

**West Kowloon Cultural District Authority  
Internal Circular No. 2016/046-01/HRA**

**Guidelines for Procurement of General Goods and Services**

**(Category A)**

*This circular should be read by all staff of the West Kowloon Cultural District Authority  
and its wholly owned subsidiaries*

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## **Guidelines for Procurement of General Goods and Services**

### **1. Objectives and Scope**

- 1.1 This set of guidelines (“Guidelines”) deals with the procurement of Category A general goods and services (“G&S”) (as specified in the General Procurement Policy (“Policy”) for the West Kowloon Cultural District Authority and the Authority’s wholly owned subsidiaries (“WKCDA” or “Authority”). Procurement includes the identification and acquisition of G&S. The Policy, this set of Guidelines and other corresponding procurement guidelines supersede Internal Circular No. 2012/028-05/HR. Staff involved in procurement activities must follow and observe the requirements of the Policy and all relevant guidelines.
- 1.2 The procurement of G&S under Category A refers to the competitive procurement of G&S that do not carry specific artistic or cultural values or involve any activities or contracts in regard to Commercial Leasing. Category A primarily includes, but is not limited to the following:-
  - (a) General goods;
  - (b) Professional, consultancy and recurring services; and
  - (c) Information and Communications Technology (ICT) related goods and professional/consultancy services.

The above-mentioned items are not intended as an exhaustive list but as a general description for a high-level overview.

- 1.3 These Guidelines cover the standard procedures and processes, and allocate levels of responsibility, for approvals and financial authority levels for the procurement of G&S under Category A in Section 1.2 above.
- 1.4 While reasonably comprehensive, these Guidelines are not exhaustive, if employees have questions about these Guidelines or the procurement procedures or find that an activity is not fully or properly covered by these Guidelines or other corresponding procurement guidelines, they must raise the matter with the Central Procurement Team (CPT) for clarification.

## 2. Definitions

Words and expressions defined in the Policy shall have the same meanings when used in this set of Guidelines. The following terms when used in these Guidelines and related guidelines shall have the meanings given to them below:

“Approving Authority”	Means the appropriate authority specified in the “Delegation of Authority Manual”.
“Assessment Panel” or “AP”	Means the team responsible for the assessment of technical and/or fee proposals in quotations and tenders and for making recommendations as to and requesting approval from Approving Authorities as to which tender or quotation should be awarded any given order, contract or agreement as applicable.
“Blanket Release Order”	Means the type of purchase order issued within the ERP System under a Blanket Agreement/Contract which has already established unit rates and an approved internal ceiling amount for spending within a specified period.
“Blanket Agreement/ Contract”	Means the type of agreement or contract for the provision of goods or services in which the Authority is under no obligation to order any of the goods or services at the unit rates and provisions defined therein.
“Central Procurement Team” or “CPT”	Means the team in the central procurement function responsible for the management of the Procurement Policy and the Guidelines for Category A and Category B, and administrative support to the User Department for procuring goods and/or services under Category C. The roles and responsibilities of CPT are stipulated in Section 4.2 of the General Procurement Policy.
“ERP System”	Means the enterprise resources planning (ERP) system deployed by the Authority to cover the system processes for financial, accounting and procurement functions.
“Open Tendering”	Means a procurement method under which all relevant suppliers are openly invited to tender through the Authority’s website and/or in selected local publications, and/or in selected overseas journals as appropriate.
“Prequalification”	Means the invitation of potential tenderers either through open or selective invitation process to

participate and prequalify for an intended procurement in accordance with a set of pre-determined prequalification criteria.

“Procurement Card”	Means a corporate credit card issued by the Authority’s designated bank to a designated employee in the CPT for the purchase of a list of specified items as governed by the “Procurement Card and Corporate Credit Card Guideline” and the relevant procedures governed by the Finance Department.
“Procurement Team”	Means the team responsible for procurement including the selection of suppliers/tenderers to be invited to quote/tender, preparation of the Request for Quotation (“RFQ”)/tender documents and selection criteria. The Procurement Team usually comprises at least a Responsible Officer from the User Department and a member from the CPT.
“Responsible Officer”	Means the person from any User Department responsible for the intended procurement.
“Restricted Tendering”	Means a procurement method under which special circumstances when suppliers are invited to tender based on a set of pre-determined criteria approved by the Approving Authority.
“Variation”	Means any change to the specification, cost of or time programme of an order, agreement or contract from the original.

### **3. Procurement Method**

- 3.1 Procurement methods to be used for purchases shall be determined by the value and category of the purchases, as set out in Table 3.2 below.
- 3.2 The objectives of procurement, as noted in Section 3 of the Policy, is to secure the most advantageous offers to supply the G&S required to meet the Authority’s business and operational needs, and maximize the Authority’s interest, art excellence and aspiration while maintaining fairness, transparency and efficiency in a competitive environment.

<b>Procurement Method</b>	<b>Estimated Contract Values</b>	<b>Number of Quotation(s)/ Tender(s) Required</b>	<b>Remarks</b>
Low Value Purchase	Up to HK\$50,000	<b>Not necessary</b> but Responsible Officers should satisfy themselves that the prices for such purchases are fair and reasonable	Low Value Purchase shall be made by User Departments and paid for by appropriate means in accordance with the relevant Finance policies/procedures for procurement. ERP System process is not required.
RFQ	Above HK\$50,000 and up to HK\$1.5 million	At least <b>THREE</b> written quotations (*Note) <i>(otherwise, justifications are required for approval)</i>	Single Quotation is acceptable only with justification and approved by appropriate authority in accordance with the “Guidelines for Procurement of General Goods and Services by Single Sourcing” (Category B).
Tendering	Above HK\$1.5 million	<b>Please refer to Section 3.5</b> <i>(For Restricted Tendering and Prequalification, at least <b>THREE</b> tenderers are to be invited, otherwise, justifications are required for approval.)</i>	Single Tendering is acceptable only with justification and approved by appropriate authority in accordance with the “Guidelines for Procurement of General Goods and Services by Single Sourcing” (Category B).

