

財經事務及庫務局
(庫務科)



FINANCIAL SERVICES AND
THE TREASURY BUREAU
(The Treasury Branch)

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來函檔號 Your Ref. : CB4/PAC/R69

By fax and email
21 December 2017

Mr Anthony Chu
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
[email address: ahychu@legco.gov.hk]

Dear Mr Chu,

Chapter 2 of the Director of Audit's Report No. 69

Procurement and maintenance of government vessels

Thank you for your letter dated 12 December 2017 to Secretary for Financial Services and the Treasury.

At your request, I attach a copy of the Circular Memorandum No. 8/2014 issued by the Financial Services and the Treasury Bureau in August 2014 ("FSTBCM No. 8/2014") at **Annex I** (only English version is available).

FSTBCM No. 8/2014 reminds procuring departments to critically review the need and continued need for the adoption of marking schemes and avoid any excessive use. As stated in the Marine Department ("MD")'s tender reports in respect of new vessel construction projects submitted to the Central Tender Board since 2016, it has stopped using a marking scheme for tender evaluation. Instead, we note that MD has specified the more important requirements originally assessed in the relevant standard marking scheme (e.g. tenderers' relevant past experience and vessels' technical specifications) as

“essential requirements” to ensure the quality of the procured vessels. Non-compliance with these essential requirements will render the tenders non-conforming. We trust that it is MD’s conscious decision to cease adopting a marking scheme for this type of procurement after considering the department’s operational need and the pros and cons involved, in line with the guidelines set out in FSTBCM No. 8/2014. At the same time, we note that MD has continued to use marking schemes in tenders for the provision of marine cleansing services in 2016 and 2017. We respect MD’s decision as each procurement exercise ventures to meet specific needs of the department.

Government procurement is a means to obtaining goods or services in support of government programmes and activities. As procurement is conducted to meet departments’ operational needs, procuring departments are responsible for formulating their procurement plan and tendering strategy, including whether a marking scheme should be adopted. In general, a marking scheme is used when price is not the sole consideration and the quality of the goods/services procured is an important consideration. If a procuring department decides to adopt a marking scheme in a tender exercise, it should have user-friendliness in mind and avoid lengthy or overly complicated design of the marking scheme as set out in FSTBCM No. 8/2014.

I attach two samples of marking scheme that are considered disproportionately detailed and lengthy having regard to their estimated contract values (both under \$50 million) at **Annexes II and III** (only English version is available). They have 17 – 21 pages, with 14 assessment criteria/ sub-criteria each. In line with FSTBCM No. 8/2014, the departments concerned subsequently simplified the marking schemes to nine to 11 pages, and reduced the assessment criteria/ sub-criteria to eight to ten respectively in 2015 and 2016.

I should be grateful if you could relay the above information to Members of the Public Accounts Committee for reference.

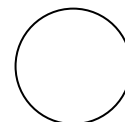
Yours sincerely,



(Miss Pat Chung)
for Secretary for Financial Services
and the Treasury

***Note by Clerk, PAC:** *Annexes II and III not attached.*

c.c. Secretary for Transport and Housing (fax no.: 2523 9187)
Director of Marine (fax no.: 2850 8810)
Director of Audit (fax no.: 2583 9063)



FSTBCM No. 8/2014

MEMO

<i>From</i>	Secretary for Financial Services and the Treasury	<i>To</i>	Directors of Bureaux and Controlling Officers
<i>Ref.</i>	<i>in</i> TsyB T 00/810-6/33/0 Pt 5	<i>(Attn : _____)</i>	
<i>Tel. No.</i>	2810 2540	<i>Your Ref.</i>	_____
<i>Fax No.</i>	2596 0729	<i>Total Pages :</i>	7
<i>Date</i>	4 August 2014	<i>Dated</i>	_____ <i>Fax No.</i> _____

Keeping Tender Documentation Simple

Purpose

Further to Financial Circular No. 4/2013 entitled “Streamlining Procurement Procedures” promulgated on 27 June 2013, this memo reminds procuring departments to avoid excessive use of marking schemes and offers guidelines on how to avoid tender documentation becoming overly burdensome – for procuring departments as much as tenderers.

Current inadequacies

2. Stores and Procurement Regulation (SPR) 350(h) allows procuring departments to adopt marking schemes in tender evaluation for the procurement of goods or services where **quality** (rather than price alone) is of paramount importance. While the use of marking schemes is permissible, we are concerned that the evaluation criteria and evaluation basis in many marking schemes are getting disproportionately detailed and lengthy, **delaying** the tender preparation work of departments, **discouraging** new operators especially small and medium enterprises with no tendering expert support from bidding, **inhibiting** competition, **without necessarily improving the quality of the goods and services procured**. Streamlining is called for.

