

July 2020

**West Kowloon Cultural District Authority
Internal Circular No. 2020/001-01/GPD**

General Procurement Policy

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

Table of Contents

1. Objectives and Scope	3
2. Definitions	4
3. Principles	7
4. Roles and Responsibilities	8
5. Approval	10
6. Application of WTO GPA	10
7. Supplier Management and Performance Review	10
Appendix 1 – Exemption Items List	12

General Procurement Policy

1. Objectives and Scope

- 1.1 This procurement policy (“Policy”) sets out the requirements for procurement by the West Kowloon Cultural District Authority and the Authority’s wholly owned subsidiaries (the “Authority” or “WKCDA”). The activities covered by the Policy include the identification and acquisition of goods, services and works¹ (collectively known as “Goods and Services”) other than those exemptions defined in Section 1.2 below.
- 1.2 This Policy does not apply to:
- (a) Procurement for Capital Projects (which is specified in the “Procurement Procedures for Capital Projects”²)
 - (b) Collections acquisition (which is governed by separate acquisition policies for the respective museums such as M+ and Hong Kong Palace Museum)
 - (c) Commercial Leasing (which is specified in “Guidelines for the Commercial Leasing Process”³)
 - (d) Engagement of Artists (which is governed by the “Guidelines for Engagement of Artists”)
- 1.3 Procurement of Goods and Services shall include primarily three main categories:
- (a) General Goods and Services
refers to procurement of Goods and Services including Consultancy Services and recurring services that do not exhibit specific artistic or cultural content. This category is governed by the “Guidelines for Procurement of General Goods and Services”.
 - (b) Artistic Goods and Services
refers to the procurement of Artistic Goods and Services as defined in Section 2 below with the exception of Engagement of Artists which is governed by a separate set of guidelines. This category is governed by the “Guidelines for Procurement of Artistic Goods and Services”.
 - (c) Commercial Merchandise and Retail Ancillary Goods and Services
refers to the procurement of Commercial Merchandise as defined in Section 2 below acquired by WKCDA for subsequent resale including Retail Ancillary Goods and Services. This category is governed by the “Guidelines for Procurement of Commercial Merchandise and Retail Ancillary Goods and Services” and related procedures that are established by the relevant departments or divisions pursuant to principles set out in this Policy.

¹ A contract issued to carry out minor construction, installation, erection repair, renovation, maintenance, alteration of any movable or immovable property and sale of goods is called works contract.

² Internal Procedure No. IP/PDD/PRO/2012-001 or later version

³ Internal Circular No. 2016/051-01/COM or later version

Different procurement methods, such as Request for Information (RFI), Request for Quotation (RFQ), Request for Proposal (RFP) and tendering/request for tender, may be used with proper approval for acquiring Goods and Services on behalf of the Authority. However, consideration of the total value, complexity, risk and nature of the supply market must be taken into account. The standard procurement processes are specified in the respective guidelines for different categories.

- 1.4 This Policy provides reference to the guiding principles for the procurement of all categories defined in Section 1.3 above, as well as defining the roles and responsibilities during the procurement process.
- 1.5 While reasonably comprehensive, this Policy is not exhaustive. When employees have enquiries about this Policy or find that an activity is not fully or properly covered by the Policy, they must seek the assistance of the General Procurement Department of WKCDA for further clarification.

2. Definitions

The listed terms when used in this Policy and its related guidelines shall have the following definitions ascribed to them:

“Approving Authority”	Means the appropriate authority specified in the “Delegation of Authority Manual” or “DOA Manual” ⁴ .
“Artistic Goods and Services”	<p>Means</p> <ul style="list-style-type: none"> • Goods that directly impact an artistic objective; • Goods that are required as a result of an artistic decision; • Goods created specifically to meet the needs of artistic projects; • Goods whose creation requires specific artistic performance or exhibition related industry knowledge; • Goods whose supply requires the supplier to provide specific artistic knowledge and advice to the Authority’s artistic teams; or • Goods that are used in the production of artistic projects or may sit outside the specific project, but directly support it. <p>OR Services where the provider’s responsibility in the project is one or more of the following:</p> <ul style="list-style-type: none"> • Facilitates the execution of the art; • Makes decisions that directly impact the art; or • Provides expert knowledge, skills and advice related to an artistic endeavor.

