

物料供應及採購規例
STORES AND PROCUREMENT
REGULATIONS

香港特別行政區
政府規例(卷四)

REGULATIONS OF THE
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE
REGION

VOLUME 4

STORES AND PROCUREMENT REGULATIONS

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INTRODUCTION

VALIDITY OF GOVERNMENT REGULATIONS, CIRCULARS AND CIRCULAR MEMORANDA

1. Government Regulations regulate matters relating to the conduct of Government business, the terms of appointment and conditions of service for Government servants, financial business and accounting operations, the management and procurement of Government stores and services, the security of Government records, and other miscellaneous matters. They do not provide for necessary and self-evident exceptions.

2. Save for Financial and Accounting Regulations and Stores and Procurement Regulations which are made under the provisions of the Public Finance Ordinance (Cap. 2), Government Regulations are Regulations made by or with the authority of the Chief Executive. The sole authority for their interpretation and application is the Chief Executive, or those to whom he has delegated such authority.

3. Government Regulations apply to all government servants, except in so far as —

- (a) a contrary intention appears in Government Regulations; or
- (b) an alternative provision is made for particular government servants in a piece of legislation which applies in the Hong Kong Special Administrative Region; or
- (c) a Government Regulation is inconsistent with the terms of a piece of legislation which applies in the Hong Kong Special Administrative Region which apply to particular government servants; or
- (d) a particular government servant is excluded by the terms of his employment from the operation of a Government Regulation.

4. Government Regulations are divided into 7 volumes as shown below. The following public officers have been authorised to amend, supplement, apply, interpret and make exceptions to the Regulations in each Volume as shown —

Volume	Name	Authority
1	General Regulations	Director of Administration
2	Civil Service Regulations	Secretary for the Civil Service
3 (Part 1)	Financial and Accounting Regulations	Financial Secretary/Secretary for Financial Services and the Treasury
(Part 2)	Standing Accounting Instructions	Director of Accounting Services

4	Stores and Procurement Regulations	Financial Secretary/Secretary for Financial Services and the Treasury/Permanent Secretary for Financial Services and the Treasury (Treasury)#
5	Security Regulations	Secretary for Security
6	Accommodation Regulations	Secretary for Financial Services and the Treasury
7	External Service Regulations	Secretary for the Civil Service/Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) and Permanent Secretary for Constitutional and Mainland Affairs*

The Permanent Secretary for Financial Services and the Treasury (Treasury) is authorised to apply, interpret and make exceptions to the Stores and Procurement Regulations and related Financial Circulars.

* The Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) or Permanent Secretary for Constitutional and Mainland Affairs is authorised to apply, interpret and make exceptions, where expressly stated, to the External Service Regulations in respect of staff posted to offices outside Hong Kong maintained by the Government of the Hong Kong Special Administrative Region.

5. Government Regulations may be supplemented by Circulars and Circular Memoranda and the instructions contained therein are of equal application and force to the Regulations. These Circulars and Circular Memoranda and their issuing authority are described below —

General Regulations	General Circulars and Circular Memoranda	Director of Administration
Civil Service Regulations	Civil Service Bureau Circulars and Circular Memoranda	Secretary for the Civil Service
Financial and Accounting Regulations	Financial Circulars and Financial Services and the Treasury Bureau Circular Memoranda	Secretary for Financial Services and the Treasury
Standing Accounting Instructions	Accounting Circulars and Circular Memoranda	Director of Accounting Services

Stores and Procurement Regulations	Financial Circulars and Financial Services and the Treasury Bureau Circular Memoranda	Secretary for Financial Services and the Treasury
	Government Logistics Department Circulars and Circular Memoranda	Director of Government Logistics
Security Regulations	Security Circulars and Circular Memoranda	Secretary for Security
Accommodation Regulations	Accommodation Circulars and Circular Memoranda	Government Property Administrator
External Service Regulations	External Service Regulations Circulars and Circular Memoranda	Secretary for the Civil Service

6. Each set of Circulars is issued in a single numbered series with a new series for each calendar year. Circulars are reviewed annually and the first Circular of each calendar year indicates which of the previous Circulars remain in force. Circular Memoranda may be numbered as for Circulars and are subject to regular review by the concerned issuing authorities.

RESPONSIBILITY FOR KNOWLEDGE OF GOVERNMENT REGULATIONS, CIRCULARS AND CIRCULAR MEMORANDA

10. It is the duty of all Government servants other than staff on daily rates of pay to be thoroughly acquainted with all Government Regulations, Circulars and Circular Memoranda on Conduct and Discipline, and such other Government Regulations, Circulars and Circular Memoranda as appertain to their duties.

11. Where a Government servant disobeys or neglects or fails to observe the terms of Government Regulations, Circulars or Circular Memoranda on Conduct and Discipline appertaining to his/her duties, disciplinary proceedings may be taken against him/her and he/she may be held pecuniarily responsible for any financial loss to Government resulting from each disobedience, neglect or failure.

DISTRIBUTION OF GOVERNMENT REGULATIONS, CIRCULARS AND CIRCULAR MEMORANDA

12. It is the responsibility of a Head of Department to see that all his/her staff (other than on daily rates of pay) are provided with, or have made available to them, Government Regulations, Circulars and Circular Memoranda on Conduct and Discipline and such other Government Regulations, Circulars and Circular Memoranda as appertain to their duties.

13. Government Regulations, Circulars and Circular Memoranda on Conduct and Discipline are available in a separate edition, of which there is a Chinese version. All Government servants (other than staff on daily rates of pay) shall on first appointment to the service be provided with, or have made available to them a copy of the Government Regulations, Circulars and Circular Memoranda on Conduct and Discipline either in English or Chinese as appropriate.

14. Copies of Government Regulations, Circulars and Circular Memoranda (other than the separate editions on Conduct and Discipline) are not to be regarded as the property of individuals but as part of the equipment of the office for which the copy is provided. It is the duty of Heads of Departments to ensure that copies of Government Regulations, Circulars and Circular Memoranda are not retained by officers when transferred to another office.

16. All Civil Service Bureau Circulars, Financial Circulars and General Circulars are categorised, on the basis of their respective contents, into one of the following scales of distribution —

Scale A — to be brought to the attention of all staff.

Scale B — to be brought to the attention of a particular group or groups of officers because of matters such as conditions of service, salaries and entitlements, rules and regulations applicable to them as individuals.

Scale C — to be brought to the attention of officers who, because of the functions of their posts, are required to take action on, or to be informed of, the circular.

Scale D — to be brought to the attention of officers who keep a copy of a particular set of Government Regulations and those, who because of the functions of their posts, are required to take action on, or to be informed of, the circular.

There is no fixed scale for distribution of Circular Memoranda. The normal distribution is usually Directors of Bureaux, Permanent Secretaries and Heads of Departments, with a copy to the Judiciary Administrator. However, any of the above scales may be used, if necessary.

CHAPTER I

AUTHORITY, POLICY AND RESPONSIBILITY

AUTHORITY FOR MAKING STORES AND PROCUREMENT REGULATIONS (SPRs)

100. These Regulations are made by the Financial Secretary/Secretary for Financial Services and the Treasury (SFST) under section 11(1) of the Public Finance Ordinance (Cap. 2), and should be read in conjunction with that Ordinance.

APPLICABILITY

105. The SPRs apply to all public officers except in so far as they are inconsistent with any enactment. They may be supplemented by Financial Circulars (FCs) and Financial Services and the Treasury Bureau Circular Memoranda (FSTBCM) which are of equal application and force as these Regulations.

PROCUREMENT POLICY AND PRINCIPLES

106. The policy of government procurement is to obtain stores and services at the best value for money in a publicly accountable manner to support Government's programmes and activities.

107. To make the best use of public resources and be accountable to the public, bureaux and departments (referred to as "departments" hereafter) should aim to achieve the best value for money in procurement. "Value for money" does not simply mean buying at the lowest price. "Value for money" should be assessed in terms of economy, effectiveness and efficiency, taking into account the total costs involved (measured on a whole-life costing basis) and the overall value to be created or brought about through the procurement. In other words, "value for money" means the optimal use of resources to achieve the best outcome. Controlling Officers (COs) should ensure that public funds are well spent in terms of the total positive value to be created or brought about by the procurement. The positive values may include (but are not limited to) social, environmental, economic and/or other positive values that serve the interest of the public. When conducting procurements, COs should fully take into account the consideration of whether the procurement is more costly than necessary. They should be satisfied that the procurements are genuinely required and fully justified on legitimate and defensible grounds, for example, meeting essential operational needs and/or achieving better value for money for the procurements.

108. Procurement decisions are subject to review by the relevant authorities. For procurements covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA), they are also subject to review by the Review Body on Bid Challenges. COs are accountable to the public for the purchasing decisions of their departments, and should ensure that the decisions are properly justified and documented.

109. The policy of government procurement is underpinned by the following principles –

(a) Open and fair competition

- (i) Competition is a reliable safeguard against bidders overcharging and holding Government to ransom. By encouraging participation through open and fair competition, the Government will be better able to obtain responsive and competitive bids that ensure value for money.
- (ii) As a norm, open bidding should be adopted as far as practicable. Single/restricted tendering or direct engagement of suppliers/service providers/consultants should be the exception and must be properly justified to the satisfaction of the relevant approving authority.
- (iii) All bidders should be treated on an equal footing. There should be no discrimination on the basis of the country of origin of the goods or service providers. Requirements, tender specifications and marking schemes (where applicable) should be drawn up in an objective manner, providing a level playing field for all to compete on an equal footing.
- (iv) For procurements with limited competition in past exercises, departments should explore measures to enhance competition and satisfy themselves that the tendering or consultants selection strategy to attract new bidders and innovative proposals is effective.

(b) Transparency

To uphold public accountability and fairness of the procurement process, government procurement should be conducted in a transparent manner. In a procurement exercise, potential bidders should be given the same information. Departments should make available tender notices for all open tenders and invitations for admission to suppliers/service providers' lists on their webpages. Tender documents or consultancy briefs should be clear, concise and easy to understand to avoid complicating and adding to the cost of the bidding process.

(c) Pro-innovation

Innovation is conducive to securing value for money in the long run. Departments should encourage and be receptive to new ideas from suppliers / service providers, and allow room for assessing innovative proposals in the procurement process. Outcome-based requirements should be adopted as far as possible. Over-specification and over-prescription in product requirements or mode of service delivery should be avoided. For the procurement of stores, services (excluding works contracts and consultancy) and revenue contracts, "innovation" includes –

- (i) technology related innovation, meaning the use of new technology or innovative application of existing technology in the supply of stores or services; and

- (ii) ideas or suggestions with no technology content which are not conventionally adopted or readily envisaged by departments that may create positive value to the Government or the public. These may include ideas or suggestions that are conducive to the delivery of public services (e.g. resulting in a cleaner environment in a street cleansing service contract), contribute to defined policy objectives of the Government (e.g. contribution to environmental protection in a facility management service contract, or employment of persons with disability in a vehicle maintenance service contract), or better serve the needs of endusers (e.g. meeting user-centric requirements, which are generated from design thinking process as per the guidelines provided by the Commerce and Economic Development Bureau / Efficiency Office (EffO) from time to time.).

(d) Integrity

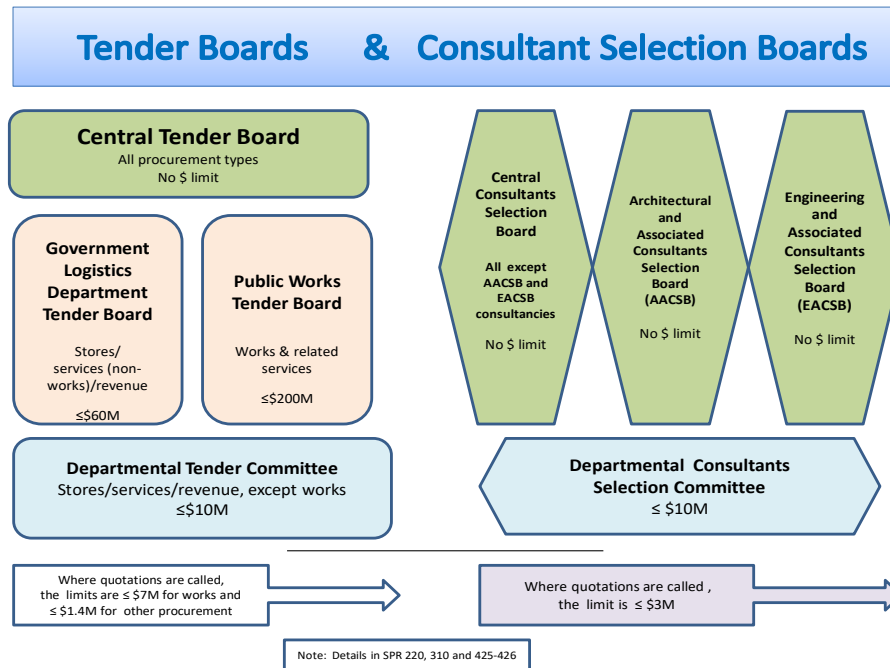
To uphold the integrity of government procurement, procurement decisions should be made in an impartial manner and public funds spent in an accountable way.

RESPONSIBILITIES OF PUBLIC OFFICERS

110. (a) No public officer will be relieved of any portion of his responsibility if he deposes to his subordinates the performance of duties for which he has overall responsibility. Any public officer contravening any of these Regulations, FCs or FSTBCM may be subject to disciplinary proceedings.
- (b) Any person who is or was employed as a public officer may be liable to be surcharged in the circumstances detailed in section 32 of the Public Finance Ordinance. COs who become aware of any of these circumstances shall investigate the matter fully and, as soon as practicable, shall forward a detailed report to the Permanent Secretary for Financial Services and the Treasury (Treasury) (PS(Tsy)) with copies to the Secretary for the Civil Service, Director of Accounting Services (DAS) and Director of Audit (D of A).
115. The respective responsibilities of the Director of Government Logistics (DGL) and D of A for checking and reporting any shortcomings in connection with procurement activities and government stores do not absolve any public officer from his responsibility for complying, or ensuring compliance, with instructions within the scope of his own duties.

AUTHORITY AND RESPONSIBILITIES OF THE TENDER BOARDS/ COMMITTEES AND CONSULTANTS SELECTION BOARDS/COMMITTEES

116. The structure for the approval of tenders and consultancies and the key financial limits for tender boards/ consultants selection boards and COs are summarised below –



AUTHORITY AND RESPONSIBILITIES OF THE DIRECTOR OF GOVERNMENT LOGISTICS

120. (a) DGL is responsible for advising departments on implementing good practice on their management of stores and procurement activities and for conducting compliance checks on such activities according to prescribed criteria to ensure compliance with these Regulations and other relevant instructions.
- (b) In the exercise of his duties, DGL shall have access to all records, books, vouchers, documents and receipts relating to procurement exercises conducted by and government stores in the possession of any public officer.
- (c) DGL may issue Government Logistics Department (GLD) Circulars and Circular Memoranda to supplement these Regulations, FCs and FSTBCM relating to the procurement of stores and services and management of government stores. With the approval of PS(Tsy), the instructions contained therein are of equal application and force to these Regulations.

AUTHORITY AND RESPONSIBILITIES OF CONTROLLING OFFICERS

125. COs are responsible for the procurement of stores, services and revenue contracts within the financial limits set out in the SPRs, and the management of the stores and services procured and the contracts awarded. COs shall observe the policy and principles set out in SPRs 106 – 109 and uphold a culture of compliance with the requirements set out in the SPRs, regularly remind all the staff concerned about their need to always comply with the SPRs and closely monitor their compliance.

126. COs may develop departmental instructions as appropriate to guide public officers in the department in conducting government procurement and stores management, provided that such instructions comply with SPRs and have been approved by DGL. For works and works-related consultancy contracts, COs may also develop departmental instructions with reference to Development Bureau Technical Circular (Works) (DEVB TC(W)). Within the departmental procurement and stores management system, there should be institutional safeguards designed with adequate checks and balances as well as clear segregation of roles and duties. On procurement, COs or designated officers should agree on the segregation of duties before tenders are invited. COs should ensure that public officers involved in the procurement exercises are alert to actual, potential and perceived conflict of interest and sufficient safeguards are in place to avoid or manage such conflict of interest situations in accordance with Chapter IA.

127. For procurement covered by WTO GPA, COs shall observe the provisions therein.

128. On stores management, COs should ensure the effective and efficient use of government stores to support Government's programmes and activities. COs should put in place the necessary measures to ensure that government stores are properly kept and accounted for and that regular and surprise inspections are conducted to examine the adequacy of security arrangements for stores management.

130. COs should reply promptly to any queries addressed to them by the D of A or DGL, giving fully the particulars, explanations and information required.

135. COs should appoint a Departmental Stores Manager (DSM) to assist them in supervising all procurement and stores management matters within their purview. The DSM may be assisted by Supplies Grade staff and/or non-Supplies Grade staff. Purchasing and stores management functions should normally be performed by Supplies Grade staff. COs should make available sufficient Supplies Grade staff to discharge these functions in an appropriate manner.

HANDLING OF COMPLAINTS

160. (a) Contractors, suppliers, firms or organisations may lodge complaints about the process or result of a procurement exercise to the procuring department, the relevant tender board/consultants selection board, or the Office of The Ombudsman. If there is suspected corruption, complaints may be made to the Independent Commission Against Corruption.

- (b) For procurements covered by WTO GPA, contractors/suppliers/service providers may also make a challenge against alleged breaches of WTO GPA to the Review Body on Bid Challenges.
- (c) COs should put in place an effective complaint-handling system in accordance with SPR and other relevant government regulations/ circulars/ guidelines. On receipt of a complaint or the referral of a complaint, CO of the procuring department should personally ensure that the complaint is to be handled in an impartial and timely manner, and that an early and substantive reply is to be provided to the complainant direct or through the referral office within ten working days. An interim reply should be sent to the complainant if a substantive reply cannot be issued within the above timeframe. All complaints and the substantive replies should be brought to the attention of the relevant tender board or consultants selection board.
- (d) If the CO has been personally involved in the procurement exercise and an apparent conflict of interest may arise, he should refer the complaint to the relevant tender board or consultants selection board (depending on the value and the nature of procurement) for consideration after investigation by his department. The CO or a designated directorate officer should present the complaint, the outcome of the investigation and recommendations on way forward to the relevant tender board or consultants selection board. The relevant tender board or consultants selection board will decide on how the complaint should be taken forward.
- (e) If the relevant tender board or consultants selection board believes that there is scope for changing the procurement policy or system, it should make a recommendation to the PS(Tsy) and for works-related items, the Permanent Secretary for Development (Works) for consideration.

CHAPTER IA

AVOIDING AND MANAGING CONFLICT OF INTEREST IN GOVERNMENT PROCUREMENT

GENERAL AND APPLICABILITY

180. It is the responsibility of all public officers to ensure the integrity and impartiality of the Government's procurement process. Conflict of interest situations may arise in cases where a public officer exercises his authority, influences decisions and actions or gains access to valuable information, perhaps but not necessarily restricted or confidential. Conflict of interest may also arise from participation by consulting firms/organisations (hereinafter referred to as "consulting firms") or contractors in government procurement. All public officers involved in procurement must be alert to situations which may lead to actual, potential or perceived conflict of interest and ensure that sufficient safeguards are in place to avoid such situations from arising or manage such situations. The principles and guidelines set out in this Chapter apply to all types of government procurement including revenue contracts, irrespective of value.

AVOIDING AND MANAGING CONFLICTS WITH PRIVATE INTERESTS

185. All public officers involved in government procurement, including in particular the head or chairperson, members and/or secretary of all committees/working groups responsible for preparing tender documentation (including tender specifications and marking schemes), tender opening teams, tender assessment panels (TAPs), departmental tender committees (DTCs), departmental consultants selection committees (DCSCs), tender boards and consultants selection boards, must —

- (a) **avoid** conflicts, whether actual, potential or perceived, arising between their official duties and their private interests. Private interests include the financial and other interests of the public officer, the public officer's relatives and close associates, or persons to whom the public officer is indebted or owes a favour, as defined in relevant civil service guidelines (including Civil Service Bureau Circular No. 2/2004 on "Conflict of Interest" or any updated version);
- (b) **declare** all such conflicts or relevant private interests as soon as the public officer is aware of them to enable his supervisors, the head or the chairperson of the relevant tender preparation team, tender opening team, TAP, DTC, DCSC, tender board or consultants selection board to decide whether the public officer should continue to be involved in the specific procurement exercise;
- (c) **observe** prevailing civil service code and guidelines on how to prevent or deal with conflict of interest situations; and
- (d) **observe** prevailing Security Regulations and not make unauthorised disclosure or take advantage of any tender-related information whether or not for personal gain.

186. All public officers involved in preparing tender documentation (including tender specifications and marking schemes), assessing tenders and conducting negotiations must declare whether they have any actual, potential or perceived conflict of interest upon their taking up of the respective responsibilities in procurement matters and as soon as they become aware of such actual, potential or perceived conflict of interest. Departments must state in each tender report whether or not the public officers involved in preparing tender documentation (including tender specifications and marking schemes), assessing tenders and conducting negotiations have declared their interest and, where conflicts of interest (actual, potential or perceived) have been identified, what remedial action has been taken. A specimen declaration and undertaking is at Appendix I(A).

187. The head or chairperson, members and/or secretary of all tender opening teams, DTCs, DCSCs, tender boards and consultants selection boards who handle procurement matters are required to sign an undertaking upon taking up these responsibilities, and are also required to renew their undertaking at least annually. A specimen undertaking is at Appendix I(B).

188. COs of the procuring department must —

- (a) **remind** all colleagues involved in government procurement, at regular intervals, to observe strict confidentiality rules with regard to tender-related information and to declare any private interests as may arise in relation to the procurement, or in relation to the parties offering the stores, services or revenue contracts being procured;
- (b) **ensure** that all declarations are drawn to the attention of the head or the chairperson of the tender preparation team, tender opening team, TAP, DTC, DCSC, tender board or consultants selection board as the case may be. If the public officer making the declaration is the head or the chairperson himself, his declaration should be drawn to the attention of his supervisor. All such declarations and actions taken must be recorded and filed properly;
- (c) if a public officer has declared an interest and the supervisor, the head or the chairperson of the tender preparation team, tender opening team, TAP, DTC, DCSC, tender board or consultants selection board rules that the public officer should not continue to handle the specific procurement exercise, **redeploy**, if necessary, other staff to take the place of the public officer who has declared an interest in the procurement exercise; and
- (d) **consider** and if appropriate draw up supplementary guidelines to fit the circumstances of the department on the detection, avoidance and management of conflicts in government procurement, making reference to the “Government Procurement of General Goods and Services” published by the Independent Commission Against Corruption as appropriate.

AVOIDING AND MANAGING CONFLICTS THAT MAY ARISE FROM THE DIFFERENT ROLES OF CONSULTING FIRMS/CONTRACTORS

190. Departments must be alert to the potential conflict of interest which may arise from the different roles or assignments a consulting firm or contractor may take up, whether in relation to the same project for which that consulting firm or contractor was or remains engaged by the Government in the first place, or other related projects.

191. It is not possible to list all situations in which potential conflicts of interest may arise. One typical situation is where a firm/organisation (hereinafter referred to as “firm”), having acted as Government’s consultant for a project, bids as a contractor or is involved as a controlling shareholder or subcontractor of the contractor in a subsequent exercise for the procurement arising out of the consultancy or which was the very subject of the consultancy.

192. To ensure that Government receives from consulting firms objective professional advice which is not tailored or fashioned with regard to promoting that consulting firm’s or its associate’s products and/or services, and to maintain a level-playing field in the procedures for government procurement, departments must —

- (a) **ascertain** as far as practicable, before the award of a consultancy, whether there is any reason to disqualify a consulting firm which has expressed an interest in undertaking a government consultancy on grounds of actual, potential or perceived conflicts of interest;
- (b) **oblige** the selected consulting firm to report on situations which may give rise to those conflicts; and
- (c) **debar** the selected consulting firm and its associate(s) from participating in any subsequent exercise for the procurement arising out of or which was the very subject of the consultancy, save for the circumstances specified in SPR 194.

Departments should consult the Department of Justice (D of J) on the provisions to be included in consultancy briefs and consultancy agreements to reflect the requirements in SPR 192(b) and (c) above.

193. There may be circumstances where a strict ban on future participation in procurement exercises is not practicable. Departments which are not able to comply with the principles and guidelines set out in SPR 192 above must approach the relevant consultants selection board (or tender board if the professional advice is procured through a tender exercise) for a ruling.

194. If, for reasons acceptable to the relevant consultants selection board, a department would not want to debar a firm which has acted as its consultant and/or the consultant’s associates from participating in exercises for the procurement arising out of or which was the very subject of the consultancy, the department must —

- (a) **review** the recommendations of the consultant, including the proposed tender specifications for the implementation tender, to satisfy itself that the tender document is and is seen to be objective and unbiased having regard to the role and recommendations of that consulting firm. The relevant CO should appoint a review committee comprising public officers who have **not** been involved in the consultancy in question and who can serve as a credible and effective checking body, and the decisions should be clearly recorded; and
- (b) **specify** in the tender notices for the implementation tenders that the firm appointed for the consultancy studies is a potential bidder but that all the information which was made available to that firm and all the advice which the firm has provided and which is relevant to the tender will equally be made available to all potential tenderers upon request.

Under no circumstances may a consulting firm (including its associates) that has advised on the preparation of the tender document, including tender specifications and marking scheme, be allowed to bid, participate or be financially involved in that or related tender exercise.

195. (a) Departments must bear in mind the requirement that all consulting firms must not only have, but be seen to have, an equal opportunity to participate in any consultants selection exercise. Where members of a consulting firm participate with government departments in committees, working groups, boards, etc. in the course of which the need to engage consulting firms to perform assignments arises, departments must without any delay —
- (i) **require** the person concerned to disengage himself immediately from the committee, working group, board, etc., as the case may be; or
 - (ii) **request** the person concerned to undertake in writing that his consulting firm will not compete for, participate or be financially involved in the assignment whether as the main consultant or sub-consultant or otherwise.
- (b) Departments must not put pressure on prospective consulting firms to employ particular sub-consultants or be over-enthusiastic in matching sub-consultants with consulting firms. Information on the availability of specialist sub-consultants should be provided to all firms in the invitation to submit an expression of interest (EOI) and/or a tender, if it is considered essential for the main consultants to have such information.

196. When a consulting firm submits a bid as a main consultant while concurrently bidding as a sub-consultant of other competing main consultant(s) in the same consultants selection exercise or when a consulting firm teams up as a sub-consultant with more than one bidding main consulting firm, the question of potential or perceived role conflict may arise unless these different roles are disclosed to all participants, including those bidding as main or sub-consultants. Departments shall require all consulting firms to disclose their competing roles, if any, in a consultants selection exercise and to confirm in the consultancy proposal that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the proposal in which the main consultant and/or sub-consultant are in common or affiliated with the sub-consultant of another bidder. Departments should consult D of J as necessary to include a provision in the consultancy brief and consultancy agreement reflecting the aforesaid requirements.

197. Under special circumstances, advice may need to be sought from technical experts outside the Government (paragraph 3 of Appendix III(G)1). To ensure that the Government receives from outside technical experts objective professional advice which is not intended to favour any particular consulting firms or contractors, and to maintain a level-playing field in the procedures for government procurement, departments must —

- (a) **ascertain** as far as practicable, before the engagement of any outside technical expert, whether there is any reason to disqualify such expert who has expressed an interest in undertaking the role of technical expert on grounds of actual, potential or perceived conflicts of interest; and
- (b) **oblige** the outside technical expert engaged to report on situations which may give rise to those conflicts.

Departments may consult the D of J as appropriate on the provisions to be included in the letter or agreement when engaging outside technical experts to reflect the requirements in SPR 197(b) above. The outside technical experts should be invited to complete the declaration/undertaking at Appendix I(C).

198. If actual, potential or perceived conflict of interest is identified in engaging the outside technical expert, it should be drawn to the attention of the Chairman of the TAP as specified in paragraph 5 of Appendix III(G)1. The actions taken should be properly documented and reported to the DTC, DCSC, tender board or consultants selection board as appropriate.

CHAPTER II

PROCUREMENT OF STORES, SERVICES AND REVENUE CONTRACTS

GENERAL

200. For the purpose of these Regulations —
- (a) government stores refer to all articles purchased or acquired on behalf of Government, excluding land and buildings;
 - (b) services refer to tasks performed by firms for and on behalf of Government, which include services for construction and engineering works, consultancy services and other general services;
 - (c) where a contract for the supply of stores includes the provision of incidental services and the value of the services does not exceed that of the stores, the contract shall be construed as a contract for the supply of stores. Where a contract for the supply of services includes the provision of stores and the value of the stores does not exceed that of the services, the contract shall be construed as a contract for the supply of services; and
 - (d) revenue contracts refer to contracts that generate revenue for and on behalf of Government.
205. The financial limits set out in these Regulations refer to the total value of stores or services of a similar nature or total value of revenue which, in normal practice, are obtained or generated in a single purchase or contract. COs should ensure that public officers responsible for procurement matters interpret these limits strictly, and that they do not evade the limits by dividing procurement requirements into instalments or by reducing the usual duration of contracts. In making procurement, COs should consolidate requirements of stores and services of similar nature as far as possible to achieve better economies of scale. COs may be held personally responsible for the amount so expended or revenue so lost if they allow or order the procurement of stores, services or revenue contracts without proper authority.
206. Where the purchase is for replacement stores or equipment, trade-in option should be considered as far as practicable. Apart from the monetary return, the opportunity can be taken to use the contractors' resources to dispose of the stores which would otherwise have to be arranged separately by the concerned department at a cost to the Government. When determining the value of purchases, departments should only count the value of the new stores instead of the net value after deducting the value of the trade-in items.
210. The procurement of specific stores is subject to endorsement by the appropriate authority. These endorsement authorities and the respective procurement agents, where applicable, are listed at Appendix II.

216. While procurement should normally be conducted at departmental headquarters, COs can authorise any procurement of their own departments to be conducted in branches/divisions/sub-offices, as appropriate.

217. There must be clear segregation of roles and responsibilities in the procurement process. As far as possible, the users of the stores and services to be procured and the public officers who initiate procurement of revenue contracts should not be the approving authority for inviting bids, or approving the acceptance of offer, where applicable. Furthermore, the public officer who approves and/or selects the suppliers/service providers/potential bidders for inviting bids shall not be the public officer authorising the acceptance of the offer for that procurement.

TYPES OF PROCUREMENT PROCEDURES

220. The Financial Secretary has delegated the authority to COs to procure stores, services and revenue contracts of value not exceeding the financial limits, by way of quotations or tendering, as stated below —

	Procurement type	Financial limits (up to and including)	Procedures to be followed
(a)	(i) Stores (ii) Services (other than those covered by (b) below) (iii) Consultancy services (general and works-related consultancy) (iv) Revenue contracts ^{Note 1}	<u>Quotation Limit:</u> \$3 million for consultancy services; \$1.4 million for other items <u>Departmental Limit:</u> \$10 million	For items within Quotation Limit - Quotation procedures in Chapter II of the SPRs. Alternatively, if COs prefer (say for greater competition), tender procedures or consultants selection procedures in Chapter III or IV of the SPRs. For items beyond Quotation Limit - Tender procedures or consultants selection procedures in Chapter III or IV of the SPRs.
(b)	Services for construction and engineering works ^{Note 2}	<u>Quotation Limit:</u> \$7 million <u>Departmental Limit:</u> \$55 million for non-WTO GPA works contracts ^{Note 3} procured under the simplified tendering arrangement as set out in FC No. 3/2009 (as may be updated from time to time)	For items within Quotation Limit - Quotation procedures in Chapter II of the SPRs. Alternatively, if COs prefer (say for greater competition), tender procedures in Chapter III of the SPRs. For items beyond Quotation Limit - Tender procedures in Chapter III of the SPRs and FC No. 3/2009 if applicable.

Note

1. Sale of goods for disposal of government stores or confiscated goods will be dealt with by GLD.
2. They only cover those services which fall under Division 51 of the United Nations Provisional Central Product Classification Code which is accessible at <http://portal.ccgo.hksarg/en/ia/DisplayIABByCat.jsf?cat=3766#3766>
3. For classification of works contracts, please refer to DEVB TC(W) No. 5/2012 (as may be updated from time to time) and guidelines issued by the Development Bureau (DEVB).

221. For procurements **beyond** the respective quotation limits specified in SPR 220, departments shall follow the tender or consultants selection procedures laid down in Chapter III or Chapter IV respectively, and supplementary instructions, as appropriate. Departments may choose to follow the tender or consultants selection procedures for procurement within the respective quotation limits. In such cases, the relevant procedures (including the use of marking scheme in general) in Chapter III or Chapter IV, will apply. Procurements adopting the tender or consultants selection procedures shall be subject to the approval or advice of the relevant tender board/ committee or consultants selection board/ committee.

221A. Departments may choose to adopt a marking scheme for evaluation of offers for procurements under the quotation procedures. In such case, departments should observe the guidelines and the authority for adopting a marking scheme at Appendix III(G). For works contracts and consultancy services, the marking scheme shall be approved by a directorate officer before invitation of quotations. For procurement of stores, services (excluding works contracts and consultancy) and revenue contracts, the use of a marking scheme which deviates from the Standard Marking Scheme Framework (SMS Framework) shall be approved by a directorate officer before invitation of quotations. As a general rule, irrespective of the use of marking schemes, tenderer's experience should not be set as an essential requirement in non-works procurement. If it is absolutely necessary, prior approval must be sought from public officers (normally at directorate level) designated by COs. The justifications for seeking exception from the general rule and the grounds for approval should be properly recorded.

222. Departments may refer to the lists of contractors/suppliers/service providers maintained by the GLD or maintain their own lists of contractors/ suppliers/service providers for inviting quotations for the procurement of stores, services and revenue contracts not exceeding the quotation limits in SPR 220. If departments maintain their own lists, they should publish their methods and invitations for admission to the lists of contractors/suppliers/service providers on their webpages.

PROCUREMENT OF STORES THROUGH THE GOVERNMENT LOGISTICS DEPARTMENT

235. (a) DGL is the procurement agent for stores with a value beyond the departmental limit specified in SPR 220(a). Departments shall make their requests to the DGL for procurement of stores which are neither held in unallocated stock by the GLD nor covered by a bulk contract arranged by the GLD in accordance with the arrangements set out in (c)-(f) below.
- (b) For the procurement of stores not exceeding the departmental limit specified in SPR 220(a), departments may seek assistance from the DGL for preparation of tender documents and invitation of tenders or as an alternative, conduct their own tender exercises. Departments choosing to conduct their own tender exercises have the authority to prepare their tender documents (including tender specifications and marking schemes), assess tenders received and approve acceptance of offers.
- (c) For procurement of stores through the DGL, departments should make full use of GLD's Procurement and Contract Management System to submit their procurement requests.
- (d) To obtain competitive offers, departments shall use general specifications prepared in accordance with the provisions set out in SPR 350. Specifications having the effect of suiting a particular supplier should not be adopted, unless exceptionally justified. If necessary, the DGL or departments may refer the matter to the relevant tender board for consideration.
- (e) Delivery of stores by air, if proposed, should be the exception and needs full justification.
- (f) If the stores to be procured require the endorsement of an appropriate authority (such as vehicles, furniture and equipment items in the public works projects, safes, printing-related equipment, etc.), departments should attach to the request a copy of the approval from the endorsement authority.

PROCUREMENT OF STORES BY DEPARTMENTS

245. Departments may procure stores of a value not exceeding the departmental limit specified in SPR 220(a) direct, rather than through the GLD, if such stores are -

- (a) not held in unallocated stock by the GLD; or
- (b) not covered by a bulk contract arranged by the GLD.

If notwithstanding (a) and (b) above, departments still want to procure stores direct, they shall seek the DGL's prior consent having regard to value for money consideration. Except in the case of urgent minor purchases under SPR 265, departments shall follow the procedures set out in SPR 260 or the tender procedures set out in Chapter III when making direct purchases.

246. Departments may only make repeated purchases of the same items within 12 months if the cumulative value of the purchases does not exceed the quotation limit set out in SPR 220(a). If departments have to use a particular item regularly in quantities with a value in excess of the quotation limit, departments shall follow the tender procedures laid down in Chapter III and supplementary instructions, as appropriate. For purchases outside Hong Kong on Free on Board terms, the quotation limit includes the Free on Board value of the stores procured, but excludes the freight, insurance and other incidental charges.

254. When preparing specifications, departments may make reference to the Guidelines for Drawing Up Tender Specifications at Appendix III(F), where appropriate.

