

**July 2020**

**West Kowloon Cultural District Authority  
Internal Circular No. 2020/002-01/GPD**

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

*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 General Goods and Services except Artistic Goods or Services, and Commercial Merchandise and Retail Ancillary Goods and Services as specified in the General Procurement Policy (“Policy”) for the West Kowloon Cultural District Authority and the Authority’s wholly owned subsidiaries (“WKCD” or “Authority”). Procurement includes the identification and acquisition of goods, services and works<sup>1</sup> (collectively known as “Goods and Services”). Staff involved in procurement activities must follow and observe the requirements of the Policy and all relevant guidelines.

1.2 The procurement of General Goods and Services refers to the procurement that do not exhibit specific artistic or cultural content including, but not limited to the following:

- (a) General goods;
- (b) Professional, consultancy and recurring services;
- (c) Information and communications technology related goods and services; and
- (d) Minor works<sup>2</sup>.

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

1.3 These Guidelines cover the standard processes and procedures, roles and responsibilities, approval authority levels for the procurement of General Goods and Services.

1.4 While reasonably comprehensive, these Guidelines are not exhaustive. When employees have enquiries about these Guidelines or the procurement procedures, they must seek the assistance of the General Procurement Department (GPD) of WKCD for further clarification.

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<sup>1</sup> 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.

<sup>2</sup> Minor Works refers to building works that are relatively simple in nature, small in scale and low risk to safety.

## 2. Definitions

Word definitions and expressions as defined in the Policy shall apply to this set of Guidelines. The following terms when used in these Guidelines and the 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” <sup>3</sup> .
“Assessment Panel” or “AP”	Means the team responsible for the assessment of technical and/or fee proposals in quotations and tenders. They are also responsible for making recommendations and requesting approval from the Approving Authority, for the applicable awarding of contract, order or agreement, as applicable, following a quotation or tender process.
“Blanket Release Order”	Means the type of purchase order issued from the ERP System under a Framework Agreement. This type of purchase order has already established unit rates and an approved internal ceiling amount for spending within a specified period.
“Competitive Bidding” / “Competitive Procurement Process”	Means the procurement in which three or more suppliers are involved in a competitive supplier selection process.
“ERP System”	Means the enterprise resources planning (ERP) system deployed by the Authority to cover the system processes for financial, accounting and procurement functions.
“Framework Agreement”	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.
“General Procurement Department” or “GPD”	Means the department in the general procurement function responsible for the management of the Policy and related guidelines as stipulated in the Policy including the relevant Practice Notes. The roles and responsibilities of GPD are stipulated in Section 4 of the Policy.
“Open Tendering”	Means a procurement method under which the tender is openly published through the Authority’s website, and/or other appropriate channels such as selected local or overseas publications; and all interested suppliers are free to submit their tenders.

<sup>3</sup> Internal Circular No. 2017/053-06/FIN or later version

“Prequalification”	Means the assessment process of potential suppliers (based on pre-determined factors such as experience, financial ability, managerial ability, reputation, capability and track record, etc.) to develop a list of qualified bidders who will be invited to tender.
“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 of at least a Responsible Officer from the User Department and a member from the GPD. External parties such as consultants can also form part of the Procurement Team, if it is deemed relevant and necessary.
“Responsible Officer”	Means the person from any User Department responsible for the intended procurement.
“Restricted Tendering”	Means a procurement method under which selected or prequalified suppliers are invited to tender, based on a set of pre-determined criteria approved by the Approving Authority.
“Single Quotation”	Means the procurement process used when a single supplier is invited to <b>quote</b> based on pre-determined criteria approved by the relevant Approving Authority, for estimated contract values above \$50,000 and up to \$1.5million.
“Single Tendering”	Means the procurement process used when a single supplier is invited to <b>tender</b> based on pre-determined criteria approved by the relevant Approving Authority, for estimated contract values above \$1.5 million.
“Variation”	Means any change to the specification, cost of or duration 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 type of the purchases, as set out in Table 3.3 below.
- 3.2 Spend commitment on Goods and Services – A contract or agreement awarded through relevant procurement method with contractual commitment to spend is legally binding. User Departments shall not use other 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 Team if they have any doubt.

