

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

政府總部
發展局
工務科



Works Branch
Development Bureau
Government Secretariat

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Ref. : DEVB(W) 920/30/01
Group : 15

28 April 2014

Development Bureau
Technical Circular (Works) No. 2/2014

Tender Procedures for Procurement governed by the
Agreement on Government Procurement of the World Trade Organization

Scope

The 2012 Agreement on Government Procurement of the World Trade Organization (“WTO GPA”) entered into force on 6 April 2014. This Circular updates the guidelines on tendering procedures for procurement of works contracts governed by WTO GPA.

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular supersedes ETWB TC(W) No. 33/2004. It shall be read in conjunction with Financial Circular No. 2/2014.

Introduction

4. Hong Kong acceded to WTO GPA in May 1997. The objective of the WTO GPA is to provide open and fair competition among all foreign and domestic suppliers

of goods and service providers. An updated list of WTO GPA members can be found on the WTO websites. Since 1999, Hong Kong, China had been conducting negotiations with other Parties to improve the WTO GPA (i.e. the 1994 Agreement). The revised WTO GPA (i.e. the 2012 Agreement) entered into force on 6 April 2014. A full text of the WTO GPA 2012 Agreement is available at <http://fb.host.cngo.hksarg/spr/spr.htm>.

Scope and Coverage

5. The WTO GPA provisions apply to the procurement of goods and services¹ by any contractual means by the Government of the Hong Kong Special Administrative Region, including construction services but excluding consultancy agreements², of the values exceeding the financial limits set out below. The financial limits shall be equated with the estimated “Contract Sum” which includes all provisional sums, prime cost sums, contingency, and the total value of options (if any) allowed in the contract. For term contracts, the contract value in this context shall normally be taken as the estimated value of works in a 12-month period in accordance with Article II 7 of the WTO GPA.

All works departments

- (a) 130,000 Special Drawing Rights (SDR) (equivalent to HK\$1,541,000) and above for goods and services other than construction services³.
- (b) 5,000,000 SDR (equivalent to HK\$59,256,000) and above for construction services.

6. The above equivalent HK\$ threshold values are for the calendar years of 2014 and 2015. Such SDR/HK\$ exchange rate will be reviewed periodically. Departments will be notified of any revision in the equivalent HK\$ threshold values.

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

¹ *The services that are covered by the WTO GPA are set out in Annexes 5 and 6 of Appendix I to the WTO GPA under the schedule of commitments by Hong Kong, China. Procurement of services that are not included in the Annexes are not subject to the WTO GPA irrespective of the value of such procurement.*

² *as well as all franchise arrangements*

³ *Definition of construction services in WTO GPA : A Construction services contract is a contract which has as its objective the realisation by whatever means of civil or building works, in the sense of Division 51 of the Central Product Classification.*

National Treatment and Non-discrimination

8. Departments shall provide open, fair, consistent and non-discriminatory treatment to products, services and contractors irrespective of their country of origin. Local and overseas contractors⁴ should all be treated on an equal footing.

Technical Specifications

9. Technical specifications shall, where appropriate, be in terms of performance rather than design or descriptive characteristics and be based on international standards where such exist. Where design or descriptive characteristics are used in the technical specifications, “similar or equivalent” shall always be permitted and indicated in the tender documentation. There shall be no requirement for or reference to a particular trademark or trade name, patent, copyright or origin unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that “similar or equivalent” shall always be permitted and indicated in the tender documentation.

Tendering Procedures

Open tendering :

10. Open tendering procedures are those procedures under which all interested contractors may submit a tender.

Selective Tendering :

11. Selective tendering procedures are those procedures under which qualified contractors are invited by the department to submit a tender. Contractors invited from the Lists of Approved Contractors for Public Works (“Approved Lists”) to participate in a particular tendering or prequalification exercise fall within this definition.

12. For selective tendering using the Approved Lists, if the contractors are not on the Approved List by the date set for the close of tender, or if this has been extended, the extended date, they do not meet the qualification criteria and their tenders will not be considered.