Authorisation and control

255. For the purpose of exercising adequate control over direct purchases, COs must designate a public officer to approve the issue of formal orders. Unless otherwise approved by the DGL, the public officer should not be lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent, who shall report to a more senior ranked DSM appointed under SPR 135. Before authorising the issue of formal orders, the public officer must ensure that the procedures set out below are fully complied with. Only in exceptional circumstances, and subject to the clearance of the DSM, may departments make purchases before placing formal orders. When this occurs, the public officer handling the purchase must provide a clear explanation on file for record purpose.

260. (a) **For purchases with a value not exceeding \$50,000**, with the exception of those urgent minor purchases made under SPR 265, departments should normally invite more than one supplier for quotations and accept the lowest conforming offer or the conforming offer with the highest overall score (if a marking scheme is used). Departments shall designate public officers of not lower than the rank of Supplies Supervisor II or equivalent to handle the selection of suppliers and to contact them for quotations. Public officers contacting suppliers for quotations shall record on file the particulars such as the names and contact details of the suppliers contacted and details of the quotations received for audit purpose. The acceptance of an offer can only be approved by a public officer of not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent. This public officer shall certify on file that the prices quoted are reasonable. The purchase shall be made through purchasing cards unless the CO, or a designated officer not lower than the rank of Chief Executive Officer or equivalent, has authorised in writing otherwise. Departments should follow supplementary guidelines issued by the DGL on the use of purchasing cards for low value purchases.
- (b) **For purchases with a value over \$50,000 but not exceeding the quotation limit set out in SPR 220(a)**, departments must invite at least five written quotations, save for the circumstances stated under (d) below and follow the procedures in (d)-(g) below.

- (c) Departments shall forward copies of their purchase orders, together with a summary return listing out purchases over \$50,000 in value, to the DGL at half-yearly intervals ending 31 March and 30 September respectively. For all purchases with a value exceeding \$500,000, explanations have to be provided in the returns if the number of written quotations received is less than five and/or an offer of a higher price or not obtaining the highest score (if a marking scheme is used) is accepted.

Invitation of quotations

260. (d) Provided that no less than five written quotations are invited, public officers at the levels listed in column (A) of the table below are authorised to approve the issue of invitations and/or selection of suppliers for inviting quotations. For the purpose of this Chapter, written quotations by electronic mail, facsimile or post are accepted. In cases where it is not possible to invite no less than five written quotations, or it is justified to invite less than five written quotations, such as in the case of purchases from a sole agent or supplier, the approving authority is listed in column (B) of the table below –

	Value of the Purchase	Approving Officer (not lower than the rank of)	
		(A)	(B)
(i)	not exceeding 20% of the quotation limit set out in SPR 220(a)	Assistant Supplies Officer/ Executive Officer II or equivalent	Supplies Officer/ Executive Officer I or equivalent
(ii)	not exceeding 50% of the quotation limit set out in SPR 220(a)	Supplies Officer/ Executive Officer I or equivalent	Senior Supplies Officer/ Senior Executive Officer or equivalent
(iii)	up to the quotation limit set out in SPR 220(a)	Senior Supplies Officer/ Senior Executive Officer or equivalent	Chief Supplies Officer/ Chief Executive Officer or equivalent

The approving officer shall record on file the particulars such as the names and contact details of the suppliers proposed to be contacted, a brief explanatory note on the decision (in case less than five written quotations are invited) and the reasons for their selection.

- (e) After the necessary approval under (d) above is obtained, a public officer not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent shall contact the suppliers for quotations.

- (f) Where written quotations are invited, departments shall ask the suppliers to return the quotations in sealed envelopes, submit the quotations through e-Procurement System or other electronic procurement system where applicable, or by electronic mail/facsimile in cases where the receipt of quotations by electronic mail/facsimile has been authorised by the approving officers for the issue of invitations under (d) above, by a specified time. A quotation opening team comprising two members, with the team leader at a rank not lower than that of Assistant Supplies Officer/Executive Officer II or equivalent, will open or vet the quotations received, and where applicable, date-stamp and initial quotations. All written quotations received should be properly documented.

Acceptance of offer

260. (g) Provided that no less than five written quotations are received, public officers at the levels listed in column (A) of the table below are authorised to approve the acceptance of the lowest conforming offer or the conforming offer with the highest overall score (if a marking scheme is used). In cases where (i) less than five written quotations are received; (ii) less than five written quotations have been invited in accordance with SPR 260(d); or (iii) a higher conforming offer or a conforming offer not obtaining the highest overall score (if a marking scheme is used) is to be accepted under exceptional circumstances with full justifications, the approving authority is listed in column (B) of the table below –

	Value of the Purchase	Approving Officer (not lower than the rank of)	
		(A)	(B)
(i)	not exceeding 20% of the quotation limit set out in SPR 220(a)	Supplies Officer/ Executive Officer I or equivalent	Senior Supplies Officer/ Senior Executive Officer or equivalent
(ii)	not exceeding 50% of the quotation limit set out in SPR 220(a)	Senior Supplies Officer/ Senior Executive Officer or equivalent	Chief Supplies Officer/ Chief Executive Officer or equivalent
(iii)	up to the quotation limit set out in SPR 220(a)	Chief Supplies Officer/ Chief Executive Officer or equivalent	D1 or equivalent

- (h) Except for purchases made through purchasing cards and e-purchases made by placing e-orders, or as provided in SPR 265, departments shall place order using Departmental Order for Supply of Stores (GF 219) or a Letter of Acceptance, as appropriate.

- (i) Departments must certify all stores received against a direct purchase order by asking the public officer who receives the stores to sign on the invoice issued by the supplier. Where this is impracticable, the public officer shall sign a receipt. In either case, the invoice or receipt requires endorsement by a senior public officer.

Purchases outside Hong Kong

- 260. (j) For direct purchases outside Hong Kong, except for purchases made through purchasing cards and e-purchases made by placing e-orders, departments shall place orders with the supplier outside Hong Kong by way of a Letter of Acceptance. Departments should normally arrange collection and local delivery of the goods directly with the supplier. For specialised stores such as arms and ammunition, departments may request the DGL to be the consignee of such goods and arrange collection and local delivery of the consigned goods. Departments shall handle any claims arising from these direct purchases outside Hong Kong in accordance with SPR 935-965, with GLD rendering advice and assistance where necessary.

Urgent minor purchases

- 265. (a) Public officers may make minor purchases of stores in cash or through purchasing cards to meet immediate needs, provided that the total value of the purchase does not exceed \$5,000 each and the authorising officer not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent is satisfied that such purchases are essential and the rates obtained are reasonable and certifies this on file. For payments made in cash, the cost of such purchases will be reimbursed from a departmental imprest account. When claiming reimbursement, public officers shall use a Claim for Reimbursement of Expenses (GF 51). For these purchases, departments do not need to issue covering orders, but shall maintain a copy of GF 51 issued for audit purpose.
- (b) Public officers not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent may make purchases of stores to meet departmental needs while on official visits outside Hong Kong, provided that the total value of the purchase does not exceed \$25,000. Public officers making such purchases shall follow the same reimbursement procedure described in SPR 265(a).

PROCUREMENT OF SERVICES BY DEPARTMENTS

- 280. (a) Departments shall follow the provisions set out in these Regulations for procurement of services with a value not exceeding the quotation limits stated in SPR 220(a) or (b) as appropriate. Reference may be made to A General Guide to Outsourcing prepared by EffO (formerly known as Efficiency Unit) for guidance. When preparing specifications, departments may make reference to the Guidelines for Drawing Up Tender Specifications at Appendix III(F), where appropriate. For service contracts that rely heavily on the deployment of non-skilled workers, departments should consider setting requirements in accordance with the relevant FCs.

Authorisation and control

280. (b) **For procuring services with a value not exceeding \$50,000**, with the exception of services procured under SPR 290, departments should normally invite more than one service provider for quotations and accept the lowest conforming offer or the conforming offer with the highest overall score (if a marking scheme is used). Departments shall designate public officers of not lower than the rank of Supplies Supervisor II or equivalent to handle the selection of service providers and to contact them for quotations. Public officers contacting service providers for quotations shall record on file the particulars such as the names and contact details of the service providers contacted and details of the quotations received for audit purpose. The acceptance of an offer can only be approved by a public officer of not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent. This public officer shall certify on file that the rates or amounts quoted are reasonable. The procurement of services shall be made through purchasing cards unless the CO, or a designated officer not lower than the rank of Chief Executive Officer or equivalent, has authorised in writing otherwise. Departments should follow supplementary guidelines issued by the DGL on the use of purchasing cards for low value purchases.
- (c) **For procuring services with a value exceeding \$50,000 but not exceeding the quotation limits stated in SPR 220(a) or (b) as appropriate**, departments must invite written quotations from not less than five service providers, save for the circumstances stated under (d) below and follow the procedures set out in (d)-(g) below.

Invitation of quotations

280. (d) Provided that no less than five written quotations are invited, public officers at the levels listed in column (A) of the table below are authorised to approve the issue of invitations and/or selection of service providers for inviting quotations. For the purpose of this Chapter, written quotations by electronic mail, facsimile or post are accepted. In cases where it is not possible to invite no less than five written quotations, or it is justified to invite less than five written quotations, such as in the case of purchases from a sole agent or service provider, the approving authority is listed in column (B) of the table below –

	Value of the Purchase	Approving Officer (not lower than the rank of)	
		(A)	(B)
(i)	not exceeding 20% of the quotation limit set out in		
	SPR 220(a)	Assistant Supplies Officer/ Executive Officer II or equivalent	Supplies Officer/ Executive Officer I or equivalent
	SPR 220(b)	Assistant Engineer or equivalent	Engineer or equivalent
(ii)	not exceeding 50% of the quotation limit set out in		
	SPR 220(a)	Supplies Officer/ Executive Officer I or equivalent	Senior Supplies Officer/ Senior Executive Officer or equivalent
	SPR 220(b)	Engineer or equivalent	Senior Engineer or equivalent
(iii)	up to the quotation limit set out in		
	SPR 220(a) (i), (ii) and (iv)	Senior Supplies Officer/ Senior Executive Officer or equivalent	Chief Supplies Officer/ Chief Executive Officer or equivalent
	SPR 220(a) (iii)	Chief Supplies Officer/ Chief Executive Officer or equivalent	D1 or equivalent
	SPR 220(b)	Senior Engineer or equivalent	Chief Engineer or equivalent

The approving officer shall record on file the particulars such as the names and contact details of the service providers proposed to be contacted, a brief explanatory note on the decision (in case less than five written quotations are invited) and the reasons for their selection.

- (e) After the necessary approval under (d) is obtained, a public officer not lower than the rank of Assistant Engineer or equivalent (for services for construction and engineering works) or Assistant Supplies Officer/Executive Officer II or equivalent (for other services) shall contact the service providers for quotations.
- (f) Where written quotations are invited, departments shall ask the service providers to return the quotations in sealed envelopes, or submit the quotations through e-Procurement System or other electronic procurement system where applicable, or by electronic mail/facsimile in cases where the receipt of quotations by electronic mail/facsimile has been authorised by the approving officers for the issue of invitation under (d) above, by a specific time. A quotation opening team comprising two members, with the team leader at a rank not lower than that of Assistant Engineer or equivalent (for services for construction and engineering works) or Assistant Supplies Officer/Executive Officer II or equivalent (for other services), will open or vet the quotations received, and where applicable, date-stamp and initial the quotations. All written quotations received should be properly documented.

Acceptance of offer

280. (g) Provided that no less than five written quotations are received, public officers at the levels listed in column (A) of the table below are authorised to approve the acceptance of the lowest conforming offer or the conforming offer with the highest overall score (if a marking scheme is used). In cases where (i) less than five written quotations are received; (ii) less than five written quotations have been invited in accordance with SPR 280(d); or (iii) a higher conforming offer or a conforming offer not obtaining the highest overall score (if a marking scheme is used) is to be accepted under exceptional circumstances with full justifications, the approving authority is listed in column (B) of the table below —

	Value of the Purchase	Approving Officer (not lower than the rank of)	
		(A)	(B)
(i)	not exceeding 20% of the quotation limit set out in		
	SPR 220(a)	Supplies Officer/ Executive Officer I or equivalent	Senior Supplies Officer/ Senior Executive Officer or equivalent
	SPR 220(b)	Engineer or equivalent	Senior Engineer or equivalent
(ii)	not exceeding 50% of the quotation limit set out in		
	SPR 220(a)	Senior Supplies Officer/ Senior Executive Officer or equivalent	Chief Supplies Officer/ Chief Executive Officer or equivalent
	SPR 220(b)	Senior Engineer or equivalent	Chief Engineer or equivalent
(iii)	up to the quotation limit set out in		
	SPR 220(a) (i), (ii) and (iv)	Chief Supplies Officer/ Chief Executive Officer or equivalent	D1 or equivalent
	SPR 220(a) (iii)	D1 or equivalent	D2 or equivalent
	SPR 220(b)	Chief Engineer or equivalent	Government Engineer or equivalent

- (h) Except for procurement of services made through purchasing cards and e-purchases made by placing e-orders or as provided in SPR 290, departments shall use Departmental Order for Provision of Services (GF 220) or a Letter of Acceptance, as appropriate, for ordering services.

Urgent minor purchases

290. (a) Public officers may make minor purchases of services in cash or through purchasing cards to meet immediate needs, provided that the value of services does not exceed \$5,000 and the authorising officer not lower than the rank of Assistant Engineer or equivalent (for services for construction and engineering works) or Assistant Supplies Officer/Executive Officer II or equivalent (for other services) is satisfied that such purchases are essential and the rates obtained are reasonable and certifies this on file. For payments made in cash, the cost of such purchases will be reimbursed from a departmental imprest account. When claiming reimbursement, public officers shall use a Claim for Reimbursement of Expenses (GF 51). For these purchases, departments do not need to issue covering orders, but shall maintain a copy of the GF 51 issued for audit purpose.
- (b) Public officers not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent may make purchases of services to meet departmental needs while on official visits outside Hong Kong, provided that the total value of the purchase does not exceed \$25,000. Public officers making such purchases shall follow the same reimbursement procedure described in SPR 290(a).

PROCUREMENT OF REVENUE CONTRACTS BY DEPARTMENTS

295. (a) Departments shall follow the provisions set out in these Regulations for procurement of revenue contracts with a value not exceeding the quotation limit stated in SPR 220(a). When preparing specifications, departments may make reference to the Guidelines for Drawing Up Tender Specifications at Appendix III(F), where appropriate.

Authorisation and control

295. (b) **For procuring revenue contracts with a value not exceeding \$50,000**, departments should normally invite more than one potential bidder for quotations, and accept the highest conforming offer or the conforming offer with the highest overall score (if a marking scheme is used). Departments shall designate public officers of not lower than the rank of Supplies Supervisor II or equivalent to handle the selection of potential bidders and to contact them for quotations. Public officers contacting potential bidders for quotations shall record on file the particulars such as the names and contact details of the potential bidders contacted and details of the quotations received for audit purpose. The acceptance of an offer can only be approved by a public officer of not lower than the rank of Assistant Supplies Officer/Executive Officer II or equivalent. This public officer shall certify on file that the rates or amounts quoted are reasonable.

- (c) **For procuring revenue contracts with a value exceeding \$50,000 but not exceeding the quotation limit stated in SPR 220(a)**, departments should invite written quotations from not less than five potential bidders. For the purpose of this Chapter, written quotations by electronic mail, facsimile or post are accepted. Departments shall follow the same procedures for the procurement of services (excluding services for construction and engineering works) as laid down in this Chapter.

QUOTATION NEGOTIATIONS

296. Where it would be in the Government's interest to negotiate with a bidder or bidders in a quotation exercise, such negotiations should be conducted in a non-discriminatory manner. The approving officers specified in SPR 260(g) or SPR 280(g) may approve the initiation of the quotation negotiations if it is justified to do so. The acceptance of the negotiated outcome should be approved by public officers at least one rank higher than the officers approving the initiation of negotiation. Some guidelines on preparing for and conducting negotiations are provided at Appendix III(J) for general reference. They are not intended to be comprehensive.

CANCELLATION OF QUOTATION EXERCISE

297. The approving officers specified in SPR 260(g) or SPR 280(g) may approve the cancellation of the quotation exercise if it is justified to do so. The reasons for cancellation (such as no conforming offer received, the contract sum of recommended offer exceeds the quotation limit, or other reasons on grounds of public interest) should be recorded for audit purpose. Approval for cancellation of a quotation exercise is not required when no offer is received after the close of quotation invitation.

EXCEPTIONAL AUTHORISATION

298. In very exceptional cases, PS(Tsy) may authorise departments to make purchase of stores not in accordance with the requirements in this Chapter. For purchases of stores not in accordance with SPR 245-265, departments shall submit the requests through the DGL, who will forward them with his recommendations to PS(Tsy).

CHAPTER III

TENDER PROCEDURES

SCOPE AND COVERAGE

300. (a) The tender procedures set out in these Regulations shall be followed for procurement and disposal of stores, services, construction/engineering works and other items as well as for revenue contracts, with the exception of the following for which separate procedures shall apply —
- (i) procurement of stores, services and revenue contracts not exceeding the quotation limits specified in SPR 220. Quotation procedures are applicable;
 - (ii) franchises, concessions, leases, licences, tenancies and other items procured and disposed of by public auction or method laid down by statute, Government Regulations, or administrative procedure agreed by the PS(Tsy);
 - (iii) private treaty grants, exchanges, extensions and short-term tenancies of land under the approved “Abbreviated Tender System”;
 - (iv) procurement of consultancy services through quotation and consultants selection procedures in Chapters II and IV respectively;
 - (v) direct engagement of contractors/suppliers/service providers without recourse to tender procedures specified in SPR 331-333;
 - (vi) briefing out of legal work by the Secretary for Justice; and
 - (vii) employment of individual persons.
- (b) Where procurements are covered by WTO GPA and hence are subject to additional requirements, these are separately specified. Departments shall comply with the requirements of WTO GPA and related circulars/guidelines (as may be updated from time to time) which can be viewed at <http://portal.ccgo.hksarg/en/ia/DisplayIABByCat.jsf?cat=3766#3766> In estimating the value of a procurement for the purpose of ascertaining whether it is a procurement covered by WTO GPA, departments shall include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more contractors/suppliers/service providers, taking into account all forms of remuneration.

CLASSIFICATION OF INFORMATION

305. Information relating to tenders and contracts should be handled in the following manner —

- (a) All communications regarding tenders, from the time tender documents are prepared until a decision is made on the acceptance or otherwise of the tenders, must be classified as RESTRICTED (TENDER). Correspondence on prequalification and single/restricted tendering should also be classified as RESTRICTED (TENDER).
- (b) Contract documents and communications regarding contracts do not usually have a security classification. RESTRICTED will be an adequate classification for sensitive information relating to contract disputes, litigation, claims, etc. Information should only be classified as CONFIDENTIAL if its disclosure would be prejudicial to the interest of the Government of the Hong Kong Special Administrative Region (HKSAR).
- (c) COs and Chairmen of Tender Boards shall appoint public officers to open and handle classified correspondence relating to tenders and contracts on a need-to-know basis. Detailed instructions on the procedures for handling such correspondence shall be made in accordance with the provisions of the Security Regulations.

TENDER BOARDS AND OTHER APPROVING AUTHORITIES

- 310.
- (a) The Financial Secretary/SFST appoints the Central Tender Board (CTB), and has authorised PS(Tsy) to appoint subsidiary tender boards and COs to appoint DTCs each comprising not less than three persons to consider and decide on the acceptance of tenders or to advise on the acceptance of tenders up to the approved financial limits. The relationship amongst CTB, subsidiary tender boards and DTCs is provided in SPR 116.
 - (b) The CTB advises the PS(Tsy) on the acceptance of all tenders exceeding the financial limits of subsidiary tender boards. The CTB also advises or decides on matters concerning tenders, contracts and subsidiary tender boards generally in accordance with its terms of reference. In the case of serious disagreement among members of the CTB on the award of a contract, the Chairman, in his discretion, may refer the matter to the Financial Secretary/SFST for advice.
 - (c) In seeking advice or approval of the CTB (concerning, for example, tender reports, the use of a marking scheme for works contracts, deviation from the SMS Framework for the procurement of stores, services (excluding works contracts) and revenue contracts, or the conduct of prequalification exercise and the list of prequalified tenderers), departments shall send seven copies of the submission and the original copy to the Secretary, CTB. Submissions to the CTB must be signed or endorsed by the respective CO or his representative at directorate level. The CO concerned or his representative at directorate level may be requested or may himself request to attend CTB's meeting to present his recommendations or to answer any queries that the CTB may have (see also SPR 375).

- (d) There are currently two subsidiary tender boards, viz. the GLD Tender Board and the Public Works Tender Board. If there is a division of opinion on a contract award between members of a subsidiary tender board, the Chairman of the concerned subsidiary tender board should refer the matter to the CTB for advice. Subsidiary tender boards shall submit to the CTB at the end of the month concerned details of all contract awards where the lowest conforming offer (highest in the case of revenue contract), or the tender of the highest overall scorer in case a marking scheme is used in tender evaluation, has not been accepted and the reasons for making such awards.
- (e) Up-to-date information on the membership and terms of reference of the CTB and subsidiary tender boards is published in the Civil and Miscellaneous Lists of the Government of the HKSAR, which can be viewed at the website <http://www.info.gov.hk/cml/eng/cbc/c23.htm>.
- (f) COs shall establish in their departments a DTC consisting of not less than three persons and chaired by a directorate officer not lower than D2 rank who shall be at least one rank higher than the chairman of the TAP set up for that particular tender exercise to consider or decide on the acceptance of tenders for procurements within the financial limits specified in SPR 116.
- (g) If there is a division of opinion on a contract award between members of a DTC, the Chairman of the concerned DTC may refer the matter to his CO for ruling. DTCs shall submit to the relevant tender board at the end of the month concerned details of all contract awards where the lowest conforming offer (highest in the case of revenue contract), or the tender of the highest overall scorer in case a marking scheme is used in tender evaluation, has not been accepted and the reasons for making such awards.
- (h) COs are delegated the authority to personally approve —
 - (i) the award of all works contracts not exceeding \$30 million each and not subject to WTO GPA; and
 - (ii) the award of works contracts above \$30 million but not exceeding \$55 million each and not subject to WTO GPA provided they are awarded to the lowest conforming bidder or the highest overall scorer.

TYPES OF TENDERING

315. Departments should normally adopt open tendering for invitation of tenders. Under special circumstances and where approval from the concerned authorities have been obtained, departments may invite tenders in any of the alternative ways, namely selective tendering, single/ restricted tendering or prequalified tendering as provided for in SPR 320-330 below.

Open tendering

316. All interested contractors/suppliers/service providers are free to submit their tenders. Procedures and requirements on publications of tender notice for open tendering are set out in SPR 340.

Selective tendering

320. (a) Selective tendering is adopted when contractors/suppliers/service providers on the relevant approved lists of contractors/suppliers/service providers are invited to submit tenders.
- (b) It is a two-step, open bidding process which departments may establish lists of qualified contractors/suppliers/service providers for particular services or articles, where there is a frequent need to invite tenders for such services or articles but not all contractors/suppliers/service providers in the market are capable of providing the required services or articles. Normally, admission to the lists is accepted at any time and any contractor/supplier/service provider may submit an application. A contractor/supplier/service provider who has submitted a request for participation in a tender exercise but is not yet on the approved lists shall not be excluded from consideration on the grounds that there is insufficient time to examine the application for admission to the approved lists, unless, in exceptional cases, due to the complexity of the procurement, the department is not able to complete the examination of the application within the time-period allowed for submission of tenders. Notices of tender invitations should be published in the Government Gazette, on the Internet, and/or sent by letter to all contractors/suppliers/service providers on the relevant approved lists of qualified contractors/suppliers/service providers established for the purpose of selective tendering. For procurements covered by WTO GPA, in addition to SPR 340(c), departments shall notify and provide the notice of tender invitation to the contractors/suppliers/service providers on the relevant approved lists of qualified contractors/ suppliers/service providers that will be invited to tender. Detailed procedures and requirements on publication of notices of tender invitations are set out in SPR 340.
- (c) Except for the authority delegated for works contracts in (d) below, the PS(Tsy) is the approving authority for the establishment of lists of qualified contractors/suppliers/service providers for selective tendering. When applying to establish such lists, departments shall set out the justifications and provide information on the source of prospective applicants, qualification criteria, assessment panel and method of assessment. The qualification criteria and method of assessment shall not discriminate among foreign contractors/suppliers/service providers or between domestic and foreign contractors/suppliers/service providers. For procurements covered by WTO GPA, the qualification criteria shall be limited to those which are essential to ensure that the contractors/suppliers/service providers have the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurements. In establishing the qualification criteria, departments shall not impose the criterion that, in order for a contractor/supplier/service provider to participate in a procurement, the contractor/supplier/service provider has previously been awarded one or more contracts by an entity covered by the WTO GPA, but may require relevant prior experience where essential to meet the requirements of the procurement. Departments shall seek the prior approval of the PS(Tsy) before revising the qualification criteria and method of assessment.

- (d) For works contracts, the approving authority for the establishment of the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works and for revising the qualification criteria and method of assessment of the lists has been delegated to the Permanent Secretary for Development (Works). Departments shall follow supplementary procedures set out in relevant DEVB TC(W).
- (e) Departments establishing and maintaining approved lists of qualified contractors/suppliers/service providers for selective tendering shall publish a notice inviting interested contractors/suppliers/service providers to apply for admission to the lists in the home page on the Internet, which shall be posted continuously during the period of its validity. Such notice shall include, among other things, a description of the stores or services, or categories thereof, for which the lists may be used, the period of validity of the lists, the qualification criteria, the method of application and assessment and the means for renewal or termination, where applicable. A specimen is at Appendix III(A). Approved lists shall be reviewed regularly to ensure that new applications are processed promptly and that contractors/suppliers/service providers who cease to be qualified are deleted from the lists. In addition, new applications from contractors/suppliers/service providers for admission to the approved lists shall be allowed at any time and dealt with expeditiously. Departments shall promptly inform the contractors/suppliers/service providers of their decisions and, on request of the contractors/suppliers/service providers, promptly provide them with a written explanation of the reasons for their decisions. Updating of the lists according to the approved qualification criteria does not require further approval from the PS(Tsy).

Single and restricted tendering

325. (a) For single or restricted tendering (referred to as limited tendering under WTO GPA for which the conditions for invoking limited tendering are also specified therein), tenders are invited from only one or a limited number of contractors/suppliers/service providers. Single or restricted tender procedures shall only be used in circumstances when open competitive tendering would not be an effective means of obtaining the requisite stores or services or for procuring revenue contracts. They shall not be used for the purpose of avoiding competition among contractors/suppliers/service providers or in a manner that discriminates against non-local contractors/suppliers/service providers or protects local contractors/suppliers/service providers. Examples that may justify the use of single or restricted tendering procedures include —
- (i) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring department, the stores, services or revenue contracts could not be procured in time using open tendering or selective tendering;

- (ii) where the requirement is for a work of art, or where for the protection of patents, copyrights or other exclusive rights, or due to an absence of competition for technical reasons, the stores, services or revenue contracts can be supplied or provided only by a particular contractor/supplier/service provider and no reasonable alternative or substitute exists;
 - (iii) where no tenders were submitted or no contractors/suppliers/service providers requested participation, or no tenders that conform to the essential requirements of the tender documentation were submitted, or no contractors/suppliers/service providers satisfied the conditions for participation, or the tenders submitted have been collusive, provided that the requirements of the single or restricted tendering do not substantially differ from the previous requirements of open or selective tendering;
 - (iv) where the procurement is for additional deliveries by the original contractor/supplier/service provider of stores or services that were not included in the initial procurement, and a change of contractor/supplier/service provider for such additional stores or 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;
 - (v) where the procurement is for purchasing a prototype or a first good or service that is developed at the request of the procuring department(s) in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of the field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
 - (vi) where services are to be provided by utility companies; and
 - (vii) where lease terms require that work must be executed by a particular firm.
- (b) Single or restricted tender procedures shall only be initiated with the prior approval of the following officers –
- (i) COs personally for stores, services (excluding works contracts and consultancy) and revenue tenders invited by the department within the departmental limit specified in SPR 220(a). The same requirement also applies if departments choose to adopt single or restricted tender procedures for these procurements within the quotation limit;

- (ii) DGL or his delegated officers for tenders arranged by GLD (GLD tenders); and
- (iii) PS(Tsy) for tenders other than (i) and (ii) above.

Requests for inviting single or restricted tenders for the supply of stores exceeding the departmental limit specified in SPR 220(a) other than through a GLD contract should be routed via the DGL, who will forward them, with his recommendations, to the PS(Tsy) for approval.

COs should follow relevant guidelines set out in FC No. 2/2019 (as may be updated from time to time) in deciding whether single or restricted tendering should be initiated. Requests for single or restricted tendering, irrespective of value, should be signed or endorsed by a public officer at directorate level. After obtaining approval for the initiation of single or restricted tenders, departments shall submit their recommendations to the relevant tender board/DTC for consideration of the acceptance of tenders in accordance with the financial limits as set out in SPR 116.

- (c) Departments shall advise tenderers invited to tender under the single or restricted tender procedures to submit their tenders in the same manner as open or selective tender procedures. Tenderers shall not be informed that tenders are being invited on a single or restricted basis. Notices of tender invitation shall be sent by letter to the tenderers.
- (d) When seeking approval to adopt single or restricted tendering procedures, departments should —
 - (i) describe the background of the case, the stores or services to be procured or the source of revenue;
 - (ii) state the estimated cost or revenue;
 - (iii) explain why open tenders should not be invited;
 - (iv) if time constraint is the reason for proposing single or restricted tendering, explain why the tender exercise could not have been initiated earlier and why the additional time required for open tendering would harm the public interest;
 - (v) if a shortlist of contractors from whom tenders are to be invited is recommended, explain how the shortlist is drawn up, elaborating specifically on the criteria used for the shortlisting, and the professional capability and experience of all the contractors considered, including those not shortlisted;
 - (vi) obtain the support from the relevant policy bureau (for cases requiring approval from PS(Tsy));

(vii) seek and attach the legal advice from D of J or Legal Advisory Division (Works) of DEVB (LAD(W)/DEVB) on the proposed single/restricted tendering from the WTO GPA perspective; and

(viii) advise on how it plans to procure the contract in the longer term.

Prequalified tendering

330. (a) There may be circumstances which require the prequalification of a list of tenderers that are financially and technically capable of undertaking a particular project or supplying a particular product. These include projects which require pre-testing of equipment to determine its suitability; projects of an extremely complex nature, high value or subject to very rigid completion programmes; projects which call for a high level of co-ordination, technical expertise, or a non-standard form of contract, e.g. Build-Operate-Transfer or specific types of Design-and-Build contracts; and products which are critical to the user departments.
- (b) PS(Tsy) approves, on the advice of CTB, for the use of prequalified tendering and the evaluation criteria for prequalifying applications. A request for approval to conduct prequalification should contain all necessary information as shown in the format at Appendix III(B).
- (c) Invitations for prequalification shall be published in the Government Gazette. The invitation may also be published on the Internet, local press and selected overseas journals for the particular trade/product or any other means deemed appropriate. Consulates and trade commissions in Hong Kong and known contractors/suppliers/service providers may be notified of the invitation by letter, where appropriate. A specimen Gazette notice is shown at Appendix III(C). For procurements covered by WTO GPA, please refer to SPR 340(c).
- (d) Applications may be received by the procuring department direct provided there are proper procedures for the receipt and registration of the applications. Procuring departments may also require applications to be deposited in the Government Secretariat Tender Box, in which case, the Secretary, CTB should be informed in advance and the closing time for submission of applications must be fixed as noon on a working Friday.
- (e) Having assessed all the applications according to the evaluation criteria previously endorsed by the CTB, the procuring department should make a recommendation to the CTB on a list of prequalified applicants from whom tenders will be invited. The submission (in the format shown at Appendix III(D)) should contain an analysis of the strengths and weaknesses of all the applicants and detailed reasons why an applicant should be prequalified or rejected.
- (f) Notice of tender invitation shall be sent by letter to the prequalified tenderers and contain information as specified in SPR 340(e) and Appendix III(E), where applicable.

- (g) Any changes in the material particulars of the prequalified tenderers which occur between the prequalification and final tendering exercise will require the endorsement of the CTB. Procuring departments shall advise prospective applicants in the prequalification document that the Government may permit changes to the status of a prequalified tenderer at its discretion and may disqualify a prequalified tenderer at any time prior to acceptance of the tender, if a prequalified tenderer has ceased to be able to meet the prequalification requirements.
- (h) Unless with the prior approval of PS(Tsy) who decides on the advice of the CTB, a prequalification exercise is conducted specifically for a particular project or product, and the list of prequalified tenderers will normally remain valid for one year.

DIRECT ENGAGEMENT

331. Direct engagement of a contractor/supplier/service provider without recourse to tendering procedures should only be used in circumstances when open/selective/restricted/single tendering would not be an effective means of obtaining the requisite stores or services or procuring revenue contracts, supported with very strong justifications. Where the procurement under a direct engagement is covered by the WTO GPA, procuring departments should refer to Article XIII of the WTO GPA, and seek legal advice from D of J or LAD(W)/DEVB if in doubt on the application of the relevant WTO GPA provisions.

332. The authority to approve the initiation of direct engagement and acceptance of offer under direct engagement rests with PS(Tsy). For direct engagement of a contractor/supplier/service provider for the procurement of stores, services (excluding works contracts and consultancy) and revenue contracts not exceeding the departmental limit specified in SPR 220(a), this authority has been delegated to COs personally. Requests for direct engagement, irrespective of value, should be signed or endorsed by a public officer at directorate level.

333. In exercising the delegated authority, the approving authorities should observe relevant guidelines set out in FC No. 2/2019 (as may be updated from time to time). When seeking approval to adopt direct engagement, in addition to those listed in SPR 325(d), as no bidding process is involved, departments should also include the contracting strategy having regard to the need to protect the Government's interest and public perception, as well as negotiation strategy with the baseline position on the cost or revenue, if applicable.

FUNDING

337. (a) For works contracts funded under the Capital Works Reserve Fund, COs shall adopt parallel tendering, i.e. invite tenders before funding is secured, unless they consider, upon the conduct of risk assessment, that the benefits of parallel tendering (in terms of time saving, greater certainty in the Approved Project Estimate to be sought, etc.) are outweighed by the risks involved (in terms of abortive tendering work in case the approving authority does not approve the project concerned or impose conditions not envisaged in the tender, risk of Government being seen to be pre-empting Finance Committee/ Legislative Council, etc.). For procurements of estimated value exceeding \$30 million, prior approval from the relevant Directors of Bureaux (or Permanent Secretaries if authorised by the Directors in writing to do so) is required for exemption from parallel tendering.
- (b) For other contracts, COs may adopt parallel tendering, i.e. invite tenders before funding is secured, provided they are satisfied, upon the conduct of a risk assessment, that the benefits of parallel tendering (in terms of time saving, greater certainty in the Approved Project Estimate to be sought, etc.) outweigh the risks involved (in terms of abortive tendering work in case the approving authority does not approve the project concerned or impose conditions not envisaged in the tender, risk of Government being seen to be pre-empting Finance Committee/ Legislative Council, etc.). If the estimated value of the procurement exceeds \$30 million, COs shall seek the prior approval of their Directors of Bureaux (or their Permanent Secretaries if authorised by the Directors in writing to do so) to adopt parallel tendering.

338. When parallel tendering is adopted, COs must reflect correctly in such tender invitations that funding approval has not been obtained and remind tenderers that Government is not responsible for their costs of preparing the bids. As a general principle, COs should not award a contract and should not indicate to the successful bidder that Government would accept its bid unless and until funding for that contract is secured. Conditions for contract award are set out in FC No. 3/2020 (as may be updated from time to time).

TENDER NOTICES AND TENDERING PERIOD

340. (a) Departments wishing to publish tender notices in the Government Gazette (normally published on Friday) shall follow the procedures set out in General Regulations 103-105, and forward three copies of the draft notice in Chinese and English by 3:30 p.m. on Tuesday to the Official Languages Division of Civil Service Bureau, which will forward them to the Assistant Clerk to the Executive Council after vetting the Chinese translation. Departments should also send an additional copy of the notice to the DGL not later than 2:30 p.m. on Tuesday. A specimen Gazette tender notice is at Appendix III(E). Such notices should generally appear in two consecutive issues of the Government Gazette but can be published in more than two issues, if the procuring department deems appropriate.