3.3 The principles and objectives of the procurement, as noted in Section 3 of the Policy, is to secure the most advantageous offers to supply the Goods and Services required to meet the Authority’s business and operational needs, whilst maximizing the Authority’s interest, art excellence and aspirations. It is important that procurement exhibit 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 (“LVP”)	Up to \$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. Use of the ERP System process is not required.
RFQ	Above \$50,000 and up to \$1.5million	At least <b>THREE</b> written <sup>4</sup> quotations <i>(otherwise, justifications are required for approval)</i>	Single Sourcing is acceptable only with proper justification and approval in accordance with Section 5 below.
Tendering	Above \$1.5million	<b>Please refer to Section 4</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 Sourcing is acceptable only with proper justification and approval in accordance with Section 5 below.

3.4 Low Value Purchase – for estimated contract values up to \$50,000

- (a) To meet immediate needs, User Departments may purchase Goods and Services not exceeding \$50,000 without issuing a Purchase Requisition (PR), RFQ/Purchase Order (PO). However, Responsible Officers should satisfy themselves that the prices for such purchases are fair and reasonable. The relevant Approving Authority’s prior approval should be obtained and recorded

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<sup>4</sup> A quotation in written format obtained from the invited suppliers in accordance with the return mode and deadline as specified in the RFQ.

where possible. Where regular or frequent purchases of Goods and Services are required, Framework Agreement or bulk purchases should be considered and arranged by other procurement methods such as RFQ or Tendering.

- (b) Payment for LVP can be done via reimbursement or petty cash in accordance with the relevant Finance policies and procedures.
- (c) Where it has not been possible to obtain prior approval to a LVP, 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. 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 under the circumstances. The completed form together with original receipts should be passed to the Finance Department who will arrange payment according to the relevant Finance policies and guidelines.
- (d) LVP should not be used for acquiring consultancy services, or direct hiring of human resources (including but not limited to temporary staff employees and casual workers, which should be conducted through Human Resources Department).**

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

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

- (a) Description of Goods and Services 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 justifications should be provided. Generally, 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;
- (c) Budget provision or funding source; and
- (d) Selection criteria and assessment method.

3.6 Assessment Panel

The membership of the AP shall comprise of at least **two** officers from the User Department who have the relevant subject matter expertise(s), and at least one representative from outside the User Department as deemed necessary to assure impartiality. **The Approving Authority of the assessment should not be involved in the AP.**

### 3.7 Sourcing Suppliers

The RFQ should be sent to the suppliers from sources that the Procurement Team considers appropriate or from the WKCDA’s suppliers lists, if available and appropriate. The Procurement Team should record the reasons for inviting the particular suppliers to the RFQ. Examples of acceptable reasons include, without limitation to:

- (a) the supplier is an incumbent supplier with satisfactory performance;
- (b) the supplier is identified through market research;
- (c) the supplier is on the supplier list with satisfactory performance record; or
- (d) the supplier is identified through expression of interest process or Prequalification.

### 3.8 Managing Conflict of Interest

Before the start of the RFQ assessment, all persons involved in the assessment process should declare any actual, potential or perceived conflict of interest in accordance with Section 8 below.

### 3.9 Number of Quotations and Assessment

- (a) The minimum number of written quotations for assessment should be obtained in accordance with the following:

For Estimated Contract Values	Number of Quotations Required	Assessment of Quotations
Above \$50,000 up to \$1.5million	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 approval by appropriate Approving Authority in accordance with these Guidelines and DOA Manual)</i>	By the approved AP as stipulated in Sub-section 3.6

*\* 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) Under no circumstances shall late quotations be accepted, unless with very strong justifications to the satisfaction of the Approving Authority and is recorded in writing.
- (c) Procedural details for RFQ are provided in “Practice Notes for RFQ and Tendering Procedures” in Appendix 2 (or later version).