⁴ *For the sake of presentation, contractor shall include supplier in this technical circular.*

13. Contractors may apply for admission, promotion or confirmation in the Approved Lists at any time. The Professional Services Unit of DEVB will process the application promptly.

Limited Tendering :

14. Limited tendering procedures are those procedures where the department contacts contractors of its choice to submit a tender. The single and restricted tendering procedures as set out in the Stores and Procurement Regulation 325 are grouped under this category. Departments shall only use limited tendering under the circumstances as set out in paragraph 26 below.

Tender Notification

15. For open and selective tendering, departments shall publish tender invitations and notice of prequalification of tenderers in the Government Gazette and departments' home page⁵. Departments should also consider notifying consulates and trade commissions in Hong Kong of such invitations where appropriate.

16. For selective tendering using the Approved Lists, departments shall notify each contractor on the relevant Approved Lists the tender invitation by post or email on the same day of the first publication of the Gazette Tender Notice. Updated mailing and email addresses of contractors on the Approved Lists are available in the Contractor Management Information System ("CMIS"). From time to time, there would be circumstances where new contractors are admitted to the Approved Lists. DEVB will update the CMIS as well as informing all the works departments. Departments should be vigilant during the tender period to notify those new contractors of the relevant on-going tender invitations accordingly.

17. For single, restricted and prequalified tendering, departments shall send tender invitations by letter to contractors as approved by the Permanent Secretary for Financial Services and the Treasury (Treasury) ("PS(Tsy)").

18. Departments shall prepare the Gazette Notices for Prequalification of Tenderers, Gazette Tender Notices and Tender Invitation Letters in accordance with the specimens at **Appendices A, B & C**.

⁵ *Though not mandatory under the WTO GPA, the practice of publishing invitations in department's home page shall continue.*

19. All queries from tenderers shall be answered promptly and any information given to one tenderer shall also be given simultaneously to all other tenderers concerned.

Time-limits for Tendering and Delivery

20. Departments shall ensure sufficient time is allowed for contractors to prepare and submit tenders or application for prequalification before the closing of the invitation. The following time limits shall be strictly observed:

- a) the period allowed for submitting an application for prequalification shall **not be less than 25 days** from the date of invitation;
- b) **not less than 40 days** shall be allowed for receipt of tenders from the date of tender notification whether or not tenders are invited from contractors on the Approved Lists;

21. In the case of extreme urgency, departments will have to seek the prior approval of the PS(Tsy) for reducing the above time limits.

Tenderers not on the Approved Lists

22. For selective tendering using the Approved Lists, contractors not on the relevant Approved List (“non-listed contractors”) may submit a request for participation together with a duly completed application for inclusion in the relevant Approved List on or before the final date for the submission of requests for participation (“Deadline”) specified in the Gazette Tender Notice. The Deadline shall be set, in principle, at **not less than 25 days** from the date of publication of the Gazette Tender Notice. Late submission or submission without all the required documents upon expiry of the Deadline will not be entertained and the department shall notify the non-listed contractor accordingly. Upon the expiry of the Deadline, the department shall notify the non-listed contractor who has made a duly complete submission that its application for admission to the relevant Approved List is being processed and that it will be invited to submit a tender if its application is approved by the date set for the close of tender, or if this has been extended, the extended date.

23. Upon receiving the request for participation with an application for admission to the relevant Approved List, the department shall promptly relay the application to SEO(PS) of DEVB for carrying out the assessment. The processing of application for admission to the Approved List will not affect the date set for the close of tender.

During the tendering period, the department should keep track the applications for admission relayed to DEVB. Upon the close of tender, the department shall, as soon as practicable, notify any non-listed contractor whose application for admission is still being processed that it does not satisfy the conditions for participation of the selective tendering on the date of the close of tender.

Tender Documentation

24. The information required under the WTO GPA is already provided in the tender documentation under the current practice. Departments shall ensure that the qualification criteria, conditions for participation and evaluation criteria for awarding the contract are included in the tender documentation.

