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The Government of the Hong Kong Special Administrative Region

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Development Bureau  
**Technical Circular (Works) No. 5/2012**

**Guidelines on the Classification of  
Works Contract and Service Contract for Procurement**

**Scope**

This Circular sets out guidelines on the classification of works contract and service contract for procurement of public works.

**Effective Date**

2. This Circular takes immediate effect.

**Effect on Existing Circulars**

3. This Circular shall be read in conjunction with ETWB TCW No. 33/2004, titled "Tender Procedures for Procurement governed by the Agreement on Government Procurement of the World Trade Organization" (WTO GPA).

## **Background**

4. Government procurements are governed by the Stores and Procurement Regulations (SPR). When the purchases of stores and services (excluding consultancy services) exceed the respective financial limits set out in SPR, departments shall follow tender procedures laid down in Chapter III and supplementary instruction. When the value of procurement exceeds the WTO GPA thresholds, additional requirements to comply with WTO GPA provisions shall apply. In determining whether WTO GPA provisions shall apply, the classification of services including mixed services shall strictly refer to United Nations Provisional Central Product Classification Code, which is accessible at <http://fb.host.ccgo.hksarg/spr/spr.htm>, but not the guidelines promulgated under this circular and any other documents.

5. For the administration of procurements and contracts, Government procurement of stores and services (excluding consultancy services) can be made in the form of a works contract, service contract, or contract for the supply of stores. By the very nature of the works to be procured, the use of “works contracts” is more common for procurement relating to construction of buildings, civil engineering works, electrical and mechanical (E&M) facilities as well as other works-related services. On the other hand, “Service contract” and “contract for the supply of stores” are often used only for the procurement of non-works-related services and purchase of stores respectively.

6. SPR sets out procedures for the procurement of “services for construction and engineering works” and “other services”. As expressly specified in SPR 220(b), “services for construction and engineering works” only cover those services which fall under Division 51 of the United Nations Provisional Central Product Classification (CPCprov) Code. However, there have been justifiable cases to adopt works contract form for procuring services outside this Division. The classification of works contracts, that should be subject to the tendering arrangements as set out in the Development Bureau (DEVB)’s technical circulars, would therefore need to be better defined to ensure consistency.

7. In addition, concerns have been raised on the classification of mixed contracts involving the bundling of both works and non-works services in a single contract. In particular, the “works contract” approach has been adopted for some mixed contracts<sup>1</sup> although the value of non-works services was higher than that of works services, which would subject tenderers to more stringent financial requirements as compared with the use of service contract. Also, as selective tendering is adopted for works contracts, tender invitation will generally be issued to those on the approved lists of contractors/suppliers only and thus, casting doubt on a possibility of limiting competition. The classification of mixed contracts has to take into account the particular nature, needs and relative proportions of the different services involved so that these requirements of works contract will be imposed reasonably.

## **Policy**

8. A consistent approach in classification of contracts should be adopted for procurement of public works. The set of Guidelines at the **Appendix** aims to help departments to classify the procurement of services between “works contracts” and “service contracts” systematically with a view to achieving –

- (a) proper use of an appropriate form of contract as some provisions in works contract may not be necessary for service contract and vice versa;
- (b) proper use of an appropriate type of tendering and associated tender procedures for an open and competitive bidding;
- (c) proper financial vetting according to the different requirements for works and service contracts; and
- (d) compliance with relevant procedures for seeking approval from the appropriate authority as set out in SPR.

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1. Example 1 – Sampling and testing works were tendered by using the “works contract” approach. The tender is not subject to WTO GPA and the sampling and testing services are not covered by HKC’s Annex 4 and Annex 5 of Appendix I of WTO GPA. Example 2 – “Works contract” is adopted for the contract for the operation of construction waste sorting facilities. Aggregate value of the non-construction service is greater than the value of construction service. Other examples include the maintenance contracts for E&M system, which may not be regarded as construction services under WTO GPA unless it involves substantial modification to the building requiring the performance of “special trade construction work” of CPCprov Division 51.

