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**Development Bureau**  
**Technical Circular (Works) No. 5/2015**

**Prequalification of Tenderers for**  
**Public Works Contracts**

**Scope**

This circular sets out guidelines on prequalification of tenderers for all public works contracts.

**Effective Date**

2. This circular takes immediate effect. It does not affect on-going prequalification exercises where the use of prequalified tendering and the evaluation criteria for prequalification applications have already been submitted to the Permanent Secretary for Financial Services and the Treasury (Treasury), (hereinafter referred to as “PS(Tsy)”), for approval.

**Effect on Existing Circular**

3. This circular supersedes ETWB TC(W) No. 35/2004 and 35/2004A. This circular shall be read in conjunction with DEVB TC(W) No. 8/2014 and 4/2015.

**Principle of Prequalification**

4. 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 contractors are capable of executing the contract. In the

prequalification process, there shall be no discrimination between local and overseas contractors whether or not they are on the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works.

### **The need for Prequalification**

5. Prequalification should be considered where:-
- there is no relevant approved list of contractors;
  - 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;
  - the qualification process is time consuming and there is a need to conduct the qualification process in advance;
  - where the qualification requirements are so complex that some tenderers may not know exactly whether they are qualified or not;
  - where the cost of the tendering exercise is high or can be significantly reduced if tenderers are prequalified; or
  - mega-sized contracts\*.

### **Types of Prequalification**

6. There are two types of prequalification:-
- (a) Type 1 prequalification: prequalifying only a limited number of contractors, i.e. those scoring the highest marks in the qualification exercise.
  - (b) Type 2 prequalification: prequalifying all contractors who meet the qualification requirements.

### **Application and number of prequalified tenderers**

7. Type I prequalification generally applies to contracts, including Design and Build (D&B) contracts, where the likely costs of preparing the tender submission

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\* *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.*

are high. The number of prequalified contractors shall normally be restricted to a maximum number of five. 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. To ensure competition, contractors, once prequalified, shall not be allowed to apply for formation of any joint venture amongst them.

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

9. A prequalification exercise could take up to 6 months. If the time allowed for the prequalification exercise is less than 6 months, the project Architect/Engineer shall plan the programme for the prequalification exercise with care, in particular, to allow contractors adequate time to prepare their submissions. Provided the exercise is conducted early, prequalification offers an opportunity to obtain the views of contractors on the contract and, if appropriate, to introduce improvements to the tender documents for the contracts.

### **Authority to Prequalify Tenderers**

10. According to the Stores and Procurement Regulations (SPR), PS(Tsy) approves, on the advice of the Central Tender Board (the CTB), the use of prequalified tendering and the evaluation criteria for prequalifying applications. Request for approval to prequalify tenderers shall be made using the specimen application in the SPR Appendix III(B). No provisions in this circular shall pre-empt the considerations of the CTB in giving its advice.

### **Source of Prospective Applicants**

11. In deciding the sources of prospective prequalification applicants, the following order of priority shall be considered having regard to the nature of the project:

- (a) the Lists of Approved Contractors for Public Works (the Approved Lists);
- (b) local and overseas contractors not on the Approved Lists.

If an insufficient number of suitable contractors to be prequalified from (a) is probable, then contractors in (b) must be considered. Departments should document the considerations and details of the assessment. Departments should also observe the requirements of Section 320 (Selective Tendering) of the SPR if only the contractors from the Approved Lists are allowed for prequalification.

## **Invitations to Contractors to Apply for Prequalification**

12. Notice of invitation to prequalify shall be published in the Government Gazette as well as on the Internet in the department's web site. Where response to the notice of invitation may be inadequate or overseas contractors are allowed to apply, departments should direct the invitation to a wider range of contractors by placing additional notices in the overseas press and/or journals of local/international professional institutions and/or trade associations as appropriate. In addition, notices may also be sent to consulates, trade commissions and overseas offices of the Government of HKSAR, with a copy of the notices sent to the Economic Affairs Department of the Liaison Office of the Central People's Government in the HKSAR. Any known firms, local or overseas, may also be advised of the appearance of an advertisement by letter.

13. A specimen gazette notice for prequalification of tenderers is given in Appendix A to DEVB TC(W) No. 2/2014.

14. Adequate time should be allowed for applicants to prepare their submissions. Where the procurement is governed by the World Trade Organisation's Agreement on Government Procurement (WTO GPA), the time-limit set for submitting an application for prequalification shall not be less than 25 days from the date of publication of the notice of invitation to prequalify.