Forwarding of Tender Documentation to Contractors

25. Tender documents shall be promptly made available upon publication of tender notice in the Government Gazette or notifying contractors the invitation to submit tenders. Tender documents should continue to be collected by any interested contractors and shall be provided by courier to any interested contractors, including those not on the relevant Approved List, if requested in writing in 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 relevant courier so that the delivery cost can be charged direct to the contractor's account, or by other means.

Limited Tendering

26. Limited tendering (i.e. single or restricted tendering) procedures should only be used in circumstances prescribed in Article XIII of the WTO GPA, and may be initiated only with the prior approval of the PS(Tsy). These include circumstances:

- (a) insofar as is strictly necessary where there is extreme urgency brought about by unforeseeable events, the works contracts could not be procured in time using open tendering or selective tendering;
- (b) where for the protection of patents, copyrights or other exclusive rights, or due to an absence of competition for technical reasons, the works or services can be supplied or provided only by a particular contractor and no reasonable alternative or substitute exists;

- (c) where no tenders were submitted or no contractors requested participation, or no tenders that conform to the essential requirements of the tender documentation were submitted, or no contractors satisfied the conditions for participation, or the tenders submitted have been collusive, provided that the requirements of the limited tendering do not substantially differ from the previous requirements of open or selective tendering;
- (d) where the procurement is for additional deliveries by the original contractor that were not included in the initial procurement, and a change of contractor for such additional services cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with the existing equipment, software, services or installations procured under the initial procurement, and that any change would cause significant inconvenience or substantial duplication of costs for the procuring department;
- (e) where the works or services can only be provided by utility companies;

27. Departments shall keep a record in writing on each contract awarded under limited tendering procedures. Such record shall contain the name of the procuring entity, value and kind of goods or services procured and a statement of the conditions which necessitated the use of limited tendering.

Tender Evaluation

28. Tenders which fail to comply with the essential requirements of the tender documentation and those tenders for which the tenderer has failed to obtain the necessary qualifications by the date set for the close of tender, or if this has been extended, the extended date, shall be given no further consideration. Unless the tender exercise is cancelled on grounds of public interest, contract shall be awarded to the tenderer who is determined to be capable of fulfilling the terms of contract and whose tender is the most advantageous based on the evaluation criteria specified in the tender documents. Any proposals on cancellation of tender exercise or modification of awarded contracts shall not cast any doubt on aiming at circumventing WTO GPA obligations.

Obligation of Departments

29. Departments should provide the relevant tender board with the return at **Appendix D** within 2 weeks after the contract has been awarded.

30. On request from a contractor, the department shall, subject to paragraph 31 below, 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. ETWB TC(W) No. 42/2002 provides the guidelines and procedures on debriefing to unsuccessful tenderers.

31. Departments may decide that certain information on the contract award, contained in paragraph 30(c), 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.

Statistics and Report

32. The Director of Government Logistics (“DGL”) has undertaken to prepare an annual statistical report containing details of all procurements for submission to the WTO Committee on Government Procurement. DGL will call for returns from departments separately.

Procurement Documents

33. All procurement documents including the unsuccessful tenders and electronic data that ensure the appropriate traceability of the conduct of procurement must be retained for three years after award of contract.

Bid Challenge System

34. Hong Kong, China is required under the WTO GPA to set up an independent review system to enable contractors to challenge alleged breaches of the WTO GPA in which they have, or have had, an interest. Details of the bid challenge system can be found in the Rules of Operation of the Review Body on Bid Challenge.

Enquiries

35. Enquires on this Circular should be addressed to Chief Assistant Secretary (Works)⁷.

(C S Wai)
Permanent Secretary for Development (Works)

Specimen Gazette Notice for Prequalification of Tenderers

G.N.

