

FINANCIAL CIRCULAR NO. 3/2020

Parallel tendering for contracts

(Note : Distribution of this Circular is **Scale C**.
Directors of Bureaux, Controlling
Officers, Resource Management Unit
officers of policy bureaux and all officers
dealing with procurement should read it.)

Introduction

This Circular announces changes to the Stores and Procurement Regulations (SPRs) consequential to a change in the practice and requirements in relation to the adoption of parallel tendering for works contracts and works-related consultancies funded under the Capital Works Reserve Fund (CWRP).

2. Financial Circular No. 5/2016 “Parallel Tendering for All Contracts” is hereby superseded.

Background

3. Traditionally, Controlling Officers (COs) would initiate tender procedures or consultant selection exercises after securing funding. In the interests of expediting the procurement process, since 2016, COs¹ have been allowed to adopt parallel tendering, i.e. to invite tenders or initiate consultancy selection exercises prior to or in parallel to (rather than after) securing funding (e.g. obtaining approval from the Finance Committee (FC) of the Legislative Council (LegCo)). This applied to all works and non-works contracts and related consultancies funded under the

¹ For the projects with the estimate exceeding \$30 million, prior approval from respective Directors of Bureaux (DoB) are required.

Capital Works Reserve Fund (CWRP) and the General Revenue Account (GRA).

New requirements for works contracts and works-related consultancies funded under the CWRP

4. The time required for securing FC/LegCo's funding approval for capital works projects has become increasingly unpredictable in recent years. This seriously affects the timely delivery of projects and the accuracy of the annual capital works expenditure forecast. To address the problem, the Development Bureau (DEVB) decided as a matter of policy to **require** COs to adopt parallel tendering in the procurement of works contracts and works-related consultancies funded under the CWRP.

5. To facilitate timely delivery of projects and reduce the risks of cost overrun or unnecessary lock-up of public resources, COs shall adopt with immediate effect parallel tendering for the procurement of all works contracts² and works-related consultancies funded under the CWRP, **unless** they consider, upon the conduct of a risk assessment, that the risks outweigh the benefits involved or, where justified, have sought exemption from the relevant authority. In other words, COs are generally required to invite tenders or initiate consultants selection exercises prior to securing funding approval. DEVB's guidelines for the adoption of parallel tendering for works contracts and works-related consultancies funded under the CWRP are at **Annex A**.

Requirements for other procurements

6. The regime of allowing parallel tendering for other procurement (i.e. non-works contracts and non-works-related consultancies funded under the CWRP and GRA) **remains unchanged**. In other words, **provided that** COs are satisfied, upon the conduct of a risk assessment, that the benefits outweigh the risks involved, COs **may** invite tenders and initiate consultants selection exercises prior to funding approval. These tenders and consultancies may relate to the procurement of goods or services (including consultancy services and standing offer agreements), irrespective of whether the item procured is recurrent or one-off in nature. Guidelines for the adoption of parallel tendering in these cases are at **Annex B**.

² For classification of works contracts, please refer to DEVB Technical Circular (Works) No.5/2012 (as may be updated from time to time) and guidelines issued by the DEVB.

Conditions for contract award involving parallel tendering

7. All invitations for tenders and consultancy proposals issued prior to funding approval must state clearly that funding approval has not been obtained, and that Government will not be responsible for the cost of preparing tenders. COs should not award a contract and should not indicate to the successful bidder that Government would accept its bid unless and until funding is secured.

8. Funding is deemed to have been secured in the following circumstances –

- (a) for a contract to be funded under **CWRF**: when the project estimate for the item covering such contract has been approved by FC/LegCo or by a designated officer under authority delegated by FC;
- (b) for a contract to be funded under **GRA Subhead 000**:
 - (i) when resources for that contract have been earmarked from within the overall expenditure envelope provision of the relevant envelope holder/DoB, or secured through adjustment to the annual envelope provision approved by Star Chamber/Financial Secretary under the established resource allocation mechanism. Envelope holders are reminded to plan ahead for multi-year contracts and should not pre-empt the outcome of resource allocation exercises (i.e. should not presume that additional allocations would be approved); and
 - (ii) in case FC/LegCo approval is needed, when LegCo has approved the resources in the context of the Appropriation Bill or when FC or a designated officer under authority delegated by FC has approved the resources; and
- (c) for a contract to be funded under **other GRA Subheads**: when the specific non-recurrent financial commitment has been approved by LegCo as part of the relevant Appropriation Bill or by FC or a designated officer under authority delegated by FC.

Cancellation of tenders/consultants selection exercises

9. In case FC/LegCo does not approve the funding required before the expiry date of the tender validity period or extended tender validity period (if applicable), procuring departments adopting parallel tendering will have to cancel the tender exercise in question. Prior approval of cancellation of tenders due to this reason is not required.

10. In case FC/LegCo approves the funding in part and/or varies the scope of the procurement, the procuring department will have to consider whether the tender exercise needs to be cancelled or modified with a revised scope, or a re-tender exercise needs to be arranged. Prior approval of the relevant tender board or departmental tender committee is required if the procuring department chooses to cancel the tender exercise or negotiate with bidders on the revised scope under the circumstances.

Changes to the Stores and Procurement Regulations

11. Relevant amendments to the SPRs are set out at **Annex C**, and will be effective upon promulgation of this Circular.

Trading Funds

12. This Circular applies to Trading Funds.

Enquiries

13. For enquiries, please contact -
- (a) the Project Strategy and Governance Office of the Works Branch of DEVB for matters related to the policy for works contracts and works-related consultancies;
 - (b) E Division of the Treasury Branch (TsyB) of the Financial Services and the Treasury Bureau (FSTB) for matters related to non-works procurement policy;
 - (c) T Division of TsyB of FSTB for matters related to non-works procurement procedures;

- (d) W Division of TsyB of FSTB for works-related funding matters; or
- (e) relevant Resource Divisions of TsyB of FSTB for other funding matters.