### 3.10 Recommendation for RFQ Award or Abort

- (a) Upon completion of the RFQ assessment, the User Department shall submit a report to the Approving Authority, detailing either a recommendation for contract award or a recommendation to abort the RFQ. If there is any change to the original PR, PR approval is required for reissuing the RFQ.
- (b) For an RFQ which is solely based on price assessment, the User Departments should conduct an arithmetic check and compile a cost comparison table provided by the GPD, recommending the contract to be awarded to the lowest conforming quotation. For an RFQ which requires separate technical and price assessments, the User Departments should use the template available on the WKCD A Cultranet ([hyperlink](#)), to compile an assessment summary detailing the critical information for the required approval.
- (c) If a quotation contains any qualifications, including any departure from the Authority’s Standard T&Cs or if amended for the particular RFQ, the Responsible Officers should consult with the Legal Team as to whether the proposed departures are acceptable or acceptable after further required amendments as suggested by Legal Team. If it is considered possible to achieve an acceptable outcome with further discussions or negotiations with the supplier, recommendations 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” as stipulated in Section 4 shall be followed.
- (d) All acceptances shall be made in writing using the appropriate forms of acceptance e.g. a PO issued through the ERP System, a Letter of Acceptance (“LoA”) or a contract/agreement signed by the authorized signatory, that includes the agreed T&Cs (either the Authority’s Standard T&Cs or as amended and approved for the particular RFQ). The Procurement Team must make sure that all outstanding issues are clarified before making any acceptance.

## 4 Tendering

### 4.1 Types of Tendering

- (a) Open Tendering is the standard method of tendering unless proper justification and approval is obtained for using other tendering method.
- (b) Restricted Tendering should only be used under special circumstances, when Open Tendering would not be an effective means of procuring the required goods or services. Suppliers are invited to tender based on a set of pre-determined criteria, or results of a Prequalification exercise, as approved by the Approving Authority. The number of tenderers to be invited in Restricted Tendering shall depend on the number of interested potential suppliers identified via the appropriate sources such as WKCDA's suppliers lists supported by good performance records if available, or through market research. Subject to the pre-determined criteria, the Responsible Officers should identify and propose a reasonable number of tenderers in the "Tender Proposal" as detailed in Section 4 below and accompanied with the relevant supporting documents for approval. At least **THREE** tenderers are to be invited. Otherwise, approval by the relevant Approving Authority with supporting justifications should be obtained.
- (c) If a Prequalification for selecting capable tenderers is required for Restricted Tendering, a Tender Proposal containing a request to conduct a Prequalification exercise including all relevant information as detailed in Section 4 below should be submitted to the Approving Authority for approval. Invitations to Prequalification may take the form of Open Tendering or Restricted Tendering where the corresponding procedures apply. Subject to the approval of the Tender Proposal and Prequalification results by the Approving Authority, tender invitations are sent to the prequalified tenderers.
- (d) If the circumstances as specified in these Guidelines warrant the adoption of Single Tendering subject to the approval by the relevant Approving Authority, the procedures for Single Sourcing as detailed in Section 5 below should be followed.

### 4.2 Proposal to Proceed with a Tender (i.e. "Tender Proposal")

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 a PR in the form of the Tender Proposal. This Tender Proposal should include the following information for the Approving Authority:

- (a) a description of the background of the goods or services to be procured and the extent of work, skills and expertise required. In general, 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. If proprietary or brand name products are required, the technical and/or commercial reasons should be provided.;

- (b) the estimated value of the proposed contract(s) and the approved budget funding;
- (c) expected delivery schedule, date or contract period and tentative tendering programme;
- (d) 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 with an explanation of their professional capability, experience and performance records if available are required;
- (e) if official invitations are to be sent to particular suppliers, the reasons for including them;
- (f) the membership and responsibilities of the Procurement Team and the Tender Assessment Panel (“TAP”); and
- (g) the Prequalification criteria and associated 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 and associated passing mark where applicable, when separate assessment of the technical and price submissions is required.
- (h) The template for Tender Proposal is available on the WKCDA Cultranet ([hyperlink](#)).