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## **Enquiries**

9. Enquiries on this circular should be addressed to Chief Assistant Secretary (Works)7 of DEVB.

**( C S Wai )**  
**Permanent Secretary for Development (Works)**

**Guidelines on the Classification of  
Works Contract and Service Contract**

**Preamble**

This set of guidelines (Guidelines) outlines the guiding principles on the use of works contract and service contract for the procurement of works-related services, non-works-related services and a mix of the two types of services. Advice on works policies from the Development Bureau should be sought where necessary.

**1. Works Contracts vis-à-vis Service Contracts**

1.1 “Works contracts” are characterized by more comprehensive and detailed contract terms and conditions to cater for a diversity of works nature, complexity of quality requirements, needs for engineering/expertise input, and risks associated with site variations and default of contractors. A “Works contract” may also include top-up provisions for the fulfillment of project-specific requirements and contractual obligations such as site safety, environmental protection and wage payment by contractors. On the other hand, service contracts are generally less complex in contract terms and straightforward for implementation. The major differences in procedures and regulations for the procurement of works contract and service contract are shown in Annex A.

1.2 In the context of CPCprov Division 51, pre-erection works, new construction and repair, alteration, restoration and maintenance works on residential buildings, non-residential buildings or civil engineering works could be considered as “construction services”, leading to the question that whether procurement of some services (e.g. maintenance and overhaul of E&M machinery and equipment) not regarded as “construction services” under WTO GPA should adopt the “works contract” mode and the requisite procedures. This leads to the concern whether the term “works contract” should adopt a broader meaning than “construction services” so that the procurement procedures for the former can apply. The added complication is the need to enhance work integration and singleton responsibility, non-construction service maintenance works coupling with construction service maintenance works under one contract (“mixed contract”).

## **2. Classification of Works Contracts and Service Contracts**

### **2.1 Definition of “Works-related Services” and “Non-works-related Services”**

2.1.1 Based on past experience, Works Departments’ (WDs) procurement can broadly be classified into “works-related service” and “non-works-related service” to cater for the needs and operations, as follows –

#### **Works-related Services<sup>1</sup>**

- (a) preparation work at an existing or future construction sites, including any affected areas, for building and/or civil engineering facilities (i.e. site investigation involving sampling and field measurement but excluding geophysical testing, demolition, site formation/clearance, excavating and earthmoving, or scaffolding work);
- (b) construction of new building and/or civil engineering facilities (either permanent or temporary);
- (c) provision of common building services, E&M and electronic installations in new or existing building and/or civil engineering facilities (either permanent or temporary); and
- (d) maintenance, repair, restoration, refurbishment or replacement work for existing facilities and installations under paragraphs 2.1.1(b) and (c) above and off-site engineering tests including environmental monitoring.

#### **Non-works-related Services**

- (e) inspection, operation and/or management of existing building, civil engineering, building services, E&M and/or electronic facilities;
- (f) supporting service outside construction sites for building and civil engineering facilities (e.g. laboratory testing); and
- (g) any other services not mentioned in paragraphs 2.1.1(a) to (f) above.

2.1.2 Generally, “works contracts” and “service contracts” should be used for procurement of works-related services and non-works-related services respectively.

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<sup>1</sup> The works-related services defined herein may or may not be classified as “construction services” under CPCprov 51.

2.1.3 In line with the WTO GPA's classification, the procurement of the preparation work on construction sites described in paragraph 2.1.1(a) above, "works contracts" should be adopted. Regarding the procurement of new facilities and installations in paragraphs 2.1.1(b) and (c) above, the respective "works contract" form explicitly developed for the purpose, should apply.

2.1.4 Although not necessarily covered by CPCprov Division 51, the works-related services in paragraph 2.1.1(d) involve more or less the same work processes and requirements as for the new works mentioned in paragraphs 2.1.1(b) and (c), albeit just with a generally smaller scale, and are subject to the same contract terms and conditions, works items and payment method as being used for new installations for which "works contract" is applicable.