- (b) Procuring departments may publish tender notices on the Internet, in the local and/or international press and journals or any other means deemed appropriate in addition to the Government Gazette. For placement of advertisements in the press, departments should make arrangements with the Director of Information Services direct.
- (c) For procurements covered by WTO GPA, procuring departments shall publish the tender notices and the notices of invitations for prequalification in the Government Gazette. They should also consider notifying consulates and trade commissions in Hong Kong of the tender invitations, where appropriate.
- (d) For works contracts not exceeding \$55 million and other procurements which are not subject to WTO GPA, it would suffice to only publish tender notices on the Internet, as set out in FC No. 3/2009 (as may be updated from time to time). Publication in the Government Gazette, and/or local and/or international press and journals is optional.
- (e) Tender invitations shall indicate clearly the name and address and telephone/fax number/e-mail address of the office from which forms of tender and further particulars may be obtained and other information necessary to contact the office and obtain the relevant tender documents, the exact location of the tender box in which tenders are to be deposited, and the closing date and time for the receipt of tenders. For procurements covered by WTO GPA, departments will have to send to any interested tenderer a set of the tender documents upon receipt of a written request and may charge the tenderer for the cost of the delivery. Tender notices shall specify whether the intended procurement is covered by WTO GPA. Tenderers should be advised that late tenders or misplaced tenders by tenderers will not be accepted. They should also be informed of the possible extension of tender closing date/time in the event of tropical cyclone signal No. 8 or above being hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government being in force, or any possible scenarios of blockage of public access to the location of a tender box at the original tender closing date/time.
- (f) Adequate time shall be provided to allow both local tenderers and tenderers outside Hong Kong to prepare and submit tenders. A minimum of three weeks is normally required. As an exception, for works contracts not exceeding \$55 million and other procurements which are not subject to WTO GPA, COs may allow a period of less than three weeks for the preparation and submission of tenders as set out in FC No. 3/2009 (as may be updated from time to time) provided that it is commensurate with the complexity of tenders and normally not less than ten days. For procurements covered by WTO GPA, at least 40 days shall be allowed for receipt of tenders and no less than 25 days for applications to be prequalified to tender. In the case of extreme urgency, departments will have to seek the prior approval of the PS(Tsy) for reducing the period for receipt of tenders. This authority has been delegated to the DGL or his designated officers in respect of GLD tenders and tenders for the supply of stores not exceeding the departmental limit specified in SPR 220(a).

- (g) Tenderers must submit the required number of copies of tenders in a sealed cover. Tenderers should be advised not to give any indication on the cover of their tenders which may relate them to a particular contractor/supplier/service provider. Pre-addressed envelopes or labels for the return of tenders should, as far as possible, be provided to tenderers.

TENDER DOCUMENTS

345. (a) Departments should normally use the following standard contract forms when inviting tenders —
- (i) Tender for the Supply of Goods (GF 230).
 - (ii) Tender for Services (GF 231).
 - (iii) Tender for the Purchase of Articles or Materials from the Government of the HKSAR (GF 232).
 - (iv) Articles of Agreement and General Conditions of Contract for various types of works contracts.
 - (v) Standard Terms and Conditions (Tender for the Supply of Goods, Tender for the Provision of Services, Tender for Purchase of Articles or Materials from the Government of the Hong Kong Special Administrative Region) issued by GLD.
 - (vi) Standard Terms and Conditions for IT tenders for the design, supply, implementation and maintenance of IT systems issued by the Office of the Government Chief Information Officer.
- (b) When using standard contract forms to invite tenders, departments may delete or amend any clauses appearing on the forms by way of Special Conditions of Contract but only after consulting D of J or, in the case of works tenders, LAD(W)/DEVB. In case departments consider that the standard contract forms are not suitable for use in their tender exercises even if amendments to the clauses are made, they may design and use their own non-standard contract forms to meet specific requirements of their contracts. Departments must clear with the D of J or, in the case of works tenders, LAD(W)/DEVB regarding the terms and wordings of the non-standard contract forms before they can be used in tender exercises. Reference may also be made to A General Guide to Outsourcing prepared by EffO (as may be updated from time to time) for guidance.
- (c) Departments shall ensure that a complete set of tender documents covering the following is issued to all tenderers —

- (i) Terms of Tender including the conditions which a tenderer has to observe when submitting a tender, the tender validity period, the currency to be used for the contract, the dates for the delivery of goods or services, any limitation on the means by which tenders may be submitted, etc. and where the tenders may be submitted by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (ii) General Conditions of Contract covering the conditions which the contractor has to comply with in executing the contract;
- (iii) Special Conditions of Contract covering any conditions peculiar to the contract;
- (iv) Offer to be Bound or Form of Tender;
- (v) tender specifications (see SPR 350);
- (vi) bills of quantities or quantities required of the contract where applicable; and
- (vii) detailed price schedules or schedule of rates where applicable.

For procurements covered by WTO GPA, departments shall include the Note to Tenderers at Appendix III(E)1 in the tender documents. For procurements that a trading fund is likely to take part in the bidding exercise, departments should include the Note to Tenderers and Condition of Tender at Appendix III(E)2 in the tender documents.

- (d) If a non-works contract has an estimated value exceeding \$300 million, the department must send all the non-standard components of the tender documents, i.e. bills of quantities, particular specifications, special conditions of contract, to the D of J for vetting before the tender documents are issued to potential tenderers. If the vetted documents require substantial amendments after they have been issued to tenderers, they should be legally vetted again before the tender addendum is issued or, as the case may be, the contract is awarded. For a non-works contract with an estimated value not exceeding \$300 million, the CO (or his designated officer(s) at the rank not lower than Chief Supplies Officer/ Chief Executive Officer or equivalent) may decide if legal vetting is required for the non-standard components of the tender documents. If a department considers that the Special Conditions of Contract previously cleared with D of J pursuant to SPR 345(b) may be used with only insignificant and immaterial changes for a subsequent contract with an estimated value not exceeding \$300 million, the CO (or his designated officer(s) at the rank not lower than Chief Supplies Officer/ Chief Executive Officer or equivalent) may decide if the Special Conditions of Contract with the said changes need to be legally vetted. For legal vetting of works contracts, departments should refer to the relevant DEVB TC(W), memo or guidelines promulgated by DEVB.

- (e) Departments shall promptly make available tender documents to ensure that potential tenderers have sufficient time to submit responsive tenders and provide, on request, the tender documents to any potential tenderers. COs may decide whether to recover the cost of the tender documents from the tenderers.

ACCESS TO TENDER INFORMATION

346. Departments may receive requests for tender information from time to time. As a matter of principle, departments must ensure that the disclosure of tender information will not undermine the integrity of the tendering system, and that the prevailing Code on Access to Information is observed. Legal advice should be sought if in doubt.

347. In responding to questions or requests by tenderers, departments should observe SPR 346 and the following guidelines –

- (a) normally, departments should not disclose the estimated contract value to the potential tenderers as it may become a guiding factor in the preparation of their tender proposals, which may be reduced or, of even more concern, expanded unnecessarily, thus undermining the principles of competition and value for the money. If, however, the estimated contract value has been disclosed to the public, departments should, in all fairness, inform all potential tenderers known to the departments of the estimated contract value;
- (b) to facilitate submission of tenders, departments should respond to questions from tenderers in a timely manner. Responses to tenderers' questions should, as a general rule, be made within ten working days. An interim reply should be issued if a substantive reply cannot be made within the above timeframe;
- (c) information essential in enabling a tenderer to submit a conforming tender (e.g. clarifications on the terms, conditions and specifications of tender) should be provided. For fairness, departments should provide the same information to all potential tenderers known to the departments (or publish on department's website in case of open tender) as soon as possible and in any case before the closing date for receipt of tenders;
- (d) a tenderer can be advised of any previous record kept of his performance as he is entitled to know and to make representations against any adverse comments likely to be reflected in the assessment made to the relevant tender board/DTC;
- (e) an unsuccessful tenderer is entitled to know the reasons why his tender was unsuccessful. However, departments should ensure that the details provided do not touch on the tender information provided by another tenderer in confidence; and
- (f) any information relating to another tenderer could only be provided with the express agreement of the tenderer in question.

348. For requests for tender information made by the public, departments may provide, under the principle of SPR 346,–

- (a) particulars of a contract, the category of tenderers invited to tender for the contract, and the closing date/time for receipt of tenders; and
- (b) the number of tenders received for a particular contract, the name of the successful tenderer, the accepted tender sum and the date of the award of the contract. Information on the winning tender should only be provided after the contract has been executed with the successful tenderer.

349. Under no circumstances should a department make available the following information to either a tenderer or a member of the public –

- (a) minutes of the tender board/ committee recording the deliberations made on a certain contract; and
- (b) the method statement and plan proposed by the successful tenderer to execute the contract, the financial position and technical capability of a tenderer and any information provided in a confidential manner by a tenderer without the express agreement of the tenderer.

TENDER SPECIFICATIONS

350. (a) Departments shall ensure that tender specifications which define the requirements of the contract are drawn up in a manner which meets the government procurement policy and principles specified in SPR 106-109. Tender specifications shall not be prepared, adopted or applied and conformity assessment procedures shall not be prescribed with the purpose or the effect of creating unnecessary obstacles to international trade or to competition amongst the potential tenderers. To encourage competition and minimise entry barriers (particularly for start-ups and Small and Medium-sized Enterprises (SMEs)), as a general rule, tenderer's experience should not be set as an essential requirement in non-works tenders, irrespective of value. If it is absolutely necessary, prior approval must be sought from the relevant tender board/DTC for procurements adopting marking schemes under tendering procedures, or public officers (normally at directorate level) designated by COs for procurements not adopting marking schemes under tendering procedures. The justifications for seeking exception from the general rule and the grounds for approval should be properly recorded. Where appropriate, tenderer's experience may be set as an assessment criterion in the marking scheme as a desirable feature.
- (b) When inviting tenders under whichever tendering mode, departments shall set tender specifications in easily comprehensible general terms based on the functional and performance requirements of the stores or services required, and not around the technical data of a certain model of the goods or equipment to be purchased. There shall be no requirement for or reference to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer, supplier or service provider, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and words such as "or equivalent" are included in the tender documents. Where standards are referred to, departments shall use, where practicable, international standards.

- (c) While specifications need to be comprehensive providing sufficient information for tenderers to formulate their bids, departments should guard against over-prescribing requirements. Departments are also encouraged to adopt output- or performance-based, rather than input-based, specifications. Over-prescription or input-based requirements may perpetuate incumbent advantage inhibiting competition and leading to over-reliance on a single contractor. It may discourage the participation of innovative tenderers who are able to deliver the contractual requirements with alternative methods or fewer resources than those proposed in the tender document, hence not conducive to obtaining the best value for money for Government.
- (d) Departments shall set out in tender document all requirements and evaluation criteria that will be applied in deciding on the suitability of tenders.
- (e) Departments are encouraged to conduct a market research or non-binding EOI exercise to better understand the goods or services likely to be available in the market, technological trends, number of potential bidders, etc., in particular for procurements involving mission-critical or high-value contracts, or contracts with poor tender response in the past procurement exercise, or the potential for innovation of the procurement needs to be further assessed. Such information is useful to ensure proper design of the tender specifications including essential requirements in order to obtain responsive and competitive tenders. Some guidelines for drawing up tender specifications are provided for general reference at Appendix III(F).
- (f) When tenders are called for the execution of a project or the provision of services on the basis of a schedule of prices or rates, departments shall provide in the tender document some indication of the estimated quantity, value and scope of the contract and any other related information in order to obtain realistic and competitive tenders. Likewise, tender documents for term contracts should provide details of quantities based on past contracts (if any). But in both cases, it should be made clear that such figures are quoted only for the reference of tenderers, and that the Government cannot guarantee that the requirements under the proposed contract will be comparable.
- (g) For term contracts involving a large number of items and for which it would be impracticable to state the approximate quantities, the schedule of items shall be pre-priced, enabling the tenderers to express their offers in terms of a flat percentage variation. In such cases, tenderers shall be advised of the likely expenditure under the proposed or previous contract, with the proviso that the Government does not commit itself to the estimated expenditure under the proposed contract. When the tenders received are subsequently evaluated, the same estimates and requirements as those of which tenderers have been informed in the documents shall be employed in calculating the estimated total value of each tender.
- (h) To ensure adequate room will be in place in the tender evaluation process to assess innovative suggestions, departments are encouraged to adopt marking schemes. Marking schemes should be clear and objective so as to provide a level playing field for bidders and encourage innovative suggestions. In formulating marking schemes, departments should bear in mind user-

friendliness and ensure that they are commensurate with the nature, scale and value of the tender concerned. Departments should follow the Guidelines for Adopting a Marking Scheme at Appendix III(G) in formulating marking schemes. For non-works tenders, COs should designate officers (normally at directorate level) to approve cases not using a marking scheme for tender evaluation.

- (i) For non-works tenders, departments should formulate marking schemes based on the SMS Framework promulgated in FC No. 2/2019 (as may be updated from time to time). The normally allowed range of technical weighting is 50%-70%, and that of the price weighting is 30%-50%. Departments are required to reserve a minimum percentage of technical marks for assessing innovative suggestions as per FC No. 2/2019. No prior approval from the relevant tender board/DTC will be required if marking schemes are formulated according to the SMS Framework. Any deviation from the SMS Framework, such as adopting a technical weighting above 70%, or departing from the permitted range of marks for specified types of assessment criteria, will be subject to the prior approval from the relevant tender board/DTC before tender invitation. However, for service contracts that rely heavily on the deployment of non-skilled workers, no exception will be allowed for adopting a technical weighting below 50%, or assigning lower than 25 marks (out of a total technical marks of 100) (i.e. 25% of the total technical marks) for the assessment criterion on “wages”.
- (j) For works tenders, unless authority has been specifically delegated to departments or there exists standard marking schemes for individual procurement set out in relevant DEVB TC(W) and guidelines, the use of a marking scheme or deviation from the standard marking scheme requires the prior approval of the relevant tender board. When seeking approval for the use of a marking scheme or deviation from the standard marking scheme for individual procurements, departments shall provide a brief description of the contract/project to be procured, its estimated value, justifications for the use of the proposed marking scheme or deviation from the standard marking scheme, the respective weighting for technical and price assessment, the assessment criteria and their relative weighting with passing mark(s) if any. Departments shall follow guidelines on the use of standard marking schemes set out in the relevant DEVB TC(W) and administrative procedures relating to design and build contracts.
- (k) For tenders for service contracts that rely heavily on the deployment of non-skilled workers, departments shall observe the guidelines promulgated in FC No. 2/2019 and FC No. 3/2019.
- (l) Departments should state in the tender documents the use of a marking scheme in tender evaluation with an outline of the evaluation criteria. In line with the basic government procurement principle of transparency, departments should provide information (including descriptions of assessment criteria and their individual technical marks, passing marks (if any) set for technical assessment, formula to be used to calculate the technical/price scores, the technical to price assessment weighting, etc.) in the tender documents to facilitate tenderers' preparation of competitive and quality tender submissions.

- (m) In case of re-tender, departments should, in the light of the degree of market competition in the past procurement exercises, review and refine the tender specifications as well as essential requirements and marking scheme with a view to encouraging competition.

TENDERS IN FOREIGN CURRENCIES

355. (a) In general, contract sums for government contracts should be quoted and paid in Hong Kong dollars. In order to avoid tenderers putting in an unreasonable amount of allowance in their quotations to cover exchange risks for the contract period, departments may allow tenderers to quote in foreign currencies subject to the following conditions —
- (i) the goods or equipment offered are manufactured outside Hong Kong and form a significant part of the contract or the estimated total value of the “overseas” element exceeds HK\$500,000;
 - (ii) unless otherwise agreed by the department concerned, the foreign currency quoted must be the currency of the country supplying the goods or equipment, and more than one currency may be quoted if items from more than one foreign country are involved;
 - (iii) local materials and labour should be priced in Hong Kong dollars, which generally should include materials manufactured outside Hong Kong but which require a substantial amount of further processing in the HKSAR; and
 - (iv) services provided by personnel based outside Hong Kong and salaried in a foreign currency may be quoted in that foreign currency.
- (b) Tenders likely to cost HK\$10 million or more cannot be quoted in a foreign currency, other than US dollars, unless with the prior approval of the PS(Tsy), who must be satisfied that a refusal to allow tenderers to quote in a foreign currency other than US dollars will significantly reduce the degree of competition in tendering to the detriment of the public interest.
- (c) For tender comparison purpose, quotations in foreign currencies must be converted to Hong Kong dollars. The conversion is to be based on the selling rate of the relevant currency quoted by the Hong Kong Association of Banks on the tender closing date. Tender boards/DTCs, in considering recommendations for the award of contracts, will also take into consideration any significant fluctuations in exchange rates after the tender closing date. Departments should state in tender reports the converted tendered sums based on the exchange rates of the tender closing date and the date of tender report and should indicate whether the ranking of the tendered sums has changed as a result of these two bases.

TENDER DEPOSITS/ BONDS

360. A tender deposit/ bond is not normally required. Where a tender deposit/ bond is required as a pledge of the tenderer's good faith (as in the case of revenue contracts), the tender documents shall specify the amount of the deposit/ bond and the methods of payment (whether by cheque, cashier order, a bond in the form of guarantee arranged by a bank and/or presentation of original receipts along with the tender) and refund. The amount of tender deposit/ bond should not be excessive. Tender deposits/ bonds will be refunded to unsuccessful tenderers without interest.

CONTRACT DEPOSITS/PERFORMANCE BONDS

361. Successful tenderers may be required to pay a contract deposit (in the form of cash) or submit a performance bond to the Government within a specified period before contract signing (rather than at the time of tender submission) as security for the due and faithful performance of the contract. A performance bond may be in the form of a guarantee arranged by a bank, insurance company, or the parent company (which has been assessed to be financially capable) of the tenderer.

362. (a) For works contracts, departments should follow the guidelines on contract deposits and performance bonds laid down in the relevant DEVB TC(W). COs may adopt a flexible and pragmatic approach in considering whether contract deposit or performance bond or other options of performance guarantee is needed.
- (b) For non-works contracts, unless otherwise personally approved by the CO, successful tenderers are required to pay a contract deposit or provide a performance bond as follows —

Contract value		Contract deposit or performance bond*
(A)	Stores contracts	
	<ul style="list-style-type: none"> ● ≤ \$1.4 million ● > \$1.4 million 	<ul style="list-style-type: none"> ● Not required ● 2%
(B)	Service contracts	
	≤ \$1.4 million	● Not required
	> \$1.4 million and ≤ \$15 million	● 2%
> \$15 million [#]	<ul style="list-style-type: none"> ● 2% if passes financial vetting ● 5% if fails financial vetting for low risk contracts ● 6% if fails financial vetting for high risk contracts <p>Periodic financial vetting + closer contract monitoring needed for high risk and long duration contracts</p>	

(C)	Revenue contracts	Not required but departments may conduct financial vetting and/or require contract deposit in individual cases if considered necessary.
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* Expressed in terms of % of contract value. The stipulated percentage should apply unless personally approved by the CO.

Including contracts for supply of stores which require also the provision of services of a value exceeding \$15 million.

(c) Requirements on contract deposit or performance bond shall be stipulated in the tender documents, including the amount required, the payment method and the rights of the Government to decide whether the guarantor is acceptable and to refuse the offer from any tenderer which fails to meet the Government's requirements.

(d) Contract deposits shall not be refunded until the contract has been completed according to the terms of the contract. Likewise, performance bonds must be maintained in force until the contractor has duly performed all his obligations under the contract.

RETENTION MONEYS

363. To protect the interest of the Government, departments may include in the payment schedule for the contractor a right for the Government to hold back a certain sum as retention money, which will not be released to the contractor upon completion of the contract until the Government is fully satisfied, after a period of time, with the goods delivered or the service provided. The amount of retention money is normally pitched at no more than 5% of the contract value. For works contracts, departments shall follow guidelines in the relevant DEVB TC(W).

RECEIPT AND CLARIFICATION OF TENDERS

365. (a) Tender opening procedures should commence immediately when the deadline for tender submission is due. Except for tenders for procurements with a value not exceeding the departmental limit specified in SPR 220(a) received by departments which have set up their own tender boxes, one copy of the duplicates of the tenders received will be kept by the relevant tender board after the tenders have been opened and authenticated by the tender opening team. The originals and the remaining duplicates of the tenders will be sent to the procuring department for assessment.

- (b) After receipt of the original tenders from the tender opening team, the procuring department should check that the tenders contain, inter alia, the names and addresses of all partners (if the tender is submitted by a partnership) or offices (if the tender is submitted by an unincorporated body) and the number of the business registration certificate (or documentary evidence showing that the tenderer is exempted from business registration under the Business Registration Ordinance (BRO) (Chapter 310)).
- (c) Where certain tender information is found missing or where a tender contains some ambiguities, qualifications or counter-proposals, departments should consider carefully whether to seek the missing information or clarification from the relevant tenderer. In general, departments shall keep such post-tender closing contacts with tenderers to the minimum. They shall record clearly and in full all such contacts. Most importantly, they must ensure that such contacts will not give a tenderer any advantage or perceived advantage over other tenderers.
- (d) The opportunities that may be given to tenderers to correct unintentional errors of form (for instance, clerical errors) shall not be permitted to give rise to any discriminatory practice.
- (e) Where the provision of certain information is specified as an “essential requirement” in the tender documents and it is stipulated that non-compliance with it will render the tender non-conforming, the tender shall be considered as non-conforming if such information is not submitted. Departments shall not approach the concerned tenderer for the missing information. For instance, submission of an execution plan which will be taken into account in the tender evaluation is by its nature an essential requirement. Hence, it should be so specified in the tender documents with the stipulation that any non-compliance of this requirement will render the tender non-conforming. Where submission of certain information is not specified as an essential requirement but it is specified in the tender documents that failure to provide such information will render the tender non-conforming, the tender shall also be considered as non-conforming if such information is not submitted.
- (f) Where the provision of certain information is not specified as an “essential requirement” in the tender documents and there is no stipulation that its non-compliance will render the tender non-conforming, departments may approach the concerned tenderer for such missing information if it relates to factual information and there is no room for manipulation by a tenderer by virtue of late submission of such information. In other cases, departments shall assess a tender with certain information missing as it is.
- (g) In approaching a tenderer for clarification, departments must not provide any information that may assist the tenderer to improve his tender to the level of tenders from other tenderers.
- (h) In case of special circumstances requiring different consideration, departments shall seek the advice of the D of J or, in the case of works tenders, LAD(W)/DEVB and/or the relevant tender board or DTC.

- (i) If a clarification or correction results in an adjustment of the tendered sum, the department shall ask the tenderer to confirm whether he is prepared to abide by the adjusted tendered sum. If the tenderer refuses to so abide, the department shall consult the D of J or, in the case of works tenders, LAD(W)/DEVB on how to deal with the tender. Under no circumstances may a department reject a tender as a qualified bid (expressly or otherwise) without the approval of the relevant tender board, except that for works tenders with a value not exceeding \$55 million each which are not subject to WTO GPA and tenders for procurements with a value not exceeding the departmental limit specified in SPR 220(a), the authority to reject a tender as a qualified bid has been transferred to COs and DTCs respectively. For works contracts, departments shall observe further guidelines on the clarification of tenders and correction of errors as laid down in relevant DEVB TC(W).

EVALUATION OF TENDERS

370. (a) Tender evaluation should normally be conducted by a TAP consisting of not less than two persons. Departments should observe the guidelines on the establishment and operation of the TAP set out in Appendix III(G)1. For works tenders, departments should also follow the guidelines laid down in the relevant DEVB TC(W) currently in force issued by the DEVB.
- (b) The TAP shall examine tenders against the technical specifications, essential requirements, terms and conditions laid down in the notices of tender invitations and tender documents to determine whether they are fully conforming. In recommending a tender for acceptance, the department should also take into account the following in the evaluation, as appropriate —
- (i) technical and financial capability of the tenderers and their past performance records. For works contracts, the guidelines laid down in the relevant DEVB TC(W) currently in force issued by the DEVB shall be followed. For service contracts of a value exceeding \$15 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$15 million, financial vetting shall be conducted of a tenderer who is being considered for the award of the contract in order to ensure that the tenderer is financially capable of fulfilling the contract requirements (see Appendix III(H));
 - (ii) timely delivery or completion;
 - (iii) compatibility with existing or planned purchases;
 - (iv) after sale support and service including maintenance and spare parts provision, warranty and/or guarantees;
 - (v) running and maintenance costs; and
 - (vi) fair market prices.

Requirements (ii)-(iv), where applicable, should be included in the tender specifications. In respect of requirement (v), departments should ask tenderers to provide an estimate of running and maintenance costs for the equipment or system supplied to enable a fair price comparison to be made.

- (c) Where a marking scheme is used in the evaluation of tenders, TAPs shall assess the tenders according to the criteria set out in the tender documents. Normally, the tender which attains the passing marks (if any) and the highest overall score under the marking scheme should be recommended. The methods for evaluating technical and price proposals are set out at Appendix III(G).
- (d) In normal circumstances, departments shall determine the ranking of the tenders received according to the original tender prices or the adjusted tender prices made in accordance with SPR 365(i), or the overall scores they have attained when a marking scheme is used in tender evaluation. Where price negotiations are undertaken under SPR 385, departments shall use the negotiated prices to determine the ranking of the tenders or their price scores. Departments may only consider other proposals on discounts by a tenderer if his tender is recommended for acceptance.
- (e) Any negotiation with a tenderer shall be undertaken in accordance with SPR 385. Such negotiations may also be used to seek resolution of any qualification or counterproposal put forward by a tenderer and if the qualification seeks to reduce the tenderer's risk or to construct payment terms which are more to his advantage, departments should seek a corresponding adjustment in the tender price before formally recommending the tender for acceptance.
- (f) In recommending the acceptance of a tender to a tender board or DTC, departments shall have value for money in mind. If the tendered sums are very close or if the contract to be awarded involves payments over a number of years, e.g. interim payments to the contractor, the department shall compare the tenders by discounting future payments to obtain the present value. The present value of the tendered sum should prevail in determining the ranking of tenders. In assessing the present values of tenders, departments may approach the Management Accounting Division (MA Division) of Financial Services and the Treasury Bureau (The Treasury Branch) (FSTB) for advice.

- (g) If none of the tenders received is fully conforming with the technical specifications, essential requirements, terms and conditions laid down in the tender documents and/or attains the passing marks (if any) of the marking scheme, departments shall cancel the tender exercise (see SPR 380(e)) and re-tender with revised specifications, essential requirements, terms and conditions, where applicable. If exceptionally departments wish to recommend a non-conforming tender, they shall state clearly in the tender report any deviation of the recommended tender from the specifications, essential requirements, terms and conditions laid down in the tender documents, the assessment criteria under the marking scheme, and the reasons for so recommending. As a general practice, departments should clear their tender recommendations with the D of J, or in the case of works tenders, LAD(W)/DEVB if they wish to recommend a non-conforming tender. A copy of the relevant legal advice should be attached to the tender report for relevant tender board or DTC's reference.

TENDER REPORTS

375. (a) Departments shall prepare a tender report containing a clear recommendation in the standard format as at Appendix III(I). Tender reports for consideration by the CTB and subsidiary tender boards must be signed or endorsed by the Head of Department concerned or his representative at directorate level. Tender reports for consideration by DTCs should be signed by the chairman of TAP of the procuring department. For submissions to the tender boards, the originals of the tenders received should be submitted together with the tender report to the tender board as follows —
- (i) when the ranking of tenders is based on the tendered prices, i.e. no marking scheme is used in tender evaluation —
- if the recommended tender is the lowest (highest for revenue contracts), only the three lowest (highest) tenders should be submitted. If the recommended tender is not the lowest (highest for revenue contracts), the lower (higher) tenders, the recommended tender and the next two higher (lower) tenders should be submitted; or
- (ii) when the ranking of tenders is based on the overall scores, i.e. a marking scheme is used in tender evaluation —
- if the recommended tender is the highest overall scorer, only the tenders of the three highest overall scorers should be submitted. If the recommended tender is not the highest overall scorer, the tenders of the higher scorers, the recommended tender and the tenders of the next two lower overall scorers should be submitted.

- (b) Departments shall forward sufficient copies of the tender report to the relevant tender board at least four weeks before the expiry of the validity of the recommended tender or before the intended commencement date of the contract to be awarded. If there is a delay in putting forward a submission, departments must state the reasons in the tender report for not being able to submit on time. Departments should forward their submissions to the relevant tender board at least five clear working days prior to a board meeting. Failure to do so may result in submissions being deferred to a later meeting. For submission to DTCs, departments should draw up their own departmental procedures.
- (c) Tender boards and DTCs should normally meet to deliberate; decisions reached through circulation of papers should be the exception. Subject colleagues are to attend meetings of tender boards and DTCs if requested.
- (d) For works contracts to be approved personally by CO in SPR 310(h), SPR 375(a)-(c) do not apply and COs may devise their own tender report formats.

CANCELLATION OF A TENDER EXERCISE OR CONCLUDING A SERVICE LEVEL AGREEMENT WITH A TRADING FUND DEPARTMENT

380. (a) Unless it is not in the public interest to award a contract, a procuring department shall award the contract to the tenderer that the department has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted the most advantageous tender or where price is the sole criterion, the lowest tender (or highest for revenue contract).
- (b) Where a procuring department has invited a tender from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government whose services are funded under trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereinafter referred to as “the relevant trading fund department”), and where the relevant tender board or DTC has accepted that the lowest or most advantageous tender is the one submitted by the relevant trading fund department, the procuring department shall —
- (i) enter into a service level agreement with the relevant trading fund department; and
 - (ii) promptly inform all tenderers of its decision not to issue a “contract” in the “public interest” (in line with the requirements set out in Article XV 5. and Article XVI 1. of WTO GPA, whether or not the tender is itself subject to the WTO GPA).

- (c) It is not possible to list out definitively and exhaustively all matters that contribute to “public interest”. Other than the circumstances in (b) above, matters concerning the integrity, confidentiality, security and safety of the Government, and the effective use of government resources would be relevant. Relatively small sums of money saved and/or the retention of government staff can also be contributing factors that support “public interest”. If in doubt, legal advice should be sought.
- (d) Approval of cancellation of a tender exercise is not required when no tenders are received after the close of tender invitation, or in the case of parallel tendering, if the relevant funding application is not approved by the Finance Committee of the Legislative Council before expiry of the tender validity or extended tender validity period (if applicable).
- (e) Other than the circumstances described in items (b) and (d) above, if a procuring department proposes to cancel a tender exercise once the tenders have been invited or not to award a contract following a tender evaluation, it shall seek the prior approval of the relevant tender board or DTC for the cancellation of the tender exercise following the report format set out at Appendix III(I). Departments shall provide detailed justifications for cancelling a tender exercise and state whether and when a second tender exercise will be conducted. For works contracts not exceeding \$30 million each and not subject to WTO GPA, COs have delegated authority to personally approve the cancellation of a tender exercise.

TENDER NEGOTIATIONS

385. (a) In general, it is the Government’s policy to procure stores, services or revenue contracts on the basis of competitive tendering, with the contract being awarded to the tenderer that conforms with the tender specifications and essential requirements, attains the passing mark(s) if a marking scheme is adopted, and offers the most advantageous terms to the Government. Where it would be in the Government’s best interest to negotiate with a tenderer or tenderers, such negotiations shall be conducted in a non-discriminatory manner among different tenderers.
- (b) To facilitate negotiations, all notices of tender invitations shall contain a standard clause stating that the Government reserves the right to negotiate with any or all tenderer(s) about the terms of the tender.
 - (c) PS(Tsy) is the approving authority for tender negotiations and has delegated this authority to —
 - (i) subsidiary tender boards for negotiations on tenders which fall within their purview;
 - (ii) DGL or his designated officers for negotiations on GLD tenders;
 - (iii) COs or their designated directorate officers not having been involved in the concerned tender exercises for negotiations on works tenders not exceeding \$55 million each and not subject to WTO GPA; and

- (iv) DTCs for negotiations on tenders for procurements not exceeding the departmental limit specified in SPR 220(a) which fall within their purview.
- (d) In addition to SPR 385(c), the PS(Tsy) has delegated the authority to COs or their designated directorate officers not having been involved in the concerned tender exercises to approve negotiations with potential contractors/suppliers/service providers for tenders of their own departments in any of the following circumstances —
 - (i) when a single tender within the meaning of SPR 325 has been invited with the prior approval of the relevant approving authority; or
 - (ii) when only one tender or very few tenders have been received in response to an open tender invitation and the procuring department considers the tenders received may not be sufficiently competitive, whether in terms of price or other key quality attributes; or
 - (iii) when the tender price to be recommended is too high (or too low in the case of a revenue contract) 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 requirements contained in the tender invitation to render the recommended tender non-conforming; or
 - (v) when two or more tenderers have submitted conforming tenders which are equal in all aspects in terms of the evaluation criteria set out in the notice of tender invitation or tender documents and are equally the most advantageous to the Government.
- (e) Negotiations under items (d)(ii)-(iv) above shall **normally** be conducted only with the **single conforming tenderer** or with the conforming tenderer whose tender has been found to be **clearly the most advantageous** to the Government in terms of the evaluation criteria set out in the notice of tender invitation or tender documents. Where no single tender is clearly the most advantageous in terms of the evaluation criteria set out in the notice of tender invitation or tender document or where the most advantageous tender cannot be determined until the counter-proposals have been resolved or withdrawn, it may be necessary to hold negotiations also with the tenderers who have presented the second or the third lowest (highest for revenue contracts) conforming tenders. The criteria for selection of tenderers for negotiations shall be stated in the tender documents. Where such criteria have not been set forth in the tender documents, the selection of tenderers for negotiations must be based on objective and reasonable criteria.
- (f) Where negotiations are conducted with more than one tenderer, whether or not under item (d) above, officers authorised to conduct the negotiations shall ensure that —

- (i) any elimination of tenderers participating in the negotiations is carried out in accordance with the evaluation criteria set forth in the notice of tender invitation or tender documents;
 - (ii) should the procuring department introduce any modifications to the criteria or requirements set out in the notice of tender invitation or tender documents, the modifications must be transmitted in writing to participating tenderers in the negotiations and also in adequate time to allow such tenderers to modify and re-submit amended tenders, as appropriate; and
 - (iii) when negotiations are concluded, the remaining participating tenderers shall be provided with a common deadline to submit any new or revised tenders.
- (g) For the avoidance of doubt, price may be the subject of negotiations as it is an essential element in determining the strength and weakness of a tender. Before negotiations are initiated, however, the procuring department shall take a view as to whether any reduction of price or increase in revenue that may be achieved would exceed the cost of undertaking the negotiations, or would adversely affect the quality of goods or services to be procured.
- (h) The public officers authorised by a CO to conduct negotiations shall be at directorate level, unless otherwise approved by PS(Tsy). In the case of contracts awarded by GLD, the DGL shall determine the rank of the negotiating officers, having regard to the complexity and importance of the negotiations.
- (i) Public officers authorised to conduct negotiations shall, where necessary, seek the advice or assistance from the DGL on commercial aspects and the D of J on legal aspects.
- (j) For a high value or complex tender, negotiations shall be conducted by a team led by an experienced negotiator. The negotiation team shall consist of the following, where applicable —
- (i) a member from the GLD for commercial aspects;
 - (ii) a member from the D of J for legal aspects;
 - (iii) a member from the user department for user requirement aspects; and
 - (iv) a member from the relevant service department for technical aspects e.g. Office of the Government Chief Information Officer.
- (k) The negotiator and negotiation team shall be authorised in advance to commit the Government, if necessary, within limits set by the relevant tender board or DTC, or the concerned CO or the designated directorate officer authorising the negotiations.

- (l) Proper procedures, including keeping proper records of the negotiations, shall be established and adhered to. Negotiations may be conducted by exchange of correspondence and/or meetings. Under no circumstances shall negotiations be conducted orally by a single negotiator without the presence of another public officer of an appropriate rank.
- (m) In all cases, only public officers with no real or potential conflict of interest shall lead or participate in negotiations.
- (n) Some guidelines on preparing for and conducting negotiations are provided at Appendix III(J) for general reference. They are not intended to be comprehensive.