4.3 The membership of the TAP as mentioned above shall comprise at least two officers from the User Department with the relevant subject matter expertise(s), including one officer at Grade 3 or above to be appointed as the chairman (“TAP Chairman”) and at least one other representative from an impartial department. The Approving Authority of the tender assessment should not be involved in the TAP.

4.4 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 tender -

- (a) Technical/Price Weighting – Contracts incorporating critical elements in: safety and/or operations, substantial technical complexity, quality, design, special skills and/or consultancy advisory, etc. which require a higher level of

coordination with the contractors or have a greater contract risks may justify an increased technical weighting. Whereas, an increased weighting on price may be more appropriate for generic or recurring supply of goods or services, or where the requirements can be well defined or highly quantifiable;

- (b) Weighting of Individual Components in Technical Weighting – Consideration should be given to the respective components and their relative importance in the overall contract scope, technical parameters and constraints.
- (c) Passing Mark Requirements in Technical Weighting – A passing mark ranging between 50% and 60% out of the maximum technical weighting is recommended for both the overall technical assessment or for the individual components, to ascertain the quality of a tenderer’s technical proposal. Setting a stringent passing mark may screen out tenderers with good performance in other aspects except for the criteria subjected to a passing mark, thereby limiting WKCDA’s choices. With a view to avoid disqualifying tenderers unnecessarily, passing mark requirements should be minimized and used with care.

#### Preparation of Tenders

- 4.5 Preparation of tenders shall be completed by the Procurement Team in accordance with the approved Tender Proposal.
- 4.6 The tender documents including assessment method and evaluation criteria shall be approved by the TAP Chairman, before the tender invitations are issued. In compiling the draft tender documents, the Procurement Team must carefully review and ensure the correctness and appropriateness of the respective sections they are responsible for. It is however the responsibility of the TAP Chairman to review and sign-off the complete set of tender documents before they are released to tenderers.
- 4.7 All tender documents should be comprehensive, clear and concise. The tender documents should be prepared in a manner that provides for an open and fair platform for tenderers to bid competitively. For procedural details, please refer to “Practice Notes for RFQ and Tendering Procedures” in Appendix 2 (or later version).

#### Legal Review of the Draft Tender Documents

- 4.8 Tender documents may subsequently constitute binding contract documents and must therefore contain suitable T&Cs to meet the user requirements whilst protecting the Authority’s interest. The Legal Team and Insurance Team should be consulted to ensure that the appropriate T&Cs have been adopted.

4.9 It is essential to allow sufficient time for both the legal review and clearance process. To facilitate a smooth review process, the Procurement Team should make sure the draft tender documents are in reasonably good order before sending them to Legal Team. Normally the review process shall not be less than 10 working days.

**Tender Invitation**

4.10 Authorized signatories for Invitations to Tender and Tender Addenda should conform to Sub-section 4.14 below. The TAP Chairman is responsible for ensuring that the tender package has been properly checked and approved for issue.

4.11 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 or Single Tendering, tenderer(s) shall NOT be informed that tenders are being invited on a restricted or single basis and shall be required to submit their tenders in the same manner as an Open Tendering procedure.

4.12 Any prescribed time-limits for the submission of tenders shall be adequate to allow the suppliers/tenderers to prepare their tender submissions. The closing dates as well as contingency plans in the event of a black rainstorm signal or tropical cyclone signal no. 8 or above, have to be specified in the tender documents. Normally, 30 calendar days will be allowed for tenderers to submit their bids.

4.13 Any request for an extension of the tendering period with supporting justifications shall be approved by the TAP Chairman before the original tender closing date. A tenderer’s request for an extension of the tender closing deadline shall be made in writing and shall not normally be granted unless considered reasonable due to the issue of either tender addenda or other unforeseeable circumstances.