## 2.2 Classification according to WTO GPA's Definition

2.2.1 The services being procured should be classified as "construction services" if they fall under the definition of "construction services" in HKC's Annex 5 to Appendix 1 of WTO GPA, otherwise they should be classified as "non-construction services", including those falling under the definition of "services" in HKC's Annex 4 to Appendix I of WTO GPA. If the estimated contract value exceeds the relevant threshold of WTO GPA (i.e. 5,000,000 SDR for construction services and 130,000 SDR for services other than construction services), WTO GPA provisions are applicable and shall be complied with.

2.2.2 As for "mixed services", the classification should be based on the composition of construction services and non-construction services with regard to the CPCprov Division 51 code. An objective analysis of the services being procured should then be carried out according to the method stated in "Qs & As on WTO GPA" as may be updated from time to time by the Department of Justice ("DoJ") attached to SFST's memo ref. (44) in TsyB T 00/810/6/33/0 Pt. 2 dated 11 August 2011. A contract for mixed services should be a "construction services contract" if the aggregate value of the construction services is greater than that of non-construction services, or vice versa. The corresponding threshold value and aggregate value of the construction services and non-construction services should be considered to determine whether the tender

shall be subject to WTO GPA provisions. A flow chart showing the classification according to WTO GPA's definition is attached in Annex B.

## 2.3 Classification of "Works Contracts" according to Works-related Service

2.3.1 After determining the need for compliance with WTO GPA provisions as mentioned in Section 2.2 above, selection of a suitable contract form to enable proper management of the works should be considered. A contract shall be classified as a "works contract" if –

- (a) all the services being procured under the contract are works-related services defined in paragraphs 2.1.1(a) to (d) above; or
- (b) a mixed contract comprising both works-related services and non-works-related services provided that the aggregate value of the works-related services is greater than that of the non-works-related services (i.e. the Lion's share principle).

2.3.2 There were cases in which WD wished to classify a mixed contract not meeting paragraphs 2.3.1(a) or (b) as a works contract. For such cases, an officer at D2 rank or above of the procuring WD must first be personally satisfied with the criteria below –

- (a) the value of the works-related services exceeds the financial limit for a Category D item<sup>2</sup> although majority of services being procured are non-works-related;
- (b) the services being procured require significant works management, engineering input, construction expertise, deployment of skill personnel with engineering training and close site supervision;
- (c) the services being procured have essential quality requirements, non-compliance of which could lead to serious consequences;
- (d) contract variations and claims are anticipated due to variations of actual conditions of the site/facility/equipment or unforeseeable events;
- (e) there are significant concerns over site safety, environmental protection and other obligations such as sub-contractor management, site

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<sup>2</sup> Works with value above the financial limit of Category D item are not minor in nature. Substantial input from contractor with engineering knowledge is required. Failure in delivery of works will lead to considerable consequences.



- cleanliness, wage payment protection and public health and safety; and
- (f) there are serious consequences in case of default of the contractor.

2.3.3 WDs should then seek policy support from the DEVB in the tender preparation stage for adoption of the works contract form for mixed contracts. WDs may also consult DoJ on the suitable contract form of the services being procured if in doubt.

2.3.4 Notwithstanding the relevant provisions set out in the above Sections, a mixed contract having both works-related services and non-works-related services in any proportions should be avoided as far as practicable unless an officer at D2 rank or above of the procuring WD has personally endorsed it with due considerations to the following –

- (a) needs and synergy effect in terms of cost and contract management effort, demanding a high level of management skill capacity; or
- (b) the mixed services should preferably be carried out by the same service provider for minimizing the risk in delivering the services; or
- (c) where different service providers are involved, there is a special coordination requirement between the service providers for the works-related services and that of the non-works-related services, and a joint venture or subcontracting relationship between the service providers (with the service provider for “works-related services” being the lead partner in a joint venture or as the main contractor) is considered to be most suitable.

2.3.5 A flow chart showing the classification of contract form according to the “works-related services” and “non-works-related services” is given in **Annex C**.