## **Qualification Requirements**

15. Qualification requirements shall be limited to those relevant to ensure prequalified contractors' capability to fulfill the contract. The qualification requirements should aim at requiring an applicant to demonstrate, where applicable, that:

- (a) his staff consists of a management team capable of managing the contract; or capable of expanding where necessary to meet the need in the management of the contract;
- (b) his staff consists of a technical team capable of providing necessary technical support; or capable of expanding where necessary to meet the need;
- (c) he has relevant contract management experience to demonstrate that he is capable of executing the contract;
- (d) he has relevant works experience and a good past performance record to demonstrate that he has the technical knowledge necessary for the satisfactory completion of the works (Note: this may include local experience but only to the extent essential for the satisfactory execution of the contract and it is not intended to discriminate against overseas

contractors);

- (e) he has relevant experience to demonstrate that he is capable of managing his subcontractors (if he is required or has proposed to engage a subcontractor for the execution of an essential part of the works); and
- (f) he is capable of making available plant and equipment when required.

16. In addition, departments may ask the applicants to offer their views on the design or specification and to make a technical proposal, method statement, contingency plan, etc. to demonstrate that they have a good understanding of the works, the site difficulties and/or the necessary technical skill.

### **Selection Procedure**

17. For Type I prequalification, selection of prequalified contractors shall be carried out in two stages. The first stage is primarily to screen out those applicants patently ineligible or unsuitable. Applicants who do not satisfy Stage 1 screening shall not be considered further. Stage 2 assessment shall comprise a detailed technical evaluation of all applicants who have passed Stage 1 screening. A screening checklist and a marking scheme similar to Appendix A and Appendix C1 respectively to DEVB TC(W) No. 4/2014 but tailor-made to suit the specific features of the works required by the contract shall be devised for the prequalification. The proposed checklist and marking scheme shall be part of the submission to PS(Tsy) for approving the use of prequalified tendering as mentioned in paragraph 10 above. To streamline the process for D&B contracts involving prequalification, the PS(Tsy) has already agreed to the use of the standard checklist and marking scheme for prequalification as set out in Appendix B of the Administrative Procedures 2015 for Use with General Conditions of Contract for Design & Build Contracts, promulgated via DEVB TC(W) No. 4/2015. If departments wish to make any modifications to the standard marking scheme, they must seek policy support from the Works Policy Section of DEVB before they apply for PS(Tsy)'s approval.

18. For Type II prequalification, Stage 1 screening and Stage 2 assessment shall be carried out similarly except that the marking scheme shall only evaluate applicants on a "pass" or "fail" basis.

### **Selection Criteria**

19. In general, the criteria for Stage 1 screening shall be based on a determination of whether an applicant can satisfy the essential requirements stipulated in the notification of invitation. The criteria for Stage 2 assessment shall then contain all technical aspects of the selection process.

20. Departments should note that prequalification is to identify contractors capable of undertaking the contract. It is not necessary to ask applicants to commit

to any resources proposal, method of construction, and engagement of sub-contractors etc. at the prequalification stage.

21. Prequalification of contractors is broadly equivalent to the admission of a contractor to an approved list except that the list of approved contractors is applicable to multiple contracts while the list of prequalified contractors is applicable to only one or two contracts and the prequalification requirements are normally more project specific. Departments may thus draw reference from the administration of the approved list in conducting a prequalification exercise.

### **Specialist Work**

22. If specialist work is involved, departments should consider whether applicants should be required to have relevant knowledge and experience. If the specialist work is so essential that it has to be carried out by the contractor himself or such a specialist sub-contractor is not readily available, departments should specify in the prequalification requirements that a successful applicant must have adequate knowledge and experience in that specialist work. However, imposing such a requirement may reduce the number of successful applicants and this may not be in the best interests of the contract.

23. If a contractor can manage the specialist work by employment of a specialist sub-contractor, it is not necessary that successful applicants must have knowledge and experience in that specialist work. Instead, departments may consider specifying in the contract that if the contractor does not possess expertise in that specialist work, he must employ a specialist sub-contractor from the appropriate approved list for that specialist work. If that list does not exist, departments may consider conducting a separate prequalification exercise for those specialist sub-contractors.

