to paragraph 1.1 above, where a correction rule provided in Section 2 below is applicable, the errors shall be corrected in accordance with that rule.

1.3 In the event no written correction rule is applicable,

(i) where ambiguity as to the tenderer's true intention exists, it shall be construed by the tender examiner by reference to the best practice or his best judgement; and

(ii) where errors relate to factual information and there is no room for manipulation by a tenderer by virtue of subsequent correction; or where the correction of such errors would not change the tender in substance or the quality of the tender which would give the tenderer an advantage over the other tenderers, the concerned tenderers may be permitted to correct the errors. In other cases, departments shall assess a tender with the errors as submitted.

1.4 For the purposes of these rules, errors include omissions.

Section 2 - Errors in the pricing document

2 If the following error(s) in the pricing document are found after the opening of tenders, correction shall be made as follows, depending on the type of contract being tendered:

(1) Lump Sum Contracts with Bills of Quantities

(a) The tender sum stated on the Form of Tender shall remain unchanged irrespective of any corrections made hereinafter. If there is a discrepancy between the amount in "words" and in "figures", the one that agrees with the figure stated in the Grand Summary of the Bills of Quantities shall be taken as the tender sum. If neither one agrees with the figure stated in the Grand Summary of the Bills of Quantities, the amount in "figures" shall be taken as the tender sum. Where either the amount in "words" or the amount in "figures" is left blank or illegible, the remaining one shall be taken as the tender sum. If the amount in "words" and the amount in "figures" are both left blank or illegible, the tender is invalid.

(b) If there are errors in the Bills of Quantities, they shall be corrected as
follows:

(i) if one or more pages of the Bills of Quantities are found missing, subject to sub-paragraph (ii) below, the rates for all items in the missing page(s) shall be marked as zero and the costs shall be deemed to have been allowed for in rates entered elsewhere in the Bills of Quantities, and

(ii) where the Bills of Quantities contain a Provisional Sum, a Contingency Sum, a Prime Cost Sum, any other pre-priced item or any combination of them and the tenderer fails to include any or all of them correctly in his Bills of Quantities, then such sum (or sums) shall be correctly reinstated in the Bills of Quantities; and

(iii) errors in the casting of cash columns shall be corrected; and

(iv) the extension may be amended to agree with the quantity and rate or (dependent on the judgement of the tender examiner) the rate may be amended to agree with the quantity and the extension in the cash column but in no case will the alteration of both rate and cash extension be permitted; and

(v) indistinct rates shall be clarified to agree with the quantity and the extension in the cash column.

(c) Where no extension amount and no rate has been made against any item or quantity in the Bills of Quantities it shall be deemed that the cost of the item or quantity has been allowed for in rates entered elsewhere in the Bills of Quantities and the rate shall therefore be marked as zero.

(d) Should there be a tender addendum introducing changes to the Bills of Quantities but the changes have not been incorporated into the Bills of Quantities by a tenderer, then the changes as required by the addendum shall be incorporated into the tenderer's Bills of Quantities and the rates for those new items or modified items shall be determined as follows:

<table>
<thead>
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<th>Where new item is introduced</th>
<th>Rate for the new item shall be marked as zero</th>
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</thead>
<tbody>
<tr>
<td>Where the item description and/or quantity is changed</td>
<td>If a rate has been entered against the original item of work, the same rate shall be used</td>
</tr>
<tr>
<td>Where an item is deleted</td>
<td>That item shall be deleted in accordance with the addendum</td>
</tr>
<tr>
<td>Where the measurement unit is</td>
<td>If a rate has been entered</td>
</tr>
</tbody>
</table>
(e) Any sum entered against an Adjustment Item (the Adjustment Item may either be printed in the tender documents or added by the tenderer) in the General/Grand Summary of the Bills of Quantities shall not be altered regardless of corrections made in accordance with (1)(b), (c) and (d) provided that the sum (whether addition or deduction) entered against the Adjustment Item does not exceed 10% of the tender sum prior to the application of that Adjustment Item. If the sum is outside the ±10% limits, the inserted positive sum exceeding the maximum positive limit shall be revised to a sum equal to the tender sum divided by 11. Likewise the inserted negative sum exceeding the maximum negative limit shall be revised to a sum equal to the tender sum divided by 9. If the Adjustment Item is left blank it shall be deemed to be zero. The total of the Bills of Quantities corrected in accordance with (1)(b), (c), (d) and (e) is hereinafter referred to as the corrected total of the Bills of Quantities.