## 2.4 Pre-endorsed List of using Works Contract for Procurement

2.4.1 Based on the classification criteria set out in Section 2.2 and paragraph 2.3.1 above, a list of the more usual services which can be procured using “works contract” form has been pre-endorsed and is given in **Annex D**. It should however be noted that the list is not exhaustive and any major changes of the works and/or non-works components in the services being procured would

warrant a review on the suitability of form of contract. If in doubt, WDs should seek early advice from DoJ on WTO GPA and/or from DEVB on these Guidelines and related works policy during tender preparation stage to avoid any improper adoption of contract form for the procurement.

## 2.5 Classification of “Service Contracts” according to “Non-works-related” Services

2.5.1 A contract shall be classified as a service contract if all the services being procured are regarded as non-works-related services defined in paragraphs 2.1.1(e) to (g) above.

2.5.2 Subject to paragraph 2.3.2 above, a mixed contract comprising both works-related services and non-works-related services should be classified as a service contract if the aggregate value of the non-works-related services is greater than that of the works-related services.

## 2.6 WTO GPA Thresholds and Financial Limits under SPR

2.6.1 In accordance with SPR 220(b) and (c), bureaux/departments shall follow the tender procedures laid down in Chapter III of SPR and supplementary instructions, as appropriate, when making purchases with a value exceeding \$4 million for services for construction and engineering works which fall under CPCprov Division 51 and purchases with a value exceeding \$1.43 million for other services (excluding consultancy services) including those classified as work-related services under paragraph 2.1.1(a) to (d) above. Works-related services falling within the definition of construction services under CPCprov Division 51 would be subject to WTO GPA if the cost exceeds 5,000,000 SDR. For works-related services not falling under CPCprov Division 51 but covered by HKC’s Annex 4 to Appendix I of WTO GPA, the threshold for WTO GPA will be 130,000 SDR and procurement of such services exceeding \$1.43 million would be subject to the tender procedures laid down in Chapter III of SPR.

2.6.2 WTO GPA thresholds and the prescribed financial limits under SPR are given in **Annex E** for different types of works contracts and service contracts. For procurement of stores and services not exceeding the prescribed financial limits, procuring departments shall follow the procurement procedures laid down in SPR 245 to 275 and 280 to 290.

### **3. Procedural Differences of the Procurement of Works Contracts and Service Contracts**

3.1 The major differences in procurement regulations and procedures between works contracts and service contracts are given below for reference.

#### **3.2 Form of Contract**

3.2.1 For a works contract, one of the following standard general conditions of contract (GCC) should be used as supplemented by special conditions of contract clauses where applicable –

- GCC for Building Works
- GCC for Civil Engineering Works
- GCC for Electrical and Mechanical Engineering Works
- GCC for Term Contracts for Building Works
- GCC for Term Contracts for Civil Engineering Works
- GCC for Term Contracts for Electrical and Mechanical Engineering Works
- GCC for Design and Build Contracts

3.2.2 For service contracts, the standard terms and conditions of GLD-Terms-2 should be used together with the standard form “Tender for Services” (GF 231). If WDs consider that the standard form not suitable for use, they may, in consultation with DoJ, amend the standard form or design a non-standard form to meet their specific requirements.

#### **3.3 Legal Vetting Requirements**

3.3.1 For non-typical works contracts and complicated service contracts, WDs should consider the need to prepare and incorporate non-standard contract provisions in tender documents in consultation with the Legal Advisory Division (Works) of DEVB (LAD(W)) and DoJ respectively. The tender documents for works contracts of value exceeding \$300 million and service contracts of value exceeding \$100 million should be legally vetted by LAD(W) and DoJ respectively.