4.14 Authorized Signatories

<b>Documents</b>	<b>Up to \$5 million</b>	<b>Above \$5 million</b>
Invitations to Tender/ Tender Addendum	CDepH / CDivH	CDepH / CDivH
Letters of Clarification	CDepH / CDivH	CDepH / CDivH
Letters of Acceptance / Formal Contract/ Agreement	Follow DOA Manual (Section J)	

**Submission of Tenders**

- 4.15 Tenderers shall be required to comply with the requirements for submission of tenders. These requirements shall be clearly described in the tender documents.
- 4.16 A “Three Envelope System” shall be adopted for tenders involving separate technical and price assessments. The requirement for and the process of the Three Envelope System shall be set out in the tender document.

#### Tender Opening

- 4.17 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 GPD or the Responsible Officer, if appropriate, to the tenderer concerned.
- 4.18 The officers with responsibility for opening the 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.

#### Tender Assessment

- 4.19 Before the start of the tender assessment, all persons of the TAP and Procurement Team, including Board members and external parties involved in the assessment process (including tender assessment, clarification, presentation and negotiation), shall declare any actual, potential or perceived conflicts of interest in written form, in accordance with Section 8 below.
- 4.20 Under no circumstances shall any amendment to the submitted tender (e.g. tender sum or deliverables) be accepted unless prior approval has been given by the Approving Authority during tender clarifications/negotiations.
- 4.21 Technical assessments, where applicable, should be finalised only after all clarifications have been made. The TAP Chairman shall conclude and sign-off the final technical assessment results before the 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 and recommendation for tender approval or seeking an additional step, such as tender negotiation, within the assessment process.

4.22 Tender assessment criteria should not be changed after the tender is issued.

#### Tender Negotiations (if necessary)

4.23 The purpose of the tender negotiation is to reach an agreement that will provide a better overall outcome for the Authority than would otherwise be achieved.

4.24 Before negotiations are conducted, the staff involved shall ensure that the justifications, recommended negotiation strategies including whether negotiations with bidder(s) other than the conforming one with the most advantageous offer (i.e. the lowest bid or the highest overall combined score where applicable) in the tender assessment, membership of the negotiation team and the desired outcomes / target(s) of the negotiation shall be discussed, developed and agreed by the TAP and approved by the Approving Authority. Only officers with no actual or potential conflicts of interest shall participate in the negotiations.

4.25 All negotiations whether by email, phone or in person shall include at least 2 members of the Procurement Team and the negotiation process shall be documented.

4.26 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. Negotiations with tenderer(s) other than the one offering the lowest conforming bid or the highest overall combined score would require justification and approval from the Approving Authority.

4.27 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.

4.28 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.

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

- 4.29 A Letter of Clarification (“LoC”) shall be prepared to reflect any changes to the submitted tender documentation that resulted from the clarification or tender negotiation process. The LoC shall capture all amended contract or agreement terms which the TAP is recommending for award.
- 4.30 The draft LoC shall be vetted by the Legal Team before being sent to the tenderer(s) for agreement (on a no commitment basis). Agreement from the shortlisted tenderer(s) of the LoC shall be obtained prior to seeking the approval of the contract award from the Approving Authority.
- 4.31 Reference to the approved LoC shall be incorporated into the LoA. The LoA will constitute a binding contract as soon as it has been signed by the Authority and the tenderer’s Form of Tender.

#### Recommendation for Award or Cancellation

- 4.32 Normally, the TAP shall recommend the conforming tender which offers the lowest price, or attains the highest overall combined score in the tender assessment. The TAP shall make such recommendation by producing a tender assessment report using the template available on the WKCDA Cultranet ([hyperlink](#)).
- 4.33 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-tender with revised specifications, terms and conditions. Approval of the cancellation of a tender exercise is not required when no tender has been received upon the tender closing.
- 4.34 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. The TAP shall clearly state in the tender assessment report any exceptional circumstances, where the TAP considers recommending a tender other than the conforming tender which offers the lowest price, or attains the highest overall combined score in the tender assessment. The TAP shall provide a detailed description of any deviation of the recommended tender from the specifications and/or the T&Cs with justifications for recommending the acceptance of such tender for approval.
- 4.35 The final tender assessment report shall be signed off by the TAP Chairman before it is submitted to the Approving Authority.