DEPARTMENT

Contract No

Contract Title

Public Works Programme Number

NOTICE OF PREQUALIFICATION OF TENDERERS

It is intended to invite tenders in (month and year) from prequalified tenderers for Contract No. (state the contract number and contract title). The tenders to be invited will be covered by the Agreement on Government Procurement of the World Trade Organization and will not involve electronic auction. This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

The scope of works of the contract comprises (give a brief description of the works including the nature and the estimated quantity of the project).

¹[Applicants]²[Contractors on the (state the title(s) of the approved list(s) and category)] meeting the following requirements:

(state a list and brief description of the qualifications/conditions for participation)

and other qualifications and conditions for participation stipulated in the prequalification documents are invited to apply for prequalification.

The prequalification documents are obtainable from (state the name, address and telephone/fax number/e-mail address of the office, and other information necessary to contact the office and obtain the prequalification documents). [^][A sum of \$....., which will not be refunded, is required to cover the cost of the prequalification documents.]

¹ For open invitation only, delete if not applicable.

² For prequalification submissions invited from contractors on the Approved List only, delete if not applicable.

A charge will be levied for delivery of the prequalification documents where the delivery of prequalification documents is requested by an applicant. A written request must be made.

³[Not more than (State the number) applicants will be selected for tender invitations in accordance with the evaluation criteria stipulated in the prequalification documents.]

Completed prequalification applications shall be submitted not later than 12:00 noon on (state the closing date for receipt of prequalification applications) to (state name and address of the office). Late applications will not be accepted. If a black rainstorm warning signal or tropical cyclone signal No. 8 or above is hoisted at any time between 9:00 and 12:00 noon on (closing date for receipt of prequalification applications), the closing time will be postponed to 12:00 noon on the first working day after the black rainstorm warning signal has ceased to be in effect or the tropical cyclone signal No. 8 is lowered.

^[Joint ventures satisfying the requirements stated in the prequalification documents will be considered.]

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

Date

Name of Head of Department

^ delete if not applicable

³ For Type I prequalification, delete if not applicable.

Specimen Gazette Tender Notices

G.N.

(State the name of department)

It is hereby notified that sealed tenders in *duplicate/triplicate are invited for Contract No. (state the contract number, contract title) ^ (Public Works Programme Item No. _____). The works include (give a brief description of the works including the nature, the estimated quantity of the project and, where applicable, a description of any options). The works are scheduled to commence in (month/year) *[and will take about (no. of months) months to complete/for completion in (month/year)].

Tenders must be clearly marked with the tender reference and the subject of the tender on the outside of the envelope (but should not bear any indication which may relate the tender to the tenderer) addressed to the Chairman, (state the name of the tender board to be addressed) and placed in (title and address of the relevant tender box), before 12:00 noon on Friday, (state the tender closing date). Late tenders will not be accepted. If a black rainstorm warning signal or tropical cyclone signal No. 8 or above is hoisted at any time between 9:00 a.m. and 12:00 noon on Friday, (tender closing date), the tender closing time will be postponed to 12:00 noon on the first working day after the black rainstorm warning signal has ceased to be in effect or the tropical cyclone signal No. 8 is lowered.

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

¹{ Selective tendering is adopted. Contractors on the (state the title(s) of the approved list(s) and category) ²[or joint ventures with participation of local and/or overseas contractors with the *(lead participant or the major shareholder/one of the members) being on the (title(s) of the approved list(s) and category)] who also meet the ³(following) qualifications and ³(other) conditions for participation stipulated in the tender documents are invited to tender *(./:)

³[List out the required qualifications/experience stipulated in stage I screening]

Contractors not yet on the (title(s) of the approved list(s) and category) may also submit a tender if they submit a request for participation together with a duly completed application for inclusion in the above-mentioned approved list/category by ⁴(state the date of the deadline) to ⁵(address), meet the qualifications and conditions for participation, and the application for inclusion is duly approved on or before the tender closing date. Details for making the application are available at:

http://www.devb.gov.hk/en/construction_sector_matters/contractors/index.html

¹ For selective tendering only, delete if not applicable.

² For joint ventures are allowed to tender, delete if not applicable.