⁴ Internal Circular No. 2017/053-06/FIN or later version

“Budget Owner”	Means the department responsible for the budgetary provision and control for a planned procurement in accordance with the relevant financial policies and guidelines. The Budget Owner is usually but not necessarily the User Department.
“Commercial Merchandise”	Refers to merchandise for resale including but not limited to souvenirs, publications, food-and-beverage items to be sold via different available channels.
“Commercial Offer”	Means an offer given by any third party, usually in forms of price concession, in return for benefits such as a contract or other commercial benefits.
“Concerned Division Head” or “CDivH”	Includes the following: The Chief Commercial Officer (“CCO”), Chief Financial Officer (“CFO”), Chief Corporate Services Officer (“CCSO”), Museum Directors, Executive Director, Performing Arts (“EDPA”), Chief Projects Officer (“CPO”), the General Counsel (“GC”), and anyone acting as a CDivH including the Chief Executive Officer (“CEO”).
“Consultancy Services”	<p>Means provision of professional third-party consultancy/advisory services provided by external parties, excluding supply of IT services, recruitment services, statutory audit, market data or translation services.</p> <p>Staff Augmentation, despite not a consultancy service, requires the same level of financial control and therefore should follow the approval level as ‘Consultancy Services’ specified in the DOA Manual.</p> <p>Note: Staff Augmentation is the technique of staffing a project or a business initiative based on the additional skills required on a temporary basis. The skilled resources are employed by the professional firms instead of WKCD.</p>
“Debarred Suppliers List”	Means the list of suppliers who are excluded from doing business with the Authority. The Debarred Suppliers List shall be subject to rigorous review and approval in accordance with Section 7 below.
“Engaged Suppliers List”	Means the list of suppliers who have been awarded with contracts by the Authority within the most recent three years.
“Engagement of Artists”	Means engagement with a person or an organisation whose role in the artistic project is to create the art physically and/or intellectually. This includes the procurement of associated goods and services, if needed, to form part of the

	engagement agreement with the same person or the organisation.
“Executive Team” or “ET”	Includes the CEO or anyone acting as the CEO and Division Heads. Decisions of the ET should be based on a “simple majority vote” by ET Members, with a minimum quorum of two-third members including the CEO or acting CEO.
“General Procurement Department” or “GPD”	Means the department in the general procurement function responsible for the management of this Policy and related guidelines as stipulated in Section 1.3 above including the relevant Practice Notes. The roles and responsibilities of GPD are stipulated in Section 4 of this document.
“Purchase Requisition / Purchase Request” or “PR”	Means the document raised by the User Department to initiate the procurement of goods and/or services, including Commercial Merchandise and Retail Ancillary Goods and Services. It contains the authorization, legitimacy of the purchase and details as stipulated in the relevant guidelines.
“Registered Suppliers List”	Means the list of suppliers who have completed supplier registration process in accordance with Section 7 below.
“Request for Information” or “RFI”	Means the procurement process of collecting written information from potential suppliers and gathering information to help making decision on subsequent steps in the procurement process. It normally follows a format that can be used for comparative purposes.
“Request for Proposal” or “RFP”	Means the procurement process of soliciting proposals and price bids from potential suppliers for goods and/or services.
“Request for Quotation” or “RFQ”	Means an invitation to suppliers to bid on specific products or services in accordance with the respective guidelines.
“Retail Ancillary Goods and Services”	Means goods or services that either enhance or support the main commercial merchandising products, including purchases of raw materials to produce Commercial Merchandise, product design service, licensing and visual merchandising for retail outlets.
“Single Quotation” or “Single Tendering”	Means procurement (whether via a RFQ or tender) from a single supplier of goods and/or services who is invited to quote or tender based on pre-determined criteria and approved by the relevant Approving Authority in accordance with the procedures stipulated in the respective guidelines.
“Single Sourcing” or “Single Source”	Means exceptional circumstances for using Single Quotation or Single Tendering when a competitive RFQ or tendering