*\* Note: means a quotation in written format obtained from the invited suppliers in accordance with the return mode and deadline (including both the closing date and time) as specified in the RFQ.*

3.3 **Low Value Purchase** – for estimated contract values up to HK\$50,000

3.3.1 **Reimbursement or By Petty Cash** – To meet immediate needs, User Departments may purchase G&S not exceeding HK\$50,000 following the relevant Finance policies/procedures for procurement. RFQ and Purchasing Requisition (PR)/ Purchasing Order (PO) are not necessary but Responsible Officers should satisfy themselves that the prices for such purchases are fair and reasonable. An officer's (Designated employee at Grade 4 or higher level Approving Authority) prior approval should be obtained and recorded. Where regular or frequent purchases of G&S are required to be made, Blanket Agreement or bulk purchases should be considered and arranged by other procurement methods such as RFQ or tendering.

3.3.2 **Procurement Card** – Where card payment is the only acceptable payment method by the supplier under the CPT's responsible categories, User Departments may raise a request to the CPT to purchase G&S not exceeding HK\$10,000 by means of Procurement Card following the "Procurement Card and Corporate Credit Card Guideline" and the relevant procedures governed by the Finance Department.

3.3.3 Where it has not been possible to obtain prior approval to a Low Value Purchase, the Responsible Officer should complete the Claim for Reimbursement of Expenses form supported by original receipt(s) and seek authorization from his or her Approving Authority (Designated employee at Grade 4 or higher level). The authorizing officer should certify on the Claim for Reimbursement of Expenses form that such purchase was necessary and the purchase price was fair and reasonable in the circumstances.

3.3.4 The completed form together with original receipts should be passed to the Finance Department who will arrange payment appropriately according to the relevant Finance policies and guidelines.

3.4 **Request for Quotation** – for estimated contract values above HK\$50,000 up to HK\$1.5 million

3.4.1 User Departments shall initiate procurements by submitting a PR to the Approving Authority together with the following information:

- (a) Description of G&S required with a specification and timeline;
- (b) Justification for the intended procurement. If proprietary or brand name products are required, the technical and/or commercial reasons for that should be provided. As a general rule, brand names are not to be specified. The brand name products referred to here are those which are readily available in the market with sufficient suppliers to allow for competitive bidding. (Where circumstances warrant the adoption of Single Quotation under Category B as specified in the Policy, the Guidelines for Procurement of General Goods and Services by Single Sourcing apply);
- (c) Budget provision or funding source; and
- (d) Selection criteria and assessment method including Assessment Panel (AP) membership. The membership of the AP shall comprise at least **two** officers of the Authority to be drawn from representative(s) of the User Department with the subject expertise(s) and at least **one** representative to be drawn from the CPT and/or the Legal and Secretarial Department and/or Finance Department as deemed necessary to assure impartiality. The Approving Authority of the assessment should not be involved in the AP.

#### 3.4.2 Sourcing Suppliers

- (a) An effective supplier registration system maintains lists of service providers and goods suppliers for frequently required goods and services. RFQ should be sent to the service providers or goods suppliers from sources the Procurement Team considers appropriate or from the WKCDA's suppliers lists if available and appropriate.
- (b) The CPT will vet all supplier applications with the support of the Finance Department in conducting financial capability assessment where applicable for inclusion onto the suppliers lists. The suppliers lists should be reviewed by a designated panel as appointed by the CEO on a regular basis, with a view to updating suppliers' status ranging from "engaged", "approved" to "debarred". Both the Approved Suppliers List and the Debarred Suppliers List



should be reviewed by a designated panel as appointed by the CEO on a regular basis and approved by the CEO or his delegate.

### 3.4.3 Declaration of Interest

- (a) The relevant officer(s) of the AP and Procurement Team involved in the RFQ should declare in written form to the chairman of the AP or relevant Senior Executive (“SE”) that they either have no conflicts of interest or specify any circumstances which they believe may be perceived as a conflict of interest. The chairman of the AP or relevant SE shall decide whether in all the circumstances a person making a declaration of a potential conflict of interest should stand down from the procurement process. In the event that there is any doubt, the chairman of the AP or relevant SE shall consult the Legal and Secretarial Department.

### 3.4.4 Number of Quotations and Assessment

- (a) Based on the procurement method, contract strategy, quotation documents and assessment criteria agreed and approved by the Approving Authority, the CPT (or the Responsible Officer under circumstances without the need to procure via the CPT) shall record the approval and obtain the required minimum number of written quotations for assessment in accordance with the following:-

<b>For Estimated Contract Values</b>	<b>Number of Quotations Required</b>	<b>Assessment of Quotations</b>
Above HK\$50,000 up to HK\$1,500,000	At least <b>3</b> written quotations (*Note) <i>(otherwise, justifications are required for approval)</i>  <i>(Single Quotation is acceptable only with justification and approved by appropriate authority in accordance with the “Guidelines for Procurement of General Goods and Services by Single Sourcing” (Category B).)</i>	By the approved AP members as set out in Sub-section 3.4.1(d)

*\* Note: means a quotation in written format obtained from the invited suppliers in accordance with the return mode and deadline (including both the closing date and time) as specified in the RFQ.*

