

**Information Note for
Panel on Financial Affairs of the Legislative Council**

Follow-up action arising from the meeting on 6 June 2016

Purpose

This note provides supplementary information in relation to the revised procedure under the amended guidelines on the use of marking scheme (“revised guidelines”) for Government service contracts that rely heavily on deployment of non-skilled workers (“service contracts”) in response to Members' requests at the meeting of the Panel on Financial Affairs held on 6 June 2016, as well as the specific questions set out in the letter dated 6 June 2016 from the Clerk to Panel on Financial Affairs.

(a) Implementation details and timeframe of the revised procedure

Tender evaluation

2. As a general rule, bureaux and departments (“procuring departments”) shall award contracts to tenderers who comply fully with the tender specifications and offer the best prices for the Government. Having said that, for contracts where the quality of the goods or services to be provided is important and needs to be taken into account in the tender evaluation, separate assessments of the technical and price aspects based on pre-determined assessment criteria and weightings should be considered to better ensure value for money.

3. If a department decides to use a marking scheme for tender evaluation of a contract, the proposed marking scheme setting out the assessment criteria and weightings has to be approved by the relevant tender board or committee. Once endorsed, the department will establish a Tender Assessment Panel to evaluate the bids strictly in accordance with the approved marking scheme. The contractor that meets the essential requirements in full and obtains the highest overall combined score based on the marking scheme should be recommended for award of the contract.

4. When formulating the marking scheme, departments should

normally adopt a 30%-40% weighting for the technical (i.e. non-price) aspect, as against a weighting of 70%-60% for the price aspect. Procuring departments proposing a weighting outside the typical range should provide full justifications to the satisfaction of the relevant tender boards or committees.

Prevailing practice under original guidelines

5. According to the original guidelines, departments were **encouraged** to adopt a marking scheme to assess tenders for service contracts and to include in their assessment criteria the evaluation of tenderers' proposed wage rates and working hours for non-skilled workers. So far, the four major procuring departments of service contracts (i.e. Food and Environmental Hygiene Department, Government Property Agency, Leisure and Cultural Service Department and Housing Department), when opting to use a marking scheme, have included the proposed wage rates and working hours as assessment criteria for such contracts. For other departments which adopted a marking scheme for service contracts with an estimated contract value exceeding \$15 million from January 2013 to May 2016, it is noted that about 64% of the contracts do not have either or both of the assessment criteria on proposed wage rates and working hours.

The revised procedure – implementation and timeframe

6. The Government promulgated the revised guidelines on 27 May 2016. Under the revised guidelines, if departments opt to adopt a marking scheme for tender evaluation, the technical evaluation should **by default** include assessment criteria on both the proposed wage rates and working hours for non-skilled workers, unless otherwise agreed by the relevant tender board or committee. The revised guidelines take **immediate effect**. However, as a transitional measure, for procurements of service contracts which adopt a marking scheme, if the invitation for tenders is to be made on or before 30 June 2016, the tenders will **not** be affected and can proceed as planned. The transitional measure intends to allow time for procuring departments to amend or formulate their marking schemes in accordance with the revised guidelines and then seek the necessary approval for such marking schemes from the relevant tender board or committee.

Anticipated benefits and costs

7. Under the revised guidelines, assuming other assessment criteria

remain unchanged, those tenderers who are willing to pay higher wages to their non-skilled workers or allow their workers to work fewer hours will obtain more marks in the technical aspect, and hence stand a better chance to compete for the contract. As departments are allowed to determine the weightings of the assessment criteria having regard to operational needs and tenderers may also have different bidding strategies on each occasion, it is not possible to assess the impact of the revised guidelines on contract award, nor to estimate the potential financial implications.

8. The examples at the **Annex** may show how the tender evaluation using a marking scheme works and how the revised guidelines may affect the tender evaluation result when the assessment criteria on proposed wage rates and working hours are included.

(b) The bureaux/departments to which the revised procedure will be applicable

9. The revised guidelines are applicable to all Government bureaux and departments, including trading funds. However, since the Housing Department (“HD”) is the executive arm of the Housing Authority, which is a statutory organisation tasked to develop and implement a public housing programme to help the Government achieve its policy objective on public housing, it is not bound by the procurement guidelines as in the case of other procuring departments. Having said that, HD may make reference to the above requirements to formulate their own procurement guidelines.