	would not be an effective means of obtaining the required goods and/or services. The criteria for using Single Quotation or Single Tendering stipulated in the respective guidelines apply.
“User Department”	Means the department or division responsible for initiating the business needs or requirements that form the basis of a planned procurement, the contract management and implementation, in accordance with the appropriate procurement guidelines. The roles and responsibilities of User Departments are stipulated in Section 4 below. The User Department is usually but not necessarily the Budget Owner.
“WTO GPA”	Means the World Trade Organization agreement on Government Procurement. Copies of this agreement can be found on the World Trade Organization website.

3. Principles

The principles guiding the procurement process of all categories mentioned in Section 1.3 above are to:

- 3.1 Act at all times in the “best overall interest” of the Authority. The best overall interest is defined as the “lowest total cost of ownership” but focus is not merely on minimizing cost but more on maximizing interest, art excellence and aspiration which includes:
- (a) An appropriate cost-effective specification which satisfies the business needs;
 - (b) Purchase price, including assessment of life cycle costs such as time in service before failure, and the cost of repairs, maintenance and overhaul (including the cost of consumables and utilities);
 - (c) Cost of administration;
 - (d) Cost of poor quality and late delivery;
 - (e) Inventory holding cost;
 - (f) Cost of money, including loss of interest on early payments and net present value comparison of competing tender/ quoted purchase prices where front-end loading of payments is an option for suppliers;
 - (g) The availability and desirability of export credits and other supplier subsidized finance options;
 - (h) Foreign exchange rates;
 - (i) Delivery, installation and commissioning costs, including insurance;

- (j) Cost of operational failure;
 - (k) Residual value and/or disposal cost;
 - (l) Consequential costs due to poor supplier performance;
 - (m) Supplier switching costs; and
 - (n) For Commercial Merchandise and Retail Ancillary Goods and Services, best overall interests should also include considerations to the profit margin, sell-through, cost of obsolete inventory, and potential markdowns;
- 3.2 Uphold corporate reputation, ethics and sustainability;
- 3.3 Be transparent and encourage fairness and integrity without involving personal interest or arbitrary consideration. As a general rule, no employee shall approve the procurement solely for her/his own use or benefit;
- 3.4 Reduce the burden on administrative resources and lead to simplified and timely transactions; and
- 3.5 Create value through sufficient supply-side competition. Competitive procurement process should be used where possible.
- 3.6 Information in relation to individual procurement exercises should be kept confidential, with restricted access on a need-to-know basis.
- 3.7 No PR, order, contract or agreement should be sub-divided merely to avoid the financial authority limits, i.e. to circumvent the approval limit of the Approving Authority.
- 3.8 Unsolicited Commercial Offers are generally not accepted and should not be accepted within the scope of this Policy.
- 3.9 All persons involved in the procurement process are required to comply with the integrity standards set out in this Policy and the relevant guidelines, in addition to the respective sets of WKCD Code of Conduct issued to the persons in respect of their official capacity.

4. Roles and Responsibilities

- 4.1 **User Department** – Usually the Budget Owner of the intended procurement and is responsible for:
- (a) Initiation of a PR with justification(s), definition of the scope and user requirements of the purchase and obtaining the relevant approvals in accordance with the delegation level for such purchase specified in the DOA Manual;
 - (b) Selection of potential suppliers to invite for quotations, tenders or other procurement process;

- (c) Adopting the appropriate procurement methods and approving the contract strategy, tender/quotation documents and assessment criteria in accordance with the delegation level for such purchase as specified in the DOA Manual;
- (d) Chairmanship of the assessment panel and issuing the recommendation for approval to award the Purchase Order (“PO”) and/or contract to the appropriate Approving Authority; and
- (e) Management of engaged supplier(s) and conducting the associated performance reviews of suppliers.