- (b) The return mode of the RFQ (e.g. by fax, email or post to a designated number or address with access control set aside for this purpose) and the RFQ return deadline (including both the closing date and time) shall be specified in the RFQ. Upon return, the quotations shall be kept in the safe custody of an officer not involved in the assessment process. No quotation shall be opened before the closing time.
- (c) Received quotations are to be opened shortly after the closing time in the presence of at least 2 officers, the Responsible Officer from the User Department and an officer from the CPT/one other officer from the Procurement Team under circumstances without the need to procure via the CPT. A record of the quotations received shall be maintained by the CPT. Under no circumstances shall late quotations be accepted without proper justification(s) subject to written approval from the Approving Authority.
- (d) The AP shall check compliance of the quotations received and select the conforming bid with the lowest price offer, or the best overall interest based on the selection criteria, otherwise justifications should be provided for not doing so to the Approving Authority for approval.
- (e) To ensure the process integrity and encourage fair competition, incomplete and non-conforming submissions should not be accepted; technical assessments where applicable should be finalised only after all clarifications have been made; and clarifications should only be allowed to the originally submitted proposals but not for the provision of new information or not forming part of the original submission. Otherwise, justifications for not doing so should be provided to the Approving Authority for approval.
- (f) Where both technical and price assessments are to be made for an RFQ, submissions by electronic means to a designated address with access control set aside for this purpose may be allowed but directions should be provided to the suppliers following the same

procedure of “Three Envelope System” (i.e. separation of technical and price submissions) as stipulated in Sub-section 3.5.8 (b) below. Price assessment should only be conducted after completion of technical assessment as a general rule. In exceptional circumstances if there is a genuine need subject to the approval of the Approving Authority with written justifications, technical and price assessment may be conducted separately and independently by the technical and price assessors, and no communication shall be allowed between the technical and price assessors until both the technical and price assessments have been completed. Each technical assessor should independently study the technical proposals submitted and complete the score sheets and then pass to the Procurement Team for consolidation.

- (g) Technical assessment guidelines where applicable shall be objectively prepared by the Procurement Team in accordance with the pre-approved selection criteria and assessment method for the AP’s reference. Quotation assessment criteria and guidelines should not be changed after quotation closing. To ensure consistency in practice, the Procurement Team should use the template of assessment method and evaluation criteria as provided and maintained by the CPT at the shared drive (“S:\Public\General Procurement Templates\”).

#### 3.4.5 Recommendation for Award or Abort

- (a) Upon completion of the assessment, the User Department shall submit a report to the Approving Authority on the quotation assessment containing either a recommendation as to which quotation should be awarded the contract or order etc. or a recommendation to consider aborting the RFQ process and conducting a fresh RFQ.
- (b) For RFQ purely based on price assessment, User Departments should conduct an arithmetic check and compile a cost comparison table provided by the CPT recommending the lowest conforming quotation for consideration of the Approving Authority. For RFQ which require separate technical and price assessments, User Departments should use the template provided by the CPT at the shared drive (“S:\Public\General Procurement Templates\”) to

compile an assessment summary reporting all critical information for consideration of the Approving Authority.

- (c) All acceptances shall be made in writing in the appropriate forms of acceptance such as a PO issued through the ERP System, a Letter of Acceptance (LoA) or a contract/agreement signed by the Approving Authority that includes the agreed terms and conditions (either the Authority’s Standard T&C or as amended for the particular RFQ).
- (d) If a quotation contains any qualifications which includes a departure from the Authority’s Standard T&C or as amended for the particular RFQ, the Responsible Officers should consult with the Legal and Secretarial Department as to whether the proposed departures are acceptable or could be acceptable with further amendments. If it is considered possible to achieve an acceptable outcome with further discussions or negotiations with the supplier, a recommendation to that effect should be included in the quotation report submitted to the Approving Authority. Where negotiations are to be conducted for an RFQ, the procedure for “Tender Negotiations” provided in Sub-section 3.5.11 below is to be followed.

**3.5 Tendering** – for estimated contract values above HK\$1.5 million

3.5.1 Authorized Signatories

Documents	Up to HK\$5 million	Above HK\$5 million
Invitations to Tender/ Tender Addendum	SE / Head of Department	SE / Head of Department
Letters of Clarification	SE / Head of Department	SE / Head of Department
Letters of Acceptance	SE / Head of Department	CEO
Formal Contract/ Agreement	SE / Head of Department	CEO

3.5.2 Types of Tendering

- (a) Normally Open Tendering should be used.

- (b) Restricted Tendering should only be used in special circumstances when open competitive tendering would not be an effective means of obtaining the requisite goods or services. Suppliers are invited to tender based on a set of pre-determined criteria as approved by the Approving Authority. The number of tenders to be invited in Restricted Tendering exercises shall depend on the number of capable suppliers in the market who are interested in providing the required goods or services at the time of invitation. Subject to the criteria determined for individual cases, the Responsible Officers should identify and propose a reasonable number of tenderers in the “Procurement Proposal” mentioned in Sub-section 3.5.3 below with necessary supporting document for consideration of the Approving Authority. At least three tenderers are to be invited, otherwise, approval by the relevant Approving Authority with justifications should be obtained.
- (c) Where circumstances warrant the adoption of Single Tendering under Category B as specified in the Policy, the Guidelines for Procurement of General Goods and Services by Single Sourcing will apply.
- (d) If Prequalification of financially and technically capable tenderers is needed before identifying tenderers for Restricted Tendering, prequalified tendering is to be adopted. A Procurement Proposal containing a request for approval to conduct a Prequalification including all relevant supporting information (such as the proposed Prequalification criteria, weightings and marking scheme) should be made to the Approving Authority as mentioned in Sub-section 3.5.3 below. Invitations to apply for Prequalification may take the form of Open Tendering or Restricted Tendering and the respective procedures apply. After the prequalified tenderer list has been approved by the Approving Authority, tender invitations are sent to the prequalified suppliers.