(c) Measures to prevent bureaux/departments from circumventing the revised procedure (e.g. by reducing the number of non-skilled workers to be recruited in the outsourced services)

10. The revised guidelines are applicable to all service contracts that rely heavily on the deployment of non-skilled workers. Regardless of the actual number of non-skilled workers deployed in a contract, if the number of non-skilled workers involved constitutes a majority of the total number of staff deployed in that contract, the revised guidelines will be applicable.

(d) The respective weighting of bid price and wage levels for non-skilled workers in determining the award of tender under the revised procedure

11. As in the original guidelines, the revised guidelines will not impose any fixed weighting on the assessment criteria of “proposed wage rates” and “working hours”, so as to allow adequate flexibility for different procuring departments to cater for their operational needs and specific circumstances. Other assessment criteria in the technical aspect typically include past performance records, operational / management plans, contingency plans, etc.

(e) Other views from Members or the public

12. Among the views received from Members and the public on the revised guidelines, many concern how to ensure that the contractors will meet their contractual obligations. In this regard, under the Government procurement regulations, procuring departments shall devise an effective monitoring mechanism to ensure that a contractor will meet all contractual obligations. For service contracts that rely heavily on the deployment of non-skilled workers, contractors are required to sign a Standard Employment Contract (“SEC”) with each of their employees, which specifies the entitlement of the workers including rest days, meal breaks, working hours, etc. as committed under the tender proposals. Contractors who fail to sign the SEC with its non-skilled workers, or breach the contractual obligations in respect of wages and/or working hours stipulated in the SEC will be liable to sanction under the Demerit Point System¹.

Advice Sought

13. Members are invited to note the information provided above.

¹ Procuring departments are required to implement the Demerit Point System (“DPS”) against their contractors who have breached contractual obligations in respect of wages, daily maximum working hours, signing of standard employment contracts with and wage payment by means of autopay to its non-skilled workers (except temporary relief workers) employed for the carrying out of contract with the Government. Under the DPS, for each breach of these contractual obligations, a default notice will be issued to the contractor concerned. Each default notice attracts one demerit point. If the tenderer concerned has, over a rolling period of **36 months** immediately preceding the month of the tender closing date, accumulated **three demerit points** from one or more departments, its tender offer shall not be considered for a period of **five years** from the date the third demerit point is obtained.

Financial Services and the Treasury Bureau
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Tender evaluation using marking scheme and examples

(I) Tender evaluation using marking scheme

(i) Technical score

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

(ii) Price score

Formula :

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

(iii) Overall combined score

= Technical score + Price score

(II) Example on how the revised guidelines affect tender evaluation result

A. Tender evaluation if original guidelines are adopted

Example 1: Price to technical weighting **70:30**

	Tenderer A	Tenderer B
Technical Mark (maximum Mark: 100)	90	80
Price Proposal	\$5,100,000	\$4,800,000
Weighted Technical Score according to the formula in (I)(i) above	30	26.7
Weighted Price Score according to the formula in (I)(ii) above	65.9	70
Overall combined score	95.9	96.7

Result: Tenderer B will be recommended for award of contract.

B. Tender evaluation if revised guidelines are adopted

- Example 2:
- (a) Price to technical weighting **70:30**
 - (b) Includes assessment criteria on “proposed wage rate (5 marks)” and “working hours (5 marks)”
 - (c) For assessment criterion on “proposed wage rate”, Tenderer A obtains 5 marks while Tenderer B obtains 0 mark.
 - (d) For assessment criterion on “working hours”, Tenderer A obtains 5 marks while Tenderer B obtains 0 mark.

	Tenderer A	Tenderer B
Technical Mark (maximum mark: 100)	91 (i.e. 81* + 5 + 5)	72 (i.e. 72 *+ 0 + 0)
Price Proposal	\$5,100,000	\$4,800,000
Weighted Technical Score according to the formula in (I)(i) above	30	23.7
Weighted Price Score according to the formula in (I)(ii) above	65.9	70
Overall combined score	95.9	93.7

Result: Tenderer A will be recommended for award of contract.

- * Assuming all other factors remain unchanged, as the new assessment criteria of proposed wage rate and working hours are added, the total score for other assessment criteria (i.e. the assessment criteria under the former guidelines) reduces correspondingly from 100 marks to 90 marks. Tenderer A will then obtain a technical mark of 81 (i.e. 90/100 x 90) while Tenderer B will obtain a technical mark of 72 (i.e. 80/100 x 90).