

THE GOVERNMENT OF THE HKSAR TENDERING SYSTEM FOR PUBLIC WORKS CONTRACTS

Policy and Principles

1. The Government of HKSAR is guided by the twin policy objectives in calling tenders for public works contracts. These objectives are “Achieving best value for money” and “Maintaining open and fair competition”. The following principles are adopted:

(a) Open and Fair Competition

The Government treats all tenderers on an equal footing and ensures that the laid down contract specifications will not create unnecessary obstacles to tenderers. Besides, the Government ensures that all potential tenderers are given the same information for them to prepare their bids.

(b) Value for Money

To achieve the best value for money, the Government takes into account in the tender evaluation not only the competitiveness of the tender prices, but also the past performance of the tenderers and whether the tenders conform to the specifications, terms and conditions laid down in the tender documents.

(c) Transparency in Procedures and Practices

The Government ensures that procedures and practices for tendering Government contracts are clear and transparent to facilitate better understanding amongst contractors. To encourage them to submit responsive and competitive tenders, the Government aims to provide all the necessary information in the tender documents.

(d) Public Accountability

As public works expenditures are all public money, the Government has to be accountable to the public for tendering matters. The Government has an obligation and is always prepared to account for the tendering policies and decisions to the legislature which approves the use of public funds, to the community and also to the prospective tenderers.

2. On 20 May 1997, Hong Kong became a signatory to the World Trade Organisation Agreement on Government Procurement (WTO GPA). The object of the WTO GPA is by means of prescribed procedures to ensure that all the procurement entities under the WTO GPA to provide for open and fair competition amongst domestic and foreign suppliers and service providers. According to the WTO GPA, for all public works contracts above the value of 5,000,000 SDR (i.e. about HK\$55,109,000) (Special Drawing Rights (SDR) is an international currency unit set up by the International Monetary Fund), the tendering has to be

conducted in accordance with the provisions of the Agreement. Although the tendering policies and procedures are in general consistent with the spirit and objectives of the WTO GPA, the Government still requires aligning some procedures for full compliance with the provisions of the Agreement. One of the major changes is to extend the shortest tendering period of public works contracts from 21 days to 40 days. Besides, the Government has set up a bid challenge system to deal with complaints and follow-up remedial actions.

Tender Boards

3. While the Works Departments of the HKSAR are responsible for the tendering of the works contracts, the authority on acceptance of tenders rests with the two tender boards which are appointed by the Financial Secretary. The boards shall consider the tender recommendations submitted by the Works Departments and shall decide whether or not to accept the tenders as recommended.

(a) Central Tender Board

The board is chaired by the Secretary for the Treasury; members include the Secretary for Works or his representative, representative from Department of Justice as appointed by the Financial Secretary, the Director of Government Supplies and the Deputy Secretary for the Treasury. The board is responsible for dealing with tenders for construction and engineering services exceeding \$30 million.

(b) Public Works Tender Board

The board is chaired by the Deputy Director of Architectural Services; members include a Government Quantity Surveyor and an engineer of Directorate Grade 2 or above from Highways Department, Civil Engineering Department or Drainage Services Department on rotational basis. The board is responsible for dealing with tenders for construction and engineering services not exceeding \$30 million.

Types of Contracts

4. The types of contracts adopted by the Government of HKSAR for public works contracts are as follows:

(a) Remeasurement contract containing Bills of Quantities

Before tender, the Engineer/Architect estimates the quantities of various items of works based on the tender drawings and then prepares the Bills of Quantities. Tenderers are required to price against each item in the Bills of Quantities so that the total cost of each item can be computed. The tendered sum is the summation of cost of all items in the Bills of Quantities. When the works are completed, the Engineer/Architect will measure the actual quantities of works executed on site. The contractor will be paid based on works done and the rates priced in the Bills of

Quantities.

(b) Measurement contract containing a Schedule of Rates

The Schedule of Rates in this type of contracts lists out various items of works that may be ordered during execution of the contract. The Schedule contains no quantities of works, as they cannot be ascertained before tender. During the contract period, the contractor will be instructed to carry out works. When the works are completed, he will be paid based on the actual quantities of works done and the rates priced against these items of works in the Schedule of Rates.