### 3.4 Approving Authority for Tender/Quotation

3.4.1 For quotations for works contracts with services covered by CPCProv Division 51 with a value not exceeding \$4 million, they should be approved by the relevant authority stated in SPR 280. Public Works Tender Board (PWTB) will consider and decide on the acceptance of all tenders for engineering and building works (including demolition works), supply of materials and specialist services related to engineering and building works, not exceeding \$30 million in value in respect of any one contract. For works contracts exceeding \$30 million, tenders should be approved by the CTB. Where simplified tendering arrangements apply and the works contract is not subject to WTO GPA and not exceeding \$55 million each, the Controlling Officer (CO) has the delegated authority to approve the award of works contracts in accordance with the simplified tendering procedures in ETWB TCW No. 24/2001 and Financial Circular No. 3/2009 (or any other prevailing circular)..

3.4.2 For service contracts classified according to Section 2.5 with a value exceeding \$1.43 million, the Government Logistics Department Tender Board (GLDTB) or CTB considers and decides on the acceptance of tenders subject to the authorized financial limits of the relevant tender boards. For same type of service contracts but with values not exceeding \$1.43 million, WDs should refer to SPR 280 for the relevant authority for approving the acceptance of quotations.

### 3.5 Financial Vetting

3.5.1 For works contracts classified as aforementioned shall be subject to the financial vetting requirements as set out in the Contractor Management Handbook (CMH) and checked by CTA(F) of DEVB.

3.5.2 Service contracts classified according to Section 2.5 should be governed by the financial vetting requirements set out in SPR 370(b) and Appendix III(H) of SPR. While contract deposits in the form of cash or banker's guarantee are considered acceptable in lieu of financial vetting or where the tenderer has failed in the financial vetting for service contracts in accordance with SPR 362 and Appendix III(H) of SPR, these options are not acceptable for works contracts.

### 3.6 Authority for Contract Variations

3.6.1 Delegated authorities for contract variations under works contracts and service contracts are given in Items A and C of Appendix V(B) to the SPR. More levels of delegation (down to Senior Engineer level or equivalent) and higher financial limits are delegated under works contracts whilst only directorate grades are delegated under service contracts.