ACCEPTANCE OF TENDERS AND AWARD OF CONTRACTS

390. (a) Unless authority has been specifically delegated to departments or tender boards, the PS(Tsy) is the approving authority for acceptance of a tender. Subsidiary tender boards and DTCs are delegated with the authority to accept tenders under their purview and not exceeding the financial limits of the respective tender board and DTC. After a decision has been made on the acceptance of a tender, the relevant tender board secretary will notify the procuring department by memorandum, copying it to the D of A. Originals and duplicates of tenders will also be returned to the procuring department. For contracts awarded by DTCs or COs under delegated authority, the approving authority will notify the D of A of the acceptance of a tender.
- (b) The procuring department will then send a letter to the successful tenderer accepting his offer or, as the case may be, inviting him to sign the contract on a specified date. The department should also notify unsuccessful tenderers of the outcome of their tenders and the contract award decision promptly, and include in the letters the reasons why their tenders were unsuccessful. If the sum of the accepted tender exceeds the approved estimates, the CO concerned should ensure that it is not accepted before approval for an increase in commitment or project estimate has been obtained. The letter should be copied to the secretary of the respective tender board or DTC.
- (c) Departments shall publish a notice of contract award in their home pages on the Internet and keep a record for all contracts awarded. Departments shall separately (or additionally) keep a record of each contract awarded under single or restricted tendering as well as direct engagement of contractor/supplier/service provider, which shall include the name of the procuring department, the value and kind of goods or services procured and a statement indicating the circumstances that justified the use of single/restricted tendering and direct engagement. For procurements covered by WTO GPA, a statement indicating the conditions described in the provisions on limited tendering in WTO GPA that justified the use of limited tendering should also be included for the purpose of meeting the specific reporting requirements of WTO GPA.

- (d) Tender boards, DTCs or the approving authority should send to the DGL a list of all the contracts awarded by them or on their recommendation in a particular month at least two weeks before the end of the following month for publication on the Internet.
- (e) Departments should follow the procedures set out in SPR 505-510 in accepting an offer and executing a contract.

CHAPTER IV

CONSULTANTS SELECTION PROCEDURES

APPLICABILITY, SCOPE AND COVERAGE

400. Consultants selection procedures should only be used to obtain services from consulting firms and in circumstances when tender procedures are not applicable, for example —

- (a) where problem solving is required in areas in which Government does not have the necessary expertise and qualified staff;
- (b) where the quality of the end product is dependent on the relevant experience, efficiency, capability, reputation, expertise and proposed method of approach and methodology of the appointed consultant;
- (c) where the qualities required of the consultant cannot be precisely specified or quantified; and
- (d) where the quality of service is of paramount importance in the selection and where selection by competitive tendering on the basis of price is likely to lead to a lowering of the quality of service.

405. With the exception of the following for which separate procedures shall apply, departments should follow the procedures set out in these Regulations for the procurement of consultancy services —

- (a) procurement of consultancy services of a value not exceeding the quotation limit specified in SPR 220(a) whereby quotation procedures are applicable;
- (b) employment of individual persons; and
- (c) briefing out of legal work by the Secretary for Justice.

APPROVING AUTHORITY

410. Unless authority has been specifically delegated to departments and consultants selection boards, PS(Tsy) is the approving authority for appointment of consulting firms for the provision of consultancy services. The procuring department is normally responsible for undertaking the procurement in accordance with these Regulations. Before a proposal is made to appoint a consultant, the procuring department must obtain policy support from the relevant Director of Bureau or a public officer authorised by him for the employment of consultants. The procuring department must confirm that qualified staff for the assignment are not available in the department or other parts of the Government or within the required timeframe. The procuring department must obtain the endorsement of the MA Division of FSTB for the engagement of financial consultancies or non-financial consultancies with engagement of financial consultants as sub-consultants. For general management consultancies, the procuring department shall obtain the support of EffO.

416. (a) For works-related consultancies funded under the Capital Works Reserve Fund, COs shall adopt parallel tendering, i.e. initiate consultants selection exercises before funding is secured. The conditions and requirements as laid down in SPRs 337(a) and 338 equally apply.
- (b) For other consultancies, COs may adopt parallel tendering, i.e. initiate consultants selection exercises before funding is secured. The conditions and requirements as laid down in SPRs 337(b) and 338 equally apply.

CLASSIFICATION OF INFORMATION

420. Information relating to the selection of consultants and consultancy agreements should be handled in the following manner —

- (a) all communications regarding the selection of consultants, from the time a short-list or a list of consulting firms for direct invitation of consultancy proposals is proposed until an agreement is executed, must be classified as RESTRICTED (CONTRACT);
- (b) consultancy agreements and communications regarding contracts do not usually have a security classification. RESTRICTED (CONTRACT) will normally be an adequate classification for sensitive information relating to contract disputes, litigation, claims, etc. Information should only be classified as CONFIDENTIAL if its disclosure would be prejudicial to the interest of the Government of the HKSAR; and
- (c) COs and Chairmen of Consultants Selection Boards shall appoint public officers to open and handle classified correspondence relating to bids and contracts on a need-to-know basis. Detailed instructions on the procedures for handling such correspondence shall be made in accordance with the provisions of the Security Regulations.

CONSULTANTS SELECTION BOARDS AND COMMITTEES

425. The Financial Secretary/SFST is the authority for the appointment of consultants selection boards, each consisting of not less than three persons and chaired by a directorate officer not lower than D2 rank. The Financial Secretary/SFST has appointed the following -

- (a) **Central Consultants Selection Board (CCSB):** it advises the PS(Tsy) on the selection and appointment of all consultants, other than those selected and appointed by the AACSB, EACSB and DCSCs. Departments shall follow the procedures set out in SPR 430-470 below on the selection and appointment of consultants within the purview of CCSB.
- (b) **AACSB:** it approves the selection and appointment of architectural and associated consultants for government projects other than those selected and appointed by DCSCs. Departments shall follow the procedures set out in the Handbook on Selection, Appointment and Administration of Architectural and Associated Consultants published by the Architectural Services Department, and appropriate DEVB TC(W) on the appointment of architectural consultants.

- (c) **EACSB:** it approves the selection and appointment of engineering and associated consultants for government projects other than those selected and appointed by DCSCs. Departments shall follow the procedures set out in the Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants published by the EACSB, and appropriate DEVB TC(W) on the appointment of engineering consultants.

Up-to-date information on the membership and terms of reference of the three consultants selection boards is published in the Civil and Miscellaneous Lists of the Government of the HKSAR, which can be viewed at the website <http://www.info.gov.hk/cml/eng/cbc/c23.htm>.

426. The SFST has delegated the authority to COs to approve the selection and appointment of consultants for consultancy assignments up to the departmental limit specified in SPR 220(a). This delegation encompasses the authority to approve the list of consulting firms for inviting consultancy proposals, consultancy briefs, marking schemes for assessing consultancy proposals, pre-contract negotiations, appointment of consultants and cancellation of consultants selection exercises.

COs shall appoint a DCSC in their departments consisting of not less than three persons to approve the selection and appointment of consultants for these assignments. The DCSC shall be chaired by a directorate officer not lower than D2 rank, who should be at least one rank higher than the chairman of the assessment panel set up for that particular assignment. There should be clear segregation of roles and duties amongst the DCSC, the assessment panel and other departmental officers handling the procurement exercise. Unless specified otherwise, departments should follow the relevant consultants selection procedures stipulated in SPR 430-470 below, the Handbook on Selection, Appointment and Administration of Architectural and Associated Consultants, the Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants, FCs and DEVB TC(W), as appropriate. COs may also draw up the working procedures for DCSC, provided that these should adhere to the arrangements for the relevant consultants selection board and should be fair, transparent and defensible.

427. All marking schemes adopted for assessment of consultancy proposals should be approved by relevant consultants selection board/DCSC. The technical weighting should normally be around 60%-70%, unless justified to the satisfaction of the relevant consultants selection board/DCSC.

THE CENTRAL CONSULTANTS SELECTION BOARD PROCEDURES

430. (a) CCSB normally adopts a two-stage approval process as follows —

Stage 1 approval : approval for inviting consultancy proposals from the recommended firms and approval of the consultancy brief and method of assessing consultancy proposals; and

Stage 2 approval : approval for appointment of the recommended consulting firm, subject to the fees and other terms set out in the negotiating brief being resolved satisfactorily, where appropriate.

Key steps are set out in SPR 440-445 below.

- (b) The authority to approve a direct approach to a consulting firm without going through a competitive selection process rests with the PS(Tsy). This authority is not delegated to COs irrespective of the value of the consultancy services. Approval would not normally be granted unless full justification is given to the satisfaction of the PS(Tsy). In applying for such approval, the procuring department must justify the case for not conducting a competitive selection exercise and provide the necessary information including the scope of the proposed consultancy, the estimated cost and the required expertise of the recommended consulting firm. After obtaining approval from the PS(Tsy), the procuring department shall approach the consulting firm direct, assess the proposal from the single consulting firm and forward a combined Stages 1 and 2 submission to CCSB (for consultancy assignments exceeding the departmental limit specified in SPR 220(a)) or DCSC (for consultancy assignments not exceeding the departmental limit specified in SPR 220(a)) seeking approval of the recommendation to appoint the consultant subject to negotiation of fees and other terms, where appropriate.
- (c) Departments shall forward six copies including the original copy of the submission in the specified format to the Secretary of CCSB. Departments should forward their submissions to CCSB at least seven clear working days prior to a board meeting. Failure to do so may result in submissions being deferred to a later meeting. At the discretion of the Chairman, CCSB may exceptionally deal with urgent papers by circulation or additional meetings. Requests for such exceptional treatment must be fully justified by the CO concerned.
- (d) Submissions must be signed or endorsed by the respective CO or his representative at directorate level. He may be requested or may himself request to attend the CCSB meeting to present the recommendations of the submission or answer any queries that CCSB may have.

List of consulting firms

- 435. (a) Departments may maintain lists of consulting firms for areas of work where there is a frequent need for consultancy services. For example, the MA Division of FSTB maintains a list of accounting/financial/actuary firms and EffO maintains a list of management consulting firms. Departments wishing to employ financial or management consultants may make reference to these respective lists for compiling a long list of consulting firms for short-listing purpose (if EOIs are invited) or for direct invitation of consultancy proposals (if EOIs are not invited).
- (b) Departments maintaining lists of consulting firms for the above-mentioned purpose should publish the lists and the method of application for inclusion in the lists on their webpages. Such information should be kept on their webpages as long as it remains valid. In addition, new applications from consulting firms for inclusion in the lists should be allowed at any time and such applications should be processed expeditiously.

Stage 1 approval

440. The procuring department should complete the following steps leading to submission to CCSB for Stage 1 approval —

- (a) **compile** a long list of consulting firms which should be approached for an EOI to provide the consultancy services or for direct invitation of consultancy proposals if EOIs are not invited. Departments may compile this list by reference to the lists maintained by the relevant departments under SPR 435(a) or through a general advertisement in the press and/or on the Internet;
- (b) **consider** inviting EOI or inviting consultancy proposals direct from the long list if it is considered in the best interest of the Government. Departments should have regard to the following factors -
 - (i) availability of expertise sought – if the expertise sought from the consultant is widely available, an EOI exercise will help screen out the less competitive ones and save the consulting firms from having to incur undue time and resources to prepare the proposals. If the expertise sought is highly specialised, a direct invitation of consultancy proposals may be more time- and cost-effective;
 - (ii) market reaction – if it is not clear whether the market is keen to offer or capable of offering the required expertise, or deliver the advice within the anticipated time frame, an EOI exercise may help ascertain market interest;
 - (iii) urgency – if the consultant needs to be on board within a short time frame, a direct invitation of consultancy proposals may be preferred;
- (c) **establish** an assessment panel which should normally comprise only government officials in order to safeguard the integrity of the consultant selection exercise. It should be chaired by a directorate officer of the department, with other public officers of the department and representatives of the relevant policy bureau, resource bureau and the relevant service/professional departments, e.g. EffO, Office of the Government Chief Information Officer, Electrical and Mechanical Services Department (EMSD), as necessary, and endorse the list of consulting firms for direct invitation of consultancy proposals or determine the short-listing criteria if EOI are invited. The short-listing criteria should be limited to those which are essential to ascertaining the consulting firms' ability to provide the required services. Guidelines on assessment panel are set out at Appendix III(G)1;

- (d) if short-listing is considered necessary, **invite EOI** from the long list of consulting firms and where appropriate, through advertising in the press and/or on the Internet. In the invitation, procuring departments should provide the objective, scope and timing of the consultancy, and expertise/experience of the consulting firm as well as experience/qualifications of the consulting team required to undertake the consultancy. Consulting firms should normally be asked to provide up-to-date information on their experience/expertise and the experience/qualifications of their proposed team, and should not be asked to submit consultancy proposals at this stage. Procuring departments should generally allow no less than two weeks for consulting firms to respond;
- (e) the assessment panel shall **assess** the suitability of the consulting firms and their proposed consulting teams on the basis of the pre-determined short-listing criteria. All consulting firms meeting the criteria should be short-listed to ensure competition in the selection process;
- (f) **prepare** a draft consultancy brief and clear it with the D of J and relevant departments such as EffO and MA Division of FSTB, if necessary. A consultancy brief normally covers the objective and scope of the consultancy, expertise/experience of the consulting firm as well as experience/qualifications of the consulting team required to undertake the consultancy, duties of the consulting team, duration and timeframe for the consultancy, information required for the consultancy proposals (including composition of the consulting team and proposed approach and method), method of assessing the consultancy proposals, controls of the consultancy in various aspects (including the government representative to whom the consulting team will report, whether and how to deal with change of staff of the consulting team during the consultancy period, and employment of sub-consultants), deliverables for each phase of the consultancy, the payment schedule and other related terms and conditions, and any special features of the consultancy agreement;
- (g) **decide** the essential or desirable requirements in terms of for example experience/qualifications of the consulting team for undertaking the consultancy, and design the marking scheme for assessment of consultancy proposals under Stage 2 including, the weighting for technical and fee assessment for evaluating the cost-effectiveness of consultancy proposals, the assessment criteria and their relative weighting with passing marks (if any) for assessing technical proposals and the methodology for scoring fee proposals. The assessment criteria should generally relate to the information required to be provided by the consulting firms for evaluation. The technical weighting should normally be around 60%-70%, unless justified to the satisfaction of CCSB; and
- (h) **make a Stage 1 submission to CCSB** seeking approval from the PS(Tsy) for inviting consultancy proposals from the recommended firms, the consultancy brief and method of assessing the consultancy proposals. A specimen submission for Stage 1 approval is at Appendix IV(A).

Stage 2 approval

445. Upon Stage 1 approval, the procuring department should complete the following steps leading to submission to CCSB for Stage 2 approval —

- (a) **issue** the approved consultancy brief to invite consultancy proposals from the consulting firms. Procuring departments should generally allow no less than three weeks for the consulting firms to respond. Consulting firms should submit technical and fee proposals in separate sealed envelopes with the words “Technical Proposal” or “Fee Proposal” clearly marked on the outside of the concerned envelope. Procuring departments should require the consulting firms to submit their fee proposals either on a fixed lump sum or time charge basis. Where time charge payment is used, consulting firms should be asked to cap their fee proposals so as to enable a fair cost comparison to be made (see also SPR 465).

Normally, departments should not disclose the estimated contract value to the consulting firms as it may become a guiding factor in the preparation of their proposals which may be reduced or, of even more concern, expanded unnecessarily thus undermining the principles of competition and value for money. If, however, the estimated contract value has been disclosed to the public, procuring departments should, in all fairness, inform all consulting firms of the estimated contract value;

- (b) **invite** the consulting firms to a briefing before the closing date for submission of consultancy proposals, if necessary. In the process leading up to the submission of consultancy proposals, procuring departments should provide all consulting firms with the same information to help them prepare their proposals. After receipt of consultancy proposals and in the course of evaluation, procuring departments may invite the consulting firms to make a verbal presentation and to clarify any point in their consultancy proposals. Normally, the assessment panel should score the consultancy proposals after the presentation;
- (c) the assessment panel should **complete the technical assessment** first according to the approved marking scheme and assessment criteria. Under no circumstances should procuring departments alter the marking scheme or assessment criteria without first obtaining CCSB’s agreement;
- (d) **open** the fee proposals only after completion of the technical assessment, and score the fee proposals in accordance with the pre-determined methodology. Procuring departments should follow the methods for evaluating technical and fee proposals for tenders given at Appendix III(G) in the evaluation of consultancy proposals from the consulting firms;
- (e) **evaluate** the cost-effectiveness of the consultancy proposals by applying the pre-determined weighting given to the technical and fee assessments. Normally, procuring departments should recommend the consulting firm with the highest overall score;

- (f) **prepare**, where applicable, a negotiating brief listing details of fees, and terms and conditions of the appointment which need to be resolved with the recommended firm; and
- (g) **make a Stage 2 submission to CCSB** seeking approval to appoint the recommended firm, subject to the fees and other terms set out in the negotiating brief being satisfactorily resolved, where appropriate. Procuring departments should also recommend for CCSB's approval in the Stage 2 submission a fall-back option in the event that agreement cannot be reached with the recommended firm. A specimen submission for Stage 2 approval is at Appendix IV(B).

Pre-contract negotiations

455. (a) Upon notification of Stage 2 approval by the Secretary, CCSB who should copy the notification memorandum to the D of A, the procuring department should conduct negotiations with the recommended firm, **where applicable**. Unless authority has been specifically delegated to departments, the PS(Tsy) is the approving authority for pre-contract negotiations in all procurement of consultancy services subject to the CCSB procedures. Unless otherwise approved by the PS(Tsy), the public officer authorised to conduct such negotiations with the recommended firm should be at directorate level. Procuring departments should seek advice or assistance from the D of J on legal aspects or other departments with the relevant expertise such as EffO, where necessary.
- (b) For a high value or complex contract, departments should consider appointing a negotiating team led by an experienced public officer. A negotiating team may consist of the following —
- (i) a member from the D of J for legal aspects;
 - (ii) a member from the procuring department for user requirement aspects; and
 - (iii) a member from the relevant service/professional department for technical aspects, e.g. EffO and Office of the Government Chief Information Officer, if necessary.
- (c) The negotiator and the negotiating team should be authorised in advance to commit Government, if necessary, within limits set out in the negotiating brief.
- (d) In all cases, only public officers with no actual, potential or perceived conflict of interest shall lead or participate in negotiations. All public officers involved in conducting negotiations must declare whether they have any actual, potential or perceived conflict of interest in accordance with SPR 186.
- (e) The procurement of consultancy services is not bound by the WTO GPA. Nonetheless, public officers authorised to conduct negotiations shall still observe the principles of fair play and transparency, and may make reference to the guidelines set out at Appendix III(J).

Acceptance of offers

460. If all items in the negotiating brief are satisfactorily resolved, procuring department should **inform the Secretary of CCSB** of the outcome and draw up a consultancy agreement, incorporating the terms agreed with the recommended firm, to be cleared with the D of J. When the consultancy agreement is ready, the procuring department should notify the successful consulting firm and invite it to sign the contract on a specified date. Unless otherwise authorised by the PS(Tsy), the public officer signing the contract on behalf of Government should be at directorate level. The procedures set out in SPR 505-510 should be followed in the execution of a contract.

REMUNERATION OF CONSULTANTS

465. (a) Remuneration for consultants may take the form of time charges, a lump sum payment by instalments, or a combination of both.
- (i) *Time charge payment* - this method is suitable for assignments in which the duration and extent of the consultancy services cannot be determined in advance, e.g. investigations, economic appraisals and research. Rates are agreed for professional, technical and supporting staff, with an element added for overheads and profit. The consultant is also reimbursed for the use of special equipment and other expenditure which can be identified directly with the work. When this method is used, detailed time records of all those engaged on the work must be maintained, payroll records must be open to inspection or audit by Government, and receipts and other documents must be provided to substantiate all reimbursable expenditure. As an added safeguard, a ceiling is normally placed on the total amount to be paid to the consultant; and
 - (ii) *Lump sum payment* - this method is used when the scope and duration of the assignment can be defined clearly and fully. The lump sum payment is generally computed by estimating the cost of those elements making up the time charges expected to be incurred.
- (b) Before conducting negotiations on fees, where necessary, procuring departments should ask the consulting firm to provide a detailed cost breakdown of the consultancy. During such negotiations, procuring departments should be guided by current market rates and staff costs incurred by Government on public officers performing comparable duties.
- (c) In general, the contract sums for consultancy agreements should be quoted and paid in Hong Kong dollars. In order to avoid consulting firms putting in an unreasonable amount of allowance in their fee proposals to cover exchange risks for the contract period, procuring departments may allow consulting firms to quote in foreign currencies for services provided by personnel based outside Hong Kong and salaried in the quoted currencies. Procuring departments should follow the procedures set out in SPR 355(b) if they intend to ask consulting firms to quote in foreign currencies other than US dollars for contracts likely to cost HK\$10 million or more.

- (d) Procuring departments may, upon request by a third party such as the Legislative Council or the media, disclose the total amount of fees payable to the successful consulting firms. Procuring departments should consult D of J for inclusion of a standard provision on the disclosure of fees payable to the consulting firm in the consultancy brief and the consultancy agreement. For consultancies remunerated on a time charge basis, departments may make an estimate on the number of man-days required in order to work out the estimated total amount for disclosure purpose. Procuring departments should not disclose the individual rates of the consulting team engaged at various levels for the consultancies, as they may reveal the rates that the consulting firms pay to their staff. Procuring departments should comply with the Code on Access to Information in handling requests for disclosure of such information.

CANCELLATION OF A CONSULTANTS SELECTION EXERCISE

470. (a) If a procuring department decides to cancel a consultants selection exercise due to reasons such as public interest, lack of conforming bids, or conclusion of the exercise by entering into a service level agreement with a trading fund department, it shall seek the prior approval of the relevant consultants selection board and provide detailed justification for its decision. For procurement of consultancy services with a value not exceeding the departmental limit specified in SPR 220(a), the authority for cancelling a consultants selection exercise has been delegated to DCSCs. After obtaining the approval, the procuring department should promptly inform bidders of its decision.
- (b) Approval to cancel a consultants selection exercise is not required when no consultancy proposals are received after the close of invitation, or in the case of parallel tendering, if the relevant funding application is not approved by the Finance Committee of the Legislative Council.

CHAPTER V

CONTRACT ADMINISTRATION

APPLICABILITY

500. Unless otherwise specified, these Regulations apply to the administration of contracts for the procurement of stores and services and revenue contracts, irrespective of whether they were procured through the quotations, tender or consultants selection procedures.

EXECUTION OF CONTRACTS

Authorised contracting parties

505. (a) For procurement of stores, services and revenue contracts under the tender or consultants selection procedures, departments shall conclude contracts with the selected suppliers, service providers or consultants either by issuing a letter to accept their offers or by formally signing contracts with them, as appropriate. Before the said letter is issued or a contract is signed, the procuring department should obtain a certified true copy of the business registration certificate concerned from the Commissioner of Inland Revenue or documentary evidence showing that the tenderer is exempted from business registration under the BRO. In the case of a limited company, the procuring department should ask the company to produce a certified true copy of the memorandum and articles of association and a board resolution to prove due authorisation of the signatory for the signing of the contract. In case of a partnership, the procuring department should ask the firm to confirm in writing the authority of the relevant partner for entering into the contract and dealing with matters incidental thereto. In case of non-Hong Kong suppliers, service providers or consultants, procuring departments should consult D of J on measures to be taken to ensure due execution.
- (b) Where the firm to be awarded the contract is on a list of registered or approved suppliers, service providers or consulting firms maintained by procuring departments, the procuring department may already have records indicating the business registration certificate number, the date of expiry of the certificate and/or other relevant information of the firms (e.g. exemption from business registration under the BRO). In such cases and where business registration certificate is not exempted, verification will only be necessary annually when the business registration certificate is due for renewal.
- (c) In case of doubt as to whether the company is prohibited by its Memorandum or Articles of Association to carry on certain business or to exercise certain powers or whether a person has the authority to sign a contract on behalf of the company, the procuring department should seek D of J's advice at the earliest opportunity. 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 execution of contracts should be addressed to the D of J but some guidance notes are provided at Appendix V(A).

- (d) Departments shall report any cases of companies, partnerships or unincorporated bodies apparently doing business without complying with the requirements of the Companies Ordinance (Cap. 622) or the Business Registration Ordinance (Cap. 310) to the Registrar of Companies or the Commissioner of Inland Revenue, as the case may be.
- (e) Save for SPR 505(f) below, contracts shall be concluded by public officers at the directorate level signing the relevant documents on behalf of the Government unless the PS(Tsy) has authorised otherwise. For the avoidance of doubt, if the substance of that document is to conclude a contract either immediately or subject to condition(s), it shall be so signed by a directorate officer.
- (f) For procurement under quotation procedures specified in Chapter II of the SPRs, contracts may be concluded by public officers designated by COs signing the relevant documents on behalf of the Government. The designated officer(s) shall not be lower than the rank of Assistant Supplies Officer/ Executive Officer II or equivalent.

Insurance and personal injury

510. (a) Where it is required by the terms of the contract, procuring departments shall ensure that the firm has a valid policy or policies of insurance prior to executing the contract and ask the firm to submit the policy or policies required by the contract together with premium receipts. The public officer in charge of the contract shall examine the validity of such a policy or policies in administering the contract and be responsible for the safe-keeping of the policy or policies.
- (b) When an accident takes place resulting in personal injury, section 15 of the Employees' Compensation Ordinance (Cap. 282) obliges the firm as employer to notify the Commissioner for Labour in the prescribed form. If not already specified in the terms of the contract, the public officer in charge of the contract shall instruct the firm to send a copy of such notice to the department responsible for the contract. Should any claim be made by the injured person or his representative directly against the Government under the Employees' Compensation Ordinance or at common law or under the Fatal Accident Ordinance (Cap. 22), the department responsible for the contract shall immediately notify the firm, the Commissioner for Labour and the D of J.

CONTRACT PAYMENTS

515. (a) All payments properly due to a firm must be made in accordance with the terms of the contract and should normally be effected within 30 calendar days upon acceptance of the deliverables. Should circumstances arise where a payment has to be made before all the necessary authorities have been obtained, the department concerned must seek prior approval from the Treasury Branch of FSTB for the opening of an advance account to facilitate the payment. Opening of advance accounts should only be considered in exceptional circumstances, e.g. an unexpectedly high arbitration award. An advance account is opened on the personal responsibility of the CO and must be cleared as soon as the necessary authorities have been obtained.
- (b) Payments for contracts quoted in a foreign currency are normally paid in that foreign currency. If it is agreed by both contracting parties that payments are to be made in Hong Kong dollars instead of the quoted currency, the date and conversion rate for each payment shall be clearly specified in the contract.
- (c) For contracts with a total foreign currency (other than US dollar) commitment less than the equivalent to HK\$10 million, the department concerned shall report to the Hong Kong Monetary Authority at the end of each month all known or anticipated foreign currency requirements in the format as specified by the Hong Kong Monetary Authority.
- (d) For contracts with a total foreign currency (other than US dollar) commitment equivalent to HK\$10 million or more, the department concerned shall ask the Treasury to arrange forward purchase through the Hong Kong Monetary Authority before the contract is awarded. The transaction of forward purchases will normally take place on the day the contract is awarded, unless otherwise advised by the Hong Kong Monetary Authority. The requisition memorandum to the Treasury and the Hong Kong Monetary Authority shall quote the authority for contract award and provide a schedule of payment dates and amounts of foreign currency required.

VARIATIONS TO CONTRACTS

520. (a) Under no circumstances may a department vary a contract which will result in the approved commitment or approved project estimate being exceeded.

- (b) A CO, or a designated officer of appropriate rank, may approve any number of variations to a contract (including extension of the contract period for a contract awarded by his department and minor variations to the GLD contracts, i.e. contracts awarded by the GLD), which are inevitable and **do not increase the original contract value** (or do not affect the original contract value in the case of a revenue contract), provided that all relevant factors, including rates, are no less favourable. Contingencies (such as notional value for additional services in the case of consultancy agreements for architectural or engineering services) or optional items contemplated in and falling within the terms of the contract shall not be counted as part of the original value of a contract. For works contracts, departments should follow the guidelines issued by DEVB from time to time in defining the optional items for the purpose of this provision.
- (c) The cumulative value of contract variations for **all contracts should not normally exceed 50% of the original contract value**. Contingencies or optional items referred to in SPR 520(b) shall not be counted as part of the original contract value. Excesses have to be approved with fully documented justifications. Such contract variations should be avoided as far as possible and should normally be used as a stop-gap measure, unless they are otherwise justified in accordance with the GLD Circular issued from time to time. Any variation to a contract which will increase the original value of the contract (or affect the original value of the contract in the case of a revenue contract), or any increase in contract sums must be approved by the **appropriate authority in Appendix V(B)**.
- (d) COs shall ensure that public officers responsible for matters concerning contract variations interpret the limits specified at Appendix V(B) strictly and that they do not evade the limits by including items which have the effect of bringing down the original increase in the contract value had those items not been included. For the avoidance of doubt, for a contract that involves variations leading to a decrease in contract value in one area and an increase in contract value in another during the contract period, only the variation that leads to an increase in contract value will count under the accumulated value of the contract for determining the appropriate level of authority for seeking approval for contract variation as specified in Appendix V(B). For variations which inevitably involve the replacement of original contract items with new items which are collectively part and parcel of the subject variation, only the net value of the variation will count.
- (e) Contract variations, especially those which are not provided for in the original contract, may amount to new procurements. For contract variations amounting to new procurements **covered by WTO GPA**, procuring departments shall ensure that all relevant requirements of WTO GPA are complied with. In case of doubt as to whether contract variations amount to new procurements covered by WTO GPA, procuring departments should seek legal advice from the D of J or, in the case of works contracts, LAD(W)/DEVB.
- (f) Departments should copy correspondence on approved contract variations and any supplementary agreements consequentially signed to the D of A.

CONTRACT NEGOTIATIONS

525. If a department proposes to vary the terms of a contract, it shall seek agreement of the relevant authority (as specified in SPR 520 and Appendix V(B)) on the proposed variation and seek its prior agreement to the strategy or bottom line for the contract negotiation. For GLD contracts, the PS(Tsy) has delegated to the DGL the authority to approve contract negotiation. Departments shall conduct contract negotiations in accordance with the principles set out in SPR 385 and Appendix III(J).

DISPOSAL OF CONTRACT DOCUMENTS

530. (a) Departments shall retain the original copy of an executed contract, and the related original security bond, bank guarantee and insurance policy, if any. A certified true copy of the executed contract shall be forwarded to the D of A for audit purpose.
- (b) Departments shall not keep the original documents in files required for working purposes or with working copies. The documents must be stored in a safe or strongroom if available; otherwise they shall be kept in a locked cabinet or cupboard. The public officer responsible for the safe custody of the documents shall keep the cabinet or cupboard key.
- (c) Departments may destroy documents submitted by unsuccessful firms in a tender or consultants selection exercise three months after the date the relevant contract has been executed.
- (d) For procurements covered by WTO GPA, departments shall maintain the tender documents, all documents submitted by the tenderers, any other documents and reports of tendering procedures and contract awards, including the records required under SPR 390(c), and data that ensure the appropriate traceability of the conduct of procurements by electronic means for a period of not less than three years from the date of contract award.

MONITORING OF PERFORMANCE OF CONTRACTORS AND CONSULTANTS

535. Departments shall devise an effective monitoring mechanism to ensure that a contractor or consultant performs to standard and complies with the terms of a contract. Specifically for contracts with a value exceeding the quotation limits specified in SPR 220, departments shall follow SPR 536-541 below.

536. Departments shall evaluate the performance of their contractors or consultants —

- (a) at least once every six months until completion of the contract for contracts lasting more than one year; and
- (b) upon completion of the contract for contracts lasting a year or less.

537. As soon as it becomes apparent that the performance of a contractor or consultant is not satisfactory or deteriorating, the concerned department must —

- (a) notify the contractor or consultant in writing;
- (b) invite him to explain the reasons for the unsatisfactory performance;
- (c) request him to make improvements; and
- (d) step up monitoring.

538. If despite the action taken in accordance with SPR 537, the contractor or consultant fails to make any improvement in performance and the department is not satisfied with the reasons (if any) given by the contractor or consultant for his unsatisfactory performance, the department should consider taking further action in accordance with the terms of the contract or consultancy agreement. For example, the department should warn the contractor or consultant in writing that further unsatisfactory performance of the contractor or consultant may result in the termination of the contract and/or suspension of the contractor or consultant from bidding Government's new contracts. The department may also suspend payment to the contractor or consultant in the event that pre-agreed contractual milestones are not achieved.

539. Departments shall keep these performance records on contractors or consultants for as long as they consider necessary but in any case, not less than three years upon completion of the contracts.

540. For the purpose of monitoring the performance of works contractors, departments shall follow the guidelines and procedures set out in the Contractor Management Handbook and the relevant DEVB TC(W). For the purpose of monitoring the performance of consultants appointed by CCSB, AACSB and EACSB, departments shall follow the guidelines and procedures set out in Appendix V(C) of SPR, Handbook on Selection, Appointment and Administration of Architectural and Associated Consultants or Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants, and DEVB TC(W), where appropriate. For the purpose of monitoring the performance of consultants appointed by the DCSCs, departments may draw up their own procedures or follow the arrangements of the relevant consultants selection board.

541. Departments shall take into account the relevant past performance records of a contractor or consultant where available in evaluating his tender or consultancy proposal.

CHAPTER VI

STORES RECORDS

GENERAL

600. Except where otherwise approved by the DGL, departments should record all stores items in ledgers, vouchers and registers specified in these Regulations for stock control. Public officers who certify on the above stores forms are personally responsible for the accuracy of the certification.

605. Departments which seek to introduce computerised stock records or stores vouchers should consult and agree with the Government Chief Information Officer, DGL, DAS and D of A the scope and details of the software package to ensure completeness of data and compliance with prevailing Government Regulations and instructions.

LEDGERS

610. Departments should keep complete records of the receipt and issue of all stores held in a departmental store unit, including livestock, in manual or preferably computerised stores ledgers.

615. Stores ledgers should be posted by a public officer other than the one in direct control of the stores.

620. Departments should observe the following in the use of ledgers —

- (a) Account for new (unused), serviceable (used) and unserviceable stores in separate ledgers.
- (b) Allocate a unique folio reference number to each type of stores item in stock and strictly control the creation of new stores items by means of control index in the ledger.
- (c) Post all ledgers promptly, and support each entry by a voucher, the nature and number of which should be recorded against the entry.
- (d) Show the unit of issue, e.g. number, kilogram, metre, etc. in the ledger and record items taken on charge in that unit.
- (e) Avoid making erasures in the stores ledgers. The public officer responsible for keeping the ledger should mark all corrections clearly in red ink and initial them in case of manual stores ledgers; and support all amendments by vouchers and a brief explanatory note on each supporting voucher in case of computerised stores ledgers.

- (f) For the use of manual stores ledgers, remove completed ledger sheets from a loose-leaf ledger in current use only after the transactions on the sheets have been checked and the balances carried forward to the new sheets have been verified by the D of A. File these completed ledger sheets in numerical order in a separate binder and update the control index accordingly. Where computerised stores ledgers are used, maintain back up copies of the ledgers.

625. Departments should notify the DGL, DAS and D of A of any loss of, or damage to ledgers and investigate the matter immediately.

630. In the event of any loss or damage to ledgers, the CO concerned should appoint a board of survey to carry out a full stock-taking exercise immediately. After the Board's findings have been endorsed by the CO, the DSM appointed under SPR 135 shall open a new ledger to account for the stores which were recorded in the lost or damaged ledgers subject to the value of the stores not exceeding \$250,000. If the value of the stores exceeds \$250,000, the department should obtain the prior approval of the DGL.

635. Subject to the approval of D of A, the DSM may destroy completed manual or computerised stores ledger sheets seven years after the end of the financial year containing the last entry without reference to DGL and DAS. He should sign the relevant destruction certificate and retain it for audit inspection.

VOUCHERS AND FORMS

650. DGL is the authority for introducing new stores vouchers and forms and for revising existing stores vouchers and forms. Departments may, in consultation with DGL, revise existing stores vouchers and forms or develop new stores vouchers and forms to cater for their operational requirements in accounting for and management of stores.

660. Departments should observe the following in the use of vouchers —

- (a) File completed vouchers, which contain full particulars of authorities, dates, numbers, quantities and rates, in numerical order.
- (b) Quote the relevant reference numbers such as ledger folio reference number or inventory sheet reference on the receipt copy of the voucher in case the stores ordered are required to be taken on charge.
- (c) Avoid making erasures on the vouchers. Mark corrections by striking out the erroneous figures or words and entering amendments above. The public officer who is authorised to sign such vouchers should initial the amendment.
- (d) If a voucher is cancelled, file all copies, except the last one which should remain in the pad, with the completed vouchers in correct numerical sequence. Mark clearly all cancelled vouchers "Cancelled" and have them initialled by the public officer who is authorised to sign such vouchers.

