

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

香港添馬添美道 2 號
政府總部西翼 18 樓

18/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Ref : DEVB(W) 546/83/01
Group : 15

10 October 2014

Development Bureau
Technical Circular (Works) No. 8/2014

Examination of Tenders and Submission of Tender Reports

Scope

This Circular promulgates the updated procedures to be followed in the examination of tenders for works contracts.

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular supersedes ETWB TC(W) No. 7/2004. It shall be read in conjunction with ETWB TC(W) Nos. 41/2002, 8/2003, 10/2004 and 3/2007 and DEVB TC(W) Nos. 3/2014 and 4/2014.

Procedures

4. The procedures for examination of tenders and submission of tender reports for public works are set out in Appendix A to this Circular. 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.

Enquiries

5. Enquiries on this Circular should be addressed to Chief Assistant Secretary (Works) 7.

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

Procedures for Tender Examination

Confidentiality of Tenders

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.

2. The authority to open and handle documents classified as "RESTRICTED (TENDER)" is vested in the following officers, hereinafter collectively referred to as the "tender examiner":

- the officer of D2 rank (or above) relevant to the tender;
- the departmental secretary and accountant;
- the officer in charge of the confidential registry;
- the consultants and/or the officer nominated by the D2 officer referred to above to deal with the processing of the tender; and
- other officers authorized by the Head of Department or tender board.

The extent to which these officers should see the documents shall be on a need-to-know basis. The transfer of documents marked "RESTRICTED (TENDER)" shall be by appropriately secure methods to prevent unauthorized access to the tender information.

3. Where a tender uses a marking scheme 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 the 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.

Conflict of interest

4. Officers involved in tender examinations should observe the prevailing civil service guidelines including Civil Service Bureau Circular No. 2/2004 and the provisions in Chapter IA (180 to 196) of the Stores and Procurement Regulations ("SPR") on how to

prevent or deal with conflict of interest situations, and the need to declare any conflicts, whether actual or perceived, arising between their official duties and their private interests. When a member of the assessment panel has declared a conflict of interest in the procurement exercise, the chairperson of the assessment panel should decide on the suitability of the member to continue to handle the present procurement taking account of the actual, potential or perceived conflict of interest.

Compliance with the conditions of tender

5. 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. Where 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**.

6. 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.

7. 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.

8. 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 “submission of non-conforming tender” for the purpose of circumstances warranting regulating action under paragraph 5.2.3(b)(i) of the Contractor Management Handbook (“CMH”) and departments should take appropriate action accordingly.

9. 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, the Legal Advisory Division (Works) of DEVB (LAD(W)) should be consulted.

10. 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.

11. 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.

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

Foreign Currency Conversion

13. The conditions under which a department may allow tenderers to quote their offers in foreign currencies are set out in 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/Departmental Tender Committee, 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.

Examination of Tender Prices and Rates

14. The tender examiner shall draw the attention of the Engineer/Architect designate to items which are obviously and substantially over or under-priced, erratically 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.

15. Where exceptionally high or low rates are spotted for items in the highest-scored tender during tender assessment, the tender examiner should re-check the corresponding quantities given in the BQ to validate their accuracy. If the quantities are found to be either substantially overstated or understated, a sensitivity analysis shall be carried out to see whether there will be a substantial increase in contract sum or a change in the ranking of the tenders. Where appropriate, the department should consult LAD(W) and seek the approval of the tender board/Controlling Officer¹ to carry out tender negotiations with the tenderers by requesting them to submit rates for the new items added to cover the omitted quantities.

16. 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 or erratic and that there is a risk that the tenderer will take advantage of such rates in future claims, the department 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.

Procedure after Correction of Errors and Examination of Rates

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

¹ If such authority has been delegated to Controlling Officer via Financial Circular No. 3/2009

Tender Qualification

18. 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.

19. Care must be exercised in approaching tenderers for clarification of tender qualifications, and legal advice from LAD(W) 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.

Contractors' Eligibility to Tender

20. A tenderer is eligible for tender submission if he meets the qualification requirements on the date set for the close of tender or, if this has been extended, the extended date.

21. For determining the eligibility of probationary contractors to tender and for award of contracts, a two-stage checking shall be carried out in accordance with paragraphs 2.5.1 to 2.5.6 of the CMH.

22. 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.

Effect of Incidence of Payments

23. If the tendered sums, or the overall scores when a marking scheme or formula approach is adopted in the tender evaluation, are very close, the department should discount 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, the department may approach the Management Accounting Division of the Financial Services and Treasury Bureau for advice.

Evaluation of Tenders

24. 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 under site safety and environmental pollution related ordinances, Immigration Ordinance, Employment Ordinance, Section 27 of the Public Health and Municipal Services Ordinance (i.e. Mosquito breeding offences), 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. 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.

25. 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 Recommendations

26. 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 and that the recommended tender is the most advantageous to the Government in accordance with the tender provisions.

27. 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 department should recommend a tender award combination that would cost least to the Government as set out in Appendix A1, unless some other selection criteria have been specified in the tender documents.