**Works Branch  
Development Bureau  
November 2012**

**Major Differences in Procedures and Regulations for  
the Procurement of Works Contract and Service Contract**

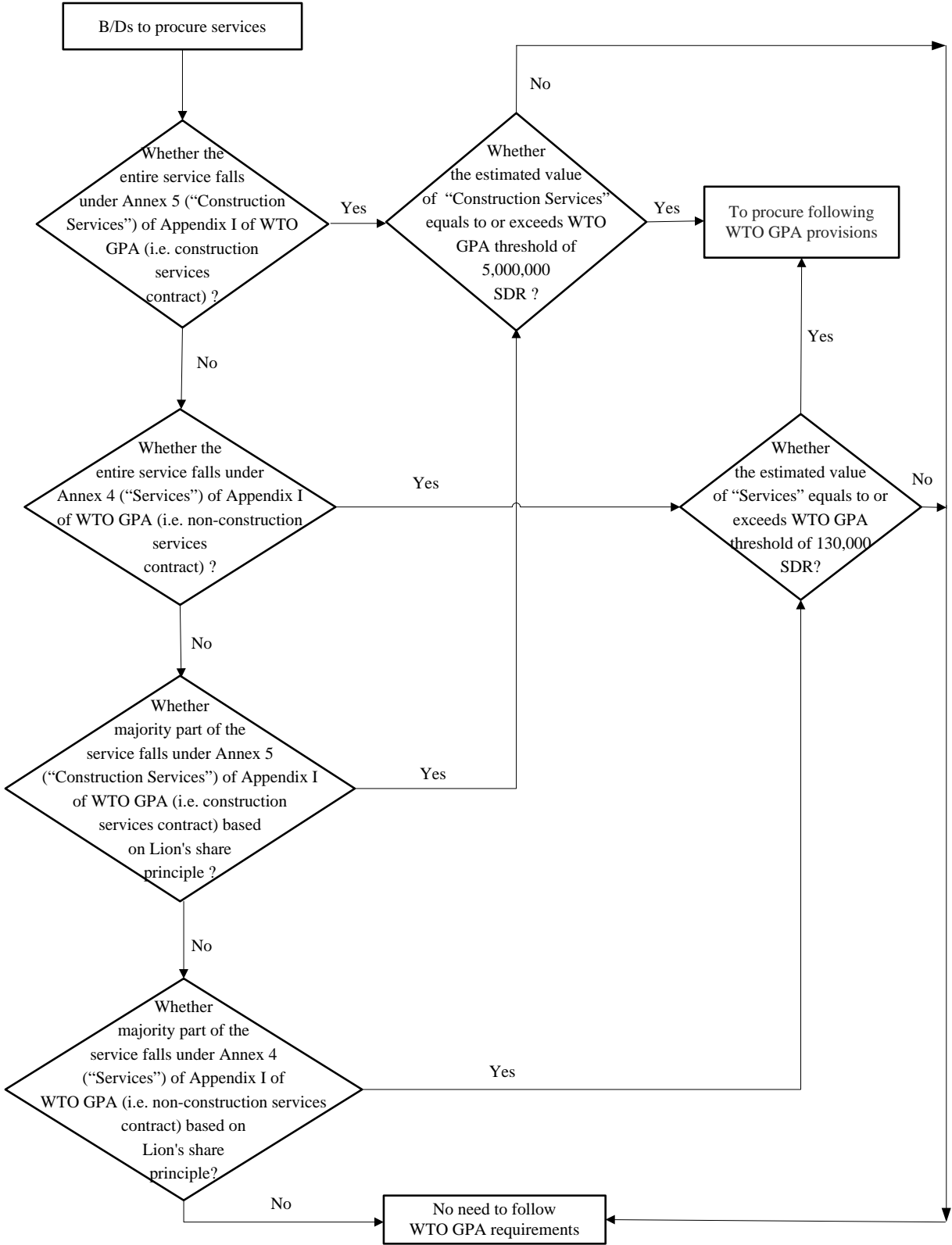
	<b>Procedures</b>	<b>Works Contract</b>	<b>Service Contract</b>
1	Standard form of contract	GCC for building/civil engineering/ E&M engineering works	GLD-Terms- 2
2	Legal vetting requirement [SPR 345(e)]	For contract > \$300M, legal vetting by LAD(W)	For contract >\$100M, legal vetting by DoJ
3	Simplified tendering [FC No. 3/2009]	Yes if not covered by WTO GPA and not exceeding \$55M, and no otherwise	No
4	Authority for acceptance of tenders	CO (if under simplified tendering procedure) /PWTB/CTB	GLDTB/PWTB (See Note)/CTB
5	Authority for rejection of qualified tenders [SPR 365(i)]	Delegated to CO for contracts not exceeding \$55M under simplified tendering procedure	No delegation
6	Financial vetting [SPR 362(a) and (b) and SPR 370(b)(i)]	Compulsory for contracts with value >\$5M (no substitution by bond)	Can be substituted by a banker's guarantee under specified circumstances
7	Authority for contract variations [Items A and C of Appendix V(B) of SPR]	More levels of delegation (down to Senior Engineer level or equivalent) and higher financial limits	Delegated to directorate grades only
8	Initiate tendering before funding is secured [SPR 335 and 336]	Yes	Yes
9	Authority for tender negotiation [SPR 385(c)(iii)]	Full delegation for contracts not exceeding \$55M (if under simplified tendering procedure) and partial delegation for others	Partial delegation
10	Authority for cancellation of tender [SPR 365(i) and 380(e)]	Delegated to CO for works tenders not exceeding \$21M (if under simplified tendering procedure)	No delegation

	<b>Procedures</b>	<b>Works Contract</b>	<b>Service Contract</b>
11	Award of contracts by CO [SPR 375(d)]	Not exceeding \$55M (if under simplified tendering procedure)	Not applicable
12	Formula approach in tender evaluation [ETWB TCW No. 8/2004]	Applicable	Not applicable
13	Performance reporting	Yes	Yes
14	Contract price fluctuation [Paragraph 8(b) of Appendix III (F) of SPR]	All except E&M works, irrespective of duration [ETWB TCW No. 21/2003]	Usually not necessary for service contracts with a duration of 1 year or less
15	Retention money [SPR 363]	Groups A/B/C contracts – 5% / 1.5% / 1% Term contracts – 10% [WBTC No. 10/97]	5%
16	Additional contract provisions	(i) Pay for safety and environment [WBTC No. 19/2005] (ii) Site cleanliness [WBTC No. 8/2010] (iii) Wage payment measures (Labour Relations Officer, Mandatory Provident Fund) (iv) Subcontractor management including Voluntary Subcontractor Registration Scheme [ETWB TCW No. 13/2004]	Tightened measures for service contracts that rely heavily on the deployment of non-skilled workers

