

**Guiding Principles on Operating Business/Trading Undertaking Involving Above-standard Facilities in Publicly-funded Schools**

All along, subject to Education Bureau's (EDB) approval, publicly-funded schools may provide above-standard facilities, such as gymnasium, swimming pool, etc. on the school premises at their own construction and maintenance costs to cater for the diversified needs of their students. Subject to compliance with existing rules, regulations and guidelines, publicly-funded schools may also make arrangements with external organisations in opening up school premises for community use and using their above-standard facilities for operating business or conducting trading operation. In order to safeguard the interests of parents and students and to ensure that proper steps are taken to comply with the requirements, publicly-funded schools, irrespective of the ownership of their above-standard facilities, should make reference to the guiding principles in the ensuing paragraphs in operating business/trading undertaking involving their above-standard facilities.

- (a) As a general rule, the operation of business/trading undertaking should be directly benefiting own students, educational in nature and/or fostering collaboration with the community through opening up school facility;
- (b) Schools should conduct consultation with parents on any proposed construction of above-standard facilities in connection with trading;
- (c) For any structural alterations in or additions to the school premises, schools should first obtain the written consent of the Permanent Secretary for Education (PSEd). Schools should forward to EDB their proposals for change together with sketch plans drawn to scale and state the source of funds for the proposed works;
- (d) Schools should not charge students for use of the above-standard facilities, for example, swimming pool during school hours and school activities (such as swimming gala, practice/training sessions by school swimming team after school hours);
- (e) Proper measures should be taken to ensure the safety of students, school staff and parents on opening up the school premises to the public;

- (f) Schools should ensure that the business operation will not affect the normal school operation or undermine the educational services for students. Schools and their own students should have the priority to use the facilities at any time, during and after school hours. Schools should review the utilisation of the above-standard facilities at regular intervals and make appropriate adjustments, if deemed necessary;
- (g) Before embarking on any procurement procedures, schools without Incorporated Management Committee (IMC) are required to seek prior permission in writing from PSEd, whereas schools with IMC are required to seek approval from the IMC which in turn is subject to the express consent of the majority of parents;
- (h) Schools should select the contractors in an open, fair and competitive manner. The quotation/tender invitation documents should set out clearly the services required. If the contract requires construction or maintenance services of above-standard facilities, it must clearly set out the party bearing the construction or maintenance cost of the above-standard facilities, size and specifications of the facilities concerned, the party responsible for operating and maintenance of the facilities as well as the cost involved, profit sharing arrangement with the school, indemnity to protect the schools, etc.;
- (i) The contract period for such business/trading undertaking should normally be not more than three years. For any specific situations where the School Management Committees (SMCs)/IMCs consider granting an exception to extend the contract period to a longer duration (for SMC school, EDB's approval is required), the reasons and relevant factors considered should be properly recorded to justify the extended contract period and an assessment panel to evaluate the offer based on a pre-determined marking scheme and assessment criteria should be set up;
- (j) Schools should take necessary steps to ensure that there is an adequate system of checks and balances to prevent favouritism, malpractice and corruption in the business/trading undertaking and such arrangements are transparent;
- (k) Schools should take measures to avoid any possible conflict of interest. Declaration of conflict of interests of school staff and managers should be made in writing, or recorded in the notes of a meeting as appropriate. Records of such declarations should be duly kept;

- (l) SMCs/IMCs should assume full responsibility of the contract they enter into with the contractor with respect to the business operation. They have the responsibilities to ensure that the business/trading undertaking would not contravene the tenancy agreement and/ or land lease conditions. Please refer to the necessary arrangements for tenancy agreement and land lease as detailed at Appendix 4a;
- (m) The operators for the business/trading undertaking are required to arrange adequate and appropriate insurance protection (including public liability insurance) for their activities on their own and indemnify the schools and EDB (where appropriate) in respect of any cost, expenses, damages incurred due to their act or negligence;
- (n) SMCs/IMCs are responsible for the maintenance and repair of above-standard facilities and no government funds should be used to pay for the recurrent and non-recurrent cost arising from the operation and maintenance of the above-standard facilities. For aided schools operated by an IMC, subject to the conditions as required under the Expanded Operating Expenses Block Grant (EOEBG), surplus under the EOEBG can be used to top up no more than 25% of recurrent cost arising from facilities acquired through private donations or other fund-raising schemes;
- (o) Any charges and/or rental collected should be credited to schools' non-government account and be used directly for the benefits of the students;
- (p) A separate ledger for the business/trading undertaking is required to be provided in the school's non-government fund account and reflected in the school's annual audited accounts; and
- (q) Publicly-funded schools that wish to operate business/trading undertaking involving above-standard facilities at school should submit a proposal to EDB with reference to these guiding principles and the completed checklist at Appendix 4b.

## Appendix 4a

### Operating Business/Trading Undertaking Involving above-standard Facilities in Publicly-funded Schools

#### Necessary Arrangements for Tenancy Agreement and Land Lease

School type	Bureaux/Departments to be approached	Necessary actions to be taken by schools
(a) Government schools	EDB	As advised by EDB, if any.
(b) Aided and Direct Subsidy Scheme (DSS) schools located on government land without tenancy agreement signed with EDB	EDB	Enter into a tenancy agreement with EDB.
(c) Aided and DSS schools located on government land with tenancy agreement signed with EDB	EDB	Update relevant clauses of the current tenancy agreement, if necessary.
(d) Aided and DSS schools at public housing estates with tenancy agreement signed with the Hong Kong Housing Authority	Housing Department	Consult their respective estate offices of the Housing Department and obtain their written consent for opening up the school facilities.
(e) Aided, DSS and caput schools located on private land	Lands Department	Apply to the respective District Lands Offices of the Lands Department for lease modification/temporary waiver of conditions, subject to the payment of administrative fee and land premium/waiver fee to be assessed; and consult professional surveyors for the concerned lease modification/temporary waiver application.