### 3.5.3 Proposal to Proceed with a Tender (i.e. Procurement Proposal)

- (a) An intended procurement shall be initiated by the Responsible Officer from the User Department with the support of the Budget Owner if applicable by submitting an application (“Procurement Proposal”) that shall include the following information to the Approving Authority:

- (i) a description of the background of the services or goods to be procured and the extent of work, skills and expertise required. If proprietary or brand name products are required, the technical and/or commercial reasons for that should be provided. As a general rule, brand names are not to be specified. The brand name products referred to here are those which are readily available in the market with sufficient suppliers to allow for competitive bidding. (Where circumstances warrant the adoption of Single Tendering under Category B as specified in the Policy, the Guidelines for Procurement of General Goods and Services by Single Sourcing apply);
- (ii) a statement of the estimated values of the proposed contract, payment schedule and the approved budget funding;
- (iii) expected delivery schedule, date or contract period and tentative tendering programme;
- (iv) the type of tendering to be adopted, i.e. Open Tendering or Restricted Tendering (including the requirement for Prequalification if needed). For Restricted Tendering, detailed justification (including justifications in case of less than 3 tenderers are to be invited) and the method of drawing up the list of tenderers and an explanation of their professional capability and experience are required;
- (v) the list of service providers or goods suppliers proposed to be invited and the reasons for including them in case of the invitation has such requirement;
- (vi) the membership and responsibilities of the Procurement Team and the Tender Assessment Panel (“TAP”); and
- (vii) the Prequalification criteria and short-listing criteria where applicable, selection criteria, assessment method, the “Technical/Price” weighting and the weighting to be given to the individual components of the tender evaluation criteria when separate assessment of the technical and fee/price submissions is needed.

- (b) The membership of the TAP as mentioned above shall comprise at least **two** officers of the Authority to be drawn from representative(s) of the User Department with the subject expertise(s) including one officer at **Grade 3 or above** to be appointed as the Chairman) and at least **one** representative to be drawn from the CPT and/or Legal and Secretarial Department and/or Finance Department as deemed necessary to assure impartiality. The Approving Authority of the tender assessment should not be involved in the TAP.
- (c) The Technical/Price weighting, may vary depending upon the nature or type of contract, specific attributes of the services or requirements being procured. The following considerations are generally recommended when developing an assessment strategy for each respective tender -
- (i) Technical/Price Weighting – Contracts having scope with relative criticality in safety and/or operations, substantial technical complexity, or involving quality, design, special skills and/or consultancy elements, etc. which require higher level of coordination with the contractors or have greater contract risks may justify greater technical weighting. Whereas, greater weighting on price may be more appropriate for contracts for generic or recurring supply of goods/services or where the requirements can be well defined or highly quantifiable;
  - (ii) Weighting of Individual Components in Technical Weighting – Consideration should be given to the respective components' relative importance in the overall contract scope and its technical parameters and constraints.
  - (iii) Passing Requirements in Technical Weighting – A passing mark or minimum score ranging between 50% and 60% out of the maximum technical weighting is recommended in either or both of the overall technical assessment or for individual components, where appropriate, to safeguard the conformity of tenders received.
- (d) The template of the Procurement Proposal as provided and maintained by the CPT is available at the shared drive (“S:\Public\General Procurement Templates\”) for adoption.

#### 3.5.4 Preparation of Tenders

- (a) Preparation of tenders shall be completed by the Procurement Team in accordance with the approved Procurement Proposal.
- (b) The tender documents including assessment method and evaluation criteria shall be approved by the Chairman of the TAP before tenders are invited.
- (c) The form and content of a tender document will depend upon the method and value of the intended procurement to be made and the type of the services or goods to be procured. All tender documents should be comprehensive, clear and concise and be prepared in a manner to allow an open and fair platform for tenderers to bid competitively.
- (d) Tender documents may subsequently constitute binding contract documents and must therefore contain suitable terms and conditions to meet end-users' requirements and protect the Authority's interest at the same time. A tender document generally shall consist of : -
  - Letter of Invitation to Tender or Tender Notice;
  - Instructions to Tenderers;
  - Standard Terms and Conditions, e.g. Terms of Agreement, Terms of Purchase, General Conditions of Contracts
  - Special Terms and Conditions, e.g. Special Conditions of Contract;
  - Brief or Tender Specifications, specifying the end user's requirements;
  - Payment Schedule;
  - Schedule of Key Personnel;
  - Insurance Schedule;
  - Form of Tender (FoT);
  - Relevant Declaration Forms.

The templates for the above tender document and standard form contracts as developed and maintained by the Legal and Secretarial Department are available at the shared drive ("S:\Public\General Procurement Templates\") for adoption. The Procurement Team should consult Legal and Secretarial



Department for the form and content of the tender document for use in case they have any doubt.

- (e) When preparing tender documents, care should be taken to observe the following:
- Consistency without ambiguities among tender documents to avoid possible contradictions;
  - Users' requirements have been fully incorporated;
  - Relevant statutory requirements have been fully specified;
  - Milestones and key dates are provided where appropriate;
  - Interim payment schedule, bonds, retention moneys and liquidated damages provisions (the Responsible Officers should consult or discuss with the CPT, the Legal and Secretarial Department and the Finance Department in case of doubt) are included, where appropriate. It is unlikely that interim payment schedules, bonds, retention monies and liquidated damages provisions will be required in contracts for general G&S. Under special circumstance where it is considered appropriate that any of these should be incorporated into a contract for general G&S, the Legal and Secretarial Department should be consulted;
  - Tender documents are prepared in conformity with the Policy of maintaining transparent and fair competition.

These criteria are important areas for checking and verification during the review of tender documents.

- (f) The Procurement Team shall ensure that tender briefs or specifications shall not be prepared, adopted or applied with a view to or with the effect of creating obstacles to international trade or to competition amongst the potential tenderers.
- (g) Tender briefs and specifications should be written in easily comprehensible general terms based on the functional and performance characteristics of the products required, and not around the technical specification of a certain make or model of the goods or equipment to be purchased.
- (h) Simple English is to be used in preparing tender documents.