4.2 **General Procurement Department (“GPD”)** is responsible for:

- (a) Providing procurement services and professional procurement advice to User Departments.
- (b) Facilitating the procurement process based on the Authority’s business needs and specifications in accordance with the Policy;
- (c) Adopting best professional procurement practices;
- (d) Collecting supply market intelligence to conduct quotations’/tenders’/proposals’ analysis;
- (e) Maintaining suppliers lists and suppliers’ performance records when available; and
- (f) Providing guidance to User Departments on the compliance with this Policy and the respective guidelines.

4.3 **Finance Department** is responsible for the relevant Finance policies/procedures for procurement and for:

- (a) Conducting fund checking and payment process;
- (b) Monitoring the compliance of User Departments with the Authority’s payment policies and guidelines and advising User Departments when non-conformities are detected.; and
- (c) Conducting financial capability assessment on suppliers in order to support supplier evaluation in the procurement process or the development of the supplier database containing supplier performance information.

4.4 **Legal Team** is responsible for:

- (a) The provision of legal advice on the terms and conditions (“T&Cs”) of procurement contracts, including the drafting of standard forms and all proposed departures from the wording of standard forms; and
- (b) Advising contract negotiations as and when necessary.

5. Approval

The approval of any procurement is subject to the availability of funds either within an approved budget or as may be otherwise provided or approved, in accordance with the procedures specified in the relevant sections of the respective guidelines as stipulated in Section 1.3 above.

6. Application of WTO GPA

Although the Authority is not currently subject to the WTO GPA, the Authority's policy is to follow the requirements of WTO GPA to ensure fair and transparent conditions of competition for procuring goods and/or services. Any procurement covered by WTO GPA with value at or exceeding the WTO's prevailing published Special Drawing Rights (SDR) under GPA should be handled as GPA tender. The WTO GPA is available in the World Trade Organization's website at <https://www.wto.org>. Employees should always refer to the latest version as published by the WTO and consult the Legal Team if there are any queries about the requirements.

7. Supplier Management and Performance Review

- 7.1 A supplier database should be maintained by GPD that includes lists of registered, engaged and debarred suppliers for frequently required Goods and Services.
- 7.2 Supplier registration is a process, through which suppliers can provide information about their company/business to the Authority. Companies/businesses can be added to the Registered Supplier List which will then be considered by the User Departments when obtaining quotations or tendering for Goods and Services. Supplier registration is not a pre-requisite for potential suppliers to be invited to the RFQ, tender or other procurement process⁵ but it is mandatory before orders, contracts or agreements are awarded. This will expand the number of supplier options, for User Departments to invite for various forms of procurement exercise.
- 7.3 An effective supplier registration system (either manual or on-line) shall be maintained for suppliers who wish to be considered for business opportunities with the Authority. Through the system, suppliers will be able to maintain their name, contact persons, banking and product/service information for use by the Authority. Suppliers may also be requested to provide their financial information for financial capability assessment where applicable. GPD will vet all supplier applications with the support of the Finance Department⁶.
- 7.4 As a basic principle when inviting suppliers for RFQ, tender, or other procurement process, all qualified suppliers from the available sources shall be considered and should not be excluded without proper justification. The supplier database should be used to support drawing up the invitation list for RFQs, tenders or other procurement

⁵ When e-tendering system is used, supplier registration should be completed before the supplier submit their quotations, proposals or tenders

⁶ Except for procurement self-service, where GPD is not involved in the procurement process and the supplier registration should be vetted by User Departments with support of the Finance Department.

process, in conjunction with other sources such as market research and supplier self-registration, etc. Suppliers invited to the RFQ or Restricted/Single Tendering may also be recommended by User Departments in consultation with the GPD.