Note :

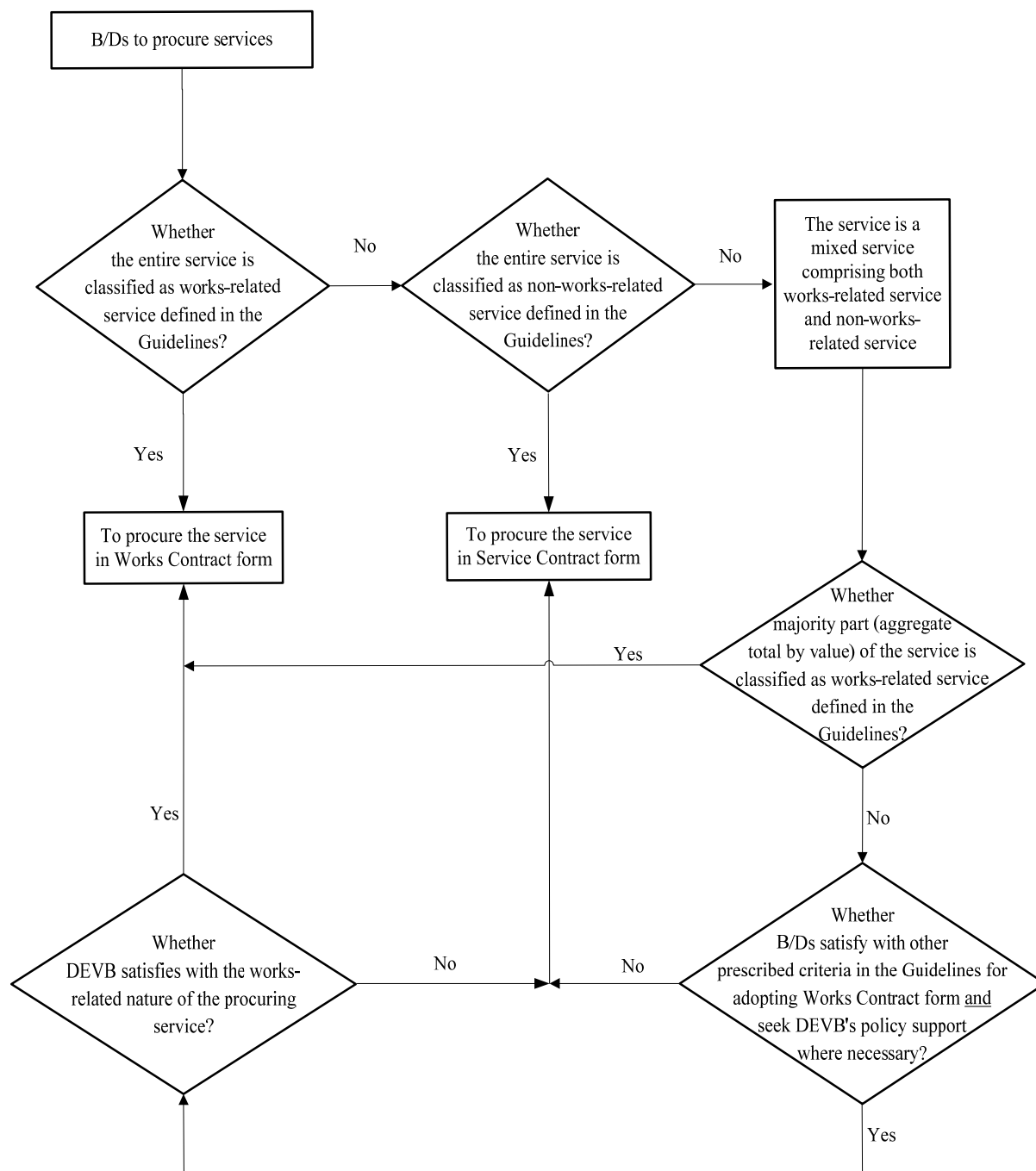
The PWTB will (i) consider and decide on the acceptance of all tenders for engineering and building works (including demolition works), supply of materials and specialist services related to engineering and building works, not exceeding \$30 million in value in respect of any one contract; and (ii) consider any matters referred by lands and works departments on tenders and contracts not exceeding the financial limit of \$30 million.