### **Sub-contractors**

24. In view of difficulty in ensuring that the sub-contractors proposed at prequalification stage will actually be employed after the contract is awarded, assessment of sub-contractors' ability and experience should be avoided as far as possible in the selection criteria for prequalification. If the department considers that attributes of sub-contractors should be assessed in a prequalification exercise, the department is required to provide justifications for it including the arrangement to overcome the difficulty stated above and an advice from the Legal Advisory Division (Works) (LAD(W)) of DEVB, for the consideration of the PS(Tsy) in the approval of the selection criteria.

## **Joint Venture Contractors**

25. Joint ventures should always be permitted for contractors in applying for prequalification. A joint venture is qualified if the participants (in the case of an unincorporated joint venture) or the shareholders (in the case of an incorporated joint venture) collectively satisfy all the qualification requirements. Departments should draw applicants' attention in the "Contract Information" of the prequalification documents to the following:-

- (a) Where an applicant is an unincorporated joint venture, each participant of the joint venture will be jointly and severally liable for the due performance of the contract.
- (b) Where an applicant is an incorporated joint venture, all the shareholders will be required to provide a joint venture guarantee for the contract.

26. For Type I prequalification, changes to the composition of a prequalified joint venture will only be allowed prior to close of tenders on condition that:-

- (a) in cases where a change is applied for before the date tenders are invited, there is sufficient time available before the tender invitation to undergo a prequalification exercise for this changed entity; or
- (b) in cases where a change is applied for on or after the date tenders are invited (but prior to close of tenders), there is sufficient time available before close of tenders to undergo a prequalification exercise for this changed entity and there has been no other contractor, which has met the qualification requirements, but not admitted to the prequalified list during the prequalification exercise.

Legal advice should be sought when there is insufficient time for re-assessment in (a) or (b) above but rejection of application may result in fewer number of prequalified contractors remaining, which may not be in the interest of the tendering exercise. In that case, departments may consider all options, including the extension of tendering programme, in consultation with LAD(W), without actual or perception of unfairness to other prequalified contractors.

27. If the department considers that the conditions in 26(a) or 26(b) above are not met and the application is rejected, the department shall as soon as possible notify the prequalified joint venture applying for the change. Any application for change in Type I prequalification is irrevocable once applied for unless the change is rejected by the department due to reasons not meeting the condition in 26(a) or 26(b) above.

28. When the conditions in 26(a) or 26(b) above are met, the prequalified joint venture who applies for such a change will need to go through a re-assessment as in the prequalification exercise.

29. In case 26(a) above, if the re-assessment shows that the changed entity could meet the qualification requirements and its rank is still within the ranking for

admission to the list of prequalified contractors, the changed entity will remain as prequalified. Otherwise, it will be removed from the prequalified list and the first contractor on the lower ranking, if any, who has satisfied the qualification requirements, will be admitted to the list of prequalified contractors.

30. In case 26(b) above, if re-assessment shows that the changed entity could meet the qualification requirements, the changed entity will remain on the list of prequalified contractors. Otherwise, it will be removed from the prequalified list.

31. For Type II prequalification, changes to the composition of a prequalified joint venture at any time prior to the close of tenders will be permitted, provided that there is sufficient time available in project programme to undergo a prequalification exercise for the changed entity and provided that the changed entity can still meet the qualification requirements.

32. Departments' attention is drawn to the need to seek endorsement of the CTB on any changes in the material particulars of prequalified contractors which occur between the prequalification and final tendering exercise according to the SPR.

### **Regulating Action**

33. For Type I prequalification, if a prequalified contractor (either a contractor or a joint venture) or the changed entity remaining on the list of prequalified contractors subsequently does not submit a tender, this will be considered as an occasion of tender withdrawal as specified in Contractor Management Handbook for the purpose of taking regulating action. The date of non-submission shall be taken as the tender closing date of the contract concerned.

### **Prequalification Document**

34. Following receipt of response to invitation, a copy of the prequalification document shall be sent to each applicant.

35. The prequalification document must be prepared to meet the particular requirements and circumstances of the contract.

36. Departments shall stipulate the qualification requirements in the prequalification document and draw applicants' attention that if an applicant fails to meet any essential qualification requirements, he would fail the prequalification exercise.

37. The prequalification document shall be designed to make applicants aware of the salient features of the contract and of any major constraints and to request information on which the assessment can be based. All assessment criteria and their relative weightings to be used in the selection process must be made known



to all the applicants.

38. Departments should respond to request for clarification from any applicant promptly. Any significant information given to one applicant with respect to the intended procurement shall be given simultaneously to all other applicants.