- 7.5 Supplier performance of engaged suppliers should be monitored and recorded by the User Departments for management review, audit inspection and as a reference for future procurement activities. Any adverse performance of suppliers should be reported to GPD for record.
- (a) User Department should inspect the goods and/or evaluate the supplier performance upon receipt of the prescribed Goods and Services for all types of contract.
 - (b) User Departments should conduct periodic performance appraisals of suppliers appointed on term, recurring contracts or agreements.
- 7.6 Supplier performance records should be captured and maintained in the supplier database, enabling for easy identification of the current business status i.e. “engaged”, “registered” to “debarred”. GPD and User Departments should ensure that any contract renewals are supported by good performance records.
- 7.7 Debarred suppliers are suppliers who have serious supplier performance issues, severe breach of contract, companies with identified conflict of interest or other legitimate reason for being excluded from doing business with the Authority. The Debarred Suppliers List should be regularly reviewed by GPD and approved by the CEO (or his delegate), with a view to updating suppliers’ status accordingly.

West Kowloon Cultural District Authority

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Appendix 1 – Exemption Items List

- a) Exemption items are expenditure items that cannot follow normal procurement procedures for which PR and subsequent procurement process are not required.
 - b) The list of exemption items should be reviewed and updated regularly by GPD and the Finance Department. This list is to be approved by CEO or his delegate.
 - c) User Departments should check the availability of funds or budget with the support of the Finance Department and purchase these items directly. User Departments must follow the relevant procedures issued by the Finance Department for settlement of payment against an invoice after satisfactory delivery and receipt of the goods and/or services purchased.
1. Direct spending on advertising media or media collaborations (advertising/media agency fees are not exempted)
 2. Entertainment expenses (subject to approval in accordance with the relevant guidelines)
 3. Executive search for positions that cannot be supported by panel search firms due to confidentiality or unforeseen urgency
 4. Fuel card, Autotoll and toll fees (e.g. tunnel fee) for company vehicles
 5. Insurance premium via a contracted broker (brokerage service is not exempted)
 6. Intellectual property rights and licenses that are required as a direct result from an artistic decision, such as film rights, screening rights, script rights, etc., that are part of the projects already pre-approved in the Business Plan and/ Corporate Plan
 7. Legal services to be provided to WKCDA and its subsidiaries
 8. Office accommodation related expenses (e.g. management fees, air-conditioning charge, carpark fees, etc.) under an existing lease agreement
 9. Payment gateway services for business receipts including credit card, online payment processing, contactless payment and e-wallets
 10. Payment of refundable deposits (e.g. rental deposit, carpark fee deposit, etc.)
 11. Payments to Government (e.g. tax, rent & rates, license fee, stamp duty, etc.)
 12. Perpetual purchases under an existing evergreen agreement or one that with auto-renewal clause
 13. Postage (by Hong Kong Post)
 14. Professional membership and associations
 15. Purchases under the scope of an existing agreement with single authorized dealer/reseller/service provider
 16. Services provided by banks or other financial institutions including bank account operations, deposit-taking, bond investment series, loans and notes issue, credit ratings, credit and debit cards, trust services and all forms of financial or market intermediation
 17. Staff costs related to recruitment and relocation costs on reimbursement basis (recruitment agency fees are not exempt)
 18. Subscription fees for publications, cable TV and online news, purchases of professional data, business intelligence (e.g. syndicated market research) or market data
 19. Training enrolment fees, tuition fees payable to educational institutions for staff training or direct spend on executive training programmes in collaboration with educational institutions

20. Travel expenditures including air ticket fares and hotel accommodation (travel agency fees are not PR exempted)
21. Utilities
22. Venue hiring for event/exhibition pre-approved by the Approving Authority, including goods or services exclusively provided by the venue as a prerequisite for venue hiring