(f) After correcting all the errors in accordance with (1)(b), (c), (d) and (e), the difference between:

(i) the tender sum minus the total of all Provisional Sums, the Contingency Sum, Prime Cost Sums (but not profit and attendance on them), any other pre-priced items and the Adjustment Item, and

(ii) the corrected total of the Bills of Quantities minus the total of all Provisional Sums, the Contingency Sum, Prime Cost Sums (but not profit and attendance on them), any other pre-priced items and the Adjustment Item

shall be calculated as a plus percentage of the sum at (1)(f)(ii) if (1)(f)(i) is greater than (1)(f)(ii) or as a minus percentage of the sum at (1)(f)(ii) if (1)(f)(i) is less than (1)(f)(ii).

(g) Subject to (1)(h), the plus or minus percentage will be applied to the tendered rates including those corrected under (1)(b)(iii) and (iv) and including Preliminaries/Preambles but excluding all pre-priced items and the Adjustment Item.

(h) If the absolute value of the percentage calculated in accordance with (1)(f) is less than 0.25%, no adjustment shall be made.

(i) For any Prime Cost Sum, the plus/minus percentage shall only be applied to the profit and attendance element and not the Prime Cost element.

(j) After correcting errors in accordance with the foregoing rules and if the plus or minus percentage calculated in accordance with
paragraph (1)(f) is equal to or more than 0.25%, the General/Grand Summary of the Bills of Quantities shall be endorsed as follows:

'In accordance with Appendix 6.27 of Chapter 6 of the Project Administration Handbook for Civil Engineering Works, all the rates and prices inserted by the tenderer in these Bills of Quantities [except those pre-priced items and the Adjustment Item] shall be corrected by ....% for all purposes for which those rates and prices may be used under the Contract.'

Note: [ ] delete where inappropriate

No endorsement is necessary where the plus or minus percentage calculated in accordance with paragraph (1)(f) is less than 0.25%.

(2) **Lump Sum Contracts based on Specification and Drawings with Schedule of Rates and Approximate Quantities submitted by Tenderers**

The same principle and relevant procedures as in (1) shall apply except that the Schedule of Rates and approximate quantities submitted by the tenderer may be adjusted as necessary to reflect the approximate quantities of work to be carried out so that the total value so calculated is equal to the tender sum, with the intent that resultant rates may be used for valuing variations in accordance with the terms of the Contract. Adjustment of quantities and rates should only be necessary in the event of arithmetical errors or when the quantities are grossly in error.

(3) **Remeasurement Contracts**

(a) **Under no circumstances can the tendered rates be changed.**

(b) If errors are found in the Bills of Quantities, they shall be corrected as follows.

(i) Errors in extensions and casting of page totals shall be corrected and the rectified amounts carried to the General/Grand Summary.

(ii) Where there is an extension amount but no rate or an illegible rate has been inserted against any quantity in the Bills of Quantities the rate is deemed to be the amount divided by the quantity as rounded off to the nearest cent.

(iii) Where there is no extension amount or an illegible amount and no rate or an illegible rate has been inserted against any item or quantity in the Bills of Quantities it shall be deemed that the cost of the item or quantity has been allowed for in rates entered elsewhere in the Bills of Quantities and the rate shall therefore be marked as zero.
(iv) If one or more pages of the Bills of Quantities are found missing, subject to sub-paragraph (vi) below, the rates for all items in the missing page(s) shall be marked as zero and the costs shall be deemed to have been allowed for in rates entered elsewhere in the Bills of Quantities.

(v) Should there be a tender addendum introducing changes to the Bills of Quantities but the changes have not been incorporated into the Bills of Quantities by a tenderer, then the changes as required by the tender addendum shall be incorporated into the tenderer's Bills of Quantities and the rates for those new items or modified items shall be determined as follows:

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<tr>
<td>Where the measurement unit is modified</td>
<td>If a rate has been entered against the original item of work, the rate shall be adjusted to fit in with the new unit</td>
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(vi) Where the Bills of Quantities contain a Provisional Sum, a Contingency Sum, a Prime Cost Sum, any other pre-priced item or any combination of them and the tenderer fails to include any or all of them correctly in his Bills of Quantities, then such sum (or sums) shall be correctly reinstated in the Bills of Quantities.

(vii) Any sum entered against an Adjustment Item (the Adjustment Item may either be printed in the tender documents or added by the tenderer) in the General/Grand Summary of the Bills of Quantities shall, subject to sub-paragraph (viii) below, not be altered regardless of corrections made in accordance with (3)(b)(i) to (vi). If the Adjustment Item is left blank it shall be deemed to be zero.

