

GENERAL GUIDELINES ON PROCUREMENT

This General Guidelines on Procurement (the Guidelines) is for the Grantee who is allocated with any grant from the Language Fund (LF). This should be read and adhered to by the Grantees, Project Leaders and staff handling the LF projects. The Grantee is requested to ensure that the requirements under the Guidelines are followed.

I. Introduction

This part provides guidelines to the Grantee for procurements made with the Grant from the LF. The Grantee is required to ensure that all procurements for goods and services are carried out in an open, fair and competitive basis.

II. Key Principles of Procurement

Segregation of Duties

2. The Grantee should ensure that segregation of duties is properly adopted in the purchase of goods and services, and a responsible person at an appropriate level within the organisation should be designated as the approving person. To provide adequate checks and balance, a clear segregation of staff functions is essential. Different personnel should be responsible for different stages of the procurement process, where feasible. The person who is responsible for calling a quotation or tender should be different from the person who is authorised to approve the quotation or tender.

Conflict of Interest

3. Also, staff dealing with procurement matters should declare any possible conflict of interest with any suppliers, and where appropriate, abstain from the evaluation or decision making process (a sample form on declaration of conflict of interest is given in **Annex A**). They should also note the potential adverse consequences of a conflict of interest situation as described in paragraph 4 of the *General Guidelines on Staff Administration*.

Open and Fair Competition

4. All bidders should be treated on an equal footing. Requirements, specifications and marking schemes (where applicable) should be drawn up in an objective manner, providing a level playing field for all to compete on an equal footing. All quotation bidders or tenderers should be provided with sufficient and equal knowledge of the procurement requirements and specifications of the goods or services through the quotation or tender documents. No one should get more information or more notice about the procurement. There should be no distortion of competition in discussions with actual or potential participants in the procurement process. **Any parties that are involved in the LF project or in drafting**

the quotation/tender documents should be excluded from participating in quote biddings/tenders.

5. As a norm, open bidding should be adopted as far as practicable. Single/restricted quotation or direct engagement of suppliers/service providers/consultants should be the exception and must be properly justified to the satisfaction of the SCOLAR Secretariat.

Clear Specifications

6. Specifications in the quotation or tender documents should be clear and specific. The specifications should be worded in easily comprehensible general terms based on the functional and performance characteristics of the products required so they are not restricted to a particular brand or supplier.

Transparency

7. To uphold public accountability and fairness of the procurement process, the procurement should be conducted in a transparent manner. In a procurement exercise, potential bidders should be given the same and sufficient information. Once the quotation or tender selection has resulted in the award of a new contract to a supplier, it is good practice to notify all other unsuccessful quotation bidders/tenderers in writing that they are not successful. There should be in place an auditable documentation trail regarding key decisions which provides clear accountability and could be subject to review.

Confidentiality

8. Quotation and tender information should be kept confidential with restricted access on a need-to-know basis. Each response from a potential supplier should be viewed as commercially confidential information and the staff involved should sign an undertaking that they would not make any unauthorised disclosure of quotation or tender information to any party outside of the formal evaluation process.

Value for Money

9. All procurement of goods and services should be based on value for money. Grantee should ensure goods or services they purchase for the LF project can deliver the output in an efficient and economical manner.

III. Procedural Requirements

10. Full information on the procurement requirements, including time and place for submission of quotations/tenders should be clearly defined in the quotation/tender documents and approved by the management.

11. Security measures and handling procedures should be adequate to prevent leakage of information, loss or damage to written quotations/tender documents etc.

12. There should be proper documentation and random audit checks throughout the process to ensure that the prescribed procedures are properly followed.

IV. Procurement Requirements

13. The LF procurement procedures are mainly structured in line with the financial thresholds set out in the Government's Stores and Procurement Regulations. For the purchase of goods, equipment and the procurement of services including consulting services with a value –

- (a) over HK\$5,000 but not exceeding HK\$50,000, a minimum of two quotations should be invited;
- (b) over HK\$50,000 but not exceeding HK\$1,400,000, at least five quotations should be invited; and
- (c) over HK\$1,400,000, a competitive tendering procedure should be adopted. In normal circumstances this will not apply to projects sponsored by the LF owing to its scale. In case this applies, please contact the SCOLAR Secretariat for details of the applicable procedures.