³ For contracts incorporate Stage I screening, delete if not applicable.

⁴ The deadline shall be set at not less than 25 days from the date of publication of the Gazette Tender Notice. See paragraph 22 of DEVB TC(W) No. 2/2014

⁵ Address of the responsible officer of the procuring department.

Contractors will be liable to have their names removed from the approved list(s) if they fail or refuse to implement an accepted tender. }

⁶{Open tendering is adopted. All interested contractors *[are invited to tender./who also meet the following requirements are invited to tender:- (list out the qualifications or the conditions for participations).]}

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

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

A charge will be levied for 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 tenders is based on a marking scheme or formula approach, the tender with the highest overall score.

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 on the Internet at http://www.gld.gov.hk/eng/services_2_c.htm.

Date (State the name and title of Head of Department)

- * select the appropriate expression
- [^] delete if not applicable.

⁶ For open tendering only, delete if not applicable.

Specimen Tender Invitation Letter

(Contractor)

(Address)

Dear Sirs,

Contract No:

Title :

^(Public Works Programme Item No.)

Contractors on the (state the title(s) of the approved list(s) and category) ¹[or joint ventures with participation of local and/or overseas contractors with the *(lead participant or the major shareholder/one of the members) being on the (title(s) of the approved list(s) and category)] who also meet the ²(following) qualifications and ²(other) conditions for participation stipulated in the tender documents are invited to submit a sealed tender in *duplicate/triplicate for the above contract*(./:)

²[List out the required qualifications/experience stipulated in stage I screening]

If you are currently under suspension or voluntary suspension from tendering, your attention is drawn to General Conditions of Tender Clause GCT 22.

The works include (give a brief description of the works including the nature, the estimated quantity of the project and, where applicable, a description of any options). The works are scheduled to commence in (month/year) *[and will take about (no. of months) months to complete/for completion in (month/year)].

³{Tender notice for the next term contract for (state the period of the next term contract) will be published around (state the estimate date in month/year).}

Tenders must be clearly marked with the tender reference and the subject of the tender on the outside of the envelope (but should not bear any indication which may relate the tender to the tenderer) addressed to the Chairman, (state the name of the tender board to be addressed) and placed in (title and address of the relevant tender box) before 12:00 noon on Friday, (state the tender closing date). Late tenders will not be accepted. If a black rainstorm warning signal or tropical cyclone signal No. 8 or above is hoisted at any time between 9:00 a.m. and 12:00 noon on Friday, (tender closing date), the tender closing time will be postponed to 12:00 noon on the first working day after the black rainstorm warning signal has ceased to be in effect or the tropical cyclone signal No. 8 is lowered.

¹ For joint ventures are allowed to tender, delete if not applicable.

² For contracts incorporates Stage I screening, delete if not applicable.

³ For term contracts only, delete if not applicable.

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

Contractors/suppliers will be liable to have their names removed from the approved list(s) if they fail or refuse to implement an accepted tender.

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

This tender is covered by the Agreement on Government Procurement of the World Trade Organization and will not involve electronic auction.

A charge will be levied for 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 tenders is based on a marking scheme or formula approach, the tender with the highest overall score.

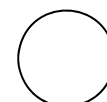
The Government of the Hong Kong Special Administrative Region reserves the right to negotiate with any tenderer about the terms of the offer.

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

Yours faithfully

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

- * select the appropriate expression
- ^ delete if not applicable



MEMO

From _____
Ref. _____ *in* _____
Tel. No. _____
Fax. No. _____
Date _____

To _____
(Attn.: Secretary, XXX Tender Board) _____
Your Ref. _____ *in* _____
Dated _____ *Fax. No.* _____
Total Pages _____

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 following details -

<u>Tender Reference</u>	<u>Tendering Procedure</u> ¹	<u>Particulars</u> ²	<u>Contractor(s)</u> ³ <u>& Address(es)</u>	<u>Item/Quality</u> ⁴	<u>Amount(\$)</u> ⁵
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(_____)
 for

Notes :

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.*