(c) Lump sum contract with firm Bills of Quantities

In this type of contracts, contractor tenders a lump sum and commits to complete the works based on the drawings and bills of quantities. The bills of quantities are compiled by the Engineer/Architect based on the drawings; and the tendered lump sum is the summation of the costs of executing all the items of works listed in the bills of quantities.

(d) Lump sum contract with drawings and specification

The Engineer/Architect will provide the tenderers with detailed drawings and specifications for the works in this type of contracts. The Engineer/Architect will not compile the bills of quantities. The tenderers are required to tender a lump sum price for completing the works in accordance with the drawings and specifications.

(e) Cost reimbursement contract

This type of contract is suitable for repair works or urgent works with a very tight programme. The contractor will be paid based on the actual cost of works he has incurred in the execution of works plus the indirect cost and profit.

(f) Design and build contract

In this type of contracts, the contractor is responsible for both the design and construction of the works. These contracts are normally priced at lump sums.

5. In general, civil and building contracts will adopt the form of lump sum contract with firm Bills of Quantities. However, in case there is a high percentage of uncertainties as to the quantities of works in the contract, remeasurement contract containing Bills of Quantities will be used. As to term contracts for the maintenance works, works of recurrent nature and minor works, measurement contract containing a Schedule of Rates will mostly be used.

Types of Tenders

6. The various types of tenders used by the Government of HKSAR are invited in the following ways:

(a) Open Tendering

Tender invitations are published in the Government of HKSAR Gazette on every Friday, on the Internet, and if necessary, in the local press and selected overseas journals. All interested contractors are free to submit tenders. For those contracts covered by WTO GPA, the originating department will also notify consulates and overseas trade commissions, where appropriate.

(b) Selective Tendering

- (i) Tender invitations are published in the Government of HKSAR Gazette on every Friday, or are sent by letter to all contractors on the relevant lists of approved qualified contractors established and approved for the purpose of selective tendering. For those contracts covered by WTO GPA, the originating department will also notify consulates and overseas trade commissions, where appropriate. Contractors not already on the lists may also be considered provided there is sufficient time to complete the qualification procedure.
- (ii) Works Bureau currently manages two lists of approved contractors; namely the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors.

(c) Single or Restricted Tendering

- (i) Under special circumstances, for example, if the works have to be commenced as soon as possible or if only one or a number of contractors has that ability to execute the works, the originating department can recommend to invite tenders from these prescribed contractors subject to the approval of the Secretary for the Treasury.
- (ii) For tenders below HK\$1 million, single or restricted tendering can be used without the approval of the Secretary for the Treasury in order to save administrative costs.
- (iii) Tenderers would not be informed that tenders are being invited on a single or restricted basis. Department would advise tenderers to submit their tenders in the same manner as open and selective tender procedures.

(d) Prequalified Tendering

- (i) There may be circumstances which require the prequalification of a list of tenderers financially and technically capable of undertaking a public works contract. These contracts may include works:
 - ◆ of extremely complex nature, high value or subject to very rigid completion programmes;