Please note that any failure of the Grantee to follow the prescribed procurement procedures herein may result in rejection of the claims of reimbursement of the relevant expenses. Any request for exceptional prior approval or covering approval will not be entertained in normal circumstances. If there are insurmountable practical difficulties in meeting the prescribed procurement procedures owing to very special circumstances, please contact the SCOLAR Secretariat forthwith for advice before any act of procurement.

14. The Grantee should not evade any of these procurement procedures by dividing a single requirement into a number of requisitions for the purpose of inviting quotations with a purchase value below any of the dollar thresholds contained in these procedures.

15. The Grantee should ensure that the purchase of goods or services in relation to its project with a purchase value within the thresholds stated in paragraph 13 should be made on a competitive basis by inviting quotations from the respective number of suppliers to ensure openness and value for money. The Grantee shall select the supplier that meets the procurement requirements and has submitted the lowest bid. If the lowest conforming offer is not selected by the Grantee, full justifications must be given and prior written approval must be sought from the SCOLAR Secretariat in advance. Failure by the Grantee to seek prior written approval may result in rejection of the claims of reimbursement of the relevant expenses. Fragmentation of orders or bids with the purpose or effect of avoiding the need to invite quotations shall be absolutely prohibited.

16. The Grantee should issue a quotation to potential quotation bidders and set up an evaluation committee of no less than two appropriately skilled and knowledgeable persons. Potential quotation bidders should have a reasonable duration to respond. The Grantee should advise the successful quotation bidder and confirm by sending an order or a written acceptance, and also advise the unsuccessful quotation bidders. All quotations must be properly documented and recorded.

17. The Grantee should include anti-bribery and anti-collusion clauses in the tender/quotation documents and a probity clause prohibiting the service provider and its staff from offering, soliciting or accepting bribes when performing duties under the contract. Samples of such clauses and warranty are given in **Annex B**.

Direct Purchase

18. Direct purchase of goods or services by cash at a value up to HK\$5,000 may be allowed, provided that the Project Leader is satisfied that the direct purchase is essential and the price is fair and reasonable.

Outsourcing

19. The principal purpose of the LF to transfer money to the Grantee is to accomplish the stated purpose of the Approved Project Proposal using the Grantee's best effort. The Grantee is not allowed to contract out the proprietary expertise of the project team members which are essential for achieving the purpose of the Project.

20. In case non-proprietary services are to be outsourced, the Grantee/project team members and their direct Relatives are not allowed to bid for the contract as a general rule.

21. When outsourcing is used as stipulated in the Approved Project Proposal, the Grantee has the responsibility to ensure compliance with the requirements of the LF. The Grantee should have in place a credible system to monitor the outsourced services.

V. Reference Materials

22. The Grantee should refer to the chapter on "Procurement" in the *Best Practice Checklist on Strengthening Integrity and Accountability – Grantee's Guidebook* published by the Corruption Prevention Department of the Independent Commission Against Corruption and the relevant website at the time of publishing this version of Guidelines is:

https://cpas.icac.hk/EN/Info/Lib_List?cate_id=3&id=142

<Name of the Grantee>
Declaration of Conflict of Interest

Part A – Declaration *(To be completed by Declaring Staff)*

To: (Approving Authority)

I would like to report the following existing/potential* conflict of interest situation arising during the discharge of my official duties:

Persons/companies with whom/which I have official dealings
My relationship with the persons/companies (e.g. Relative)
Relationship of the persons/companies with our organisation (e.g. supplier)
Brief description of my duties which involved the persons/companies (e.g. selection of staff, handling of tender/quotation exercise, etc.)