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



- 4.36 After approval has been given to the acceptance of a recommended tender by the Approving Authority, the User Department, with the support of GPD if applicable, will send a LoA (where necessary incorporating the LoC by reference) signed pursuant to Sub-section 4.14 above, to the successful tenderer. All contractual commitments with tenderers shall be made in the form of LoA(s), a signed contract(s)/agreement(s), or purchase order(s) that shall be aligned with the approved tender recommendations pursuant to Sub-section 4.32 to 4.35 above, prior to the commencement of the contract(s) or agreement(s).
- 4.37 Notice of tender award will be issued in the manner and form required, according to the requirements of WTO GPA, if applicable. Where publication is needed, the Authority will publish the name of the tenderer(s) 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.

## **5 Non-competitive bidding – for Single Sourcing**

- 5.1 Single sourcing shall only be used in circumstances when competitive bidding would not be an effective means of obtaining the required goods or services. It shall not be used for the purpose of avoiding competition among suppliers or in a manner that discriminates against non-local suppliers. Single Sourcing shall only be used under exceptional situations with prior approval.
- 5.2 Single Sourcing can be used subject to approval where:
- (a) no (reasonable) alternative or substitute exists that meets the specific or unique requirement(s), **AND** the requirement(s) can only be fulfilled by the particular supplier(s) either due to prior involvement in related works, or the supplier possesses unique knowledge, skills or experience that clearly make the supplier better qualified than any other supplier in that specific scenario; or
  - (b) the goods or service required is under the protection of patents, copyrights or other exclusive rights; or
  - (c) spare parts are required from the original equipment supplier or the equipment or services to be purchased must be compatible or interchangeable with existing equipment or services; or
  - (d) any alterations, extensions or maintenance that must be carried out by the original vendor, otherwise, the validity of a warranty or guarantee may be affected; or

- (e) there is extreme urgency brought about by unforeseeable events **AND** the urgency of the situation will not allow sufficient time for a competitive process; or
- (f) where the supplier is specified or to be selected via a competitive procurement process in accordance with the provisions in a contract with intermediate agent pre-approved by the relevant Approving Authority. For the avoidance of doubt, Single Sourcing to select a supplier by an intermediate agent is only allowed where there are provisions in the contract with the intermediate agent, which specify in detail the circumstances pursuant to which Single Sourcing would be approved. The Authority shall retain the sole discretion not to accept the appointment of the supplier sourced via the intermediate agent, if any non-compliance is identified or the proposed consultant or supplier's offer is not to the advantage of the Authority; or
- (g) where a particular supplier/brand is required in order to fulfill the Authority's contractual obligations specified in a separate contract/agreement (e.g. a particular product is specified in a partnership agreement with a third-party artistic institution). Such type of arrangement would limit the Authority's choices of suppliers; therefore, the user shall demonstrate the clear benefits to the Authority and the Legal Team should be consulted in compliance with relevant policies and guidelines.

#### Procurement of Single Sourcing Items

- 5.3 User Departments should involve the GPD at an early stage to carry out market research and explore if there are alternatives in the market. When Single Sourcing is identified as the most appropriate procurement method, the User Departments should seek comments from the GPD prior to submitting the PR or Tender Proposal to the relevant Approving Authority as specified in the DOA Manual for approval of non-competitive bidding process. Subject to justifications meeting the criteria stipulated in Sub-section 5.2 above and approval from the relevant Approving Authority, procurement of Single Sourcing items shall follow the processes and procedures for handling Restricted Quotation or Tendering, whichever may be applicable, except that only one supplier or tenderer is to be invited and approval is to be obtained from the Approving Authority for non-competitive bidding as specified in the DOA Manual.
- 5.4 In order to maintain fairness and reduce the risk to the Authority of receiving unfavourable quotations or tenders, suppliers or tenderers involved in Single Sourcing are not to be informed that they are being invited to a single quotation or tender. They shall be required to submit their quotation or tender by following the process for an open and competitive procurement method. RFQ or Invitation to