- (i) The Procurement Team shall be responsible for reviewing the draft tender documents during preparation to ensure that the end user's requirements are properly reflected in the documents, and, with the support of the Legal and Secretarial Department, that the appropriate terms and conditions are adopted.

#### 3.5.5 Legal Review of the Draft Tender Documents

- (a) In compiling the draft tender documents, the Procurement Team must carefully review and ensure the correctness and appropriateness of the respective sections of the draft they are responsible for. It is however the responsibility of the Responsible Officers to review and sign-off the entire set of drafts of tender documents before they are released to tenderers.
- (b) It is essential to allow sufficient time for the legal review and clearance process to take place. Normally the review process shall not be less than 10 working days.

#### 3.5.6 Tender Invitation

- (a) Authorized signatories for Invitations to Tender and Tender Addenda should conform to Sub-section 3.5.1 above. The Chairman of the TAP shall be responsible for ensuring that the tender package has been properly checked and approved for issue.
- (b) Tender notices and invitations shall be issued in the manner and form required by the type of tendering to be used and if applicable, the requirements of WTO GPA. In the case of Restricted Tendering, tenderers shall NOT be informed that tenders are being invited on a restricted basis, and shall be required to submit their tenders in the same manner as Open Tendering procedure.
- (c) Any prescribed time-limits for the submission of tenders shall be adequate to allow the applicants or tenderers to prepare their Prequalification or tender submissions and submit their tenders before the tender closing date and time. The Closing dates and times to apply in the event of a black rain storm signal or tropical cyclone signal no. 8 or above have to be specified in the tender documents. Normally, at least three weeks will be allowed for tenderers to submit their bids. For procurements covered by WTO

GPA, at least 40 days should normally be allowed, provided always that under urgent situations, a shorter duration may be allowed as approved by the Approving Authority. In determining any such limit, the urgency of the need, the complexity of the intended procurement, the extent of subcontracting anticipated and the normal time for transmitting tenders by mail from locations outside Hong Kong as well as domestic points are factors to be taken into account. Any request for an extension of tendering period with justifications shall be agreed by the Chairman of the TAP and approved by the relevant SE or Head of Department.

### 3.5.7 Communications with Tenderers

- (a) Tenderers shall be notified in the tender invitation that all queries shall be made to the CPT or the Responsible Officer in writing. A tenderer who contacts staff of any other department shall be referred immediately to the CPT or the Responsible Officer.
- (b) In handling tender queries, all prospective tenderers shall have equal access to the tender information, including questions and answers raised by all tenderers. Answers to questions raised by tenderers shall not identify the tenderer that asked the question. If a tender query should identify any ambiguity, error or omission in the tender documents, the ambiguity, error or omission shall be corrected by the issue of a tender Addendum.
- (c) If it is considered necessary to conduct a pre-submission tender briefing or site visit for tenderers, the date, time and location of the tender briefing or site visit and the maximum number of participants from each tenderer, shall be stated clearly in the invitation. Verbal queries and responses which may have a contractual impact made during a tender briefing, shall be notified to all tenderers in writing.
- (d) A tenderer's request for an extension to the tender closing deadline shall be made in writing but shall not normally be granted unless considered reasonable due to the issue of either tender addenda or other unforeseeable circumstances.
- (e) All communications regarding the tender, from the time tenders are received and opened until a decision is made on the acceptance or

otherwise of the tenders must be classified as RESTRICTED. Correspondence on Prequalification and Restricted Tendering should also be classified as RESTRICTED.

- (f) Only officers who are involved in the tender may open and handle communications, documents and correspondence (documentation) relating to tenders and subsequent contracts or agreements.
- (g) After receipt of the tenders, and tender closing, contacts with tenderers should be kept to the minimum. To ensure the integrity of the process and to encourage fair competition, incomplete and non-conforming submissions should not be accepted. If it is necessary to seek clarifications or presentations from tenderers, all requests for clarification or presentations should be recorded clearly and in full and such requests or presentations must not give a tenderer any advantage or perceived advantage or give rise to any discriminatory practice.

#### 3.5.8 Submission of Tenders

- (a) Tenderers shall be required to comply with the requirements for submission of tenders which shall be clearly described in the tender documents. Sufficient copies of the tender returns should be requested in the tender documents for the efficiency of internal assessment and the Authority's records.
- (b) A "Three Envelope System" shall be adopted where the pre-approved Procurement Proposal requires separate assessment of the technical submissions and fee/price submissions. The requirement for and the process of the Three Envelope System shall be set out in the tender document. In the Three Envelope System, tenderers are required to place their "Fee/Price Proposal" and "Technical Proposal" in two separate sealed envelopes before placing both envelopes in a third sealed envelope prior to the submission of their tenders. The Fee/Price Proposals should only be opened after completion of the technical assessment. The purpose of this Three Envelope System is to ensure: -
  - (i) All tender returns are submitted at the same time and there is no possibility of technical or price proposals being lost or somehow separated from each other prior to tender opening;

- (ii) All Technical Proposals are assessed by the TAP in advance of and without any influence by the outcome of the assessment of the Price Proposals, and no financial or price related information will be made known to any of the TAP members before the technical assessments are finalized (unless approved by the Approving Authority). If the technical score is below the passing mark, or in the case of a non-conformance in a tender which precludes the TAP from conducting the technical assessment according to the tender requirements, the Fee/Price Proposals will not be opened;
- (c) In appropriate circumstances, User Departments can make recommendations in the Procurement Proposal as mentioned in Sub-section 3.5.3 above whether alternative offers or different choices may be proposed by tenderers and if so under what conditions, such as, a conforming tender must have been submitted before an alternative will be considered. If alternative offers may be considered, the tender documents should include a standard clause to specify the reservation of the right to accept or reject alternative proposals. The tenderer shall submit a base conforming proposal with clear identification of the proposed alternative in terms of price, technical or other relevant areas of the tender submission.
- (d) All tender submissions shall be deposited in the Authority's tender box on or before the designated closing time. Submission of tender documents by e-mail or other electronic means is not acceptable unless the Approving Authority has given his/her prior approval. Under whatever circumstances, the return mode (i.e. by post and/or by email or other electronic means to a designated address with access control set aside for this purpose) of the tender submission shall be specified in the tender documents. If submissions by electronic means is allowed, directions should be provided to the suppliers following the same procedure as the "Three Envelope System" (i.e. separation of technical and price submissions) as stipulated in Sub-section 3.5.8 (b) above.