Measures

(A) *Critically review the need to adopt marking schemes*

3. The use of marking schemes in tender evaluation is not the only means to secure better quality for the goods and services procured. Setting clear and attainable quality-based tender specifications, cutting excessive “essential requirements” especially those at risk of protecting the interest of incumbents, and

proactive marketing of tenders which repeatedly attracted only one or two bidders are often more direct and effective for promoting real competition. In fact, some 70 – 80% of contracts with marking schemes approved by the Central Tender Board (CTB) and the Government Logistics Department Tender Board (GLDTB) between January 2012 and May 2014 were ultimately awarded to bidders with the lowest price offered. It is debatable whether the use of marking schemes *per se* has offered extra safeguard to the quality of the tender returns in these cases.

4. Procuring departments should critically review the need and continued need for the adoption of marking schemes in tender evaluation. This is especially the case for low value procurement not exceeding \$5 million under the purview of Departmental Tender Committees (DTCs).

(B) Keep marking schemes simple

5. Where the use of marking schemes is justified, the evaluation criteria and length of the entire section including the evaluation basis should be streamlined, as follows –

Value per Contract	Use of Marking Scheme
≤ \$5 million	Discouraged
> \$5 million and ≤ \$100 million	10 - 10 guideline
> \$100 million plus complex requirements	20 - 20 guideline

6. Under the **10 - 10 guideline**, the marking scheme proper (excluding appendices) should comprise not more than ten assessment criteria/sub-criteria and ten pages. The **20 - 20 guideline** allows 20 assessment criteria/sub-criteria within 20 pages.

7. CTB and GLDTB will expect strict observance of these guidelines; exceptions may be allowed but must be justified. We are not specifying font size, line spacing or other detailed requirements because the guidelines are meant to help rather than enslave departments.

(C) Limit the length of tender submissions

8. To make the government tendering experience less user-unfriendly and speed up tender evaluation, we would invite departments to –

- (a) **shorten and simplify** the tender invitation documents for all non-works contracts; and
- (b) **consider imposing a page limit** on the length of tender returns. Depending on the complexity of the goods or services to be procured, tender returns (excluding the original tender documents and supporting documentary proof) should preferably be contained as follows –

Nature of Tender	Page Limits on Tender Returns
Non-complicated, standard or low-valued (below \$50 million in this context) cases	≤ 50 pages
Complicated cases or cases involving higher value	≤ 100 pages
Highly complicated cases	≤ 200 pages

NB : Pages in A4 size

9. We would defer to procuring departments to decide whether to impose an upper limit for tender returns and if so, what that page limit should be **provided** the Controlling Officer (or designate) is satisfied that –

- (a) the overriding principles of keeping tender requirements **simple** and **clear** and keeping the tendering process **less user-unfriendly** are observed; and
- (b) the exact page limit to be set by the procuring department is **commensurate with** the overall complexity of the tender concerned.

(D) Avoid common pitfalls in designing marking schemes

10. Procuring departments are reminded to avoid some common pitfalls in designing marking schemes –

- _____
- (a) **Tenderer's experience** – if joint ventures (JVs) are not common in the market for the types of goods or services under acquisition, there is no need to specify complicated rules for counting a JV tenderer's experience. Our memorandum of 5 October 2012 at the Annex is relevant.
 - (b) **Qualification and experience of proposed key personnel** – the number of key personnel to be assessed in a marking scheme should be kept to the minimum. For instance, the full-time top management of a property management services contract would be “key”, but not the entire team of property attendants. Alternatively, procuring departments may actually impose the minimum qualification and experience requirements of the key personnel as contract requirements and remove the relevant assessment criteria/sub-criteria from the marking scheme.
 - (c) **Management / work / quality assurance / contingency plans** – when inviting tenderers to submit various plans to facilitate evaluation, procuring departments should be realistic, limit the types of plans sought and the details sought for each plan to the minimum necessary, and consider imposing a page limit to reflect the expected level of detail. It is more important for tenderers to deliver quality goods or services than for them to deliver quality tender portfolios. Since tender submissions are meant to be binding after contract award, procuring departments should ensure that the level of detail sought is not disproportionate with the resources available for contract management.