Tender where applicable, shall be sent in writing to the supplier or tenderer, otherwise justifications should be provided in the PR or Tender Proposal for approval.

- 5.5 The relevant officer(s) of the AP/TAP and Procurement Team involved in the assessment process of the quotation or tender shall declare any actual, potential or perceived conflicts of interest in written form, in accordance with Section 8 below.

## 6 Management of Variations to Orders, Contracts or Agreements

- 6.1 A Variation means any change to an existing order, a contract/agreement awarded via any type of procurement (e.g. LVP, RFQ or tendering) from the original. Variations should be avoided where possible unless the changes in specification, requirements or scope of the original approved provisions covered in an existing order, contract/agreement that could not be obtained using a separate order, contract/agreement through an independent procurement process. When determining whether approval of a Variation is necessary, User Departments should check against the prescribed provisions originally approved by the Approving Authority.
- 6.2 Approval of variations to orders, contracts or agreements, should be sought according to the following before any commitment is made to the supplier:

Accumulated Value (including the original contract value)	Variation amount <sup>5</sup> in % of original contract value	Approving Authority of Variation
Within the approval limit of the Approving Authority for the original contract <sup>6</sup>	Up to 20%	Approving Authority of the original contract
	Exceeding 20% and up to 50%	<b>One level higher</b> than the Approving Authority of the original contract
	Exceeding 50%	<b>Two levels higher</b> than the Approving Authority of the original contract

<sup>5</sup> Means the total variation amount in aggregate if there are multiple variations to the same contract.

<sup>6</sup> Where the accumulated value not exceeding \$50,000, approval of variations to orders, contracts or agreements for LVP is not required.

<b>Accumulated Value (including the original contract value)</b>	<b>Variation amount<sup>5</sup> in % of original contract value</b>	<b>Approving Authority of Variation</b>
Exceeds the approval limit of the Approving Authority for the original contract	Up to 50%	Approving Authority based on the accumulated contract amount
	Exceeding 50%	<b>The higher of the following:</b>  1) Two levels higher than the Approving Authority of the original contract, or 2) Approving Authority based on the accumulated contract value

6.3 If the original order, contract or agreement has been approved by the Board:

<b>Variation amount in % of original contract value</b>	<b>Variation Amount<sup>7</sup></b>				<b>Approving Authority of Variation</b>
	<b>Goods or Non-Consultancy Services</b>		<b>Consultancy Services</b>		
	<b>Competitive Bidding</b>	<b>Non-competitive Bidding</b>	<b>Competitive Bidding</b>	<b>Non-competitive Bidding</b>	
Up to 20%	Up to \$10M	Up to \$5M	Up to \$5M	Up to \$2.5M	CEO
	Up to \$20M	Up to \$10M	Up to \$10M	Up to \$5M	ET (or BM+ for M+ only, or BHKPM for HKPM only)
	Up to \$50M	Up to \$20M	Up to \$20M	Up to \$10M	ExCom
Exceeding 20%	Any				The Board

6.4 All Variations that are estimated to result in extensions of time and/or cost increases shall be processed through a written submission of the change requisition for budget review by the Finance Department before seeking the appropriate Approving

<sup>7</sup> Means the total variation amount in aggregate if there are multiple variations to the same contract.

Authority's approval. Supporting justification including estimates of potential extensions of time and cost increases shall be provided. Legal Team should be consulted when there is any variation to the original contract terms.