### 3.5.9 Tender Opening

- (a) Under no circumstances shall late tenders be accepted or opened except with very strong justifications and subject to the express

written approval of the Approving Authority. In scenarios where there is a risk of information leakage (e.g. after on time tender submissions have been opened), late tenders should not be accepted. The submission time and date of late tenders shall be recorded and the un-opened tenders (unless it is necessary to open the tender to identify the tenderer) shall be returned by the CPT or the Responsible Officer to the tenderer concerned.

- (b) The officers with responsibility for opening tenders should not take part in tender assessment, selection and approval processes of that particular tender. The officers shall handle such tenders with great care and in strict conformity with the Authority's security requirements for such tenders, distribution of such tenders shall be made on a need-to-know basis.
- (c) The tender box shall be locked with two locks. The keys shall be kept by two individual key holders, one by a designated Manager of the CPT or his/her delegate and the other by a designated Senior Manager of the Finance Department or his/her delegate.
- (d) The tender opening shall be in the presence of and recorded by an officer from the CPT and an officer appointed by the Chairman of the TAP or SE of the User Department. The designated Senior Manager of the Finance Department or his/her delegate who is also the second key holder shall witness the tender opening process until completion.
- (e) The originals of each tender submission shall be dated and time stamped. At the opening of the Fee/Price Proposals, the relevant pages showing the fee and price rates shall be initialed by the officers who witnessed the opening of the proposals. A tender opening record showing tender reference number, subject, closing date and time, list of tenderers, opening date and time, and witnesses shall be prepared by the CPT or the Responsible Officer and retained by the CPT. A template of the tender opening record with instructions on the roles and responsibilities of individual members witnessing the tender opening process is provided and maintained by the CPT at the shared drive ("S:\Public\General Procurement Templates\") for use by all tender teams.

- (f) The originals of all tenders (i.e. tender submissions and opening records except samples or models, company catalogues or booklets, diskettes, and any other non-document items) shall be retained by the CPT in secure rooms, cabinets or safes for control purposes. Copies may be made for the purposes of the tender assessments by the relevant TAP members.

#### 3.5.10 Declarations of Interest and Tender Assessment

- (a) Before the start of the tender assessment, all persons of the TAP and Procurement Team including Board members and staff of the Authority as well as consultants/contractors staff involved in the tender assessment process (including tender assessment, clarification, presentation and negotiation processes) shall declare in written form to the Chairman of the TAP, relevant SE or CEO that they either have no conflicts of interest or specify any circumstances which they believe may be perceived as a conflict of interest. The Chairman of the TAP, relevant SE or CEO shall decide whether in all the circumstances a person making a declaration of a potential conflict of interest should stand down from the assessment process. In the event that there is any doubt, the Chairman of the TAP, relevant SE or CEO shall consult the Legal and Secretarial Department.
- (b) To ensure independent marking by individual TAP members, technical assessment guidelines including a standard assessment form where applicable shall be provided by the Procurement Team in accordance with the pre-approved assessment method and criteria endorsed by the Chairman of the TAP before tender invitation. Each TAP member must check compliance and complete their individual assessment form for each proposal according to the endorsed assessment guidelines. Members must not discuss the scores before the initial marking. After marking, they may as a panel discuss the scores given and, if necessary, adjust them. In particular if extremely divergent marks are given by individual members, the TAP should meet to discuss the overall marking, with a view to achieving a more balanced overall picture and obtaining a fair assessment result. The adjusted scores will then form the final score for individual proposals. The assessment forms, the deliberation process, meetings and any subsequent changes made

by individual members and the reasons for the changes must be fully documented.

- (c) Where it is necessary, as part of the technical assessment, for tenderers to give presentations to the TAP, the detailed arrangements for the presentations shall be stated clearly to the tenderers. All conforming tenderers who have met the pre-determined shortlisting criteria as specified in the tender documents shall have the same opportunities and be subject to the same constraints, including the maximum allowable time for their presentation and the maximum number of participants from each tenderer or requirements as to which of their personnel must attend the presentation. The tenderers shall make the presentation based on their submitted tenders and shall not provide other additional information without prior request by the Authority. Members of the TAP shall attend every presentation. Should any TAP member be unable to attend a tender presentation, approval to appoint an alternative representative should be obtained from the Chairman of the TAP with a declaration of interest submitted by the alternative representative.
- (d) Under no circumstances shall any amendment to the submitted tender (e.g. tender sum or deliverables) be accepted by the Authority unless prior approval has been given by the Approving Authority to the conduct of, and in the course of, approved tender clarifications/negotiations. In the event that the Authority asks for relevant additional information, the tenderer shall make the presentation or submit the requested additional information within the time limit in the manner specified by the Authority.
- (e) Technical assessment where applicable should be finalised only after all clarifications have been made. The Chairman of the TAP shall conclude and sign-off the final technical assessment results before price opening. Upon completion of the technical assessment, the TAP is to assess Fee/Price Proposals with the support of the Procurement Team and Finance Department to produce an overall assessment result for the purpose of recommending either that a tender be approved or seeking such further step in the assessment as may be provided for by the procedures.



In normal circumstances, the TAP shall determine the ranking of the tenders received according to the original tender prices or the tender prices as adjusted in the course of approved clarifications/negotiations, or the overall scores they have attained.