Date

 (Name of Declaring Staff)
 (Title / Department)

Part B – Acknowledgement *(To be completed by Approving Authority)*

To: (Declaring Staff)

Acknowledgement of Declaration

The information contained in your declaration form of _____ (Date) is noted. It has been decided that:

- You should refrain from performing or getting involved in performing the work, as described in Part A, which may give rise to a conflict.
- You may continue to handle the work as described in Part A, provided that there is no change in the information declared above, and you must uphold the organisation’s interest without being influenced by your private interest.
- Others (please specify): _____

Date

 (Name of Approving Authority)
 (Title)

* Please delete as appropriate

Sample Probity Clauses for Tender/Quotation Invitation Documents

- (1) The bidder/tenderer shall not, and shall procure that its Directors, employees, agents and sub-contractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Cap. 201), in connection with the quotation/tendering and execution of this contract.
- (2) Failure to so procure or any act of offering, soliciting or accepting advantage referred to in (1) above committed by the bidder/tenderer or by a Director, employee, agent or sub-contractor of the bidder/tenderer shall, without affecting the bidder's/tenderer's liability for such failure and act, result in its quotation/tender being invalidated.

Sample Anti-collusion Clauses for Tender/Quotation Invitation Documents

Anti-collusion

- (1) The tenderer/bidder shall not communicate to any person other than <Name of the Grantee> the amount of any tender/quotation, adjust the amount of any tender/quotation by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not tender/quote or otherwise collude with any other person in any manner whatsoever in the tendering/bidding process. Any breach of or non-compliance with this sub-clause by the tenderer/bidder shall, without affecting the tenderer's/bidder's liability for such breach rules and laws or non-compliance, invalidate its tender/quotation.
- (2) Sub-clause (1) of this Clause shall have no application to the tenderer's/bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of tender/quoted price and communications in strict confidence with its consultants/sub-contractors to solicit their assistance in preparation of tender/quotation submission.
- (3) The tenderer/bidder shall submit to <Name of the Grantee> a duly signed warranty in the form set out below to the effect that he understands and will abide by these clauses. The warranty shall be signed by a person authorised to sign the contract on the tenderer's/bidder's behalf.
- (4) Any breach of any of the representations and/or warranties by the tenderer/bidder may prejudice the tenderer's/bidder's future standing as a contractor of <Name of the Grantee>.

To: <Name of the Grantee>

Dear Sir/Madam,

Warranty

- (1) By submitting a tender/quotation, the tenderer/bidder represents and warrants that in relation to the invitation of tender/quotation of [description]:
 - (i) it has not communicated and will not communicate to any person other than the <Name of the Grantee> the amount of any tender/quoted price;
 - (ii) it has not fixed and will not fix the amount of any tender/quoted price by arrangement with any person;
 - (iii) it has not made and will not make any arrangement with any person as to whether it or that other person will or will not submit a tender/quotation; and
 - (iv) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering/bidding process.
- (2) In the event that the tenderer/bidder is in breach of any of the representations and/or warranties in clause (1) above, the <Name of the Grantee> shall be entitled to, without compensation to any person or liability on the part of the <Name of the Grantee>:
 - (i) reject the tender/quotation;
 - (ii) if the <Name of the Grantee> has accepted the tender/quotation, withdraw its acceptance of the tender/quotation; and
 - (iii) if the <Name of the Grantee> has entered into the contract with the tenderer/bidder, terminate the contract.
- (3) The tenderer/bidder shall indemnify and keep indemnified the <Name of the Grantee> against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties in clause (1) above.
- (4) A breach by a tenderer/bidder of any of the representations and/or warranties in clause (1) may prejudice its future standing as a <Name of the Grantee>'s supplier or service provider.
- (5) Clause (1) shall have no application to the tenderer's/bidder's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the tender/quoted price, or with its professional advisers, and consultants or sub-contractors to solicit their assistance in preparation of tender/quotation submission. For the avoidance of doubt, the making of a bid by a tenderer/bidder to the <Name of the Grantee> in public during an auction will not by itself be regarded as a breach of the representation and warranty in clause (1)(i) above.
- (6) The rights of the <Name of the Grantee> under clauses (2) to (4) above are in addition to and without prejudice to any other rights or remedies available to it against the tenderer/bidder.

Authorised Signature and Company Chop : _____
Name of Person Authorised to Sign (in Block Letters) : _____
Name of Tenderer/Bidder in English (in Block Letters) : _____
Date : _____