(Christopher HUI)
Secretary for Financial Services and the Treasury

**The Development Bureau's guidelines on parallel tendering
for works contracts and works-related
consultancies funded under Capital Works Reserve Fund**

Controlling Officers (COs) shall adopt parallel tendering³ for works contracts and works-related consultancies funded under the Capital Works Reserve Fund (CWRF) unless exempted by relevant approving authority with justifications, with the aim of reflecting the returned tender price in the Approved Project Estimate and commencing the works contract/ works-related consultancy as early as practicable in, say, around one month following the funding approval of the Finance Committee of Legislative Council (FC/LegCo).

Considerations

2. COs should conduct a risk assessment, taking into account the benefits and risks involved, for example, the possible lapse of tender validity, given the time required to secure funding approval from FC/LegCo and the controversy of the projects, etc. In doing so, COs may also wish to refer to the relevant considerations set out in paragraphs 1 and 3(b) of **Annex B**. In case the CO considers it inappropriate for a project to adopt parallel tendering (for example, the risks outweigh the benefits involved), the CO shall obtain prior approval from the respective approving authority (see paragraph 3 below) for exemption.

Approving authorities for exemption

3. The authority to approve exemption from parallel tendering for works contracts and works-related consultancies funded under CWRF is as follows –

³ For projects seeking funding approval with multiple works contracts / works-related consultancies, the first works contract / works-related consultancy shall adopt parallel tendering. For avoidance of doubt, tendering for subsequent works contracts / works-related consultancies may be initiated after funding is secured.

	Approving authority	Financial limit
(a)	Directors of Bureaux of the project proponent (or their Permanent Secretaries if authorised by the Directors in writing)	No financial limit
(b)	Controlling Officers of the project proponent	Not exceeding \$30 million

After obtaining approval from the relevant approving authority for exemption from adopting parallel tendering, the procuring department shall notify the Project Strategy and Governance Office of Works Branch of the Development Bureau in writing on the approval for exemptions with detailed justifications.

**Guidelines on parallel tendering for contracts and consultancies
other than works contracts and works-related consultancies
funded under the Capital Works Reserve Fund**

Considerations for adoption

For the procurement of contracts and consultancies not funded under CWRF, COs may consider adopting parallel tendering if the benefits outweigh the risks involved. Parallel tendering is intended to expedite government procurement process. It also allows Government to set more realistic cost estimates of the procurements before approaching FC/LegCo, thus reducing the risk and scale of cost overruns. On the other hand, in case FC/LegCo were to vote down the funding application, vary the scope of the procurement or delay its processing, the relevant tender or consultants selection exercise could be held up if not aborted, the scope of procurement could be subject to re-negotiations, and validities of prices offered could lapse. It is not unlikely that bidders could build in a risk premium when bidding for procurements which have yet to secure FC/LegCo's funding approval.

Approving authorities for adoption

2. The authority to initiate parallel tendering and consultants selection exercises for all contracts funded under GRA and CWRF contracts (except works contracts and works-related consultancies funded under CWRF) is as follows –

	Approving authority	Financial limit
(a)	Directors of Bureaux of the project proponent (or their Permanent Secretaries if authorised by the Directors in writing)	No financial limit
(b)	Controlling Officers of the project proponent	Not exceeding \$30 million

Conditions precedent

3. The approving authorities concerned should satisfy themselves, **before** granting the approvals to proceed with parallel tendering, that the following conditions are met –

- (a) the scope of the consultancy assignment, and the detailed specifications for the contract have been finalised and agreed by all relevant parties within the Government; and
- (b) a project-specific risk-appraisal has been conducted. The approving authority concerned should assess the risks to the Government of having to delay or abort the procurement exercise due to lack of funding or substantive last-minute changes to the scope of the consultancy brief or proposed project. The risks of FC/LegCo imposing unexpected conditions on the project scope, or holding up funding approvals and/or blaming Government for pre-empting FC should be assessed. The approving authority should only agree to proceed with parallel tendering where such risks are assessed as low, or where the merits of parallel tendering have been assessed as outweighing the potential downside risks.

Parallel tendering encouraged

4. To expedite project delivery and minimise the possibility and quantum of cost overrun, procuring departments may consider more positively the use of parallel tendering for less controversial procurements and reflect the tender sums in the funding applications for FC/LegCo (where needed). The assessment of whether a project is controversial needs to be done before the funding application is submitted to FC/LegCo. The following types of non-works procurement may be ready candidates –

- (a) computerisation projects that seek to replace or upgrade existing systems; and
- (b) procurement of systems and equipment that support existing functions or operational needs.

Changes to SPRs

CHAPTER III – TENDER PROCEDURES

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. ~~5/2016~~ 3/2020 (as may be updated from time to time).

CHAPTER IV – CONSULTANTS SELECTION PROCEDURES

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.

Appendix III (I) – Standard Tender Report Format

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.

J. Availability of Funds

— For tenders invited before funding is secured, state the expected date of obtaining the funding approval.

Appendix IV(A) – Specimen Submission for CCSB Stage 1 Approval

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 consultants and EffO for general management consultants, funding approval, etc.

— ~~For initiation of consultants selection exercise before funding is secured~~ 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.

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.

Appendix IV(B) – Specimen Submission for CCSB Stage 2 Approval

E. Authority to Employ Consultants

— Policy support, funding approval, CCSB Stage 1 approval, etc.

— ~~For initiation of consultants selection exercise before funding is secured,~~ 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.

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.