- (f) Tender assessment criteria and guidelines should not be changed after tender closing. To ensure consistency in practice, templates for declaration of interest and assessment method and evaluation criteria as provided and maintained by the CPT at the shared drive (“S:\Public\General Procurement Templates\”) should be used.

#### 3.5.11 Tender Negotiations (if necessary)

- (a) The purpose of tender negotiation is to reach agreement to provide a better overall outcome for the Authority than would otherwise be achieved. Normally, negotiations may be necessitated in the following circumstances:
  - (i) when a single tender has been invited with the prior approval of the appropriate Approving Authority; or
  - (ii) when only one tender or very few tenders have been received in response to an open tender invitation and when the concerned TAP 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 exceeds the estimated budget; or
  - (iv) when the tender price to be recommended is too high in comparison with the price of similar procurement in the past or in relation to other market information; or
  - (v) when the tender to be recommended contains counter-proposals or qualifications to the tender terms which are disadvantageous to the Authority but are not sufficiently substantial or do not cause substantial deviation from the essential requirements contained in the invitation to tender to render the recommended tender non-conforming.

- (b) Decisions on when and with whom to negotiate will normally be a panel decision, as will the development of negotiation strategies. Before negotiations are conducted, the staff involved shall ensure that the justifications, recommended negotiation strategies, membership of the negotiation team and the desired outcomes / target(s) of the negotiation shall be discussed, developed and agreed by the TAP and be approved by the Approving Authority. Only officers with no real or potential conflict of interest shall lead or participate in negotiations.
- (c) Negotiations shall normally be conducted only with a single conforming tenderer or with the conforming tenderer whose tender has been found to be clearly the most advantageous to the Authority in terms of the evaluation criteria set out in the notice of tender invitation or tender document. In the latter case, if the negotiation team fails to achieve the desired outcome / targets via the negotiations with the first conforming tenderer, further negotiations would be carried out with the next tenderer whose conforming tender is the second most advantageous to the Authority and so on. Where no one tender is clearly more advantageous 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 other conforming tenders.
- (d) 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 TAP shall take a view as to whether any reduction of price that may be achieved would exceed the cost of undertaking the negotiations, or would adversely affect the quality of services to be procured.
- (e) Successful negotiations require a degree of flexibility to meet different circumstances. However, the general principles laid down below must be observed in all negotiations:
  - (i) under no circumstances should confidential information concerning other tenderers' offers be revealed during negotiations;

- (ii) all tenderers involved in negotiations must be treated fairly and equally, and given access to the same information; and
  - (iii) records must be kept of all negotiation meetings and discussions with tenderers.
- (f) Where tenderers are informed in advance of the Authority's possible intention to conduct tender negotiations, it must be made clear that selection for negotiation will be based on the competitiveness of their original tenders in order to discourage practice of inflating tenders.

#### 3.5.12 Preparation and Issue of Letter of Clarification (if necessary)

- (a) Where there have been changes to the tender documentation post tender assessment through the clarification process or via tender negotiations, a Letter of Clarification (LoC) shall be prepared to reflect the terms and scope of the contract or agreement as amended which the TAP is recommending for award.
- (b) The draft LoC shall be vetted by the Legal and Secretarial Department before being sent to the tenderer(s) for agreement (on a no commitment basis). Agreement from the shortlisted tenderer(s) of the LoC shall have been obtained prior to seeking the approval of the contract award from the Approving Authority.
- (c) The approved LoC shall be incorporated by reference into the LoA and the LoA once signed by the Authority together with the tenderer's FoT constitute a binding contract.

#### 3.5.13 Recommendation for Award or Cancellation

- (a) Normally, the TAP shall select and recommend the conforming tender which offers the lowest price, or attains the highest overall combined score under the Technical/Price assessment based on the pre-determined selection criteria. The TAP shall conclude a recommendation of the selected tender by producing a tender assessment report using the template as provided and maintained by the CPT at the shared drive ("S:\Public\General Procurement Templates\").

- (b) If none of the tenders received fully conform to the specifications, terms and conditions laid down, or where the original requirements have been substantially changed, the TAP shall consider cancelling the tender exercise and re-tendering with revised specifications, terms and conditions. Approval of the cancellation of a tender exercise is not required when no tender has been received at the close of tenders.
- (c) Other than cancellation due to no tender having been received as described above, if the TAP proposes to cancel a tender exercise once tenders have been invited, or not to award a contract following a tender assessment, it shall first obtain the approval of the Approving Authority. The TAP shall provide the Approving Authority with detailed justifications for cancelling the tender and state whether and when a further tender will be conducted. If exceptionally, TAP considers recommending a tender other than the conforming tender which offers the lowest price, or attains the highest overall combined score under the Technical/Price assessment based on the pre-determined selection criteria, they shall state so clearly in the tender assessment report and provide a detailed description of any deviation of the recommended tender from either or both of the specifications or T&C and the justifications for recommending acceptance of such tender for approval.
- (d) The final tender assessment report shall be signed off by the members of the TAP, the relevant members of the Finance Department and the Legal and Secretarial Department involved in the tender assessment or negotiations and the Chairman of the TAP before it is submitted to the Approving Authority for consideration.

#### 3.5.14 Acceptance of Tender and Notice of Tender Award

- (a) After approval has been given to the acceptance of a recommended tender by the Approving Authority, the User Department, with the support of the CPT if applicable, will send a LoA (where necessary incorporating the LoC by reference) signed pursuant to Sub-section 3.5.1 above to the successful tenderer. All commitments to contracts with tenderers shall be made in the form of an LoA, signed contract or agreement pursuant to Sub-section 3.5.1 above, or purchase order that shall be aligned with the approved

recommendations as stated in the tender approval record, assessment results and relevant supporting documents prior to the contract or agreement execution.