39. A specimen format of the prequalification document is given in the SPR, at the Annex to Appendix III(B). For D&B contracts, a more comprehensive outline of prequalification document is provided in the Administrative Procedures 2015 for Use with General Conditions of Contract for Design & Build Contracts.

### **Important Notes to Applicants**

40. Departments should draw applicants' attention in the "Contract Information" of the prequalification documents by the inclusion of the following:-

“(a) Tenders for the contract will be invited from prequalified contractors only. Government reserves the right to prequalify any contractor who meets the qualification requirements.

(b) If Government becomes aware that a prequalified contractor has ceased to be able to meet the qualification requirements then Government may, at its discretion, disqualify the contractor at any time prior to acceptance of the tender. In such case, the Government may add another prequalified contractor or tenderer for the contract. *(The last sentence is needed for Type I prequalification only.)*

(c) All prequalified contractors will be required to make a statement at the time of tender submission to confirm that there has been no material change in their qualifications.

(d) *(For Type I prequalification only)* 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 purpose of this Clause, 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 of companies as defined in Section 2(1) of the Companies Ordinance (Cap. 622), either on its own behalf or as a participant or shareholder of a joint venture. The existence of a holding-subsidiary relationship shall be determined as at the date set for the close of prequalification, or if this has been extended, the extended date, and in accordance with the provisions in Section 13 to 15 of the Companies Ordinance (Cap. 622). Applications submitted from an applicant on his own behalf who is found to be in breach of this Clause or from a joint venture or joint ventures in which

any participant or shareholder is found to be in breach of this Clause shall not be considered.

Alternate (d) *(For Type II prequalification only)* 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 purpose of the Clause, 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. Tenders submitted from a tenderer on his own behalf who is found to be in breach of this Clause or from a joint venture or joint ventures in which any participant or shareholder is found to be in breach of this Clause shall not be considered. Therefore each prequalified contractor, either as a holding company or its subsidiary companies 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 each give an undertaking in the following form:-

“I undertake that if I am prequalified individually or as part of a joint venture that I shall only submit one tender for the contract either as a holding company on its own behalf or as a subsidiary company on its own behalf or as a participant or shareholder of a joint venture. I understand and accept that if I fail to observe this condition that this will render all related tenders null and void and such tenders shall not be considered by the Government.”

The existence of a holding-subsidiary relationship shall be determined as at the date set for the close of prequalification, or if this has been extended, the extended date, and in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap. 622).

(e) The list of prequalified contractors will normally remain valid for one year from the date of the notification of the prequalification result.

(f) *(For cases where the identity of the successful prequalified tenderers will be disclosed in the interest of the public)* The result of the prequalification will be released by MM/YY. The result will be published in the \*Hong Kong SAR Government Gazette (\*Note - amend as appropriate: such as “made available on the project website” or other media). Applicants will be notified separately by the Employer.

Alternate(f) *(For cases where the identity of the successful prequalified tenderers will not be disclosed but pre- or post-tender meetings may be arranged)* The applicants' attention is drawn to the fact that \*a pre-tender meeting (\*Note: amend as appropriate – such as “a briefing session”, “a post-tender meeting”, etc.) may be arranged at the tender stage following completion of the prequalification exercise. All prequalified tenderers will be invited to attend this meeting if arranged. The identities of the prequalified tenderers may be revealed when attending such a meeting or where public interest so requires. The Employer shall not be liable for any claims, loss or damages arising from the disclosure of the identity of any prequalified tenderers during such occasions.”

41. The following paragraphs shall be added to the “Instructions to Applicants” of the prequalification documents as appropriate:-

- (a) The financial capability of any applicants will be assessed at the works contract tender stage in accordance with the financial requirements set out in the Contractor Management Handbook; and
- (b) In the event of a bid challenge being lodged with the Review Body on Bid Challenges under the WTO GPA on this prequalification exercise or the tendering of the Contract which is the subject of this prequalification exercise and the Employer is requested by the Panel appointed in accordance with the Rules of Operation of the Review Body on Bid Challenges (the Panel) to disclose the information submitted in the prequalification submissions, the Employer may disclose the information to the Panel and to such other persons and in such manner as the Panel may require in accordance with the Rules of Operation. This may include disclosing the information to the complainant which has lodged the bid challenge.

### **Submission of Prequalification Documents**

42. The prequalification document shall be accompanied by a letter giving details of the date, time and place that the prequalification submissions should be made. Prequalification submissions should be submitted to departments direct and departments must ensure a proper procedure for the receipt and registration of the prequalification submissions. This also applies to consultant-administered contracts. Departments should not ask applicants to submit their prequalification submissions to the consultants direct.