Flow Chart 1 : Classification of Services according to WTO GPA





**Flow Chart 2 : Classification of Works Contract and Service Contract Form for Procurement**



**Pre-endorsed List of Works-related Services to use Works Contract for Procurement**

(The list will be reviewed when additional contracts have to be proceeded with works contract form)

- Services prescribed under paragraph 2.1.1 (a) to (d)<sup>3</sup> of the Guidelines
- Maintenance of slopes and associated landscaping works including landslip prevention and mitigation works
- Greening/landscape works and establishment works
- Maintenance of drainage and sewage
- Management and maintenance of roads
- Management, operation, installation and maintenance of public lighting system
- Waterwork facilities comprise (i) construction of new water works facilities (either temporary or permanent) including buildings, pumping stations, water treatment works, service reservoirs, impounding reservoirs, pipelines, tunnels, access roads and bridges, slopes, desalination plants, chlorination stations, valve towers, manholes and chambers; (ii) provision of building services, mechanical, electrical and electronic installations in new or existing waterworks facilities (either temporary or permanent); and (iii) maintenance, repair, restoration, refurbishment, rehabilitation or replacement work for existing waterworks facilities and installations of items (i) and (ii) above

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<sup>3</sup> For the services described in paragraph 2.1.1 (c) of the Guidelines, the services include maintenance work for E&M system, which may not be regarded as construction services under WTO GPA unless it involves substantial modification to the building requiring the performance of special trade construction work of CPCprov Division 51.

### Summary on Classification of Contract Forms correlated with WTO GPA and Tender Thresholds

Contracts	WTO GPA Classification	WTO GPA Threshold	Financial Limit under SPR
(1) Works contracts comprising work-related services wholly or in majority	100% or majority value of services under Division 51 of CPCProv	5,000,000 SDR (HK\$60,461,000) <sup>4</sup>	\$4 million
	100% or majority value are services outside Division 51 of CPCProv but covered by HKC's Annex 4 to Appendix I of WTO GPA	130,000 SDR (HK\$1,572,000) <sup>5</sup>	\$1.43 million
	100% or majority value are services outside Division 51 of CPCProv and not covered by HKC's Annex 4 to Appendix I of WTO GPA	Not Applicable	\$1.43 million
(2) Works contracts comprising works-related services in minority (ONLY under exceptional circumstances as mentioned in Section 2.3 & 2.4 of the Guidelines)	100% or majority value are services outside Division 51 of CPCProv but covered by HKC's Annex 4 to Appendix I of WTO GPA	130,000 SDR	\$1.43 million
	100% or majority value are services outside Division 51 of CPCProv and not covered by HKC's Annex 4 to Appendix I of WTO GPA	Not Applicable	\$1.43 million
(3) Service contracts comprising non works-related services wholly or in majority	100% or majority value are services outside Division 51 of CPCProv but covered by HKC's Annex 4 to Appendix I of WTO GPA	130,000 SDR	\$1.43 million
	100% or majority value are services outside Division 51 of CPCProv and not covered by HKC's Annex 4 to Appendix I of WTO GPA	Not Applicable	\$1.43 million

<sup>4</sup> The SDR equivalent values in Hong Kong dollars are subject to periodically review.