28. If none of the tenders received complies with the essential requirements of the tender, the department should recommend to the relevant tender board, or the Controlling Officer as the case may be, to cancel the tender exercise (see SPR 380 and Financial Circular No. 3/2009) and re-tender with revised specifications, terms and conditions, where applicable.

Submission of Tender Reports

29. Tender reports for submission to the Central Tender Board (CTB) / Public Works Tender Board (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 Permanent Secretary for Financial Services and the Treasury (Treasury) 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 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.

30. Paragraph G of Appendix III(I) to the SPR requires checking of all performance reports of government contracts and relevant Housing Authority contracts undertaken by the recommended tenderer during the preceding five years (“5-year checking period”) and stating the total number of these contracts together with a summary of any adverse report(s) issued under these contracts in the tender report. For tenders adopting the standard marking scheme for tender evaluation, the 5-year checking period shall tally with the 5-year assessment period defined in Appendix C1 to DEVB TC(W) No. 4/2014. For tenders adopting the formula approach for tender evaluation, the 5-year checking period shall be counted from the original date set for close of tender or, if this has been extended, the extended date. Copies of the relevant computer printouts of Contractor Management Information System showing the summary of the Contractor’s Performance Reports and the Contractor’s Performance Ratings shall be appended to the tender report.

31. Copies of correspondence exchanged with the tenderers and the tenderers’ past performance records are not required to be submitted with the tender report unless special references to these correspondence or records have been made in the report. Normally, it is only necessary for 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 as may be required in paragraph 17.

32. The following original tender documents plus six/four copies of the tender report shall be submitted to CTB/PWTB respectively. For tender report submitting to CTB, one extra copy of the report should be submitted to SEO(PS) of DEVB concurrently.

- (i) If the lowest 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 tenders or, as the case may be, the three tenders of the highest overall scores.
- (ii) If the recommended tender is not the lowest, the lower tender(s), the recommended tender and the next two higher 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.

33. 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 twelve clear working days (Saturdays excluded) 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.

34. Paragraphs 29 to 33 on submission of tender reports do not apply to simplified tendering arrangement, in which case WBTC No. 24/2001 applies.

Rejection of Tenders

35. Departments should note 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 Financial Circular No. 3/2009 and WBTC No. 24/2001.

Method of Selection of Tender Combination

Method

Selection of the tender combination should be based on the lowest total cost of the combination to the Government. This method applies when a marking scheme approach or formula approach is adopted for tender evaluation and a tenderer is found to be the highest combined technical/price (or performance/price) scorer for a greater number of contracts in the same tender exercise than he is allowed to take up.

Example

Five contracts are to be tendered out through a tender exercise which sets out the maximum number of contracts that may be awarded to a tenderer as two. A marking scheme (with a 70% weighting for price and 30% weighting for technical assessment) is adopted for tender evaluation. One tenderer (Tenderer A) has gained the highest combined technical/price score for three contracts. The score sheet is at Annex.

Three tender combinations are possible as shown in the following table. In this example, Combination 1 should be recommended as it yields the lowest total cost to the Government:

	Contract I	Contract II	Contract III	Total Tendered Prices
Combination 1				
Successful Tender (Tender Price)	Tenderer A (\$50)	Tenderer A (\$80)	Tenderer D (\$100)	\$230
Combination 2				
Successful Tender (Tender Price)	Tenderer A (\$50)	Tenderer C (\$100)	Tenderer A (\$135)	\$285
Combination 3				
Successful Tender (Tender Price)	Tenderer B (\$100)	Tenderer A (\$80)	Tenderer A (\$135)	\$315

Score Sheet

Contract/ Contractor	Tendered Price	Price Score (out of 70)	Technical Score (out of 30)	Combined Technical/Price Score	
Contract I					
Tenderer A	\$50	70.00	15.00	85.00	(highest)
Tenderer B	\$100	35.00	30.00	65.00	(2 nd highest)
Tenderer C	\$70	50.00	10.00	60.00	
Tenderer D	\$200	17.50	25.00	42.50	
Contract II					
Tenderer A	\$80	61.25	19.00	80.25	(highest)
Tenderer C	\$100	49.00	30.00	79.00	(2nd highest)
Tenderer B	\$70	70.00	8.00	78.00	
Tenderer D	\$220	22.27	22.00	44.27	
Contract III					
Tenderer A	\$135	51.85	30.00	81.85	(highest)
Tenderer D	\$100	70.00	5.00	75.00	(2nd highest)
Tenderer B	\$125	56.00	10.00	66.00	
Tenderer C	\$220	35.00	25.00	60.00	
Contract IV					
Tenderer B	\$220	61.25	28.00	89.25	(highest)
Tenderer D	\$175	70.00	18.00	88.00	
Tenderer A	\$250	49.00	30.00	79.00	
Tenderer C	\$225	54.44	20.00	74.44	
Contract V					
Tenderer C	\$200	52.50	30.00	82.50	(highest)
Tenderer A	\$180	58.33	20.00	78.33	
Tenderer D	\$150	70.00	8.00	78.00	
Tenderer B	\$350	30.00	20.00	50.00	

(Contract IV to be awarded to Tenderer B and Contract V to Tenderer C as the highest combined technical/price scorer.)