### **Confidentiality of Prequalification Submissions**

43. The procedures and requirements on “confidentiality of tenders” and “conflict of interest” as described in the Appendix to DEVB TC(W) No. 8/2014

“Examination of Tender and Submission of Tender Reports” shall apply to the handling of the prequalification submissions.

### **Assessment of Prequalification Submissions**

44. Following receipt of prequalification submissions, an acknowledgement shall be sent to each applicant that made a submission.

45. An assessment panel as described in **Appendix A** to this Circular shall be established to evaluate the prequalification submissions.

46. In respect of Type I prequalification, in cases where the assessment panel considers that some information has been missed out or ambiguities exist in the application, the assessment panel may need to consider carefully whether to seek the missing information or clarification from the relevant applicant. In general, the assessment panel should keep such contacts with the applicants to the minimum. They should record clearly and in full all such contacts. Most importantly, they must ensure that such contacts would not give an applicant any advantage or perceived advantage over the other applicants.

47. In respect of Type II prequalification, in cases where the assessment panel considers that insufficient information is provided to form a conclusion, the assessment panel may request that an applicant makes further written submissions. Such opportunity for an applicant to make good his submission should be made available to all applicants. If an applicant fails to provide the required information for a proper assessment to be made, his application should not be given further consideration.

48. The assessment panel may ask for further written submissions in those instances where applicants have offered views, opinions or alternative proposals on which the project team would find further information of assistance.

49. The assessment panel shall assess submissions against the qualification requirements as approved by the PS(Tsy). In the event that there are changes to the qualification requirements or to the scope of the contract, it would be necessary to make a further submission to the PS(Tsy) and undertake the prequalification exercise again.

50. In the event of inadequate response to the invitation to apply for prequalification or inadequate successful applicants, consideration shall be given to seeking the authority of the PS(Tsy) to re-convene the exercise with the invitation directed to a wider range of contractors.

51. For Type II prequalification, supplementary information or late applications made by applicants after the closing time should be accepted if there is still sufficient time to process the applications.

### **Selection of Tenderers**

52. A report and recommendation shall be submitted to the CTB containing information as set out in Appendix III(D) to the SPR.

53. Following approval from CTB, each applicant shall be informed of the result of his application. Departments should not let individual applicants know who else have been successful in the prequalification or the number of successful applicants. However, as provided for in the Notes to Applicants under paragraph 40 above, disclosure of the identities of the successful applicants may be necessary if it is in the interest of the public. Request for feedback or debriefing from unsuccessful applicants shall only be entertained after the conclusion of the tender exercise for the relevant works contract. The guidelines and procedures described in ETWB TC(W) No. 42/2002 shall be observed in providing feedback and debriefing information to the applicants.

54. The notification to successful applicants shall state when tender documents will be available and seek confirmation of the applicant's intention to submit a tender.

### **Enquiries**

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

**( C K Hon )**  
**Permanent Secretary for Development (Works)**

### **Assessment Panel**

An assessment panel shall be established to evaluate the prequalification submissions. The assessment panel shall be made up of suitably qualified personnel capable of making an independent assessment of the applicants' submissions, technical or otherwise. The assessment panel shall consist of a chairperson plus at least two other members. Normally the chairperson will not mark the applicant's submissions in order to ensure that the meeting is conducted in an orderly and impartial manner. The chairperson shall be a directorate officer while the other members shall be public officers of professional rank or above coming from more than one department. Members of the project team and members of the assessment panel including the chairperson should familiarize themselves with the basic requirements, implications and obligations contained in the WTO GPA and the associated rules which govern the subject prequalification exercise. Reference should be made to the guidelines given under DEVB TC(W) No. 2/2014. 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.

1. Members of the assessment panel shall individually mark the applicants' submissions in accordance with the approved marking scheme. For each submission, the average mark given by the panel members shall then be taken as the score of that submission.
2. The assessment panel and the project team including consultants should observe the prevailing civil service guidelines 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 such conflict, the chairperson of the assessment panel should decide whether that member should continue to handle the specific procurement exercise and the ruling may err on the stringent side to replace the member with another public officer. Chapter IA of the SPR is relevant. The confidentiality requirements set out in DEVB TC(W) No. 8/2014 must be strictly observed. The chairperson shall ensure that every member of the assessment panel is reminded of the need to maintain confidentiality of the whole prequalification assessment process.