11. For a tender exercise involving more than one contract and restrictions on the number of contracts to be awarded to a contractor at any one time, procuring departments would normally recommend the award of contracts on the basis of a tender combination that is least costly to the Government (**the least costly approach**). However, it might not be cost-effective in applying the least costly approach in all circumstances. In a recent tender exercise involving ten contracts and 58 conforming tenders from six tenderers, the procuring department had spent enormous efforts and time in working out over 100 000 combinations to identify the one that was least costly to the Government. To avoid similar complications, please consider –

- (a) **staggering** the contract start and end dates with a view to minimising the chance of similar contracts being dominated by one single contractor at any point in time; and

- (b) **simplifying** the tender acceptance rule (e.g. pre-setting the priority of contracts to be awarded based on the contract value) where necessary, and seeking the prior approval of the relevant tender board or DTC, as appropriate, for use of the pre-determined tender acceptance rule instead of the least costly approach in a tender exercise.

(E) *Standardise marking schemes for contracts of similar nature*

12. Procuring departments should review the number of marking schemes in the pipeline which require the prior approval of the relevant tender board or DTC, as appropriate, and standardise those for contracts of similar nature (e.g. security, cleansing, facility management, IT maintenance, technical support services in different venues or facilities).

Implementation

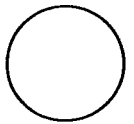
13. The guidelines apply to all tender exercises which fall within the purview of CTB, GLDTB or DTC. They do not apply to works tenders and consultants selection exercises. Marking schemes that have been approved for on-going tender exercises and standard marking schemes approved by CTB, GLDTB or DTC before the issue of this memorandum are **not** affected.

14. In the light of operational feedback, we may incorporate the new guidelines into SPR.

15. Enquiries on this memorandum may be directed to Principal Executive Officer (Tender) at 2810 2257, Treasury Officer (Tender)² at 2810 2518 or Chief Supplies Officer (Procurement Administration) of the Government Logistics Department at 2231 5232.



(Ms Elizabeth Tse)
for Secretary for Financial Services
and the Treasury



M E M O

<p><i>From</i> Secretary for Financial Services and the Treasury</p> <p><i>Ref.</i> (11) in TsyB T 00/810-6/45/0 Pt 2</p> <p><i>Tel. No.</i> 2810 2257</p> <p><i>Fax No.</i> 2523 5722 <i>Total Pages :</i> 2</p> <p><i>Date</i> 5 October 2012</p>	<p><i>To</i> Controlling Officers</p> <p><i>(Attn :</i> _____ <i>)</i></p> <p><i>Your Ref.</i> _____</p> <p><i>Dated</i> _____ <i>Fax No.</i> _____</p>
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Tenders for Contracts involving Joint Ventures

This memorandum draws your attention to the factors that need to be taken into account in the design of tender documents and marking schemes if joint ventures (“JVs”) are accepted in tenders for government procurement.

2. The Central Tender Board noted at a meeting that while a procuring department was prepared to accept JVs in its tender exercise for a service contract, the specific form of JV to be accepted had not been spelt out clearly in the tender document and the marking scheme for the tender exercise had not been designed in such a way enabling the qualification, experience and past performance of JVs to be assessed if JV tenders were received. This might render the procuring department unable to proceed with the tender assessment in an open and fair manner and/or lead to disputes from the JV tenderers or abortion of the tender exercise.

3. While JVs are common in tenders for works projects and information technology systems for reasons such as need for pooling of different expertise and resources, bureaux/departments should consciously consider from the operational perspective in each case as to whether it is desirable to allow JVs to participate in their tender exercises, particularly those for service contracts which are relatively straight-forward in nature. If a bureau/department decides to accept JVs in its tenders, it should ensure that the tender document, the marking scheme (if any) and the related financial vetting requirements have incorporated suitable provisions to cater for different scenarios of JVs. To this end, bureaux/departments may draw reference to the Technical Circulars (Works) (“TCW”) issued by the then Environment, Transport and Works Bureau (“ETWB”) including ETWB TCW Nos. 50/2002

and 8/2004 (both available on the Development Bureau's website) in which arrangements related to JVs, including the rules for counting the qualification, experience and past performance of JV tenderers, the special conditions of tender, the form of JV Guarantee for incorporated JV, the Articles of Agreement for unincorporated JV, etc. are set out in detail.

4. For further enquiries on this memorandum, please contact Treasury Officer (Tender)2 at 2810 2518.



(Miss Winky Wong)

for Secretary for Financial Services and the Treasury