665. Departments should notify the DGL, D of A and DAS of any loss of, or damage to used or unused stores vouchers and controlled numbered stores forms.

670. DSM may destroy general forms, non-control-numbered stores forms, books of unused stores vouchers/control-numbered stores forms which are either obsolete or in excess of requirements. In the latter case, the CO who issues the forms or vouchers must authorise their destruction. After destruction, the DSM should sign the destruction certificate and file it for D of A's examination.

675. DSM may destroy, in the same manner as that described in SPR 670 above, used or partly used books of stores vouchers/control-numbered stores forms after they have been retained for three years and audited by the D of A. If a book contains original copies of used vouchers or forms, departments must seek approval from the DAS for the destruction unless the book has been retained for seven years after the end of the financial year containing the last entry.

REGISTERS

680. Departments should maintain registers of various stores records in accordance with the guidelines set out at Appendix VI.

CHAPTER VII

ACCOUNTING FOR STORES

CLASSIFICATION OF STORES

700. There are two types of stores : GLD unallocated stores and departmental stores.

GLD unallocated stores

705. (a) GLD unallocated stores are stores purchased by the DGL in bulk and held in stock pending subsequent sale or issue to departments and other bodies.
- (b) The costs of these stores are chargeable in the first instance to the Unallocated Stores Suspense Account established under section 30 of the Public Finance Ordinance and administered by the DGL. When these stores are issued to departments, DGL informs the DAS to debit the appropriate subheads of expenditure of the departments concerned and to credit the Unallocated Stores Suspense Account correspondingly.

Departmental stores

710. (a) Departmental stores are stores acquired by departments solely for their own use. They may be standard stores from the GLD unallocated stores or other items acquired by departments through direct purchase or other means.
- (b) Departmental stores are further classified into inventory and non-inventory items. Inventory items are generally stores of permanent or non-consumable nature and with a unit cost at or above \$1,000 at the time of purchase, while all the other stores are non-inventory items.

ACCOUNTING FOR GENERAL INVENTORY ITEMS

715. DSM is responsible for proper accounting of inventory stores received and issued. He should —

- (a) ensure that the public officer maintaining the inventories in a store unit records all the issues and receipts correctly and makes cross-references of the entries in the relevant inventory records such as Inventory Stores Ledger Sheet (GF 270) and Inventory Sheet and Distribution Record (GF 272) with the relevant vouchers such as the Departmental Order for Supply of Stores (GF 219) or Departmental Combined Requisition and Issue Voucher (GF 277);
- (b) arrange to check inventories at least once a year and ensure that any discrepancies are dealt with in accordance with SPR 1030; and
- (c) maintain a control index to record the number of inventory sheets in use.

720. DSM should account for inventory items as follows —

- (a) *Items received as stock in the first instance*
- (i) Enter the items in GF 270 when they are received into the departmental stores.
 - (ii) Strike the items off the GF 270 when they are issued from stock and enter them in bulk on GF 272 of an entity (which can be a branch, section or unit of a department, or a floor or wing of an office block).
 - (iii) In the case of departmental quarters or in exceptional circumstances where departments consider there are operational needs, enter also the items on the reverse side of the GF 272 and on the Room Inventory Record (GF 273). DSM and the inventory holder should each hold a copy of the GF 273.
- (b) *Items brought into immediate use*
- Account for the items as in (a)(ii)-(iii) above, but without first taking them on charge on a GF 270 and then striking them off.
- (c) *Items on loan from individuals or non-government organisations*
- Account for the items as in (a) or (b) above for the period on loan.
- (d) *Items donated by individuals or non-government organisations*
- Bring the items on charge using a Departmental Stores Return Note (GF 278) as soon as acceptance of the donation has been approved and account for the items as in (a) or (b) above as appropriate.

730. Departments may transfer items from one GF 272 to another. The public officer requiring the items should raise a Departmental Combined Requisition and Issue Voucher (GF 277) and route this through the DSM for his approval. Once the transfer is completed, the public officer concerned should duly inform the DSM so that the latter can update the records accordingly. In cases where GF 273 is maintained, departments may transfer items from one GF 273 to another without the use of vouchers provided that both records are under the same GF 272 and all relevant records are updated with the inventory holder receiving the items signed to that effect.

ACCOUNTING FOR SPECIAL INVENTORY ITEMS

735. Departments should account for special inventory items including fire fighting equipment, electrical and gas appliances, books, uniforms and accoutrements in accordance with the procedures set out in SPR 740-760 below.

Fire fighting equipment

740. User departments are responsible for the procurement of all portable fire-fighting equipment in their buildings and should account for the equipment on GF 272. The installation, testing, maintenance, inspection and repair of the equipment should be arranged by user departments or their appointed agents. In the event of loss or damage of the equipment, user departments should initiate write-off action in accordance with SPR 1035-1040 as appropriate.

Electrical and gas appliances

745. (a) For accounting purposes, electrical and gas appliances are classified into non-specialist, i.e. those which are listed in the Inventory Distribution Sheet of Electrical and Gas Appliances (GF 269), and specialist, i.e. those which are not listed in GF 269.
- (b) Departments should account for the appliances as follows —
- (i) Non-specialist electrical and gas appliances for office accommodation—follow SPR 720, but use GF 269 instead of GF 272.
 - (ii) Non-specialist electrical and gas appliances for departmental quarters—use GF 273 with the disposition summarised on GF 269.
 - (iii) Specialist electrical and gas appliances—follow SPR 720.
- (c) The Director of Electrical and Mechanical Services should account for the non-specialist electrical and gas appliances provided to each non-departmental quarter on the Inventory of Electrical and Gas Appliances (EMSD 32), and summarise the disposition of the appliances on GF 269.

Books

750. (a) For the purpose of these Regulations, books are classified into books typified as non-inventory stores, books held on departmental charge and books maintained in departmental libraries.
- (b) Each library should maintain an Accession Register (GF 39). Each line in the Register should be assigned a number in strict numerical sequence, called the accession number, for allocation to each book when it is received.
- (c) Apart from those classified as non-inventory items, which need not be taken on charge, departments should account for books as follows —
- (i) Books held on departmental charge—in accordance with SPR 720.
 - (ii) Books maintained in departmental libraries—allot to each book the next accession number immediately upon receipt and enter the number onto GF 39. Record the accession number outside on the binding panel of the book. Where not practicable, record the number on the inside front cover.

- (d) Departments should maintain a Loan Register to record books issued on loan.

Uniforms

755. (a) The authorities for the supply and design of uniforms are laid down in CSR 570-572. Departments should follow the Uniform Scale approved by the relevant authorities under the provisions of CSR 570-571 for the issue and replacement of uniform items. COs may personally grant exemption for certain uniform items from returning upon replacement or by outgoing officers having regard to the value of the items concerned and the security concern. The exempted items should usually be of low value and may create hygiene problems in case they are returned to departments for central disposal. Examples are socks, stockings and pantyhose. Uniform items bearing insignia, badges, departmental logo, department's name/acronym should not be exempted from returning.
- (b) Departments should maintain either a Uniform Record Card (GF 203) or an approved departmental uniform record card/sheet for each public officer and ensure its accuracy. All record cards/sheets should be serially numbered and supported by a control index.
 - (c) Except where otherwise authorised by the DGL, departments should follow the following procedures in (d)-(g) below for the issue of uniforms.
 - (d) Except for direct counter issues as described in (g) below, the public officer in charge of the requisitioning unit should submit to the DSM lists of public officers for whom issues are required, together with either —
 - (i) a GF 277 for initial issue; or
 - (ii) an Exchange Voucher for Stores on Inventory Charge (GF 275) for replacement issue, together with the items to be replaced (except for the exempted items).
 - (e) In case of an initial issue, the DSM should issue the items required, account for the issue in GF 270 by means of GF 277/GF 275 and update the GF 203 of the public officers concerned accordingly. In case of a replacement issue, the DSM should examine the items returned (except for the exempted items) and satisfy himself that they are unserviceable before issuing replacement items.
 - (f) Upon receipt of the uniform items, the officer-in-charge of the requisitioning unit should distribute them according to the name lists attached to the GF 277 or GF 275 and request the public officers concerned to acknowledge receipt by signing against their names on the lists. He should retain the lists for audit purpose.

- (g) In case of counter issues, unless the requisitioning officer can produce a GF 277 or GF 275 in which case the procedure in (e) should be followed, the DSM should record the issue on a Counter Record of Issues>Returns of Uniforms (GF 292) and the public officer's GF 203 and request the public officer to sign on both records to acknowledge receipt. When a GF 292 is completely filled up, he should raise a GF 277 to account for all the issued items on the GF 292 and then strike the items off the GF 270 accordingly.
760. (a) DSM should withdraw unserviceable items (except for the exempted items) and bring them on charge in the Unserviceable Ledger (see SPR 620(a)) for subsequent condemnation in accordance with the procedures laid down in Chapter XI.
- (b) DSM should take on charge used but serviceable uniforms returned from outgoing officers as serviceable (used) stores in accordance with SPR 620(a). He may subsequently issue such items to a public officer in excess of the latter's normal uniform scale as a supplementary issue and record this on the public officer's uniform record card. When the public officer no longer requires the supplementary issues, he should return the items and the DSM should then update the public officer's GF 203 accordingly.

ACCOUNTING FOR NON-INVENTORY ITEMS

765. Departments should account for non-inventory items as follows —
- (a) Items held in stock in a departmental store unit—in a Non-inventory Stores Ledger (GF 291). Except those cases set out in SPR 775 below, no further accounting for the stores is necessary once their issue has been recorded in the Ledger.
 - (b) Items issued for immediate use, for use on Working Stores Tables or specific jobs—state the purpose of the issue in the relevant voucher such as the Unallocated Stores Requisition and Delivery Note (GF 210) or GF 219, e.g. put down the relevant job number or cross-reference it with a GF 277.
770. To facilitate control and to simplify the accounting procedure, the DSM should, where necessary, prepare Working Stores Tables for controlling the issue of stores which are regularly required in fairly large quantities by individual units. The Table should specify the approved maximum permissible stock level for the unit concerned.
775. If departments consider that certain non-inventory items should be accounted for as inventory items for control purposes, they should account for the items in accordance with SPR 715-760. Once so accounted, departments should continue to treat them as inventory items unless otherwise agreed by the DGL.

CHAPTER VIII

MANAGEMENT OF STORES

GENERAL

800. (a) COs are responsible for the general supervision and control of stores. In order to make the best use of government stores, departments should follow good stores management practices in their daily operation.
- (b) DSM is responsible for the proper use of Government mark when procuring stores. Departments should deface the Government mark when selling such stores for private use.
805. (a) Departments should consult the Director of Fire Services on the storage of highly inflammable or explosive items where the quantities exceed the exemption levels stipulated under the Dangerous Goods Ordinance, and on the adequacy of fire-fighting facilities, where necessary.
- (b) Departments should make special arrangements for the storage of corrosive, radioactive or other dangerous materials in consultation with the Government Chemist or the Senior Physicist in-charge, Radiation Health Unit of the Department of Health.
810. In compiling draft Schedules of Accommodation for office fitting-out purpose, departments should —
- (a) give due consideration to the provision of proper and adequate storage facilities and the subsequent safety and safe-keeping of all stores including dangerous and perishable stores, and valuable, attractive or delicate items of equipment; and
- (b) include in the Schedules a full specification of the storage facilities covering layout, fixtures, fitments and special conditions, if any, and where appropriate, consult the relevant authorities.

RECEIPT OF STORES

815. The DSM is responsible for ensuring that stores supplied by a supplier are in full compliance with the contract or order specifications. The public officer who receives the stores should report immediately to the DSM any incidents of sub-standard stores received.
820. A public officer authorised to sign an order voucher should ensure that the stores ordered are delivered to the correct location within the stipulated time. This public officer should sign for any subsequent alteration or amendment to the order or cancellation of delivery and agree this in writing with the supplier.
825. Upon receipt of stores, departments should —

- (a) inspect the stores received within a reasonable period of time. If stores received are subject to extensive testing procedures, payment may only be made upon satisfactory completion of the acceptance testing; except where the contract specifies otherwise; and
- (b) account immediately for the accepted stores and give due consideration to any discount for prompt payment offered by the supplier. Payment should be made in accordance with the relevant provisions in the Financial and Accounting Regulations.

830. Departments should account for the proper handling/disposal of any containers/pallets, etc. received from suppliers but having resaleable value —

- (a) Take on charge empty non-returnable drums of a capacity of 200 litres or more in the Inventory Stores Ledger Sheet (GF 270) and record their subsequent disposal.
- (b) Maintain a record on the receipt and return of all containers returnable to or on loan from suppliers.

835. Departments which reject stores from local suppliers should do so in writing, with a copy to the DGL for an order placed or a contract let by the GLD.

ISSUE OF GLD UNALLOCATED STORES

845. (a) DGL may issue unallocated stores to departments for use in government services.
- (b) DGL may issue on payment basis to non-government organisations or individuals, unallocated stores which he considers are surplus to government requirements in accordance with the following procedures —
- (i) charges the stores at stock price plus an additional overhead charge of 20%, which may be waived only with the authority of the PS(Tsy); or
 - (ii) where there is a significant increase in market price over the stock price, consults the PS(Tsy) on whether the issue price should be calculated as stated in (i) above, or in some other way.

ISSUE OF DEPARTMENTAL STORES

850. Departments should follow the procedures set out at Appendix VI when issuing departmental stores for government works or services, for transfer between depots, for conversion into different specifications or units, or for sale.

Issue of stores on loan

855. (a) Subject to the approval of the DSM and to the loan period not exceeding six months, departments may issue departmental stores on loan in accordance with the following procedures —

- (i) To public officers within a department—record the issue in a Loan Register and retrieve the items immediately after the specified period of loan or before the public officers leave the department (e.g. on transfer or retirement).
 - (ii) To other departments—similar to (i) above. In addition, the issuing department should require the borrowing department to raise a GF 277 and a Departmental Stores Return Note (GF 278) to cover the issue and return of the stores respectively. Throughout the loan period, the stores remain on charge with the issuing department.
 - (iii) Contractors engaged in government works—similar to (ii) above except that the issuing department raises GF 277 and GF 278 on behalf of the contractor. In addition, the contractor has to provide a written agreement, including appropriate financial arrangements to safeguard Government's interests.
- (b) Where authorised personally by the CO or his deputy, departments may also issue stores on loan to private individuals or non-government organisations by following the procedures stated in (iii) above. The issuing department will raise GF 277 and GF 278 on behalf of the borrower.

Issue of tools on loan to government employees

860. (a) Departments should follow the procedures below for the issue of departmental tools on loan to government employees —
- (i) Long-term loan in respect of items required by the employees for carrying out their normal daily work —
 - Make issues in accordance with a standard scale where possible.
 - Record the issues on an Inventory Sheet and Distribution Record (GF 272) or a register/card (one sheet/page for each employee) designed to suit departmental requirements.
 - Check all tools issued physically against the records at least once every six months.
 - (ii) Short-term loan in respect of items required by the employees for a specific job outside the course of their normal daily work —
 - Record the issues in a Loan Register.
 - Retrieve the tools immediately to the departmental store unit once the job is completed.
- (b) Government employees are required to return all departmental tools on loan to them before taking leave of seven or more consecutive days.

Issue of stores to other departments

865. (a) Subject to the following authorities, a department may issue departmental stores which are no longer required to another department —

Original value of stores issued in any one case	Authority
Not exceeding \$50,000	CO
More than \$50,000 but not exceeding \$250,000	DGL
Over \$250,000	PS(Tsy)

(b) The issuing department should require the receiving department to raise a GF 277 for the issue. The GF 277 should bear the reference of the approving authority.

Issue of stores on payment

870. Subject to the approval of the DGL, departments may issue departmental stores, which are considered surplus to the department's requirements, on payment basis to non-government organisations, or individuals as follows —

- (a) charge the stores at stock price plus an additional overhead charge of 20%, which may be waived only with the authority of the PS(Tsy); or
- (b) where there is a significant increase in the market price over the stock price, consult the PS(Tsy) on whether the issue price should be calculated as stated in (a) above, or in some other way.

RETURN OF STORES

Stores issued from GLD unallocated stock

875. (a) Serviceable departmental stores received from GLD Unallocated Stock which are no longer required may be listed on a GLD Unallocated Serviceable Stores Return Note (GF 224) and return to the GLD for acceptance into GLD Unallocated Stock provided that they are —

- (i) not obsolete or surplus to government requirements;
- (ii) in a condition acceptable to the DGL and suitable for re-issue to other departments; and
- (iii) in complete units of quantity.

(b) The DGL will take the returned stores on charge in the GLD unallocated stores account at the current stock price. After receiving the notification from the DGL, the DAS will debit the Unallocated Stores Suspense Account and —

- (i) credit the returning department's vote if they are returned in the same financial year in which they were issued; or
- (ii) credit the General Revenue if they are returned in a year subsequent to the financial year in which they were issued.

Stores issued from departmental stock

880. If serviceable stores received from departmental stock are no longer required, the public officers concerned should return them to departmental stock. They should indicate on the GF 278 whether the stores are new (unused) or serviceable (used).

SAFE CUSTODY OF STORES

885. Public officers are personally responsible for the safe custody of all stores received by them in the course of their duties. They may be surcharged for any loss resulting from a failure to follow these Regulations, and/or any instructions issued by the DGL regarding the safe custody of stores.

HANDOVER OF STORES

890. (a) When stores on ledger charge are handed over, both the outgoing and incoming officers should verify that all items shown in the stores ledgers are actually held in stock and that all items in stock are correctly recorded in the ledgers. However, if the DSM considers that, owing to a large number of items, it is not practicable for the incoming officer to check all of them, he may permit the incoming officer to select a number of items, which should include valuable and highly attractive items, for verification.
- (b) The outgoing officer should record all surpluses and deficiencies noted during verification on a Departmental Stocktaking—Schedule of Discrepancies (GF 241) and report them to the CO through the DSM by completing paragraph 1 of the Departmental Stocktaking Report (GF 237). He should also immediately raise a GF 277 and/or GF 278 as necessary to deal with the discrepancies in accordance with SPR 1030-1070.
- (c) On completion of the verification, both the outgoing and incoming officers should sign on the Handing Over Certificate (GF 239) and forward it to the CO through the DSM.
895. (a) If the outgoing officer is unable to hand over stores issued to him personally, the CO should appoint a Handing Over Board which should proceed in accordance with SPR 1015 (a)-(c)(i). A completed Certificate of Handing Over by a Board (GF 240) should be forwarded to CO through DSM.
- (b) The outgoing officer may be held responsible for any deficiencies reported; whilst the incoming officer may be held responsible for any deficiencies not reported but subsequently discovered.

SECURITY OF STORES

896. DSM is responsible for assisting the CO in general supervision and control of stores and stores accounts within his purview. In this respect, DSM should –

- (a) inspect each store unit under his direct control at least once every two years, including examining the adequacy of security arrangements, and report the results of the inspection to the CO on the Periodical Stock Inspection Report (GF 238); and if necessary, also on the Departmental Stocktaking-Schedule of Discrepancies (GF 241); and
- (b) carry out surprise stock and security checks at irregular intervals at least once every three months unless DGL has authorised otherwise. However, if it is impractical or not cost-effective for him to inspect each and every store unit, he should ensure that the respective head of the unit concerned or his deputy will conduct such checks. In all cases, the public officer conducting the check should properly record the findings in the Surprise Inspection Book (GF 235).

CHAPTER IX

COLLECTION AND DELIVERY OF STORES FROM SUPPLIERS OUTSIDE HONG KONG

GENERAL

900. DGL may assist departments to receive specialised stores, such as arms and ammunition, consigned by suppliers outside Hong Kong.

905. When a department receives any bill of lading or airway bill addressed directly to it, the responsible officer of the department should endorse the bill “For delivery to the Director of Government Logistics” by signing on behalf of his CO and then forward it to the DGL.

HANDLING OF CONSIGNED GOODS RECEIVED BY THE DIRECTOR OF GOVERNMENT LOGISTICS

915. The requisitioning department should retain all packing materials in separate lots and maintain a record of all related documents until the actual receipt of all the stores said to have been delivered. In the event of loss, these packing materials can be used for checking the gross and net weight of the particular package against the weights given in the shipping documents.

RECEIPT OF STORES

920. Immediately upon receipt of stores from the DGL or directly from suppliers outside Hong Kong, departments should take on charge the full quantity of stores shown on the invoices.

INSPECTION OF STORES RECEIVED

925. Department should raise an Inspection Report of Goods Received (Imported) (GF 280) and inspect the stores received —

- (a) within seven days of delivery in respect of general stores; and
- (b) within 30 days of delivery or as specified in the terms of order/contract in respect of stores requiring special testing procedures.

930. Immediately after the inspection, the department will complete the relevant sections of the Inspection Report of Goods Received (Imported) giving details of any differences between the stores actually received and those listed in the invoices or packing lists and of any losses or damages of stores. For stores received through the GLD, the department should send a copy of the Inspection Report of Goods Received (Imported) to the DGL.

CLAIMS

935. If stores ordered are not received in good order and condition, and if the loss or damage exceeds \$1,000, or if essential accessories or parts of any equipment, regardless of their value, are not received in good order and condition, the department concerned should immediately —

- (a) submit a Claims Report (GF 296) to the DGL or notify him through the GLD's Procurement and Contract Management System so that the GLD will create a Claim Record and lodge claims on the appropriate parties and the department concerned should follow the procedures set out in SPR 955-965 in the case of stores purchased through the GLD; or
- (b) lodge claims on the appropriate parties by following the procedures set out in SPR 950-965 in the case of stores purchased by departments direct.

940. Departments should not consider a claim being settled until —

- (a) the value of the loss or damage has been recovered in full; or
- (b) the stores have been replaced; or
- (c) a write-off has been authorised.

945. Departments should maintain a Claim Register (GF 207) for recording claims on account of breakages or deficiencies of stores received from sources outside Hong Kong. Departments should treat any broken item which cannot be repaired as a deficiency.

950. After the claim has been settled, the department concerned will strike off charge the quantities of stores broken or found deficient by means of a Departmental Combined Requisition and Issue Voucher (GF 277) and make cross reference with the Claim Register.

955. The DGL will follow the accounting procedures outlined below when dealing with claims in respect of stores ordered by/through the department —

- (a) Debit the cost of the stores to the appropriate subhead of expenditure.
- (b) Prepare a Claim Record Card on receipt of a claim through Procurement and Contract Management System or GF 296 from the requisitioning department.
- (c) (i) If the exact amount to be claimed is known, raise a journal transfer crediting the appropriate subhead of the requisitioning department and debiting "Advances—Claims". After the liable party has settled the claim, credit the amount to clear the Advance Account. This is regardless of whether the claim is settled in the same or subsequent financial year.

- (ii) If the exact amount to be claimed is not known (e.g. for broken or damaged parts of plant, instruments or other equipment where the value of the parts will not be known until after receipt of the required replacement invoice or claims for refund of repair, alteration and associated charges and where the charges cannot be ascertained until after completion of the jobs or where the claim is in a foreign currency), allocate the credit received direct to the appropriate subhead if received within the same financial year, or to revenue if received in a subsequent year.
- (d) Debit the cost of any subsequent replacements to the appropriate subhead of the requisitioning department.
- (e) If the liable party admits liability and the supplier provides a free replacement, irrespective of whether this is done in the same or subsequent financial year, the DGL will take no further action. Except where an Advance Account has been opened under (c)(i) above, the DGL will reverse the original entry by journal transfer, forwarding the original and three copies to the requisitioning department. On receipt of the free replacement, the department concerned will accept the debit by retaining the quadruplicate and forwarding the original and duplicate to the DAS, and the triplicate to the DGL.

960. When dealing with claims in respect of stores purchased by departments direct, departments should follow the accounting procedures outlined in SPR 955(a), (c), (d) and (e). Whenever necessary, departments may write to the DAS for the opening of an Advance Account for debiting the amount to be claimed, and should credit the Advance Account immediately after the claims have been settled.

965. Departments may not lodge claims on the appropriate parties if the amount of breakages or deficiencies of stores received does not exceed \$1,000 ledger value, and the stores involved are not essential. Under such circumstances, departments may write off the items in accordance with SPR 1040(b).

CHAPTER X

STOCK VERIFICATION AND WRITE-OFF

STOCK VERIFICATION

1000. (a) The following bodies may verify the stocks of government stores held by departments on ledger charge —
- (i) Supplies Surveys and Stock Verification Section of GLD;
 - (ii) Board of Survey appointed by DGL;
 - (iii) Departmental Stock Verification Team appointed by the CO; and
 - (iv) Special Board of Survey appointed by the Chief Secretary for Administration.
- (b) Except in the case of a Special Board of Survey, DGL determines the checking and verifying criteria for verification of stocks of government stores by the bodies listed in SPR 1000(a). PS(Tsy) may amend or make exceptions to the prescribed criteria.

GLD Supplies Surveys and Stock Verification Section

1005. (a) The Supplies Surveys and Stock Verification Section of GLD verifies completely or randomly stocks of government stores held by departments according to prescribed criteria at least once every three years.
- (b) The DGL lays down the procedures for the supplies surveys and stock verification exercises conducted by the Supplies Surveys and Stock Verification Section of the GLD. The terms of reference of the Section are as follows –
- (i) to compare ledger balances with quantities found in stock and to report any discrepancies;
 - (ii) to examine the general conditions of the stores held in stock and the stock control system with particular reference to dormant and excessive stocks;
 - (iii) to advise on the arrangements for the security of stores; and
 - (iv) to conduct compliance checks on stores management and procurement activities performed by the departments to ensure compliance with the Regulations and other relevant instructions.

- (c) On completion of the supplies survey and stock verification exercise, the DGL should forward a report on details of the findings together with recommendation to the CO concerned for follow up action and making improvements, copying it to D of A.

Boards of survey

1010. (a) DGL appoints Boards of Survey to verify stocks of government stores held by departments, which the Supplies Surveys and Stock Verification Section of GLD is unable to verify within the approved checking period stipulated in SPR 1005(a). Unless the DGL has authorised otherwise, such Boards do not include any staff of the department concerned, and their terms of reference are as follows —
- (i) to confirm that the balances of stores on charge are actually in stock and to report any discrepancies;
 - (ii) to report on any stores which are found not taken on charge; and
 - (iii) to report on the general conditions of stores in stock.
- (b) On completion of the survey, the Chairman of the Board should submit to the DGL a Report of Board of Survey on Stores (GF 236), attaching a Departmental Stocktaking Schedule of Discrepancies (GF 241).
- (c) DGL should forward the Report (GF 236) to the CO concerned for necessary action required under SPR 1030-1065, copying it to D of A.

Departmental stock verification team

1015. (a) In addition to the stock verification by either the Supplies Surveys and Stock Verification Section of GLD or Boards of Survey, CO may appoint public officers of his department to inspect and verify completely stocks of all items held on ledger charge in all stores under his control by following the procedures set out in (b) and (c) below.
- (b) Unless otherwise approved by the DGL, the appointed officers should inspect and verify —
- (i) progressively, in the case of large store, ensuring that each item is checked at least once every three years. COs should, where necessary, arrange more frequent verifications and inspections to be carried out;
 - (ii) completely, stores by stores in the case of small stores, at least once a year, and preferably about six months after the last verification by either the Supplies Surveys and Stock Verification Section of the GLD or a Board of Survey; and
 - (iii) completely, stores by stores, immediately prior to and immediately following the transfer of stores from one storage area to another.

- (c) The inspection and verification should include —
 - (i) a comparison of the ledger balances with the actual stocks, and a report of the surpluses and deficiencies on a GF 241;
 - (ii) an examination of the conditions of the items of stores and the manner in which they are stored; and
 - (iii) an examination of the conditions of the warehouses, yards, locks and fastenings for the storage of stores.

1020. On completion of the inspection and verification in the case of either SPR 1015(b)(ii) or (b)(iii), and monthly in the case of SPR 1015(b)(i), the appointed officers forward their reports together with recommendations, on the Departmental Stocktaking Report (GF 237), to the CO concerned for necessary action required under SPR 1030-1065 in respect of any discrepancies.

Special boards of survey

1025. (a) The Chief Secretary for Administration may appoint a Special Board of Survey where there is reason to believe that losses of stores have been caused by fraud or gross negligence, or in other circumstances as deemed necessary. The Chief Secretary for Administration will determine the specific terms of reference and responsibilities of the Board.
- (b) On completion of the survey, the Chairman shall prepare a report containing a detailed account of the findings and recommendations of the Board in accordance with the specific terms of reference, and forward the report, in quadruplicate, through the DGL who detaches one copy and passes the other three to the Chief Secretary for Administration with his comments.

PROCEDURES FOR DEALING WITH DISCREPANCIES

1030. When a CO becomes aware of any discrepancies between the physical and ledger balances of stores under his control, he will arrange to —

- (a) account for any deficiencies by a Departmental Combined Requisition and Issue Voucher (GF 277), which should bear a reference to the appropriate authority for the necessary adjustment made; and
 - (b) take on charge any surplus by a Departmental Stores Return Note (GF 278).
1035. (a) The CO concerned should **report immediately** in writing all cases of loss or deficiency where fraud, suspected fraud or negligence is involved to the DGL, copying it to PS(Tsy), DAS and D of A. The CO concerned should make a report to the police if the losses or deficiencies involve a criminal act or suspected criminal act.

- (b) The CO should then **investigate** the loss or deficiency and forward his report, to be supported by the police report if appropriate, to the DGL, copying it to PS(Tsy), DAS and D of A. He has to include in the report his recommendations for clearing the loss or deficiency, any necessary action taken against the public officer(s) responsible, and a statement of the steps taken to prevent a recurrence. Where appropriate, he should submit monthly reports on the progress of the investigation.
 - (c) Where appropriate, the DGL **may conduct enquiries** into the loss or deficiency, and submit his recommendations to the PS(Tsy), copying them to DAS and D of A.
 - (d) Where negligence (but not fraud or suspected fraud) is involved and the value of the lost items does not exceed \$50,000, the CO, after conducting an investigation of a case of loss or deficiency in accordance with SPR 1035(b), may, subject to DGL's advice, **arrange to write off** the loss or deficiency in accordance with SPR 1070 or consider asking the public officer(s) concerned to **replace** the lost or deficient stores in accordance with SPR 1075. PS(Tsy)'s approval has to be sought where DGL's advice does not agree with that of the CO.
 - (e) **Where fraud, suspected fraud or negligence is involved**, the CO should submit an application in respect of each case to the **PS(Tsy)** for the write-off of losses or deficiencies, using an Application for Write-off under SPR 1070(a)(ii) (GF 403), copying it to DAS, D of A and DGL. Except for cases described in (f) below, this procedure should be followed, irrespective of the amount involved.
 - (f) For the purposes of write-off, departments should treat any loss arising from theft or suspected theft as a loss involving fraud or negligence on the part of a public officer. The only exception for this treatment is when such a loss does not exceed \$50,000 in value, for which departments may, on completion of a departmental investigation, **write off** departmentally on a Record of Lost or Deficient Stores Written-off (GF 190) in accordance with the authorities stated in SPR 1070(a)(i).
1040. (a) **Where no fraud, suspected fraud or negligence is involved but where the amount in any one case exceeds \$750,000**, the CO has to submit an application to the PS(Tsy) as soon as possible for the write-off of losses or deficiencies, using an Application for Write-off under SPR 1070(b)(v) (GF 402), copying it to DAS, D of A and DGL with supporting information set out in Annex B of FC No. 5/2017.
- (b) **Where no fraud, suspected fraud or negligence is involved and where the amount of loss or deficiency in any one case does not exceed \$750,000**, COs may write off such an amount on a GF 190 in accordance with SPR 1070(b)(i)-(iv). When approving the write-off, the public officer with the delegated authority needs to sign on the GF 190 personally and certify in each case that —

- (i) no fraud, suspected fraud or negligence is involved;
 - (ii) an investigation and a record have been made of the circumstances and, where appropriate, steps have been taken to prevent a recurrence;
 - (iii) the amount is not in excess of his delegated authority; and
 - (iv) he is satisfied that the stores are irrecoverable.
- (c) Departments should submit a half-yearly return to the PS(Tsy) on the Half Yearly Return of Lost or Deficient Stores Written-off under SPR 1040(b) (GF 401), showing the description and amount written off in respect of each case during the first/second half of a financial year. Returns must be submitted within two months after the end of the reporting period, with copies to the DAS, D of A and DGL. A nil return is required.

1045. In respect of deficiencies appearing in the Stock Movement Journal of the GLD, the DGL has the authority to write off deficiencies up to a value of \$50,000 in any one month, provided that such deficiencies are not caused by fraud, suspected fraud or negligence.

1050. If any surplus stock of a value exceeding \$50,000 in respect of one store is found, the CO will report to the DGL, and copy it to PS(Tsy), DAS and D of A.

1055. For the purpose of these Regulations, “value” means the GLD stock price or the original purchase cost or, where neither of these can easily be determined, the replacement cost.

1060. COs are responsible for investigating the practicability of protective measures for safeguarding government property.

1065. These Regulations, in no way, inhibit the DAS, D of A or DGL from conducting an investigation into any losses or deficiencies which they consider necessary.

AUTHORITY FOR WRITE-OFF OF LOST/DEFICIENT STORES

1070. The authorities for approving the write-off of any loss or deficiency of stores are as follows —

- (a) Where caused by fraud, suspected fraud or negligence of a public officer —
 - (i) in respect of cases involving theft or suspected theft as described in SPR 1035(f) —

**Value of stores in each case or
in respect of any one cause**

Authority

Not exceeding \$10,000

Deputy/Assistant Head of
Department/ Bureau of D2/DL2
rank or above

- | | |
|---------------------------|--|
| Not exceeding \$50,000 | Head of Department/ Bureau or CO personally (irrespective of rank) |
| (ii) in all other cases – | |
| Not exceeding \$500,000 | PS(Tsy) |
| Exceeding \$500,000 | Finance Committee of the Legislative Council |
- (b) Where not caused by fraud, suspected fraud or negligence of a public officer (with the exception of those cases described in SPR 1045) —

Value of stores in each case or in respect of any one cause	Authority
(i) Not exceeding \$7,500	Departmental Secretary ranked at or above Point 45 of the Master Pay Scale or other public officers of equivalent rank who oversee stores and supplies matters as designated by CO
(ii) Not exceeding \$30,000	Directorate Officer of D1/DL1 rank
(iii) Not exceeding \$150,000	Deputy/Assistant Head of Department of D2/DL2 rank or above
(iv) Not exceeding \$750,000	Head of Department/Bureau or CO personally
(v) Exceeding \$750,000	PS(Tsy)

REPLACEMENT OF STORES

1075. The CO, or his designated directorate officer of seniority at least one substantive rank higher than the public officer(s) involved in the loss or deficiency, may approve the replacement of the lost or deficient item(s) by the public officer(s) concerned provided –

- (a) **no fraud or suspected fraud** is involved,
- (b) the total value of such loss or deficiency **does not exceed \$50,000** in value, and
- (c) the CO or his designated directorate officer is satisfied that replacement by the public officer(s) would be **reasonable** having regard to the duty to protect public funds and the circumstances leading to the loss or deficiency.

In these cases, when the public officer concerned has replaced the loss or deficiency on repayment basis, no write-off of such loss or deficiency on GF 190 is necessary. The DSM will support the replacement issue from stock by a Departmental Combined Requisition and Issue Voucher (GF 277), with the relevant demand note number quoted thereon.

SURCHARGE

1080. (a) The CO, after conducting an investigation in accordance with SPR 1035(b), may recommend in his report to the PS(Tsy) to surcharge the public officer concerned under section 32 of the Public Finance Ordinance for the deficiency in, or loss or destruction of, or damage to stores for which he is responsible. Unless otherwise authorised by the PS(Tsy), departments should calculate the proposed charge as follows —

- (i) for new items—the current replacement cost plus an additional charge of 20% for overheads;
- (ii) for used items—the greater of the scrap value or the depreciated value of the item(s), plus an additional charge of 20% for overheads; and
- (iii) for damaged items which are not beyond economical repair—the cost of repair plus an additional charge of 20% for overheads.

(b) The depreciated value of an item is calculated using the following formula —

$$\text{current replacement cost} \times \frac{\text{unexpired useful life span}}{\text{useful life span}}$$

(c) The current replacement cost, life span, scrap value and repair cost of an item are determined by the GLD and the specialist department(s) responsible for the procurement, maintenance or repair of the item. Where the item is out of production, or the current replacement cost for the item is unknown, the current price of the equivalent substitution will be used for calculating the replacement cost. In case a public officer objects to the Government's valuation, he may, at his own expense, appoint an independent valuer approved by the Government for the purpose of proposing an alternative valuation. The valuation made by this independent valuer will be binding on both the public officer and the Government.