- (b) User Departments shall maintain a record of all their contracts awarded and send to the CPT a list of all contracts awarded by them or on their recommendation in a particular month at least two weeks before the end of the following month for record purpose.
- (c) Notice of tender award will be issued in the manner and form required according to the type of tendering and if applicable, the requirements of WTO GPA. Where publication is needed, the Authority will publish the name of the tenderer awarded with the contract and the contract sum on the Authority's website. The unsuccessful tenderers will also be informed of the outcome of their tenders.

#### 3.5.15 Exclusive use of Appointed Tenderers for the supply of G&S

- (a) Where a contract or agreement (except if it is a Blanket Agreement/Contract) has been awarded to a particular tenderer, there are legal consequences (specifically legal damages claims for loss of profits) that may attach if G&S the subject of the tendered and awarded contract are procured from a third party supplier. Normally, third party suppliers should only be used in special circumstances where a contractor has specifically responded in writing to an order refusing to provide or supply for the agreed price or within the agreed time or at all or where the contract or agreement has expressly allowed for, or anticipated purchases or procurement of goods or services of the same kind from third parties outside of the contract or agreement. No order should be placed with a third party supplier prior to a contractor refusing or failing to comply with their agreement. In particular, where a contract has been entered into by the acceptance of a tender after a procurement process, User Departments shall not use third party suppliers simply because they offer a better price, better timeline for supply or more attractive terms. The Procurement Team **SHALL** consult the Legal and Secretarial Department if they have any doubt as to the legal consequences attached to the appointed contract or agreement.

#### 4. Management of Variations to Orders, Contracts or Agreements

4.1 A Variation means any change to any order, contract or agreement reached via any type of procurement (i.e. Low Value Purchase, RFQ or tendering) subject to availability of funds within the approved budget. Changes in specification requirements or scope of the original approved provisions covered in an existing order, agreement or contract that could not be provided using a separate contract or agreement through an independent procurement process are Variations. When determining whether approval of a Variation is necessary, User Departments should check against the prescribed provisions originally approved by the Approving Authority.

4.2 Approval of variations to orders, contracts or agreements,

- i) not exceeding 20% of the original contract value; AND
- ii) the accumulated value (including the original contract value) not exceeding the approval limit of the Approving Authority,

should be sought from the Approving Authority. Variations exceeding the parameter (i) above require a **higher level** approval than is otherwise required according to the delegation levels specified in the “Delegation of Authority Manual” (subject to the requirement in Section 4.5 below). Variations exceeding parameter (ii) require the approval of the relevant level according to the delegation levels specified in the “Delegation of Authority Manual”.

Note: Where the accumulated value (including the original contract value) not exceeding HK\$50,000, approval of variations to orders, contracts or agreements for Low Value Purchase is not required.

4.3 If the original contract or agreement has been approved by the Board:-

Variations to Contracts/ Agreement (HK\$)	Approved by
Up to 20% of the original contract value or up to \$5 million, whichever is lower	CEO
Up to 20% of the original contract value or up to \$10 million, whichever is lower	Executive Team (ET)
Exceeding 20% of the original contract value or above \$10 million, whichever is lower	The Board

- 4.4 All Variations that are estimated to result in either or both of extensions of time or cost increases shall be processed through a written submission of the change requisition to the Finance Department for budget review before seeking appropriate authority's approval with supporting justification including estimates of potential extensions of time and cost increases. Where practicable, approval for variations should not be sought unless corresponding savings can be achieved from the same contract.
- 4.5 Variations exceeding 50% of the value of the original order, contract or agreement require approval from **the second higher level** authority than is otherwise required according to the delegation levels specified in the "Delegation of Authority Manual" or approval from the Board.
- 4.6 When the procurement needs are highly volatile and requirements cannot be clearly defined before invitations to tender are to be sent, they can be included in tenders as provisional sums based upon the User Department's best estimation of the cost of the required item. Details of when and how such provisional sums shall be instructed to be executed by contractors / suppliers / consultants are to be provided to the Approving Authority for consideration when seeking approval to undertake the procurement. Where provisional or optional items are included in a tender, the provisional amounts shall be included in the estimate of the total contract amount or ceiling when seeking approval of the procurement. With such prior approval, it is not necessary to seek approval of a variation before instructing the execution of the provisional sum or option unless the total price of the item will exceed the pre-approved ceiling value. Approval to instruct the execution of provisional/optional items shall be sought according to the delegation level specified in the "Delegation of Authority Manual".

## **5. Procurement Self-Service**

- 5.1 User Departments can carry out the entire procurement process for G&S by themselves (i.e. without the need to procure via the CPT), where:
- (a) there is a need for G&S to be obtained for use outside Hong Kong (for example in preparing an exhibition in a foreign country/city and there is strong justification for buying the G&S locally in the location outside Hong Kong;

- (b) the G&S are needed immediately and the urgency of the situation precludes the CPT from carrying out the procurement process. (for example as on-site variations or recovery of goods or services); or
  - (c) the CPT does not have personnel with the necessary knowledge, skills or experience to undertake the procurement of specific goods or services.
- 5.2 User Departments and officers involved in such procurements must follow the procedural and process requirements as required by the Policy and these Guidelines.

## **6. Reporting and Registering**

- 6.1 Any contract approved and awarded by the ET (including Subsidiary Boards) should be reported regularly to the Board. In the report to the Board, a summary of the background and justification for using Restricted Tendering and the record of approval should be included.
- 6.2 All approved Variations must be reported regularly by User Departments and captured in the “Summary of Changes” to be maintained by the CPT for recording, monitoring and reporting the status of changes/ Variations.
- 6.3 User Departments shall keep written records of all procurements undertaken without the involvement of the CPT (i.e. procurement self-service except Low Value Purchase) for audit inspection and report all such cases to the CPT for record quarterly.

## **West Kowloon Cultural District Authority**