- ◆ calling for a high level of co-ordination, technically demanding;
 - ◆ adopting a non-standard form of contract, e.g. Build-Operate-Transfer (BOT) or Design-and-Build contracts.
- (ii) The use of prequalified tendering and the evaluation criteria for prequalifying applications require the prior approval of the Central Tender Board. Invitations for prequalification are published in the Government Gazette on every Friday and, if necessary, local press and selected overseas journals for the particular trade/product. Consulates and trade commissions in Hong Kong and known contractors are notified of the invitation by letter, where appropriate.
- (iii) The prequalification documents would include an outline of the contract, a description of works, the selection criteria and the information and documents that the tenderers are required to submit. The project team is responsible to determine the selective criteria; and these criteria have to be approved by Central Tender Board prior to invitation of prequalification. After receipt of prequalification submission, the originating department would set up an Assessment Panel to evaluate the applications.
- (iv) Selection of applicants shall be carried out in two stages. The first stage is primarily intended to screen out those applicants who are so patently ineligible or unsuitable so as to make further assessment of their applications unnecessary. Applicants who do not satisfy Stage 1 screening shall not be considered further.
- (v) Stage 2 assessment shall comprise a detailed technical evaluation of all applicants who have fulfilled the requirements of the Stage 1 screening. The criteria for Stage 2 assessment shall contain the applicants' experience, reputation, past performance, available plant and equipment, the availability and experience of the managerial, professional and technical staff, and other relevant factors. A relative weighting determined for each criterion shall be applied together with an appropriate marking scheme. Selection criteria would be carefully chosen and worded to avoid introducing inequalities and uncertainties which could unfairly influence the assessment of the applicants.
- (vi) Having assessed all the applications for pre-qualification, the originating department would submit a report and make a recommendation to the Central Tender Board on a list of prequalified applicants from whom tenders will be invited. In general, all applicants will be included into the list provided that they pass the assessment criteria. However, under special circumstances, for example for design and build contracts, the department will normally include into the list three to four applicants whose scores are the highest. The report to Central Tender Board would contain an analysis of the strengths and weaknesses of all the applicants and detailed reasons why an applicant should be prequalified or rejected.
- (vii) The originating department may permit any changes in the particulars of the prequalified tenderers which occur between the prequalification and final

tendering exercise subject to the prior endorsement of the Central Tender Board. If a prequalified tenderer has ceased to be able to meet the prequalification requirements, the Government may disqualify a prequalified tenderer at any time prior to acceptance of the tender.

Tendering Process

7. The tendering process involves the preparation of tender documents, tender notices, receipt and opening of tenders, evaluation of tenders and award of tenders. Each stage of the process is described below:

Preparation of Tender Documents and Specifications

8. The originating department is required to provide in the tender documents all the necessary information to assist the bidders to prepare their tenders. In drawing up specifications for the works, departments are required to ensure that the specifications are based on functional and performance requirements. Where standards are referred to, international standards would be adopted where practicable.

9. All tender documents must be completed prior to calling for tenders. Tender documents for civil and building works normally comprise the following:

- (a) General and Special Conditions 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, etc;
- (b) General Conditions of Contract covering the conditions which the contractor has to comply with in executing the contract;
- (c) Special Conditions of Contract covering any conditions peculiar to the contract;
- (d) Form of Tender to be signed and completed by the tenderer;
- (e) General and Particular Specifications;
- (f) Bills of Quantities; and
- (g) Drawings.

Tender Notices

10. Tender notices would normally appear in two consecutive issues of the Government Gazette. If necessary, public tender notices may also be advertised in the local and/or international press.

11. Tender notices would list out the following information:

- (a) a broad description of the various requirements of the works contracts;
- (b) the closing date and time for tenders;
- (c) the place for lodging the tenders;
- (d) whether the contract is covered by WTO GPA;

- (e) where to obtain tender document; and
- (f) name of the office or officer and a telephone contact for enquiries.

12. Normally, the originating department allows at least three weeks for tenderers to submit their bids. For contracts covered by WTO GPA, at least 40 days would normally 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, department will have to seek the prior approval of the Secretary for the Treasury for reducing the period for receipt of tenders.

Receipt and Opening of Tenders

13. Tenderers must submit their tenders and deposit them into the prescribed tender box before the tender closing date and time stipulated in the tender notices. Tenders received after the tender closing time or submitted not in accordance with the tender notices will not be considered. These tenders will not be opened and will be returned to tenderers.

14. At the closing time of tenders, the tender opening team designated by the tender boards will open the respective tender box. Only tenders which are due are opened and authenticated by the tender opening team. The tender opening team will make appropriate records on file of the tenders received and then send the originals of the authenticated tenders to the originating department for evaluation.

Evaluation of Tenders

15. From the time tenders are received and opened until the decision is made on the acceptance or otherwise, all correspondence regarding the tenders are classified as “RESTRICTED (TENDER)”. Correspondence on prequalification and single or restricted tendering shall also be so classified to ensure the confidentiality of the information.