1085. The PS(Tsy) shall process all cases referred to in SPR 1080 in accordance with the guidelines and procedures set out in the prevailing FC on surcharge.

CHAPTER XI

DISPOSAL OF SURPLUS STORES

SCOPE

1100. These regulations apply to the disposal of store items that have become surplus to the requirements of a department. They cover all stores, inventory as well as non-inventory items which are serviceable or otherwise. Items that can be used for trade-in purposes are not counted as surplus stores.

DEPARTMENTAL DISPOSAL AUTHORITY

1105. Each CO shall appoint a Departmental Disposal Committee (DDC) comprising a chairman who is a public officer at or above senior professional level and at least two other members (at or above the rank of an Assistant Supplies Officer or Executive Officer II or equivalent) from within his department.

1106. A DDC may approve the disposal of surplus stores items with a value at or below the quotation limit for procurement of stores specified in SPR 220(a). A DDC may sub-delegate its work relating to the disposal of non-inventory unserviceable stores items to designated officers not lower than the rank of an Assistant Supplies Officer or Executive Officer II or equivalent. CO or a directorate officer designated by him may, on the recommendation of the DDC, approve the disposal of surplus stores items exceeding the approval limit of the DDC.

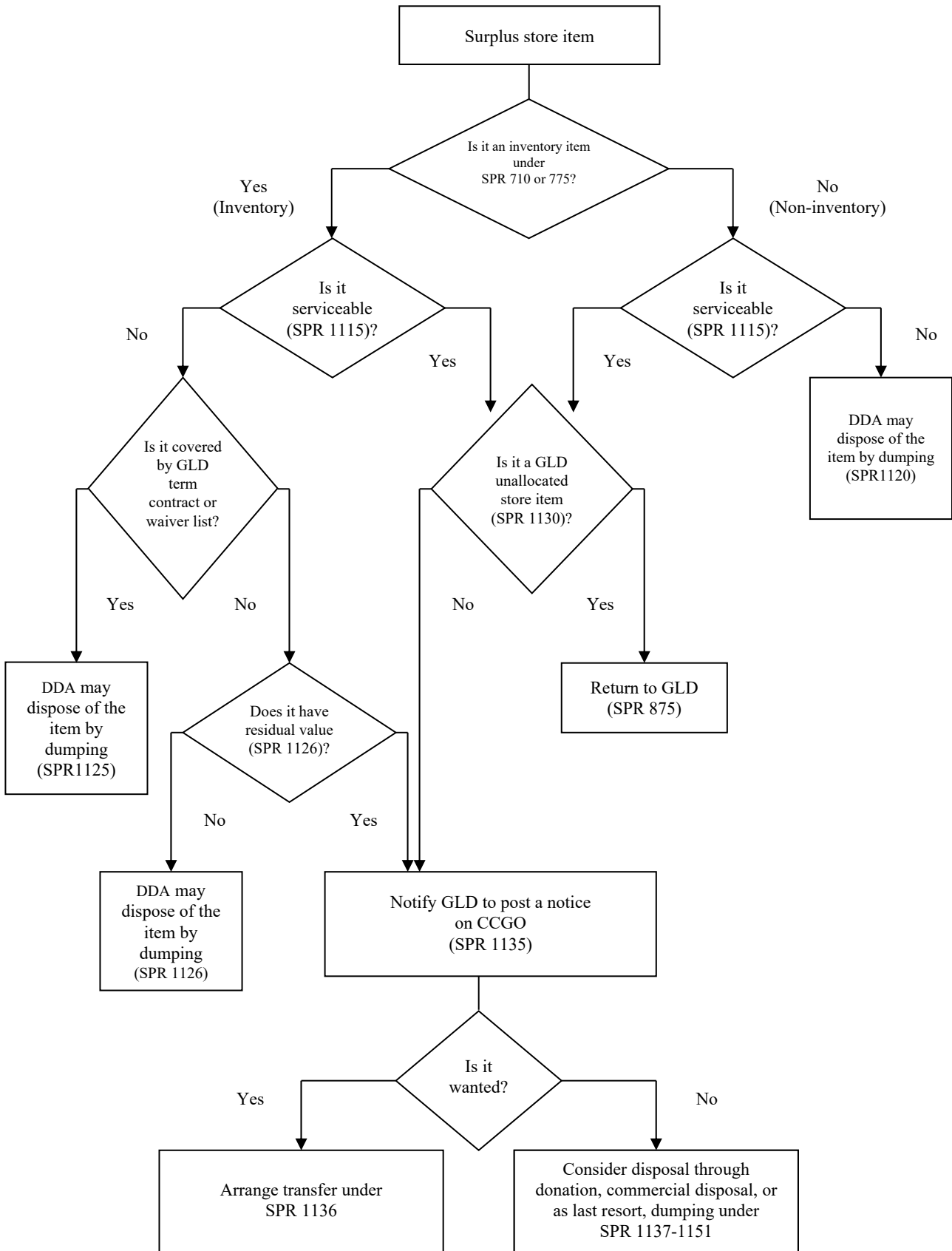
1107. "Value" means the GLD stock price or the original purchase cost or, where neither of these can easily be determined, the replacement cost. The threshold specified in SPR 1106 may apply to the value of each individual surplus stores item or if there are separate items, the collective value of all the items concerned in each case or in respect of any one cause.

1108. A CO may decide the exact mode of operation for his DDC provided that the DDC operates in a transparent manner and sufficient checks and balances are in place.

DISPOSAL PROCEDURES

1110. Departments shall follow the key steps summarised below and explained in greater detail through other regulations in this Chapter —

Disposal of Surplus Stores



DISPOSAL OF UNSERVICEABLE STORES ITEMS

1115. The decision on whether or not a surplus stores item is serviceable rests with the departmental disposal authority (DDA) which, depending on the value of the stores items to be disposed, may be the DDC or a designated officer specified in SPR 1106.

Non-inventory

1120. A DDA may arrange to dump a non-inventory stores item which is found to be unserviceable, i.e. unsuitable for use either because it is worn out or broken and is certified by the supplier, competent technician or technical department to be beyond economical repair; or because it is technically obsolete.

Inventory

1125. A DDA may dispose of an unserviceable inventory store item —

- (a) by selling it to a term contractor if it is an article or material covered by the disposal term contracts arranged by the GLD; or
- (b) by dumping it direct if it is of such low value as to be covered by a waiver list which the GLD regularly publishes on its webpage.

1126. If the unserviceable inventory stores item is not covered by SPR 1125 and the DDA considers that it may have residual value of some kind (for display, training, or preservation, etc.), the DDA shall arrange for its disposal in accordance with SPR 1135-1151. Otherwise, the DDA may dispose of the item by dumping.

DISPOSAL OF SERVICEABLE STORES ITEMS

GLD unallocated stores items

1130. A DDA should return serviceable GLD unallocated stores items to the GLD in accordance with SPR 875. A DDA shall follow the procedures set out in SPR 1135-1151 for the disposal of all serviceable allocated stores items, inventory as well as non-inventory.

Items that may be wanted by other departments

1135. If a surplus stores item under SPR 1126 or 1130 is available, a DDA should ascertain whether it is needed within other parts of the Government, by requesting the DGL to post a notice on the Central Cyber Government Office (CCGO) to publicise the availability of the surplus stores item. The releasing department should provide details on the condition of the surplus stores items (including whether they are still serviceable, and whether spare parts are available, etc.) and a contact point for follow-up enquiries. The DGL updates the relevant website at least once a week and posts individual notices of availability on the CCGO for no less than ten working days.

1136. If another department indicates interest in receiving the concerned surplus stores item the releasing and receiving departments should make their own arrangements for transfer and reconciliation of necessary accounts and inventory lists, etc., in line with SPR 865. The same procedures will apply to the transfer of surplus stores items between trading funds and government departments, except that such a transfer may be subject to a charge on the receiving department; the proposed level of charges should be made on the notice. The releasing department should consider competing bids for surplus stores items on a first-come-first-served basis.

1137. When, after action is taken under SPR 1135, a DDA establishes that a surplus stores item is not wanted within the Government, it shall consider whether to dispose of it through donation, commercial disposal or dumping. Donation and commercial disposal should be considered in parallel and the final decision depends on the merits of each case. In general, factors including the residual value, resaleable value and the public interest should be taken into consideration. On the resaleable value, advice from DGL should be sought where appropriate.

Donation

1140. A DDA may, either at its own initiative or upon request, donate a surplus stores item to non-government organisations subject to the following conditions —

- (a) the recipient organisations must be established solely or principally for educational, scientific, cultural or charitable purpose;
- (b) the recipient organisations will only use the surplus stores items for non-profit-making purpose; and
- (c) the provision of surplus stores items will not have any capital or recurrent expenditure implications on the Government.

1141. If the value of the surplus stores items to be donated exceeds \$200,000 in each case or in respect of any one cause, the releasing department must seek the prior approval of PS(Tsy).

1142. The prior approval of the Finance Committee must be sought for a donation that does not meet the conditions specified in SPR 1140.

1143. If a DDA decides to make a donation of surplus stores items, it may liaise with the relevant non-government organisations either directly or through the DGL as co-ordinator. If the non-government organisations agree to receive the surplus stores items, the releasing department should directly arrange to issue the items to the organisations concerned after obtaining the necessary approval provided under SPR 1140-1142. The releasing department should provide details of the donation (e.g. the name of the recipient organisations, the description of stores items and the quantity) to the DGL for record.

1144. If there are more applications for surplus serviceable stores items than the stock of stores available, the DGL will advise the releasing department concerned as to whom and what surplus stores items and quantities to be donated, having regard to the past donation records to ensure equity.

Commercial disposal

1145. If a DDA considers that a surplus stores item has saleable value, it shall request the DGL to arrange for commercial disposal of the stores item. DGL may advise the department to sell the stores item to the GLD disposal term contractors direct or arrange for a quotation, a tender or an auction exercise, having due regard to the value of the stores item and the cost-effectiveness of various disposal options. Under exceptional circumstances, departments may seek PS(Tsy)'s approval for selling their surplus stores by means other than those set out in this Regulation. Application should be submitted through DGL with full justifications.

Dumping

1150. If a DDA is satisfied that a surplus stores item, which has been established as not wanted within the Government, is not fit for donation, and commercial disposal is not cost-effective, it may arrange to dump the item.

1151. If a department decides to dump a surplus stores item that does not fully meet the foregoing conditions, it shall seek the prior consent of DGL who, if in doubt, shall consult PS(Tsy).

PROPER ACCOUNTING FOR STORES

1155. Whatever the method of disposal, COs are responsible to ensure that the movement of stores is properly recorded and accounted for, in line with the requirements in Chapter VII of these Regulations (Accounting for Stores) and for items dumped, follow the format set out at Appendix VII.

CHAPTER XII

DISPOSAL OF DANGEROUS OR CONFISCATED GOODS

DISPOSAL OF MATERIALS IN A DANGEROUS CONDITION

1200. (a) When CO considers that any materials under his control are in dangerous condition and might endanger life or property, he may authorise immediate disposal of the materials. He should consult the Director of Fire Services, Government Chemist, or Senior Physicist in-charge, Radiation Health Unit of the Department of Health as appropriate.
- (b) CO should keep proper records on all such disposals, following the format set out at Appendix VII.

DISPOSAL OF CONFISCATED GOODS

1205. The department which initiates the confiscation of goods under the relevant legislation will hand over all the goods confiscated to those departments ultimately responsible for their disposal in accordance with the relevant legislation and/or standing instruction from the Financial Secretary (see SPR 1215 and 1220).

1210. When handing over the confiscated goods, the department should present a Confiscation Order (GF 83), bearing reference to the legislation or authority (either a Court or a public officer empowered by the relevant ordinance) under which the confiscation has been ordered. The Confiscation Order should be distributed as follows —

- | | |
|---------------|--|
| Original | — To the officer-in-charge of the case for attachment to the charge sheet or relevant document. |
| Duplicate | — To be retained by the office which issues the GF 83. |
| Triplicate | — To the department which receives the confiscated goods to support entry in the forfeited goods ledger. |
| Quadruplicate | — To the department which initiates the confiscation. |

1215. The following departments are responsible for the disposal of the specific categories of confiscated goods —

Department	Confiscated Goods
Agriculture, Fisheries and Conservation Department	(a) Tree Wood (b) Fish
Civil Engineering and Development Department	(c) All dangerous goods listed in Category I of the Dangerous Goods (Application and Exemption) Regulations (Cap. 295) other than ammunition

	(d)	Minerals (confiscated under the Mining Ordinance (Cap. 285))
Customs and Excise Department	(e)	All goods including kerosene, gasoline and diesel fuel, to which the Dutiable Commodities Ordinance (Cap. 109) applies, and rice and dried food not fit for human consumption
EMSD	(f)	Liquefied petroleum gas as prescribed in the Gas Safety Ordinance (Cap. 51)
Fire Services Department	(g)	All dangerous goods listed in the Dangerous Goods (Application and Exemption) Regulations (Cap. 295) other than those in Category I, kerosene, gasoline and diesel fuel, and liquefied petroleum gas as prescribed in the Gas Safety Ordinance (Cap. 51)
Food and Environmental Hygiene Department	(h)	Perishable goods for destruction
Hong Kong Police Force	(i)	Arms and ammunition
	(j)	Counterfeit currency (bank notes and coins) as prescribed in Standing Accounting Instruction 1971
Hong Kong Police Force or Customs and Excise Department	(k)	Dangerous drugs paraphernalia
Hong Kong Police Force or Department of Health	(l)	Dangerous drugs as prescribed in the Dangerous Drugs Ordinance (Cap. 134) and dried food not fit for human consumption
Treasury	(m)	Currency as prescribed in Standing Accounting Instruction 1970

1220. DGL is responsible for the disposal of any other confiscated goods not listed in SPR 1215. The department which initiates the confiscation will report to the DGL who, after assessing the transportation and storage costs likely to be incurred, will decide on the most appropriate disposal method and arrangements.

1225. The following COs are empowered to destroy the specific categories of goods which are confiscated under the relevant ordinances —

CO

Confiscated Goods

- | | |
|---|---|
| Commissioner of Customs and Excise | (a) Goods of a perishable nature or the sale of which will give rise to a harmful effect to the public
<i>Import and Export Ordinance (Cap. 60)</i> |
| | (b) Obscene books, films, magazines, photographs, etc.
<i>Post Office Ordinance (Cap. 98)</i> |
| | (c) Goods bearing a forged trade mark or to which a false trade description is applied and where obliteration of such markings or description is inapplicable
<i>Trade Descriptions Ordinance (Cap. 362)</i> |
| | (d) Items infringing copyrights and unsuitable for public sale
<i>Copyright Ordinance (Cap. 528) and Prevention of Copyright Piracy Ordinance (Cap. 544)</i> |
| Commissioner of Customs and Excise and Commissioner of Police | (e) Controlled chemicals ^{Note 1}
<i>Control of Chemicals Ordinance (Cap. 145)</i> |
| | (f) Obscene publications, video tapes, video compact discs, photographs, etc. ^{Note 2}
<i>Control of Obscene and Indecent Articles Ordinance (Cap. 390)</i> |
| Commissioner of Customs and Excise, Commissioner of Police and Director of Film, Newspaper and Article Administration | (g) Indecent articles not complying with statutory requirements for their publication ^{Note 2}
<i>Control of Obscene and Indecent Articles Ordinance (Cap. 390)</i> |
| Commissioner of Police and Director of Food and Environmental Hygiene | (h) Hawker's equipment, carts, trolleys and stalls
<i>Public Health and Municipal Services Ordinance (Cap. 132)</i> |

Note

1. Exceptions —

Chemicals which are suitable for laboratory use such as cholesterol test, or having a saleable value, will be dealt with in accordance with SPR 1220.

2. Exceptions —

Machinery or apparatus for projecting or showing and/or plates, instruments or utensils used for printing which are considered suitable for public sale, will be dealt with in accordance with SPR 1220.

1230. In the case of perishable goods handed over to recognised charitable institutions, the releasing department will require the receiving institution to sign the triplicate of GF 83 and return it to the issuing department. In such cases, the quadruplicate of GF 83 will not be used.

1235. In the case of goods earmarked for destruction, public officers carrying out the destruction will certify destruction on the triplicate of GF 83, and in such cases, the quadruplicate of GF 83 will not be used.

Appendices

- Appendix I
- (A) [Specimen Declaration and Undertakings by Public Officers Involved in Preparing Tender Documentation \(including Tender Specifications and Marking Schemes\), Assessing Tenders and Conducting Tender Negotiations](#)
 - (B) [Specimen Undertakings by Head or Chairperson, Members and/or Secretary of Tender Opening Teams/Departmental Tender Committees/Departmental Consultants Selection Committees/Tender Boards/Consultants Selection Boards](#)
 - (C) [Declaration and Undertakings by Technical Advisor who are not Public Officers](#)
- Appendix II
- [Endorsement Authorities and Procurement Agents for Specific Stores](#)
- Appendix III
- (A) [Specimen Notice for Approved Lists of Qualified Contractors/Suppliers/Service Providers for Selective Tendering](#)
 - (B) [Specimen Application for Authority to Prequalify Tenderers](#)
 - (C) [Specimen Gazette Notice for Prequalification of Tenderers](#)
 - (D) [Specimen Application for Approval of Prequalified Tenderers](#)
 - (E) [Specimen Gazette Tender Notices](#)
 - (E)1 [Note to Tenderers](#)
(to be included in tender documents for tenders covered by WTO GPA)
 - (E)2 [Note to Tenderers and Condition of Tender](#)
(to be included in tender documents for tenders invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430)
 - (F) [Guidelines for Drawing Up Tender Specifications](#)
 - (G) [Guidelines for Adopting a Marking Scheme for Tender Evaluation](#)
 - (G)1 [Guidelines on Tender Assessment Panel](#)
 - (H) [Guidelines for Financial Vetting of Recommended Tenderers for Service Contracts](#)

	(I)	<u>Standard Tender Report Format</u>
	(J)	<u>Guidelines for Tender and Contract Negotiations</u>
Appendix IV	(A)	<u>Specimen Submission for CCSB Stage 1 Approval</u>
	(B)	<u>Specimen Submission for CCSB Stage 2 Approval</u>
Appendix V	(A)	<u>Guidance Notes on Execution of Contracts</u>
	(B)	<u>Schedule of Authorities for Variation of Contracts</u>
	(C)	<u>Guidelines for Monitoring Performance of Consultants Appointed under the Central Consultants Selection Board Procedures</u>
Appendix VI		<u>Guidelines for Keeping Stores Records and Issuing Stores</u>
Appendix VII		<u>List of Stores for Dumping</u>

**Declaration and Undertakings by Public Officers Involved
in Preparing Tender Documentation (including Tender Specifications
and Marking Schemes), Assessing Tenders and
Conducting Tender Negotiations
(SPR 186)**

[Tender Reference and Subject]

I hereby declare that there is no conflict of interest, whether actual, potential or perceived, between my official duties to the Government in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation (including tender specifications and marking schemes), the assessment of tenders and the conduct of negotiations, and my financial, professional, commercial, personal or other interests.

2. I undertake to —

- (a) hold in strict confidence all tender information that I have access to through my official duties to the Government in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation (including tender specifications and marking schemes), the assessment of tenders and the conduct of negotiations. Tender information includes details of tenders received and any other sensitive, restricted or confidential information relating to a tender;
- (b) refrain from making any unauthorised disclosure or taking advantage of any tender information referred to in paragraph 2(a) above whether or not for personal gain;
- (c) declare any actual, potential or perceived conflict of interest with my official duties to the Government in relation to the captioned tender exercise, including without limitation those in relation to the preparation of the tender documentation (including tender specifications and marking schemes), the assessment of tenders and the conduct of negotiations immediately when I become aware of any such conflict; and
- (d) take steps to avoid any conflict of interest with any potential tenderer or tenderer by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.

3. The undertakings in paragraphs 2(a) and (b) above shall not apply —

- (a) if and when the disclosure and information therein referred to becomes a matter of public knowledge (other than by reason of a breach of paragraphs 2(a) and (b) above); or

- (b) to any communications or disclosures caused or permitted by me to colleagues in the Government who are or are expected to be involved in the course of their official duties in the captioned tender exercise or parts thereof.
- (c) to disclosures of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction.

4. I understand that I may be subject to disciplinary action should I make a false declaration or fail to observe any of my above undertakings.

Signed : _____

Name (block letters) : _____

Title/Rank : _____

Date : _____

**Undertakings by Head or Chairperson, Members and/or Secretary of
Tender Opening Teams/Departmental Tender Committees/Departmental
Consultants Selection Committees/Tender Boards/
Consultants Selection Boards
(SPR 187)**

I undertake to hold in strict confidence all tender information that I have access to through my position as a head/chairperson/member/secretary of the above Tender Opening Team/Departmental Tender Committee/Departmental Consultants Selection Committee/Tender Board/Consultants Selection Board. Tender information includes details of tenders received and any other sensitive, restricted or confidential information relating to a tender.

2. I undertake not to make any unauthorised disclosure or take advantage of any tender information referred to in paragraph 1 above whether or not for personal gain.

3. I undertake to declare any actual, potential or perceived conflict of interest with my official duty as a head/chairperson/member/secretary of the Tender Opening Team/Departmental Tender Committee/Departmental Consultants Selection Committee/Tender Board/Consultants Selection Board immediately when I become aware of any such conflict.

4. I undertake to take steps to avoid any conflict of interest with any potential tenderer or tenderer by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.

5. I understand that I may be subject to disciplinary action should I fail to observe any of my above undertakings.

Signed : _____
Name (block letters) : _____
Title/Rank : _____
Date : _____

**Declaration and Undertakings by
Technical Advisor who are not Public Officers
(SPR 197 and Appendix III(G)1)**

[Tender Reference and Subject]

To: The Government of the Hong Kong Special Administrative Region (“Government”)

I hereby declare that there is no conflict of interest, whether actual, potential or perceived, between my role as the technical advisor in relation to the captioned tender exercise and my financial, professional, commercial, personal or other interests.

2. I undertake to —

- (a) hold in strict confidence all tender information that I have access to through my role as the technical advisor in relation to the captioned tender exercise. Tender information includes details of tenders received and any other sensitive, restricted or confidential information relating to a tender;
- (b) refrain from making any unauthorised disclosure or taking advantage of any tender information referred to in paragraph 2(a) above whether or not for personal gain;
- (c) declare any actual, potential or perceived conflict of interest with my role as the technical advisor in relation to the captioned tender exercise immediately when I become aware of any such conflict;
- (d) take steps to avoid any conflict of interest with any potential tenderer or tenderer by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them;
- (e) perform my role as the technical advisor on a professional and impartial basis in accordance with applicable professional standards in the Hong Kong and international markets; and
- (e) not to offer, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) in relation to my duties as the technical advisor in the captioned tender exercise.

3. The undertakings in paragraphs 2(a) and (b) above shall not apply —

- (a) if and when the disclosure and information therein referred to becomes a matter of public knowledge (other than by reason of a breach of paragraphs 2(a) and (b) above);

- (b) to any communications or disclosures caused or permitted by me to the public officers of the Government who are or are expected to be involved in the course of their official duties in the captioned tender exercise or parts thereof; or
- (c) to disclosures of any information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or order of a court or arbitral authority of competent jurisdiction.

4. I agree that in the event of any breach or threatened breach of the provisions of this Declaration and Undertakings, money damages are unlikely to be a sufficient remedy and the Government shall be entitled, in the discretion of the court, to an injunction to restrain the said breach or threatened breach in addition to and not in lieu of any other equitable or any legal relief including damages.

5. Each of the provisions of this Declaration and Undertakings is severable and distinct from the others and, if one or more of such provisions or any part thereof is or becomes illegal, invalid or unenforceable, the legality and enforceability of the remainder of this Declaration and Undertakings shall not be affected or impaired in any way.

6. This Declaration and Undertakings shall be subject to and construed in accordance with the laws of Hong Kong.

In witness whereof, this Declaration and Undertakings has been executed and delivered as a deed on the date written below.

Signed, sealed and delivered)
by *[name of individual]* on *[date]*) *[signature of individual]*
as his deed in the presence of:) *[affix seal]*

[signature of witness]
Name: *[witness name]*
Address: *[witness address]*

**Endorsement Authorities and Procurement Agents for Specific Stores
(SPR 210)**

Stores	Endorsement Authority	#Procurement Agent	Reference
I. Safes combined with steel filing cabinet maintained in GLD's unallocated stock	Secretary for Security and/or DAS	DGL	Standing Accounting Instructions 1835 and 1845 Security Regulations
II. Stores items not included under I. above and those items not covered by standard stores items available for drawing off by departments from GLD's term contracts - (financial limits refer to unit cost of items)			
1. Furniture and equipment items			
(A) Specific furniture and equipment items regardless of costs			
(a) All forms of receipting equipment	DAS	DGL or user department	FC No. 3/2016 Standing Accounting Instruction 216
(b) Computer systems/equipment			
(i) Administrative computer systems	Government Chief Information Officer	DGL or user department	Office of the Government Chief Information Officer Circular No. 3/2007
(ii) Systems/equipment connected to existing system	Government Chief Information Officer	DGL or user department	Office of the Government Chief Information Officer Circular No. 3/2007
(c) Furniture and equipment for projects in the Public Works Programme except hospital, clinic and standard primary and secondary schools projects			
(i) Furniture and equipment not exceeding \$5 million per department per project	Head of user department	DGL or user department	FC No. 3/2016
(ii) Furniture and equipment exceeding \$5 million but not exceeding \$30 million per department per project	Government Property Administrator	DGL or user department	FC No. 3/2016
(iii) Furniture and equipment costing over \$30 million per department per project	PS(Tsy)	DGL or user department	FC No. 3/2016

For those stores with "DGL or user department" shown as the procurement agent, DGL is the procurement agent where the value of the stores to be procured exceeds the departmental limit set out in SPR 220(a).

Stores	Endorsement Authority	#Procurement Agent	Reference
(d) Furniture and equipment for hospital and clinic projects in the Public Works Programme	Secretary for Health (S for Health) or other directorate officers in Health Bureau whom S for Health has delegated such authority	DGL (for clinic projects) or user department	FC No. 3/2016
(e) Furniture and equipment for standard primary and secondary schools projects in the Public Works Programme	Secretary for Education or other directorate officers in the Education Bureau (EDB), subject to the annual cost ceiling for respective school types specified by the Treasury Branch of the Financial Services and the Treasury Bureau or EDB	DGL or user department	FC No. 3/2016
(f) Safes not maintained in GLD's unallocated stock	Secretary for Security and/or DAS	DGL or user department	FC No. 3/2016 Standing Accounting Instructions 1835 and 1845 Security Regulations
(g) Strongrooms/strongroom doors	Secretary for Security and/or DAS	DGL or user department	FC No. 3/2016 Standing Accounting Instructions 1835-1845 Security Regulations
(h) Secure telephone and facsimile equipment and accessories including scramblers, encryptors and interface	Secretary for Security	DGL or user department	Security Regulations General Regulations 625-649
(B) Equipment items (other than those included under II.1.(A)) costing <u>over \$50,000</u> per item			
(a) Computer systems/equipment - standalone systems/equipment <u>not</u> connected to existing system	Government Chief Information Officer	DGL or user department	Office of the Government Chief Information Officer Circular 3/2007
(b) Printing plants, machinery, equipment and accessories and reprographic equipment			

For those stores with "DGL or user department" shown as the procurement agent, DGL is the procurement agent where the value of the stores to be procured exceeds the departmental limit set out in SPR 220(a).

Stores	Endorsement Authority	#Procurement Agent	Reference
(i) Photocopying machines	DGL	DGL or user department	General Regulation 600
(ii) Optional accessories (including sorting and collating equipment) for standard and non-standard model photocopiers	DGL	DGL or user department	General Regulation 600
(iii) Offset duplicators and plate makers	DGL	DGL or user department	General Regulation 600
(iv) Folding machines	DGL	DGL or user department	General Regulation 600
(v) Sorting/Collating equipment	DGL	DGL or user department	General Regulation 600
(C) Radiocommunications apparatus using radio frequencies [^] ; or an apparatus that may generate radio frequency emission exceeding the level permitted under the Telecommunications (Control of Interference) Regulations (Cap. 106B)	Director-General of Communications	DGL or user department	Cap. 106Z General Regulation 629(2) General Circular No. 9/2016
2. Other items			
(A) Vehicles and mobile plant			
(a) Vehicles			
(i) general purpose	DGL	DGL	General Regulation 236 (1)

[^] Please refer to the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106Z) and the list of Class Licences published at the web site of the Communication Authority (<https://www.coms-auth.hk/en/licensing/telecommunications/class/index.html>) for radiocommunications apparatus which do not require endorsement from the Director-General of Communications (DG Com) before procurement.

Please refer to General Circular No. 9/2016 (as may be updated from time to time) for advice on procurement of radiocommunications apparatus which requires assignment of specific radio frequency by OFCA and endorsement from DG Com. Once the user department obtains a valid frequency assignment from OFCA, the corresponding procurement of apparatus should be deemed to be endorsed by DG Com.

For those stores with “DGL or user department” shown as the procurement agent, DGL is the procurement agent where the value of the stores to be procured exceeds the departmental limit set out in SPR 220(a).

Stores	Endorsement Authority	#Procurement Agent	Reference
(ii) specialised	DGL and user department	DGL or user department or Electrical and Mechanical Services Trading Fund as mutually agreed between DGL, user department and Electrical and Mechanical Services Trading Fund	General Regulation 236 (1)
(b) Mobile plant	User department	DGL or Electrical and Mechanical Services Trading Fund or user department	General Regulation 236 (2)
(B) Vessels	Director of Marine	Director of Marine	General Regulation 200

For those stores with “DGL or user department” shown as the procurement agent, DGL is the procurement agent where the value of the stores to be procured exceeds the departmental limit set out in SPR 220(a).

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

Firms on the approved list of qualified contractors/suppliers/service providers for the provision of (a description of goods, services, or categories thereof) maintained by the (name of department) are published below for general information —

(List of contractors/suppliers/service providers)

Tender invitations will be (#published in the Government Gazette, on the Internet, and/or sent by letter to firms on the approved list). The approved list is valid *for (number of years) year(s) commencing (date) or until it is terminated by separate notice. The approved list shall be reviewed regularly to ensure that firms who cease to be qualified are deleted from the list. The concerned contractors/suppliers/service providers will be informed of the deletion in writing separately.

The following criteria and method of assessment are used for the selection of qualified contractors/suppliers/service providers for the approved list —

(State the qualification criteria and method of assessment)

Firms interested in providing (a description of goods, services, or categories thereof) and meeting the above criteria may apply to and obtain all relevant documents relating to the list 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 all relevant documents).

* The approved list may be used for procurements covered by the Agreement on Government Procurement of the World Trade Organization.

* This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

Date

Name of Head of Department

to be amended by the procuring department as appropriate

* delete if not applicable

**Specimen Application for Authority to Prequalify Tenderers
(SPR 330(b))**

RESTRICTED (TENDER)

MEMO

From : Head of Department

To : Chairman, Central Tender Board

Contract Title
Request for Authority to Prequalify Tenderers

A. Type and Duration of Contract

B. Brief Description of Contract

C. Authority to Call for Tenders

D. Reasons for Prequalification

E. Source of Potential Tenderers

F. Method of Selection of Tenderers

— Essential requirements and marking scheme including assessment criteria, weighting attached to each criterion and passing mark(s) for qualification.

— Number of tenderers to be prequalified.

— Selection process including membership of selection panel, normally chaired by a public officer of D2 rank or above.

— Relevant parts of the prequalification document pertaining to the method of selection of tenderers. (A specimen format of prequalification document is appended.)

G. Availability of Funds

— Approved project estimate (if applicable) \$

— Sum allowed for this contract in the approved \$
project estimate (if applicable)

— Funds in (financial year) Estimates \$
(Head Sub-head)

H. Declaration of Interest

- Confirm whether public officers involved in preparing prequalification documentation (including specifications and marking scheme(s)) have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.
- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of prequalification documents and in the prequalification exercise.

I. Name and Telephone Number of Contact Officer

- Public officer(s) who will answer questions from the tender board or attend board meetings for this item, if necessary.

()
Signed by a directorate officer
for Head of Department

Specimen Format of Prequalification Document

Contract Title
Contract No. /Public Works Programme No.

I. Information to Applicants

- State the eligibility for application, method of application, closing time for submission of applications and selection criteria for the prequalification exercise.
- State how late submissions, unsuccessful applications, and changes to the status and proposals of a prequalified tenderer will be handled.

II. Information on Contract

- State the scope of the contract, tender documentation, tender programme, implementation programme, delivery requirements, etc.

III. Information Required from Applicants

- Relevant information, including the applicant's technical and financial capability for assessment purpose.

**Specimen Gazette Notice for Prequalification of Tenderers
(SPR 330(c))**

G.N.

DEPARTMENT

Contract Title

Contract Number /Public Works Programme Number

NOTICE OF PREQUALIFICATION OF TENDERERS

It is intended to invite tenders in (month and year) from prequalified tenderers for (state the name, nature and quantity (or where the quantity is not known, the estimated quantity) of the project/services/goods). *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.

* Contractors/suppliers/service providers on the (title(s) of the approved list(s) and state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the prequalification documents that are made available to contractors/suppliers/service providers)) are invited to apply for prequalification and 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). Contractors/suppliers/service providers not yet on the (title(s) of the approved list(s)) may also apply for prequalification if they submit a request for participation by (deadline) to (address) and meet (state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the prequalification documents that are made available to contractors/suppliers/service providers)). *A sum of \$....., which will not be refunded, is required to cover the cost of the prequalification documents.

(State the number) of applicants will be selected for tender invitations on the basis of the following criteria —

(List of criteria)

Completed prequalification applications shall be submitted not later than (time) on (date) to (state name and address of the office/tender board). If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force at any time between (time) and (time) on (closing date for receipt of prequalification applications), the closing time will be postponed to (time) on the first working day after the tropical cyclone signal No. 8 is lowered, or the black rainstorm warning signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force. In case of blockage of the public access to the location of the relevant office/tender board at any time between (time) and (time) on (closing date), the Government will announce extension of the closing time until further notice. Following removal of the blockage, the Government will announce the extended closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

* Joint ventures with other firms 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

**Specimen Application for Approval of Prequalified Tenderers
(SPR 330(e))**

RESTRICTED (TENDER)

MEMO

From : Head of Department

To : Chairman, Central Tender Board

Contract Title

Request for Approval of the Prequalified Tenderers

A. Type and Duration of Contract

B. Brief Description of Contract

C. Authority

— Authority to call for tenders

— Authority to prequalify tenderers

D. Details of Invitation

— Dates of Gazette notifications.

— Dates and media of advertisements or other means of invitation, if any.

— Any restrictions on applicants, e.g. Approved Contractors for Public Works only.

— Closing date and office for submission of applications.

— A copy of the prequalification document should be attached for inspection.

E. Details of Applications

— Number of firms obtaining prequalification documents.

— Number of firms submitting applications.

— Essential requirements, marking scheme including assessment criteria, weighting attached to each criterion, and passing mark(s) required for qualification approved by the PS(Tsy) on the advice of the CTB.

- Details of assessment of applications : composition of selection panel, method of assessment, assessment of specific items by bodies other than the panel, e.g. financial assessment by Chief Treasury Accountant of DEVB (Works Branch), etc.

F. Recommendation

- Names of firms recommended for inclusion in the list of prequalified tenderers.
- A summary of the results of assessment showing the relative merits of all applicants under each selection criterion and an overall assessment on individual applicants as a conclusion.
- The assessment reports of individual panel members should be attached, where necessary, drawing specific attention to any opinion which is contrary to the general recommendation.
- Results of the financial vetting of the prequalified tenderers, if applicable.

G. Availability of Funds

- Approved project estimate, if applicable \$
- Sum allowed for this contract in the approved \$
project estimate, if applicable
- Funds in (financial year) Estimates \$
(Head Sub-head)

H. Declaration of Interest

- Confirm whether public officers involved in this prequalification exercise have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest has been identified, and if yes, what remedial action has been made.
- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of prequalification documents and in the prequalification exercise.

I. Name and Telephone Number of Contact Officer

- Public officer(s) who will answer questions from the tender board or attend board meetings for this item, if necessary.

()
Signed by a directorate officer
for Head of Department

**Specimen Gazette Tender Notices
(SPR 340(a))**

G.N.