- 6.5 Provisional sum(s) can be included in the tender when the procurement needs are highly volatile and requirements cannot be clearly defined before an RFQ/tender is issued. The User Department will make their best estimation for the cost of the required items. Details of when and how such provisional sum(s) shall be instructed to be executed by contractors, suppliers, or 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 an RFQ/tender, the provisional amount(s) shall be included in the estimate of the total contract amount or ceiling when seeking award 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(s) or option(s), unless the total price of the item(s) will exceed the pre-approved ceiling value or provisions. PO(s) should be issued to instruct the execution of provisional/optional items.

## **7 Procurement Self-Service**

- 7.1 User Departments can carry out the entire procurement process by themselves (i.e. without the need to procure via the GPD), where:
- (a) there is a need for Goods and Services to be obtained for use outside Hong Kong (for example in preparing an exhibition in a foreign city or country and there is strong justification for buying the Goods and Services in the location outside of Hong Kong);
  - (b) the Goods and Services are needed immediately that the situation precludes the GPD from carrying out the procurement process (for example, as on-site variations or recovery of goods or services); or
  - (c) the items are under the "Exemption Items List" in Appendix 1 of the Policy.
- 7.2 User Departments and officers involved in such procurements must follow the procedural and process requirements as required by the Policy and these Guidelines.
- 7.3 User Departments shall maintain a record of all their awarded contracts. A list of all contracts awarded by the User Departments or contracts awarded following the User Departments' recommendation shall be sent to the GPD at least two weeks before the end of the following month, for record keeping purposes.

## **8 Declaration of Interest**

- 8.1 The Procurement Team, including the Approving Authority, should declare any actual, potential or perceived conflict of interests as soon as they take up the duties and as soon as they become aware of such actual, potential, or perceived conflict of interest. If any external party, e.g. consultant or contractors, is involved in the procurement process, the User Department should ensure that sufficient safeguards are in place to avoid conflict of interest in the procurement exercise. In particular, the external party should sign an undertaking to confirm, amongst others, the absence of any actual, potential or perceived conflict of interest situations in the procurement exercise.
- 8.2 Declarations/undertakings should be drawn to the attention of the TAP/AP Chairman while the declaration of the TAP/AP Chairman should be drawn to the attention of his or her supervisor. All such declarations/undertakings and follow-up actions taken (if any) must be recorded and properly filed before proceeding to the next stage of the procurement process.
- 8.3 The TAP/AP Chairman (or her/his supervisor) shall decide whether a person making a declaration of a potential conflict of interest should stand down from the procurement process.
- 8.4 In the event that there is any doubt, the Legal Team shall be consulted.

## **9 Reporting and Registering**

- 9.1 Any contract approved and awarded by the ET (including Subsidiary Boards) should be reported at least annually to the Board via the Board Secretary. In the report to the Board, a summary of the background and justification for using Restricted Tendering and the record of approval must be included.
- 9.2 All approved Variations must be recorded in the ERP System by the User Departments through revising the original PO for tracking purpose.
- 9.3 GPD shall keep the duly signed original contracts, if available other than contracts awarded through the User Departments' procurement self-service. User Departments shall keep written records, including the duly signed original contracts, of all procurements undertaken without the involvement of the GPD (i.e. procurement self-

service) for audit inspection. A summary report of these records (except LVP) shall be forwarded to the GPD on a quarterly basis.

- 9.4 Any contract awarded through Single Sourcing should be recorded in a register, to be maintained by the designated officer of the User Departments for audit inspection. Contracts, awarded through Single Sourcing should be reported to the CEO and copied to the GPD, the Finance Department and the Chief Audit Executive on a quarterly basis.
- 9.5 Reporting and registering of approved Variations, contracts approved and awarded through Single Sourcing by the Executive Team (ET) (including Subsidiary Boards), and procurements of Single Sourcing items undertaken without the involvement of the GPD (i.e. procurement self-service) where applicable, shall follow the same procedures as stipulated in this Section 9.

## **West Kowloon Cultural District Authority**

**July 2020**