16. The originating department is responsible for the evaluation of tenders. After receipt of the original tenders from the tender opening team, department would check that the tenders contain inter alia all the required information. Tenderers would be invited to provide any information which is missing. Where a tender contains some technical ambiguities or qualifications, department would seek clarification by a reasonable deadline. If there are arithmetical errors found in the tender which result in a correction of the tendered sum, the department would ask the tenderer to confirm whether he is prepared to abide by the corrected tendered sum. Other than corrections arising from arithmetical errors, department would not accept any change in tender price offered by a tenderer after the opening of tenders and during tender evaluation. In the tender evaluation, only the original tender price (adjusted for arithmetic errors) would be used in determining the price ranking of the tenders received. If there are qualifications or counterproposals put forward by a tenderer, the department must consider the implications of these for Government very carefully. Care must be exercised in approaching a tenderer for clarification of qualifications. Where information is provided to a tenderer in the process of seeking clarification or in response to a tenderer’s enquiry, department would ensure that the same information is provided to all tenderers.

17. The originating department would examine tenders against the technical specifications, terms and conditions laid down in the tender documents to determine whether they are fully conforming. The department must satisfy itself that the recommended tenderer is both technically and financially capable of undertaking the contract concerned satisfactorily as well as all other contracts already in his hand. Besides, the recommended tenderer should also meet the financial requirements laid down by Works Bureau. Before recommending a tender for acceptance, department would take into account the following factors where appropriate:

- (a) tender prices;
- (b) technical and financial capability of the tenderers and their past performance records. For works contracts, past performance records would also include conviction records for employing illegal immigrants, conviction records for site safety related offences, conviction records under the Employment Ordinance, environmental performance records, if applicable, and any past history of claims for contracts with a value exceeding \$100 million;
- (c) timely delivery or completion;
- (d) compatibility with existing or planned purchases;
- (e) after sale support and service including maintenance and spare parts provision; and
- (f) running (e.g. power consumption) and maintenance costs.

18. In recommending the acceptance of a tender to a tender board, department would 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, the department would compare the tenders by discounting future payments to obtain the present value.

19. The Government of HKSAR is not bound to accept the lowest tender. For example, if the tender does not conform with the specifications, terms and conditions laid down, or if the past performance of the tenderer is not good, or if the present value of the tender price is not the lowest or under any other special circumstances, the originating department can always recommend tender other than the lowest to the tender board. However, department should detail the reasons for not recommending the lowest tender in his tender report submitted to the tender board.

20. For contracts of a high-value, complex, technically demanding as well as those which are subject to a very rigid completion programme and require a high level of co-ordination, prequalification of tenderers should be considered. However, if prequalification is not practicable due to time limitation but there remains sound reasons for getting a more reliable and better performing contractor, a marking scheme may be adopted in tender evaluation which would give weights to the quality and performance aspects as well as to the tendered sum. Where approval has been given for the use of a marking scheme in the evaluation of tenders, the tenders would be assessed according to the criteria previously endorsed by the relevant tender boards. Normally, the tender which attains the highest overall technical and price score would be recommended.

21. After the tender evaluation is completed, the originating department would submit a tender report to the relevant tender board and recommend acceptance of a particular tender or

any other course of actions. The tender board will consider the tender report and notify department whether or not to accept the recommendation therein.

22. If none of the tenders received is fully conforming with the specifications, terms and conditions laid down, department should make a recommendation to the tender board to cancel the tender exercise and re-tender with revised specifications, terms and conditions, where applicable. If department wish to recommend a non-conforming tender under exceptional circumstances, they have to state clearly in the tender report any deviation of the recommended tender from the specifications and terms and the reasons for so recommending.

Award of Tenders and Notification of Tender Results

23. Upon receipt of the approval from the tender board to accept a tender, the originating department will send a letter to the successful tenderer and invite him to sign the contract with the representative from the originating department on behalf of the Government. The department will also inform unsuccessful tenderers of the outcome of their bids. To respect commercial confidence, the department would ensure that the details given will not disclose tender information provided by another tenderer.

24. The Government of HKSAR will publish the name of the successful tenderer and the contract sum in the Government of HKSAR Gazette and on the Internet.

Works Bureau
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