DEPARTMENT

It is hereby notified that sealed tenders in *duplicate/triplicate are invited for (state the tender reference, name, nature and quantity (or where the quantity is not known, the estimated quantity) of the project/services/goods and the time-frame for delivery of project/services/goods or the duration of the contract, whichever is applicable, and, where applicable, a description of any option).

Tenders must be clearly marked with the tender reference and the subject of the tender on the outside of the envelope (but should not bear any indication which may relate the tender to the tenderer) addressed to the Chairman, (state the name of the tender board to be addressed, address of the relevant tender box, and the closing date and time for receipt of tenders). Tenders must be deposited in the tender box as specified in this tender notice (“Specified Tender Box”) before the tender closing time. Late tenders or tenders not deposited in the Specified Tender Box will not be accepted. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force at any time between (time) and (time) on (tender closing date), the tender closing time will be postponed to (time) on the first working day after the tropical cyclone signal No. 8 is lowered, or the black rainstorm warning signal or the “extreme conditions after super typhoons” announced by the Government has/have ceased to be in force. In case of blockage of the public access to the location of the Specified Tender Box at any time between (time) and (time) on (tender closing date), the Government will announce extension of the tender closing time until further notice. Following removal of the blockage, the Government will announce the extended tender closing time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>).

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.

*Open tendering is adopted. All interested contractors/suppliers/service providers are invited to tender. (State a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers).)

*Selective tendering is adopted. Contractors/suppliers/service providers on the (title(s) of the approved list(s) and state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers)) are invited to tender. Contractors/suppliers/service providers not yet on the (title(s) of the approved list(s)) may also submit a tender if they submit a request for participation by (deadline) to (address) and meet (state a list and brief description of the qualifications/conditions for participation and any requirements for specific documents or certifications to be provided by contractors/suppliers/service providers in connection therewith) (if such requirements for specific documents or certifications are **not** included in the tender documents that are made available to contractors/suppliers/service providers). Contractors/suppliers/service providers 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. *This notice also serves as a summary notice required under the Agreement on Government Procurement of the World Trade Organization.

The Government of the Hong Kong Special Administrative Region does not bind itself to accept the *lowest/highest (for revenue) tender or any tender, and reserves the right to negotiate with any tenderer about the terms of the offer.

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

Name of Head of Department

* delete as appropriate or if not applicable. Where a marking scheme is adopted for tender evaluation, the reference to “lowest/highest (for revenue) tender” should be changed to “tender with the highest overall score”.

NOTE TO TENDERERS
(to be included in tender documents for tenders covered by WTO GPA)
(SPR 345(c))

This tender is covered by the Agreement on Government Procurement of the World Trade Organization (WTO GPA) and the provisions of the WTO GPA will apply to this tender. Tenderers are requested to note that a Review Body on Bid Challenges (under WTO GPA) (“the Review Body”) has been set up by the Government to deal with challenges made against alleged breaches of the WTO GPA and the relevant procedures for handling bid challenges are set out in the Rules of Operation of the Review Body (“the Rules”), which are available for inspection at the Secretariat of the Review Body located at the Trade and Industry Department or which may be sent to the interested parties upon request. In the event that a tenderer believes that a breach of the WTO GPA has occurred, the supplier may, within ten working days after he/she knew or reasonably should have known the basis of the challenge, lodge a challenge to the Review Body on the alleged breaches of the WTO GPA. Nevertheless, the tenderer is encouraged to seek resolution of its complaint in consultation with the procuring department before lodging a complaint to the Review Body. In such instances, the procuring department shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures through the Review Body.

Tenderers should note that the Review Body may receive and consider a late challenge but a challenge shall not be considered if it is filed later than 30 working days after the basis of the challenge is known or reasonably should have been known.

NOTE TO TENDERERS and CONDITION OF TENDER
(to be included in tender documents for tenders invited from
contractors/suppliers/service providers in both the private and public sectors including
department(s) of the Government of the Hong Kong Special Administrative Region
whose operation of the services is managed and accounted for by trading funds
established pursuant to the
Trading Funds Ordinance, Cap. 430)
(SPR 345(c))

Note to Tenderers

Tenderers should note that tenders are invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereafter referred to as “the relevant trading fund department”).

All tenders will be evaluated on a fair basis. Every effort has been and will be made by the Government to ensure that the relevant trading fund department would not undertake both the role of consultant and contractor in this tendering exercise and where appropriate, independent consultant has been or will be engaged for the preparation of the tender documents, assessment of tenders and subsequent monitoring on the performance of the contractor/supplier/service provider.

[Where the Electrical and Mechanical Services Trading Fund may submit a tender.] The Electrical and Mechanical Services Trading Fund may submit a tender for this contract. A code of conduct for staff of the Electrical and Mechanical Services Department seconded to other department(s) is also in place for the staff to observe to avoid conflict of interest and is available for inspection by tenderers.

Condition of Tender

Tenderers should note that tenders are invited from contractors/suppliers/service providers in both the private and public sectors including department(s) of the Government of the Hong Kong Special Administrative Region whose operation of the services is managed and accounted for by trading funds established pursuant to the Trading Funds Ordinance, Cap. 430 (hereafter referred to as “the relevant trading fund department”).

Unless it is in the public interest not to do so, the Government will award the contract to the tenderer who has been determined to be fully capable of undertaking the contract and whose tender, whether for domestic products or services, or products or services of others, is either the lowest tender or the tender which in terms of the specific evaluation criteria set forth in this tender documentation is determined to be the most advantageous. In the situation where the tenderer selected in accordance with the foregoing criteria is the relevant trading fund department, the Government may, instead of issuing a contract, enter into a service level agreement with the relevant trading fund department.

Guidelines for Drawing up Tender Specifications (SPR 254, 280(a), 295(a) and 350(e))

These notes provide guidelines for the preparation of tender specifications. They supplement any specific instructions given by the body/public officer authorising the tender.

User Requirements

2. A tender specification defines the requirements of the procuring department and consequently, what the tenderer is expected to provide. As a rule, tender specifications should meet the basic government procurement policy and principles specified in SPR 106-109.
3. Public officers drawing up tender specifications should have regard to the following —
 - (a) specifications form the basis for seeking tenderers' response and should be easily comprehensible. They should be precise and concise and should not render the preparation of bids by tenderers an unduly time-consuming and costly process;
 - (b) specifications form the framework for evaluating the suitability of offers received from tenderers. They should be framed in terms that encourage open and fair competition by providing potential tenderers an equal opportunity to develop solutions capable of satisfying the procuring departments' requirements. They shall not include any feature which could be perceived as discriminatory because it is specific to a trademark or trade name, patent, copyright, design, type, origin, producer, supplier or brand of product, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the tender documentation;
 - (c) they should be comprehensive and should contain sufficient information for the tenderers to determine the nature, scope and estimated quantity or value of goods or services required, their characteristics, standards to be met, performance under specified conditions and other relevant information in order to obtain conforming and competitive bids;

- (d) departments should guard against over-prescribing requirements. Output- or performance-based (rather than input-based) specifications should be adopted. Over-prescription or input-based specifications may perpetuate incumbent advantage, inhibiting competition and leading to over-reliance on single contractor. It may reduce the scope for innovative responses and exclude some potential tenderers who would be capable of meeting the performance levels required in a more cost effective manner, depriving Government of the chance to obtain more competitive tenders. It may also require products to be custom designed at additional cost rather than making use of goods available in the market, hence not conducive to achieving the best value for money for Government; and
- (e) to encourage competition and minimise entry barriers (particularly for start-ups and SMEs), as a general rule, tenderer's experience should not be set as an essential requirement in non-works procurements, irrespective of value. If it is absolutely necessary, prior approval must be sought from the relevant tender board/DTC (for procurements adopting marking schemes under tendering procedures) or public officers (normally at directorate level) designated by COs (for procurements not adopting marking schemes under tendering procedures or for procurements under quotation procedures irrespective of the use of marking schemes). The justifications for seeking exception from the general rule and the grounds for approval should be properly recorded. Where appropriate, tenderer's experience may be set as an assessment criterion in the marking scheme as a desirable feature.
- (f) consideration should be given, as far as possible and where economically rational, to avoiding single-use disposal items and procuring stores —
 - (i) with improved recyclability, high recycled content, reduced packing and greater durability;
 - (ii) with greater energy efficiency;
 - (iii) utilising clean technology and/or clean fuels;
 - (iv) which result in reduced water consumption;
 - (v) which emit fewer irritating or toxic substances during installation or use; or
 - (vi) which result in smaller production of toxic substances, or of less toxic substance, upon disposal.

4. In general, there are four categories of specifications —

- (a) *Functional Specifications*

These outline the proposed function or role to be performed by the goods, services and revenue contracts in helping the end-user to achieve the desired outcome. They focus on what is to be achieved rather than how it is to be done.

(b) *Performance Specifications*

These detail the required performance characteristics and performance parameters by specifying details of operating input or output required, but not the method to achieve them or how they should be manufactured or provided. For example, the performance specifications for wire may require it to withstand a given temperature, have a designated level of resistance to abrasion and have a given level of conductive capability. No mention needs to be made of the material to be used or how the wire is to be manufactured.

(c) *Material Specifications*

These state the physical characteristics of the specific materials to be used for manufacturing the goods.

(d) *Technical Specifications*

These provide a physical description of the items required, such as size, capacity, tolerances and strength. Technical specifications may include detailed plans, designs and technical drawings.

5. The use of material and/or technical specifications is unavoidable in some tenders, particularly where compatibility with existing equipment is required. However, the use of such specifications at the outset might limit innovative solutions or new technologies or products which tenderers might be able to offer, and restrict competition. In preparing tender specifications, departments should use functional and performance specifications, supplementing them by a material or technical specification only if absolutely necessary. Where design or descriptive characteristics are used in the technical specifications, departments should indicate, where appropriate, that it will consider tenders of equivalent goods or services that can be demonstrated to fulfil the requirements of the procurement by including words such as “or equivalent” in the tender documents. Where dimensions or other measurable characteristics are critical to performance, a permitted range rather than a fixed dimension should be used wherever possible.

6. In drawing up specifications, particularly for mission-critical or high-value contracts, departments —

- (a) are encouraged to research the market or conduct non-binding EOI exercises for likely sources of supply and other relevant information on current features of the goods or services to be procured and technological trends. Market research or EOI may be particularly warranted for contracts with poor tender response in the past procurement exercise, or for cases where the potential for innovation of the procurement needs to be further assessed. This might occasionally involve the department discussing with contractors/suppliers/service providers how particular functional and performance requirements can best be met;
- (b) should use functional and performance requirements in the specifications, with a distinction drawn between mandatory and desirable features. Mandatory features are those features that are so fundamental or essential to the acceptability of the tender that non-compliance with any of them will render the tender non-conforming. Desirable features are not standards or specifications that must be met but normally take the form of assessment criteria in the marking scheme and more technical scores will be given if the tenderer can provide more desirable features with performance better than the specified level. Once accepted, the successful tenderer will be required to incorporate the desirable features in providing the stores or services, or in performing the revenue contracts;
- (c) should specify in the tender document all the essential requirements as well as the consequences that non-compliance with any of the specified essential requirements will render the tender non-conforming. These requirements must be made known to the potential bidders in the invitation for procurements. Mandatory features which must be proposed and met, requirements which must be complied with and documents which must be submitted at the time of tender opening must be specified as “essential requirements”. Given that non-compliance with a requirement specified as an “essential requirement” will render the tender non-conforming, departments should vigorously assess whether a requirement should be specified as an “essential requirement”. Use of separate sealed envelopes for technical and price proposals should not be specified as an “essential requirement” since, subject to appropriate measures being adopted to ensure the integrity of the tender evaluation process, permission of compliance after tender opening will neither give rise to manipulation nor affect the outcome of the tender evaluation. Those requirements which can be complied with after tender opening should be specified as “requirements”, but not “essential requirements”. To discourage late submission of missing documents (such as copies of required documents where the original has been submitted, certificates, licences or proof of minimum experience) which should be requirements but not essential requirements, departments may state in the tender document that failure to comply with the requirements may (but not “will”) render the tender non-conforming. If in doubt whether a tenderer should be disqualified for such failure, advice from the D of J or, in the case of works tenders, LAD(W)/DEVB should be sought;

- (d) where departments consider it appropriate to allow tenderers to make alternative proposals which could better meet their requirements, should include in the tender documents a standard clause that alternative proposals will be considered by the Government and may be offered; and
- (e) should determine the evaluation criteria before inviting tenders and include an outline of the evaluation criteria in the tender documents to assist tenderers in preparing their tenders. Where departments consider it necessary to evaluate the technical and price aspects of tenders separately, including the use of a marking scheme, they should follow guidelines set out at Appendix III(G) and adopt a two-envelope approach where appropriate.

Other Considerations

7. Apart from tender specifications, departments, in drawing up the terms and conditions for inclusion in tender documents, should have special regard to the following —

(a) *Duration of contract*

Market conditions should be taken into account in determining the length of the contract. Where market developments are characterised by the presence of a large number of potential tenderers and rapid technological improvements, it may be appropriate to adopt break clauses to give flexibility to take advantage of favourable trends and avoid being committed to products that may become obsolete quickly. When the barriers to enter into the market are high for a tenderer, such as the requirement to invest substantially in capital assets, the department should consider letting a longer contract in order to generate more interest among potential tenderers and to enable them to offer more competitive prices.

(b) *Price adjustment*

A price adjustment clause may be used where wages, material costs or other major determinators of market prices are prone to rapid and substantial fluctuation or adjustment. For non-works contracts of a duration of one year or less, it is usually not necessary to provide for a price adjustment. For capital works contracts, provisions for price adjustment may be made irrespective of the contract duration.

(c) *Payment schedule*

Where applicable, milestone payments related to performance targets should be used. A contract may be divided into several stages and payment be made after the completion of a particular stage.

(d) *Over-reliance on single contractor*

In case of re-tender, departments should, in the light of the degree of market competition in the past procurement exercises, review and refine the tender specifications as well as essential requirements and marking scheme with a view to encouraging competition.

(e) *Bundling vs splitting into smaller contracts*

While larger contracts created through bundling of say different geographical districts or venues may achieve better economy of scale, considerations should also be given to whether splitting them up into smaller ones will enable more new comers, such as start-ups or SMEs, to enter the market and hence more choices for the Government. In no circumstances should a contract be spilt with the intention of totally or partially excluding it from the application of the WTO GPA.

(f) *Exclusion of a contractor/supplier/service provider*

Departments may consider including a clause to reserve the right for the Government to exclude a contractor/supplier/service provider from a tender exercise on grounds such as:

- (i) bankruptcy;
- (ii) false declarations;
- (iii) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (iv) final judgements in respect of serious crimes or other serious offences;
- (v) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the contractor/supplier/service provider; or
- (vi) failure to pay taxes.

**Guidelines for Adopting a Marking Scheme for Tender Evaluation
(SPR 221A, 350(h), 370(c) and 445(d))**

Introduction

To ensure adequate room will be in place in the tender evaluation process to assess innovative suggestions, departments are encouraged to adopt marking schemes. Marking schemes should be clear and objective so as to provide a level playing field for bidders and encourage innovative suggestions. In formulating marking schemes, departments should bear in mind user-friendliness and ensure that they are commensurate with the nature, scale and value of the tender concerned.

Standard Marking Scheme Framework (SMS Framework) for the procurement of stores, services (excluding works contracts) and revenue contracts

2. The SMS Framework is provided in FC No. 2/2019 (as may be updated from time to time). The SMS Framework sets out the limitations on the use of essential requirement(s), the normal range of technical and price weightings, the permitted range of marks in respect of different assessment criteria and the guidelines on giving marks and setting passing marks, etc. It is applicable to the procurement of stores, services (excluding works contracts) and revenue contracts. For the avoidance of doubt, if a marking scheme is adopted for stores, services (excluding works contracts) and revenue contracts under quotation procedures set out in Chapter II, departments should also follow the SMS Framework.

3. Marking schemes formulated according to the SMS Framework do not require approval from the relevant tender board/DTC (or directorate officer for adopting marking schemes under quotation procedures). Any deviation from the SMS Framework will be subject to the prior approval of the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures). Justifications for the proposed deviations must be provided and recorded.

4. Departments are encouraged to adopt marking schemes to assess bidders' proposals for service contracts that rely heavily on the deployment of non-skilled workers. If departments opt to adopt a marking scheme for this type of contract under the tender procedures or quotation procedures, the SMS Framework should be followed, unless otherwise approved by the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures). For this type of contract, departments should observe other requirements set out in FC No. 3/2019.

5. Departments may draw up their own departmental procedures on the endorsement of marking schemes to ensure compliance with the SMS Framework. The procedures should be approved by DGL in accordance with SPR 126. As specified in SPR 350(a) and SPR 350(h), non-works tenders not adopting marking schemes or setting essential requirements on tenderer's experience for procurement should be approved by public officers (normally at directorate level) designated by COs.

6. Submission to the relevant tender boards/DTCs (or directorate officers for adopting marking schemes under quotation procedures) to approve any deviation from the SMS Framework shall include a brief description of the goods or service to be procured, its estimated value, tentative tender program, findings of a market research (if any), details of the deviations from the SMS Framework and justifications for such deviations, where appropriate.

Marking Scheme for Works Tenders

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

8. All marking schemes, including deviation from the standard ones (i.e. paragraph 9 of the Appendix), have to be approved by the relevant tender boards. Submissions to the relevant tender boards on the use of a marking scheme or deviation from the approved standard marking scheme shall include a brief description of the scope of works, its estimated value, tentative tender program, findings of the market research (if any), justifications for the use of the marking scheme, proposed weighting for technical and price assessments, assessment criteria and their relative weighting, and passing marks for assessment criteria (if any), where appropriate.

Standard Marking Scheme for Individual Procurement

9. If considered appropriate, departments may seek the approval of the relevant tender board/DTC (or the relevant directorate officer for adopting marking schemes under quotation procedures) for adoption of a standard marking scheme (including marking schemes that deviate from the SMS Framework) for particular types of works or non-works contracts. The standard marking scheme, if approved, may be used in future procurement exercises for the same type of contracts.

Design of Marking Schemes for Tender Evaluation

10. In formulating a marking scheme, the assessment criteria should be drawn up in consistent with basic government procurement principles set out in SPRs 106 – 109. They should be able to differentiate the relative merits of tenderers' technical proposals and obtain better value for money for Government. The assessment criteria should be objective and as far as possible quantifiable. Assessment criteria that may have the effect of favouring incumbent contractors should be avoided. Proposals committed by the recommended tenderer under the marking scheme should be incorporated into the contract and enforceable by the procuring department as part of contract management. The enforceability of these proposals and the administrative costs involved should hence be taken into account by the department in developing the assessment criteria.

11. Departments should state in the tender documents the use of a marking scheme in tender evaluation with an outline of the evaluation criteria to assist tenderers in preparing their tenders. In line with the basic government procurement principle of transparency, departments should provide information including descriptions of assessment criteria and their individual technical marks, passing marks set for technical assessment (if any), formula to be used to calculate the technical/price scores, technical to price assessment weighting, etc. Once the marking scheme is published, departments should adhere to the evaluation basis set out in the marking scheme in deciding on the award of contract.

Two-envelope Approach for Submission of Tenders

12. Since the use of a marking scheme invariably involves a technical evaluation conducted separately from the tendered sum comparison, a two-envelope approach should be adopted when requiring the tenderers to submit their tenders, i.e. technical and price information should be submitted in separate envelopes. Under the two-envelope approach, departments shall ask the tenderers to enclose all the information and documents required for price assessment in sealed envelope(s) with the clear indication that it contains the price information; and to enclose all the other information including those required for technical assessment in separate sealed envelope(s) with the clear indication that it contains the technical information. Normally departments should not open the envelopes containing the price information until the completion of technical assessment. When departments, having regard to exceptional circumstances, consider it necessary to open the price envelope(s) prior to completion of the technical assessment because of the urgency of the exercise, departments should ensure that assessment of the technical and price proposals should be carried out by separate teams which should not communicate with each other until after completion of their assessment. The prior approval of the relevant tender board/ DTC (or directorate officer for adopting marking schemes under quotation procedures) has to be obtained for any such arrangement. For works contracts, departments should follow the guidelines promulgated in relevant DEVB TC(W).

Scoring Methodology for Technical and Price Proposals

13. Price proposals should only be opened and assessed after completion of the technical assessment. Any exceptional arrangement such as those in paragraph 12 above should be fully justified and require the prior approval of the relevant tender board/DTC (or the relevant directorate officer under quotation procedures).

14. TAPs should apply pre-determined weighting given to the technical and price assessment. In normal circumstances, the contractor meeting the essential requirements in full and obtaining the highest overall score should be recommended.

15. The following method should be adopted for calculating the technical and price scores in tender evaluation —

(i) Technical score

Formula :
$$\frac{\text{Technical mark of the tender being assessed}}{\text{Highest technical mark among the conforming tenders}} \times \text{Technical weighting}$$

Example :

Price to technical weighting : 50 : 50

Maximum mark for technical assessment in the marking scheme : 100

Tenderer A obtains 90 marks
(the highest mark of all conforming tenderers)

Tenderer B obtains 60 marks

Tenderer A's technical score : $\frac{90}{90} \times 50 = 50$

Tenderer B's technical score : $\frac{60}{90} \times 50 = 33.33$

(ii) Price score

Formula :

$$\frac{\text{Lowest tender price among the conforming tenders}}{\text{Tender price of the tender being assessed}} \times \text{Price weighting}$$

Example :

Price to technical weighting : 50 : 50

Tenderer A's price proposal
(the lowest price of all conforming tenderers) : \$5,000,000

Tenderer B's price proposal : \$6,000,000

Tenderer A's price score : $\frac{\$5,000,000}{\$5,000,000} \times 50 = 50$

Tenderer B's price score : $\frac{\$5,000,000}{\$6,000,000} \times 50 = 41.67$

Contract Award

16. When a marking scheme is used to assess tenders, departments shall follow the evaluation basis set out in the tender documents to award the contracts for that procurement. The tenderer who has submitted a conforming offer with the highest overall score (i.e. the sum of price and technical scores) under the marking scheme should normally be awarded the contract. For tenders for service contracts that rely heavily on the deployment of non-skilled workers, if two or more tenderers obtain the same overall score after technical and price assessments, the tenderer which obtains the highest score in technical assessment should normally be awarded the contract.

Guidelines on Tender Assessment Panels (TAP) (SPR 370(a) and 440(c))

Establishment of TAP

Departments should normally establish a TAP¹ for the evaluation of tenders/ consultancy proposals. A TAP should consist of not less than two persons. Where necessary, departments may set out specific terms of reference for the TAP (e.g. whether the Chairman is a marking or non-marking member at the appointment of the TAP, and the role and responsibilities of TAP members if not all TAP members will take part in the scoring of a particular assessment criterion).

2. To safeguard the integrity of the procurement exercise, a TAP should comprise government officials only. Departments should ensure that only properly qualified persons are appointed to assess the technical submissions. Where a two-envelope approach is used, departments may consider whether separate teams should be set up within the TAP to assess technical and price proposals respectively.

3. Under special circumstances such as handling innovative proposals from tenderers, advice may need to be sought from technical experts outside the Government. In determining the need to engage an outside technical expert, the department should explore and ascertain whether the expertise is available within the Government, the merits and the cost-effectiveness of engaging the outside technical expert. Outside technical experts may be engaged only if the required expertise is not available within the Government. If it is considered necessary to engage an outside technical expert to serve as a technical advisor, departments should set out clearly the role of the technical advisor in the procurement process and the specific assessment criteria that require advice from him. The technical advisor may be engaged before or after receipt of tenders, to be agreed by the TAP having regard to the need of the operation of the TAP. To enable the technical advisor to render useful advice, he may have access to tender information relevant to the assessment criteria that his advice is required. In any case, the technical advisor should not give marks to any assessment criteria or have access to price proposals submitted by tenderers.

4. TAP Chairman and members should observe the requirements laid down in Chapter IA of SPR and avoid conflict of interest in government procurement. TAP Chairman and members should declare any actual, potential or perceived conflict of interests as soon as they take up the duties and as soon as they become aware of such actual, potential, or perceived conflict of interest. If a technical advisor outside the Government is engaged, departments should ensure that sufficient safeguards are in place to avoid conflict of interest in the procurement exercise. In particular, the technical advisor should sign an undertaking to confirm, amongst others, the absence of any actual, potential or perceived conflict of interest situations in the procurement exercise. A sample of the undertaking is at Appendix I(C).

¹ Include both Tender Assessment Panel for tender exercises and Assessment Panel for consultants selection exercises.

5. Declarations/undertakings of TAP members and technical advisor should be drawn to the attention of TAP Chairman while the declaration of the TAP Chairman should be drawn to the attention of his supervisor. All such declarations/undertakings and follow-up actions taken (if any) must be recorded and filed properly before proceeding to the next stage of the tender process/ consultants selection process.

6. The membership of the TAP, the declarations/undertakings made by the TAP and the technical advisor as well as the specific terms of reference of the TAP (if any) should be covered in the submission(s) to the DTC, DCSC, tender board or consultants selection board when seeking approval in relation to the marking scheme (if applicable) and for the proposed award of the tender / appointment of consulting firm. The procuring department should take into account comments offered by the DTC, DCSC, tender board or consultants selection board as appropriate.

Evaluation by TAP

7. The assessment criteria adopted in a marking scheme should be objective and quantifiable as far as possible. Where practicable, tender documents / consultancy briefs should be drawn up to allow assessment to be made without the TAP knowing the identity of the bidders.

8. TAP members should be conversant with the assessment criteria. To facilitate the assessment of technical proposals by TAP members on a consistent basis according to the pre-determined assessment criteria, the TAP Chairman may arrange briefing for TAP members as appropriate before evaluation of tenders / consultancy proposals.

9. TAP members should score the technical proposals submitted by tenderers individually in accordance with the approved marking scheme. For non-works procurements, in case the procuring department considers that a collective assessment by the full TAP in accordance with the marking scheme is necessary, it should seek prior exceptional approval from the DTC, DCSC, tender board or consultants selection board (or the relevant directorate officer if a marking scheme is used under quotation procedures) before evaluation of technical proposals.

10. Before proceeding to evaluation, TAP should agree on the mechanism for consolidating the marks given by individual TAP members to derive the overall technical score for a tenderer. For example, TAP may take the average mark given by TAP members as the overall technical score awarded to a tenderer.

11. To facilitate better understanding of the tender proposals (such as the innovative suggestions), TAP may invite the bidders to make a verbal presentation/demonstration after the tender closing date. Bidders may introduce, explain and clarify their tender proposals during the presentation/demonstration. In no circumstances should additional information or new/amended proposal not set out in their tender submissions be accepted. If a technical advisor outside the Government has been engaged, the bidders should be informed of the presence of the technical advisor. Unless the presentation/demonstration is an essential requirement set out in tender documents, bidders refusing to offer presentation/demonstration should not be disqualified on ground of their refusal. TAP should evaluate the tenders according to the assessment criteria set out in the tender documents. Normally, the presentation/demonstration will not be taken into account in marking. If the presentation/demonstration will be taken into account in the marking as pre-determined and specified in the marking scheme and tender documents, TAP should ensure that the evaluation of the presentation/demonstration should be based on the tender specifications and the pre-determined assessment criteria.

12. Normally, TAP members should meet to deliberate the tenders / consultancy proposals received. The TAP Chairman may decide whether the technical advisor outside the government should be invited to join the TAP meeting or provide input in writing. In the former case, the outside technical advisor should only take part in the deliberation of the areas where his expertise is required. The TAP Chairman should facilitate deliberation amongst TAP members with a view to making recommendations to the DTC, DCSC, tender board or consultants selection board. In case there are substantial differences in marks given by individual TAP members according to the marking scheme, the TAP Chairman should check whether the assessment was based on the same understanding of the marking scheme or the information contained in the tenders/ consultancy proposals received. This is to ensure that evaluation is made on a consistent basis. If the differences remain after checking, the marks given by individual TAP members should be consolidated based on the agreed mechanism referred to in paragraph 10 above. TAP's deliberations and decision should be properly documented.

13. A TAP is responsible for making recommendation(s) to the DTC, DCSC, tender board or consultants selection board for the tender / consultants selection exercise under its purview. If there is a division of opinion on a contract award between TAP members, the differing views should be submitted by the TAP along with TAP's recommendation(s) for review by the DTC, DCSC, tender board or consultants selection board.

**Guidelines for Financial Vetting of Recommended Tenderers
for Service Contracts
(SPR 370(b)(i))**

Introduction

To safeguard Government's interest, we have to ensure that a tenderer recommended for the award of a service contract of a significant value is, in addition to its technical capability, financially capable of completing the contract by conducting financial vetting in respect of the recommended tenderer by a public officer of the Treasury Accountant grade including a non-civil service contract staff who is performing accounting/financial duties.

Applicability

2. Except for consultancy services and works contracts, these guidelines apply to all service contracts of a value exceeding \$15 million. Examples of service contracts include contracts for the management and operation of carparks, provision of cleaning services, etc. For the purpose of these guidelines, a contract for supply of stores is classified as a service contract if the contract requires also the provision of services of a value above \$15 million. These guidelines should be read together with the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time). Departments may also draw reference to these guidelines if financial vetting is considered necessary for revenue contracts.

Financial Vetting

3. When inviting tenders for a service contract of a value exceeding \$15 million, departments should include in the tender document the conditions that tenderers have to demonstrate their financial capability and/or provide the specified contract deposit before they can be considered for the award of the contract. For contracts where periodic financial vetting is required, departments should also stipulate the frequency of the financial vetting in the tender document.

4. For the purpose of financial vetting, departments should require tenderers to provide the following information —

- (a) audited financial statements of the tenderer, and the audited consolidated financial statements of the group if the tenderer is a subsidiary of another company, for the past three years. The financial statements shall be prepared on the same basis for each year in accordance with accounting principles generally accepted in the HKSAR and the requirements of the Companies Ordinance, Cap. 622; and

- (b) projected statement of profit and loss and other comprehensive income and statement of cash flows of the contract for each contract year and pre-operating period (if applicable), and if necessary, of the company during the contract period, showing the revenue, operating expenses, capital expenditure including the initial investments and the sources of finance.

5. For contracts which require significant working capital for financing its operation, such as the management contract for tunnels let by the Transport Department, the following information will also be required of the recommended tenderer —

- (a) supporting letter(s) from the tenderer's banker(s) as to the availability of credit facilities and the undrawn balance as at a particular date (shortly before the submission of tenders) and/or a commitment in principle to provide credit facilities for the contract; and
- (b) guarantee by the major shareholder(s) of the tenderer as security for the due and faithful performance of the contract, as and when required. In determining the amount of guarantee required, departments should consider, inter alia, the additional costs to be incurred by Government in the event that the successful tenderer fails to commence operation or defaults during the term of the contract.

6. In assessing the financial capability of a tenderer, departments should establish the following of the tenderers —

- (a) the past and projected earning performance;
- (b) the financial strength; and
- (c) the financial arrangements including the degree of the tenderer's financial commitment to finance the investment and operation of the contract.

Departments should refer to the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time) for details when conducting financial vetting for service contracts.

7. Tenderers who have passed the financial vetting should be required to pay a contract deposit (in the form of cash) or submit a performance bond (in the form of a guarantee arranged by a bank, insurance company, or the parent company which has been assessed to be financially capable) at 2% of the contract value as an additional protection of the Government's interest. For tenderers who have failed the financial vetting, or who are unable to provide adequate financial information for a meaningful assessment to be conducted (e.g. newly established companies), they should be required to pay a contract deposit or submit a performance bond at 5% of the contract value for low risk contracts, or 6% for high risk contracts.

8. The contracts or contract types which are considered to be high risk include, without limitation mission-critical, emergency-related or health-related contracts (for example, systems that relate to law and order, life and death and social security payments), and contract types with high concentration risks (for example, where the lion's share of contracts for like services awarded by the same department is dominated by one or two contractors, where there was only one conforming bid in the past two consecutive tender exercises, or where the award of a high-value contract will render the successful tenderer dominant). COs or designated directorate officers would be the authority to determine, **before** tender invitation, whether a contract or contract type is high risk and whether a 5% or 6% contract deposit should be required.

9. Procuring departments are required to conduct periodic financial vetting for contracts of high risk and long duration, with a view to ensuring that the contractor concerned remains financially healthy. As a general guideline, periodic financial vetting should be conducted for contracts lasting more than five years at three-year intervals. If a contractor fails the periodic financial vetting, procuring departments should check if any obvious irregularities have emerged (such as a drastic or continuous reduction in profitability, working capital and/or employed capital, discontinuation of related business operations, increase in customer complaints, etc.), and step up monitoring measures where necessary, such as conducting regular interviews with employees under the contract to see if their wages are paid in a timely manner, expanding the sample size for checking the service records (e.g. attendance log books), with a view to detecting early signs of default and taking appropriate actions if warranted.

Exception

10. Where the recommended tenderer has a net worth of 20 times more than the value of the contract, the financial vetting procedures described in paragraph 6 above may be waived on condition that it has passed the profitability, liquidity and gearing ratio tests. Please refer to the Financial Vetting Guidelines published by the Treasury (as may be updated from time to time) for details. Exceptions to the arrangements on financial vetting and contract deposit are allowed, but only where the Controlling Officer is personally satisfied that the deviation is justified and such decisions are to be recorded.

Tender Report

11. In making their recommendation on the award of a service contract, departments should confirm in the tender report that financial vetting of the recommended tenderer has been carried out based on the information submitted and that the tenderer is considered financially capable. Where financial vetting has not been conducted, the tender report should include an explanation as to why this was not undertaken.

12. In case a contractor fails to complete a service contract because of a financial problem, the procuring department should review whether the financial problem should have been revealed in the assessment of the financial capability of the contractor at the tendering stage and assess the loss to the Government as a result of the contractor's failure to complete the service contract. The result of the review should be sent to the DAS.

**Standard Tender Report Format
(SPR 375(a) and 380(e))**

(Note : Departments may provide additional information having regard to the individual circumstances of their tenders and delete those part(s) in this tender report format which is/are not applicable to their tenders.)

RESTRICTED (TENDER)

MEMO

From : Head of Department/Chairman, To : Chairman, Tender Board/
Tender Assessment Panel of Departmental Tender Committee
Procuring Department

**Contract Title
Tender Reference/Contract Number**

A. Type and Duration of Contract

— Example : This is a 3-year service contract at an estimated value of HK\$26.9 million with provision for price fluctuation adjustment based on Consumer Price Index (A).

B. Brief Description of Contract

- For goods or service tenders, give a brief description of the goods or services required, user departments, delivery schedule, etc.
- For revenue tenders, give a brief description of the venue or location, method to calculate revenue, etc.
- For works tenders, give a brief description of the scope of works and location of the project, and state whether the contract is subject to the “pay for safety and environment” scheme.
- State the importance and sensitivity of the contract and any special tendering and contract requirements which have affected the tender recommendation, if applicable.
- Highlight the initiatives that have been incorporated in the tender requirements to promote innovation, if any, the major changes in essential requirements, the marking scheme used (including deviations from the SMS Framework, if applicable), tender requirements and specifications as compared with the previous tender exercise, if applicable, and provide reasons for such changes.

- Provide details of any observations/comments made by the tender board/DTC in the previous tender exercise, if applicable, and state how such observations/comments have been addressed.

C. Authority to Invite Tenders

- For prequalified, restricted or single tendering, or when parallel tendering is adopted for contracts other than works contracts funded under the Capital Works Reserve Fund, quote the approving authority and provide a summary of reasons. When parallel tendering is not adopted for works contracts funded under the Capital Works Reserve Fund, quote the approving authority and provide a summary of reasons.
- For selective tendering, state the title(s) of the approved list(s).
- State whether the tender is subject to WTO GPA.

D. Details of Invitation

- Date(s) and mode(s) (e.g. Gazette, internet, newspaper, etc.) of tender invitation.
- The number of invitations issued (if not by Gazette notification).
- Closing date (original and extended, where applicable) for receipt of tenders, and if extended, the reasons.
- Date of expiry of validity, and if extended, the revised date of expiry and the reasons for extension.
- Expiry date of patent, if there is a patent.
- Reasons for delay in submitting the tender report, if applicable.

E. Details of Tenders

- State whether pre-tender market research or non-binding EOI exercise has been conducted. If positive, the tender requirements that have been incorporated to promote competition and innovation arising from the market research or non-binding EOI exercise.
- State the number of tenders received and withdrawn, if any. If only one or very few tenders have been received, state the estimated number of potential tenderers, the reasons for the poor tender response (if known) identified in the pre-tender market research or non-binding EOI exercise and the measures that will be taken to enhance tender participation in future tender exercises.