(viii) If the sum entered against an Adjustment Item is outside the adjustment limits which are ±10% of the grand total of the Bills of Quantities (corrected in accordance with the rules above as necessary) before the addition or deduction of the Adjustment Item, the inserted positive sum exceeding the maximum positive limit shall be adjusted to such maximum
positive limit (i.e. +10%) and the inserted negative sum exceeding the maximum negative limit shall be adjusted to the maximum negative limit (i.e. -10%).

(c) After correcting all the errors in the manner abovementioned, the tender sum shall be corrected to the corrected grand total of the Bills of Quantities.
APPENDIX 6.28 GUIDELINES AND PROCEDURES FOR FEEDBACK AND DEBRIEFING TO UNSUCCESSFUL BIDDERS FOR WORKS CONTRACTS

The unsuccessful bidders should be informed of the following ground rules for the debriefing:

(a) the debriefing will be informal;
(b) the bidders will be told the perceived strengths and weaknesses of their bidding submissions and their responses will be noted;
(c) the merits of other bids, including the winning bid, will not be discussed;
(d) the decision on the award of the works contract is final thus the debriefing session shall not be taken as a means or an opportunity for the bidder to lodge appeal or complaint against the bidding result of the works contract;
(e) tape recording during the debriefing will not be allowed;
(f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained, and
(g) The bidder shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

2. We should make it clear to the bidders that the debriefing should not be used to change the choice of contractor nor to re-open the selection procedure. In case if a bid challenge has been lodged to the award of the works contract under the World Trade Organisation Agreement on Government Procurement, the procuring department shall hold up the debriefing until the bid challenge is settled.

3. Any request from an unsuccessful bidder who fails to expressly agree or refuses to be bound by the ground rules shall not be entertained.

4. Upon receipt of a request for debriefing, the procuring department shall fix the date, time and place of the debriefing. Separate debriefing session shall be arranged for individual bidder. The debriefing shall be conducted by a team led by an officer of the rank of senior professional or above from the procuring department. At least one member of the team should have been a member of the assessment panel or have assisted directly in evaluating the bidding documents. For a contract managed by consultants, a senior staff member from the consultant's project team for the project concerned should also be included in the debriefing team. If it is envisaged that the consultant's staff shall be required to serve in any debriefing exercise, the requirement should be spelt out in the consultancy brief concerned. The procuring department shall determine the team size and flexibility is allowed to assign different team members to conduct different debriefing sessions under the same contract. To allow exchange of views in a casual manner, the bidder shall be requested to limit the number of representatives attending the debriefing to three.

5. Each debriefing session should be carefully planned with due regard to the weaknesses and strengths of the bidder. In general, discussion should be limited to the information submitted by the bidder without comparison with other submissions. Where practicable, the bidder should be informed frankly, honestly and tactfully of the weaknesses and strengths of his submission which shall be measured against established practices, general experience of the department or standards in the industry. Any
information that would impede the law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between contractors should not be released. The discussion during the debriefing should be limited to the issues/questions raised by the bidders as mentioned in the first paragraph above. If necessary, some topics as suggested in Annex 1 can also be discussed. The departments shall also consider the appropriate level of details to be discussed. Nonetheless, care should be exercised to demonstrate that judgments are made only against the assessment criteria made known to the bidders.

6. The debriefing should be conducted as an informal discussion, and not in writing. Nevertheless, the debriefing team should record the results and conclusions of the debriefings for internal reference in case follow-up actions are needed for improving the process of similar procurements and debriefings. Such notes shall not be sent to the bidder. The bidder is free to take notes for himself. However, request for records of the debriefing or agreement on any notes prepared by either party shall be refused. Tape recording by the bidder shall also be refused as it would hinder a free exchange of views between the parties and thus defeat the purpose of the debriefing.
Annex 1

Examples of Debriefing Topics for Works Contracts

1. Cost – discussion on the competitiveness of the contractor's tendered sum in general terms (prices and rates of other tenderers other than the awarded sum shall not be disclosed)

2. Contractor's experience
   a. Relevant experience in contracts of similar type or size
   b. Relevant local experience (if it is essential for the delivery of the project)

3. Contractor's past performance (technical)
   a. Workmanship
   b. Progress
   c. Claims attitude

4. Contractor's past performance (general obligations)
   a. Site safety
   b. Environmental performance
   c. Care of utilities and the general public
   d. Compliance with other enactments

5. Contractor's resources
   a. Managerial and technical staff
   b. Plant and equipment

6. Contractor's technical ability
   (this may include method statement, quality assurance plan, site safety policy, works programme, extent of subcontracting and control mechanisms for subcontractors etc.)