- List the tenderers in the form of a comparative statement showing the tendered sums quoted by each tenderer, starting with the lowest for goods or services tender or the highest for revenue tender, discrepancies in tenders, etc., supplemented by an enclosure if necessary. If there are corrections to the tendered sums, provide details and attach copies of tenderers' letters confirming their willingness to abide by the corrected tendered sums. List the tenders according to the corrected tendered sums alongside the original tendered sums.

F. Tender Evaluation

- State the composition of the TAP and the advice obtained from technical advisor outside the Government, if any.
- State the specific terms of reference of the TAP, if any.
- State the evaluation criteria and basis of acceptance under the terms of tender, and provide a copy of the marking scheme, and restriction on contract award, if applicable. Give reasons for not using marking schemes, if applicable.
- Provide details of each stage of the tender evaluation. Give reasons for not considering tenders with non-compliance with tender requirements and specifications, supplemented by an enclosure, if necessary.
- Provide details of innovative suggestions proposed by tenderers and the TAP's assessments, if applicable.
- If the tendered sums are very close and there are considerable differences in the pricing of individual items or when tenders are considered 'front-loaded', conduct a discounted cash flow analysis to confirm that the net present values of the tendered sums do not change the position of the recommended tenderer. If however the position changes after the discounted cash flow analysis, the present value of the tendered sums should prevail in determining the ranking of tenders. If there are reasons for not conducting a present value calculation, state these reasons.
- Confirm that post-tender closing contacts/clarifications with tenderer(s), if any, were conducted in accordance with the relevant tender terms and SPR 365 and explain briefly why such clarifications are required.
- Provide details and results of any negotiations with tenderer(s) if prior approval to conduct tender negotiations has been obtained from the appropriate authority.

G. Recommendation

- State the recommendation on the tender to be accepted.
- Provide detailed reasons for not recommending acceptance of the lowest (highest for revenue contracts) conforming tender, or the tender of the highest overall scorer when a marking scheme is used for tender assessment.

- Confirm that the tender recommended for acceptance complies with the tender terms, conditions and specifications. If not, state where the tender fails to comply and explain.
- Confirm that the recommended tenderer is suitable for performing the contract having regard to its performance records, if any. For works tenders, check all the performance reports of government contracts and relevant Housing Authority contracts undertaken by the recommended tenderer during the preceding five years and state the total number of these contracts together with a summary of any adverse report(s) issued under these contracts. State the reasons why a tender is recommended despite the tenderer has been given adverse report(s) for other contract(s). If the recommendation is a controversial one, e.g. if a recommendation is made against the advice of consultants or if the lowest (highest for revenue contracts) conforming tender or highest overall scorer as appropriate is not recommended for acceptance, departments/TAP should comment on the suitability of other tenderers whose tenders are nearest to the lowest (highest for revenue contracts) conforming tender or highest overall scorers as appropriate so that the relevant tender board/DTC may decide on the acceptance without referring the tender report back to the department/TAP.
- State any other special circumstances or important assumptions/considerations governing the recommendation, any complaint(s) received relevant to the tender exercise and how such complaint(s) has/have been handled.
- For works tenders, confirm that the recommended tenderer has been financially vetted by Chief Treasury Accountant, DEVB (Works Branch), and state the vetting result.
- For service contracts with a value exceeding \$15 million, or contracts for supply of stores which require also the provision of services of a value exceeding \$15 million, confirm that the recommended tenderer has been financially vetted in accordance with the terms of tender and that the tenderer is considered financially capable. State the vetting result and the amount of contract deposit or performance bond, as a percentage of the contract value, that is required from the tenderer. Where financial vetting has not been conducted, or where the stipulated percentage under SPR 362(b) is not followed, explain why.
- For revenue contracts, in case financial vetting has been conducted, state the vetting result and the amount of contract deposit or performance bond, as a percentage of the contract value, that is required from the tenderer.
- For works tenders, confirm the status of the recommended tenderer on the respective approved list(s) of contractors and that the recommended tenderer is not suspended from tendering under the provisions of the prevailing DEVB TC(W) relating to the employment of illegal workers or having illegal workers on sites under its control, site safety, Employment Ordinance, etc.

- If special references to a tenderer's conviction records have been made in the report (e.g. as a major consideration for not accepting its tender even though it is the lowest conforming tender/highest overall scorer), attach a list of convictions for the related offences under the relevant Ordinances and summarise the number of such convictions in respect of the concerned tenderer during the specified period (as promulgated in relevant FCs, FSTBCM or other relevant memoranda issued by FSTB, or concerned DEVB TC(W) issued by DEVB which would be updated from time to time) prior to the tender closing date.
- For works tenders, state the aggregate value of the outstanding works of the contracts which the recommended tenderer has in hand if the recommended tenderer is of probationary status or subject to a financial limit on contract values for other reasons, and whether the value of the contract in question exceeds the allowed limit.
- For cancellation of tender exercise, state the reasons, the way forward and the legal advice obtained.
- For tenders subject to WTO GPA, confirm that the requirements of WTO GPA have been complied with.

H. Comparison with the Estimate and Similar Contracts

- For works tenders, state the following sums and compare the recommended tendered sum with the sum allowed for the contract and the pre-tender estimate. Explain the reasons for any significant difference (i.e. with a difference of $\pm 10\%$ or more), where applicable —
 - (a) Recommended tendered sum : \$
 - (b) Sum allowed for this contract in the approved project estimate (month/year of approval) : \$
 - (c) Pre-tender estimate (month/year of preparation) : \$
- Explain the basis on which the pre-tender estimate is drawn up.
- Compare the recommended tendered sum/rates with the pre-tender estimate and the award contract sum of the previous contract or those in similar contracts (month/year of award), whichever is applicable, and explain the difference, where applicable. If a price comparison cannot be made, this should be stated and explained.
- Compare the recommended tendered sum with the second and third lowest (highest for revenue contracts) conforming tenders/highest combined scorers, where appropriate.

- Confirm with analysis that the recommended tendered sum is fair and reasonable, and explain why it is considered realistic to accept the tender if the tendered sum is significantly higher or lower than the pre-tender estimate, the award contract sum of the previous contract or the sum allowed for the contract in the approved project estimate.

I. Claims History (for works tenders exceeding \$100 million in value only)

- State the number of performance reports on the recommended tenderer with claim attitude marked as unreasonable in the preceding five years. Confirm whether the recommended tenderer has demonstrated a reasonable claim attitude, or otherwise, on an overall basis taking account of any reported ‘claims-conscious’ attitude, frivolous or vexatious claims or unjustified pressure on the Government in the manner in which claims were pursued. Where there is no record, this should be stated in the report.

J. Availability of Funds

- For works tenders, state the following and confirm whether a revision of the approved project estimate will be required, if the tendered sum is greater than the sum allowed for the contract —
 - (a) Recommended tendered sum : \$
 - (b) Approved project estimate (month/year of approval) : \$
 - (c) Sum allowed for the contract in the approved project estimate : \$
 - (d) Funds in (financial year) Estimates under
Head ____/Subhead ____ : \$
- For other tenders (except revenue contracts), confirm that funds are available and the vote to be charged.
- For tenders invited before funding is secured, state the expected date of obtaining the funding approval.

K. Declaration of Interest

- Confirm whether public officers involved in preparing tender documentation (including tender specifications and marking scheme), assessing tenders and conducting negotiations have declared their interest in accordance with SPR 186, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.
- Confirm whether the outside technical expert(s), if any, involved in assessing tenders have declared their interest in accordance with Appendix III(G)1, and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.

- Confirm whether the consultant(s) has/have declared their compliance with the relevant terms and conditions of the Consultancy Agreement on conflict of interests and confirmed that there was no actual, potential or perceived conflict of interest in connection with their services in the preparation of tender and contract documents and in the tender exercise.

L. Name and Telephone Number of Contact Officer

- Nominate public officer(s) to answer questions from the tender board/DTC or attend board/committee meetings for this item, if necessary. The telephone numbers of the nominated officer(s) should be provided.

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Signed by a directorate officer*
for Head of Department/
Chairman, TAP of Procuring Department

- * Tender reports which are submitted for consideration by CTB and subsidiary tender boards should be signed by a directorate officer. Tender reports which are submitted for consideration by DTCs should be signed by the Chairman, TAP of the procuring department.

Guidelines for Tender and Contract Negotiations
(SPR 296, 385(n), 455(e) and 525)

Public officers authorised (under SPR 296, 385, 455(e) or 525) to conduct negotiations with tenderers and contractors shall observe the following guidelines when preparing for and conducting negotiations with tenderers and contractors —

- (a) Be clear about what is intended to be achieved from the negotiation. For example, this can be a reduction of tender price, a change to the payment terms, removal of a counter-proposal (e.g. restriction of liability) from the tenderer or adjustment to the price for additional requirements of items or service.
- (b) Draw up a checklist of the items to be discussed. The tenderers and contractors participating in the negotiations may be given a copy of this checklist so that they know what to discuss and bring the right people to the meeting.
- (c) Determine what the baseline for negotiation should be and seek prior clearance as necessary.
- (d) Consider what fall back positions Government would need to adopt in case the negotiation fell through and plan ahead, for example, by considering the need to extend the contract period of existing contracts, cancel the tender exercise, conduct a re-tender exercise, etc.
- (e) Keep the negotiation team small and limit the number of staff to those who are absolutely essential. There is no need to match the other party in numbers.
- (f) Include a representative from the GLD and/or LAD(W)/DEVB or D of J, if necessary.
- (g) Hold the negotiation in a government office as a normal practice.
- (h) Ensure that the government negotiation team as well as the tenderers and contractors participating in the negotiations know who the leader of the government negotiation team is, and make sure there is only one.
- (i) Hold a pre-meeting so that members of the government negotiation team familiarise themselves with the ground rules and the relative strengths and weaknesses of the parties to the negotiation.
- (j) Do not reveal to tenderers and contractors participating in negotiations the Government's baseline unless a deadlock persists after repeated rounds of negotiations and the negotiation team is satisfied that the disclosure is necessary.

- (k) Do not give tenderers and contractors participating in negotiations conditional treatment based on past or future procurements, except for those already indicated in the tender document.
- (l) Do not furnish to tenderers and contractors participating in negotiations information about other tenderers' prices or technical proposals.
- (j) Keep proper record of the negotiations for audit purpose.

**Specimen Submission for CCSB Stage 1 Approval
(SPR 440(h))**

RESTRICTED (CONTRACT)

MEMO

From : Head of Department

To : Chairman, Central Consultants Selection
Board

Title of Consultancy

A. Purpose of the Present Submission

This is a submission for Stage 1 approval to invite consultancy proposals from [number] consulting firms listed in Section G below for the captioned consultancy.

B. Brief Description of the Consultancy

C. Estimated Duration of the Consultancy

D. Estimated Cost of the Consultancy

E. Authority to Employ Consultants

- Policy support from the relevant Director of Bureau or a public officer authorised by him, endorsement of the MA Division of FSTB for financial consultants² and EffO for general management consultants³, funding approval, etc.
- State whether the consultants selection exercise was initiated before funding is secured (i.e. whether parallel tendering has been adopted).
- For works-related consultancies funded under the Capital Works Reserve Fund, if parallel tendering has not been adopted, quote the approving authority and provide a summary of reasons.
- For other consultancies, if parallel tendering has been adopted, quote the approving authority and provide a summary of reasons.

² Financial consultants may include, inter alia, accountants, actuaries, merchant bankers or financial management consultants and also cover financial consultants to be engaged as sub-consultants to non-financial consultancies. The need for appointing outside financial consultants may be justified by circumstances including where the assignment requires special knowledge or expertise not available within the Government or the required timeframe, where there is a need for acquiring independent financial appraisals to enhance the credibility of the exercise, etc.

³ General management consultants may provide services including advisory, development and operational support services concerning —

- (a) business policy and strategy and the overall planning, organisation, management and control of an organisation including management information systems, management audits, etc.;
- (b) human resources management; and
- (c) methods for improving productivity, reducing production costs and improving the quality of production.

F. Details of the Present Submission

- Provide information on the size and source of the long list, and state whether EOIs have been invited.
- If EOIs have been invited –
Provide information on the number of consulting firms which have expressed interest to participate (with a sample of invitation for EOI), the criteria and method used for short-listing consulting firms, the recommended list of short-listed consulting firms derived based on the pre-determined criteria and method (with reasons for the inclusion of the short-listed firms and the rejection of other interested firms from the long list).
- Attach a copy of the consultancy brief which should have been cleared with the D of J and other relevant departments (such as the MA Division of FSTB for financial consultancy and EffO for general management consultancy).
- Provide information on the composition of assessment panel, the specific terms of reference of the assessment panel (if any), the marking scheme including the weighting for technical and fee assessments, the assessment criteria and their relative weighting with passing marks (if any) for assessing technical proposals and the method for scoring fee proposals.
- Confirm whether all public officers involved in the Stage 1 process (including formulation of the long list, the short-listing exercise, preparation of the consultancy brief, etc.) have declared their interest in accordance with SPR 186 and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.

G. Recommendation

- If EOIs have been invited –
Recommend to issue the consultancy brief as approved by CCSB to invite consultancy proposals from the short-listed consulting firms.
- If EOIs have not been invited –
Recommend to issue the consultancy brief as approved by CCSB to invite consultancy proposals from the recommended consulting firms direct.
- Recommend to assess the consultancy proposals using the marking scheme as approved by CCSB.

H. Availability of Funds

These exclude public relations services, marketing management services, arbitration and conciliation services, financial management services and information technology services.

- Confirm the availability of funds and the title of the vote to be charged.
- For initiation of consultants selection exercise before funding is secured, state the expected date of obtaining the funding approval.

I. Name and Telephone Number of Contact Officer

- State the name(s)/tel. no(s). of public officer(s) who will attend the CCSB meeting to discuss this item.
- State the name/tel. no. of public officer who can provide further information on this submission.

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Signed by a directorate officer
for Head of Department

**Specimen Submission for CCSB Stage 2 Approval
(SPR 445(g))**

RESTRICTED (CONTRACT)

MEMO

From : Head of Department

To : Chairman, Central Consultants Selection
Board

Title of Consultancy

A. Purpose of the Present Submission

This is a submission for Stage 2 approval to appoint [name of the consulting firm] for the captioned consultancy, subject to the fees and terms detailed in the negotiating brief in Section G below being resolved satisfactorily.

B. Brief Description of the Consultancy

C. Estimated Duration of the Consultancy

D. Estimated Cost of the Consultancy

E. Authority to Employ Consultants

- Policy support, funding approval, CCSB Stage 1 approval, etc.
- State whether the consultants selection exercise was initiated before funding is secured (i.e. whether parallel tendering has been adopted).
- For works-related consultancies funded under the Capital Works Reserve Fund, if parallel tendering has not been adopted, quote the approving authority and provide a summary of reasons.
- For other consultancies, if parallel tendering has been adopted, quote the approving authority and provide a summary of reasons.

F. Details of the Present Submission

- Provide information on the invitation and receipt of consultancy proposals from the consulting firms with a sample of invitation for proposals.
- State the composition of assessment panel and the specific terms of reference of the assessment panel (if any).
- Describe the assessment process by the assessment panel based on the approved marking scheme and assessment criteria, including any verbal presentation arranged.

- Summarise the results of assessment highlighting the relative merits of the consulting firms under each of the assessment criteria and an overall assessment of individual firms.
- Confirm whether members of the assessment panel have declared their interest in accordance with SPR 186 and state, whether or not any conflict of interest (actual, potential or perceived) has been identified, and if yes, what remedial action has been made.

G. Recommendation

- State the consulting firm being recommended for appointment (with MA Division of FSTB and EffO's advice on the reasonableness of fees and payment terms (if any) proposed by the recommended firm in case of financial consultancies and general management consultancies respectively).
- Negotiate, where applicable, with the recommended firm to resolve items set out in a negotiating brief and the expected result for each item.
- State, where applicable, the next course of action in the event that agreement cannot be reached with the recommended firm.

H. Availability of Funds

- Confirm the availability of funds and the title of the vote to be charged.
- For initiation of consultants selection exercise before funding is secured, state the expected date of obtaining the funding approval.

I. Name and Telephone Number of Contact Officer

- State the name(s)/tel. no(s). of public officer(s) who will attend the CCSB meeting to discuss this item.
- State the name/tel. no. of public officer who can provide further information on this submission.

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Signed by a directorate officer
for Head of Department

**Guidance Notes on Execution of Contracts
(SPR 505(c))**

Corporate bodies are companies incorporated under the Companies Ordinance (Cap. 622) or under private incorporation ordinances. Other bodies, not so incorporated but often loosely referred to as companies are, in fact, sole proprietorships or partnerships trading under the name of a firm. A simple distinction between corporate bodies and unincorporated bodies is that only the former can use the word "Limited" in their titles and is a separate legal entity whilst the latter is merely one or more persons trading together. The shareholders of a corporation cannot be sued individually. On the other hand, sole proprietors can be sued individually and the members of a partnership can be sued individually and severally.

2. A corporate body will usually execute a contract with its company chop and the actual words to be used will be determined by the provisions of the Articles of Association or other constitution of that corporate body. With these qualifications a contract will usually end as follows —

"Signed by ___ [and ___] for and on behalf of [name of the contractor] in the presence of ___"

3. The appropriate persons to sign the contract should be ascertained by inspection of the Articles of Association and the resolution of the Board.

4. Where it is necessary or desirable to execute the contract as a deed with the use of a common seal (e.g. the contract is not supported by consideration or is to be executed as a specialty for the purpose of a longer limitation period), it is no longer compulsory for a company to have a common seal. Where the company does not have a seal or is not using the seal, the contract may be treated as being executed under seal if the document is expressed to be executed by the company and is signed by two or more directors or by one director and the company secretary (or signed by the sole director if the company only has one director). The execution clause without use of a common seal may be worded as follows—

“Executed and delivered as a deed)
 by _____ [name of Contractor])
 acting through _____)
 , its sole director,/ _____)
 and _____, its directors,/)
 _____, its director and _____,)
 its company secretary, in the presence)
 of _____ [name of witness] :)

Where the common seal is used, the execution clause may be worded as follows—

“Executed and delivered as a deed and)
 the common seal of _____)
 [name of Contractor] was affixed in the)
 presence of _____,)
 its director(s),/ _____, its director)
 and _____, its company secretary,/)
 [name(s)] _____, person(s) authorised)
 to sign the contract by its board of)
 director(s) and in the presence of _____)
 [name of witness]:)

5. Individuals or partnerships (as distinguished from corporate bodies) may sign a contract under hand by the signature of the individual or one or more partners by virtue of the provisions of the Partnership Ordinance. Section 7 of the Ordinance provides that “every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner”. However a partner has no authority to execute a document under seal on behalf of the other partners unless specifically authorised by them under seal to do so. Normally all works contracts and bonds to secure the due performance of contracts must be executed under seal by the relevant parties. There is no objection to other types of contracts being executed under hand but a bond to secure the due performance of a contract must be executed under seal by the contractor and by the financial institution which is giving a guarantee. Accordingly where a contract is to be secured by bond, it is preferable that both the contract and the bond should be under seal.

6. In any case where execution of a contract is by power of attorney, the original power of attorney should be produced and a copy thereof retained with the contract.

7. In every case the execution of a contract by each party thereto should be witnessed by one person (not necessarily the same for each) who should sign his name and add his address and his occupation.

8. In every case where a contract is made with a partnership, the certificate of registration under the Business Registration Ordinance should be produced prior to the execution of the contract and the particulars of the partners should be checked.

**Schedule of Authorities for Variation of Contracts
(SPR 520(c) – (e) and 525)**

A. WORKS CONTRACTS		
	Approval Authority (Public officers)	Approval limit
<p>I. Subject to funds being available –</p> <p>(a) any number of variations (e.g. additional works, deleted works, design, method), excluding extension of contract period, essential for the completion of works as defined in the original contract; and</p> <p>(b) any additional payment in accordance with the terms of the contract (e.g. price fluctuation clauses, certified claims, remeasurement, arbitration awards).</p>	<p>(i) Senior Engineer level or equivalent</p> <p>(ii) Directorate level</p> <p>(iii) COs</p>	<p>Up to the limit that the estimated final contract sum, after including all variations under Items I(a) and (b), would not exceed the total sum of the original contract value plus the contingencies allowed for in accordance with the contract terms [“total contract value”].</p> <p>Up to the limit that the estimated final contract sum, after including all variations under Items I(a) and (b), would not exceed the total contract value plus 20% of the original contract value or plus 150% of the quotation limit [SPR 220(b)], whichever is the greater.</p> <p>no limit</p>
<p>The above schedule of authorities is subject to the condition that separate approval of the public officer on the right hand column is obtained, where necessary, for variations under Item I(a) –</p>	<p>(i) Engineer level or equivalent</p> <p>(ii) Senior Engineer level or equivalent</p> <p>(iii) Directorate level</p> <p>(iv) COs</p>	<p>Variations with individual value up to % of quotation limit [SPR 220(b)] –</p> <p>5%</p> <p>20%</p> <p>100%</p> <p>no limit</p>

(Note: For avoidance of doubt, supplementary agreement for additional works approved under A.III and A.IV in this Appendix should be treated as a separate contract for the purpose of effecting further variations to these additional works and the schedule of authorities for variation of contracts under A.I should also be applicable where appropriate)

A. WORKS CONTRACTS		
	Approval Authority (Public officers)	Approval limit
II. Acceptance of an alternative design, method, etc., proposed by a contractor during the course of works, subject to there being no additional cost implications or no additional works outside the terms of the original contract.	Directorate level	Not applicable
III. Additional works outside the terms of the original contract but within the approved scope of the project, subject to funds being available.	(i) Senior Engineer level or equivalent (ii) Directorate level (iii) PS(Tsy)	Accumulated value of variations under Items III and IV up to % of quotation limit [SPR 220(b)] –
IV. Acceptance of an alternative design, method etc., proposed by a contractor during the course of works involving additional cost implications or additional works outside the terms of the original contract provided that the additional works are within the approved scope of the project, subject to funds being available.		20% 100% no limit
V. Extension of contract period.	(i) Directorate level (ii) PS(Tsy)	Accumulated contract value up to – Quotation limit [SPR 220(b)] no limit

B. CONSULTANCY CONTRACTS		
	Approval Authority (Public officers)	Approval limit
I. For contracts awarded under departmental authority		
(a) Subject to funds being available, any number of variations other than (b) below, provided that the additional services are within the approved consultancy scope and all the relevant factors (including rates) are no less favourable		
(i) For contracts awarded through quotations	Directorate level	Accumulated value of the contract up to quotation limit [SPR 220(a)]
(ii) For DCSC contracts	(i) Directorate level	Accumulated value of variations up to quotation limit [SPR 220(a)], provided that the accumulated value of the contract does not exceed DCSC's financial limit [SPR 426]
	(ii) DCSC	Accumulated value of the contract up to DCSC's financial limit [SPR 426]
(b) Extension of contract period		
(i) For contracts awarded through quotations	Directorate level	Accumulated value of the contract up to quotation limit [SPR 220(a)]
(ii) For DCSC contracts	(i) Directorate level	Accumulated value of variations up to quotation limit [SPR 220(a)], provided that the accumulated value of the contract does not exceed DCSC's financial limit [SPR 426]
	(ii) DCSC	Accumulated value of the contract up to DCSC's financial limit [SPR 426]

B. CONSULTANCY CONTRACTS		
	Approval Authority (Public officers)	Approval limit
II. For contracts awarded on the advice of the CCSB / AACSB / EACSB		
(a) Subject to funds being available, any number of variations other than (b) below, provided that the additional services are within the approved consultancy scope and all the relevant factors (including rates) are no less favourable	(i) Directorate level	Accumulated value of variations up to the quotation limit [SPR 220(a)] or % of the original contract value , whichever is the greater 10%
	(ii) COs	20%
(b) Extension of contract period	Directorate level	Accumulated value of variations up to the quotation limit [SPR 220(a)]
III. Other variations not covered by I and II above		
Subject to funds being available, and provided that the additional services are within the approved project scope	(i) PS(Tsy) (for appointment of consultants other than (ii) and (iii) below) (ii) AACSB (for appointment of architectural and associated consultants) (iii) EACSB (for appointment of engineering and associated consultants)	no limit

C. SUPPLIES AND SERVICE CONTRACTS (OTHER THAN THOSE UNDER (A) AND (B) ABOVE)		
	Approval Authority (Public officers)	Approval limit
I. For contracts awarded under departmental authority		
(a) Subject to funds being available, any number of variations provided that all the relevant factors (including rates) are no less favourable		
(b) Extension of contract period		
(i) For contracts awarded through quotation	Directorate level*	Accumulated value of the contract up to quotation limit [SPR 220(a)]
(ii) For DTC contracts	(i) Directorate level*	Accumulated value of the variations up to quotation limit [SPR 220(a)], provided that the accumulated contract value does not exceed DTC's financial limit [SPR 116]
	(ii) DTC	Accumulated value of the contract up to DTC's financial limit [SPR 116]
	(iii) GLD Tender Board (for contracts awarded by GLD only)	Accumulated value of the contract up to GLD Tender Board's financial limit [SPR 116]
(c) Subject to funds being available, variations other than those covered by (a) and (b) above	PS(Tsy)	no limit
II. For contracts awarded on the advice of subsidiary tender boards		
(a) Subject to funds being available, any number of variations other than (c) below, provided that all the relevant factors (including rates) are no less favourable		
(i) For contracts awarded by the departments itself	(i) Directorate level	Accumulated value of the variations up to – 25% of the original contract value or quotation limit [SPR 220(a)], whichever is the greater
	(ii) COs	50% of the original contract value
(ii) For contracts awarded by GLD	(i) GLD officers designated by DGL	50% of GLD Tender Board's financial limit [SPR 116] but not exceeding the original contract value
	(ii) GLD Tender Board	GLD Tender Board's financial limit [SPR 116] but not exceeding the original contract value

* For contracts awarded by GLD, the approval authority would be GLD officers (directorate or non-directorate level) as designated by DGL

D. REVENUE CONTRACTS		
	Approval Authority (Public officers)	Approval limit
I. For contracts awarded under departmental authority		
(a) Any number of variations other than extension of contract period, provided that all the relevant factors (including rates) are no less favourable		
(i) For contracts awarded through quotation	Directorate level*	Accumulated value of the contract up to quotation limit [SPR 220(a)]
(ii) For DTC contracts	(i) Directorate level*	Accumulated value of variations up to quotation limit [SPR 220(a)], provided that the accumulated contract value does not exceed DTC's financial limit [SPR 116]
	(ii) DTC	Accumulated contract value up to DTC's financial limit [SPR 116]
	(iii) GLD Tender Board (for contracts awarded by GLD only)	Accumulated contract value up to GLD Tender Board's financial limit
(b) To approve variations other than those covered by (a) above	PS(Tsy)	no limit
II. For contracts awarded on the advice of GLD Tender Board / CTB		
(a) For contracts awarded by GLD, any number of variations excluding extension of contract period, provided that all the relevant factors, including rates, are no less favourable		Accumulated value of variations up to % of GLD Tender Board's financial limit [SPR 116] but not exceeding the original contract value
	(i) GLD officers designated by DGL	50%
	(ii) GLD Tender Board	100%
	(iii) PS(Tsy)	no limit
(b) Variations other than those covered by (a) above	PS(Tsy)	no limit

* For contracts awarded by GLD, the approval authority would be GLD officers (directorate or non-directorate level) as designated by DGL

E. EXTRA-CONTRACTURAL SETTLEMENT OF CLAIMS			
	Contract Types	Approval Authority	Approval limit
I. Extra-contractual settlement of claims involving payment by the Government			
To approve, on the advice of D of J or LAD(W)/DEVB where appropriate, payment of a claim which is not certified and is not the subject of an arbitration award or an award of the court, subject to funds being available	(a) Works contracts	(i) COs or designated officers at directorate level (ii) PS(Tsy)	Accumulated value of such payments up to quotation limit [SPR 220(b)] no limit
	(b) Consultancy contracts	(i) COs or designated officers at directorate level (ii) PS(Tsy)	Accumulated value of such payments up to quotation limit [SPR 220(a)] no limit
	(c) Supplies and service contracts (not covered by (a) and (b) above) and revenue contracts	(i) <u>For contracts awarded by the department itself</u> (i) COs or designated officers at directorate level (ii) PS(Tsy) (ii) <u>For contracts awarded by GLD</u> (i) GLD directorate officers designated by DGL (ii) PS(Tsy)	Accumulated value of claims up to quotation limit [SPR 220(a)] no limit Accumulated value of claims up to quotation limit [SPR 220(a)] no limit
II. Extra-contractual settlement of claims involving acceptance of payment from the contractor			
To approve, on the advice of D of J or LAD(W)/DEVB where appropriate, acceptance of payment of a claim which is not certified and is not the subject of an arbitration award or an award of the court.		PS(Tsy)	no limit

**Guidelines for Monitoring Performance of Consultants
Appointed under the Central Consultants Selection Board Procedures
(SPR 540)**

Procuring departments should closely monitor the performance of consultants to ensure that their services meet the requirements set out in the consultancy brief and agreement. They should evaluate the performance of their consultants at the intervals as set out in SPR 536. Performance reports on consultants shall be completed by a public officer at or above senior professional level on GF 562 and forwarded to the Secretary, CCSB no later than six weeks after they are due. The procuring department should copy the performance report to other departments (if any) involved in selecting the consultant for the consultancy study.

2. As soon as it becomes apparent that any aspect of the consultant's performance is not satisfactory, the procuring department should take steps as set out in SPR 537. In addition, the procuring department should state in the performance report to CCSB the action taken to inform the consultant that his performance is considered unsatisfactory in a particular aspect(s) and the response from the consultant. The procuring department should also summarise any correspondence exchanged and discussions that have taken place with the consultant. The procuring department should not give an unsatisfactory rating in the report unless the consultant has been informed of his unsatisfactory performance in the aspect concerned.

3. When the performance of the consultant continues to be unsatisfactory notwithstanding his being so advised in writing, the procuring department should take further steps as set out in SPR 538, and put the consultant on a three-monthly reporting system.

4. CCSB may consider suspending a consultant from bidding Government's new consultancy agreements up to a period of 12 months. The suspension may apply to —

- (a) consultancy studies in a field relating to the consultancy study for which the consultant has received three adverse reports over a period of two years; or
- (b) consultancy studies in the same field for which the consultant has received three adverse reports over a period of two years or if the department has made a specific recommendation that the consultant is not suitable for similar future studies; or
- (c) consultancy studies in any field if the consultant has received four adverse reports in studies in different fields over a period of 12 months.

5. An adverse report mentioned in paragraph 4 refers to a performance report with an overall grading of "unsatisfactory". Six-monthly and three-monthly interim reports carry the same weighting as full performance reports.

6. Before considering whether to recommend to CCSB to suspend a consultant from bidding new consultancy agreements, the procuring department should invite the consultant to make representations. CCSB will then take into account recommendation by the procuring department, explanations or representations made by the consultant in response to the proposed suspension by the Government, and mitigating circumstances, if any. The procuring department should inform the consultant of CCSB's decision promptly upon notification by Secretary, CCSB.

7. If the consultant's performance on an assignment continues to be unsatisfactory after having been suspended from bidding under paragraph 4 above, CCSB may consider deleting the consultant from the long list. Before doing so, the procuring department should invite the consultant to make representations. CCSB will then take into account recommendations by the procuring department, explanations or representations made by the consultant on the proposed delisting and mitigating circumstances, if any. The procuring department should notify the consultant of CCSB's decision promptly upon notification by Secretary, CCSB.

8. Departments should ensure that payment to consultants should only be made in accordance with the terms of the relevant consultancy agreement. Where the payment schedule is based on milestone payments related to deliverables/performance targets, the department must be satisfied that the deliverables/performance targets required for a particular stage have been completed to Government's satisfaction before payment for that stage is made to the consultants.

**Guidelines for Keeping Stores Records and Issuing Stores
(SPR 680 and 850)**

Registers

For proper control of stores, departments should maintain the following registers –

- (a) Register of serially numbered and controlled form (GF 298) – for recording receipts, issues and disposal of books of stores vouchers and controlled numbered stores forms. Separate folios should be used for each type of book.
- (b) Claims register (GF 207) – for recording details of imported goods which are short-delivered, damaged, or in any other aspect not in compliance with the contract.
- (c) Loan Register – for recording details of departmental stores issued on loan.
- (d) Surprise inspection book (GF 235) - for recording results of surprise inspections.

Issue of Stores for Government Works or Services

2. Departments may issue government stores on a first-in-first-out basis to public officers for use in government works or services. The public officer receiving the stores should sign on one of the following forms —

- (a) *if the stores are delivered to the public officer by the suppliers direct —*
 - on a Departmental Order for Supply of Stores (GF 219) in respect of stores purchased through GLD or by the department concerned under its delegated authority; or
- (b) *if the stores are issued from a departmental store unit —*
 - (i) on a Departmental Combined Requisition and Issue Voucher (GF 277) in respect of inventory items or non-inventory items which are not regularly required in fairly large quantities; or
 - (ii) on a Non-inventory Stores Consolidated Issue Voucher (GF 283) for non-inventory items which are issued in accordance with a Working Stores Table maintained by DSM; or
 - (iii) in Column 7 of the Non-inventory Stores Ledger (GF 291) for non-inventory items which are not regularly required in fairly large quantities; or

- (c) on a computerised stores voucher if the department concerned has computerised its stock records and stores vouchers.

3. The voucher and the relevant job numbers, where the latter are maintained, should be cross-referenced.

Issue of Stores for Conversion

4. If a department wishes to convert stores which have already been taken on charge into items of different specifications or units, e.g. the issue of cloth for making uniform, the public officer receiving the stores for the purpose should sign on a Stores Conversion Voucher (GF 227).

Issue of Stores for Transfer between Depots

5. For the transfer of stores from one departmental depot to another, the receiving officer should sign on a Departmental Combined Requisition and Issue Voucher (GF 277).

Issue of Stores in Exchange for Unserviceable Items

6. When stores that are held on charge and recorded in an Inventory Ledger Sheet (GF 270) have become unserviceable, they need to be returned to a departmental store unit pending examination by the departmental disposal authority. In exchange for these unserviceable items, departments may issue new stores to the users and require the receiving officer to sign on one of the following forms —

- (a) an Exchange Voucher for Store on Inventory Charge (GF 275) for non-uniform items; or
- (b) a Counter Record of Issues>Returns of Uniforms and Accoutrements (GF 292) for uniform items.

Issue of Stores for Sale

7. Departments may issue surplus stores, serviceable or otherwise, for sale by the disposal term contracts arranged by the GLD and commercial disposal under SPR 1145 after receipt of payment and shall require the purchaser or his representative to sign on a GF 277.

Issue of Stores on Transfer to Other Departments or for Donation, Destruction or Dumping

8. Departments may transfer stores to other departments or arrange for donation, destruction or dumping in accordance with the procedures set out in Chapters XI and XII. In all cases, GF 277 must be completed and shall state clearly the approval reference.

Glossary

AACSB	: Architectural and Associated Consultants Selection Board
CCGO	: Central Cyber Government Office
CCSB	: Central Consultants Selection Board
CO	: Controlling Officer
CTB	: Central Tender Board
D of A	: Director of Audit
DAS	: Director of Accounting Services
DCSC	: Departmental consultants selection committee
DDA	: Departmental disposal authority
DDC	: Departmental disposal committee
DEVB	: Development Bureau
DEVB TC(W)	: Development Bureau Technical Circular (Works)
DGL	: Director of Government Logistics
D of J	: Department of Justice
DSM	: Departmental Stores Manager
DTC	: Departmental tender committee
EACSB	: Engineering and Associated Consultants Selection Board
EDB	: Education Bureau
EffO	: Efficiency Office
EMSD	: Electrical and Mechanical Services Department
EOI	: Expression of interest
FC	: Financial Circular
FSTB	: Financial Services and the Treasury Bureau (The Treasury Branch)

FSTBCM	: Financial Services and the Treasury Bureau Circular Memoranda
GLD	: Government Logistics Department
HKSAR	: Hong Kong Special Administrative Region
LAD(W)/DEVB	: Legal Advisory Division (Works) of the Development Bureau
MA Division	: Management Accounting Division of the Financial Services and the Treasury Bureau (The Treasury Branch)
PS(Tsy)	: Permanent Secretary for Financial Services and the Treasury (Treasury)
SFST	: Secretary for Financial Services and the Treasury
SMEs	: Small and Medium-sized Enterprises
SMS Framework	: Standard Marking Scheme Framework
SPRs	: Stores and Procurement Regulations
TAP	: Tender assessment panel
WTO GPA	: Agreement on Government Procurement of the World Trade Organization