Schools may contact the respective District Lands Offices if they wish to make enquiries about the land status of their school premises. The contact information can be accessed at <https://www.landsd.gov.hk/en/about/enquiries.htm>. The boundary plan of District Lands Offices can be accessed at [https://www.landsd.gov.hk/en/about/boundary\\_plan.htm](https://www.landsd.gov.hk/en/about/boundary_plan.htm).

**Checklist for Publicly-funded Schools to Apply for Operating  
Business/Trading Undertaking Involving Above-standard Facilities in the Schools**

When preparing the Contractor Agreement proposal for permitting the use of above-standard school facilities by the contractor(s), schools should, apart from observing the above-mentioned guiding principles, complete this checklist. The completed checklist should be submitted to EDB with the proposal. The ensuing section lists out the items (which are not meant to be exhaustive) to be included in the proposal for reference.

No.	Item	Yes/No If yes, please specify the relevant section(s)/paragraph(s) of the school proposal (e.g. Section X of [document name])
1.	Is the repair, maintenance and daily operation cost of the above-standard facilities concerned so substantial that the school could hardly afford with school's own funds without entering into the proposed Contractor Agreement?	
<b>Safeguarding the interest of the school's own students</b>		
2.	Is the proposed operation of business/trading undertaking directly benefiting the school's own students, educational in nature and/or fostering collaboration with the community through opening up school facilities?	
3.	Is the interest of students the school's prime concern?	
4.	Is the proposed business/trading undertaking directly benefiting the school's own students (e.g. enhancement of the school's facilities and education services)?	
5.	Can the school's own students, during school hours and when joining after-school activities (such as swimming gala, practice/training sessions of the school swimming team and school activities organised on Saturdays, Sundays and/or school holidays), use the above-standard facilities for free?	
<b>Parent Consultation</b>		
6.	Has the school informed the parents of the proposed Contractor Agreement, including adequate description of the services required from the contractor (e.g. management services of the above-standard facilities and source of funds), the conditions for	

No.	Item	Yes/No If yes, please specify the relevant section(s)/paragraph(s) of the school proposal (e.g. Section X of [document name])
	the use of the school premises by outsiders (e.g. proposed time, expected users) and the duration of the Contractor Agreement?	
7.	Has the school obtained express consent of the majority of the parents on the proposed Contractor Agreement?	
8.	Has the school properly addressed parents' concerns?	
9.	Has the proposal included (i) the date/period and the format of the consultation (e.g. consulting parent manager/Parent-teacher Association/all parents through meeting/newsletter/school webpage); (ii) consultation details/materials; and (iii) consultation result?	
<b>Selection of Contractor</b>		
10.	Will the quotation/tender exercise be conducted in an open, fair and competitive manner when selecting contractor?	
11.	Have the draft quotation/tender invitation documents clearly set out the details of the proposed Contractor Agreement?	
12.	If the contract requires construction or maintenance services of the above-standard facilities, has the school clearly laid down in the draft quotation/tender invitation documents the party bearing the construction or maintenance cost of the above-standard facilities, size and specifications of the facilities concerned, the party responsible for operating and maintenance of the facilities as well as the cost involved, profit sharing arrangement entered into with the school, indemnity to protect the school, etc.?	
13.	Is the contract period for the proposed Contractor Agreement not more than 3 years?	
14.	For SMCs/IMCs giving special consideration to exceptional circumstances of entering into a contract with longer duration given the substantial funding from the contractor: Has the school elaborated the reasons and relevant factors considered (e.g. the amount of funds involved and cost recovery projections) to justify the longer contract period in the proposal? Has a break clause been incorporated in the draft	

No.	Item	Yes/No If yes, please specify the relevant section(s)/paragraph(s) of the school proposal (e.g. Section X of [document name])
	quotation/tender invitation documents, providing the school with the option to terminate the contract before it expires?	
<b>15.</b>	Is there any clause in the Contractor Agreement granting the contractor privilege of contract renewal (without issuing a new quotation/tender)?	
<b>16.</b>	Has the school set up a quotation/tender vetting committee to evaluate the quotation/tender based on pre-determined marking scheme and assessment criteria (e.g. capital contribution, service life, facilities management plan and capability) and recommend the best offer for consideration by the SMC/IMC?	
<b>17.</b>	Is the selection of contractor not in any way influenced by a donation or any other forms of advantages (i.e. no request for monetary or any other forms of sponsorship was made in the draft quotation/tender invitation documents)?	
<b>18.</b>	Has the school taken necessary steps to ensure that there is an adequate mechanism of checks and balances to prevent favouritism, malpractice and corruption in the business/trading undertaking and such arrangements are transparent?	
<b>19.</b>	Has the school attached the draft quotation/tender invitation documents in the proposal submitted to EDB?	
<b>Contractor Agreement</b>		
<b>20.</b>	Has the proposed Contractor Agreement detailed the type of proper measures to be taken by the contractor to ensure the safety of students, school staff and parents when opening up the school premises to the public? Has the proposed Contractor Agreement required the contractor to arrange adequate and appropriate insurance protection (including public liability insurance) for their activities on their own and indemnify the school and EDB (where appropriate) in respect of any cost, expenses, damages incurred due to the act or negligence of the contractor?	
<b>21.</b>	Has the school ensured that the Contractor Agreement that the school intends to enter into with the contractor is a licence	

No.	Item	Yes/No If yes, please specify the relevant section(s)/paragraph(s) of the school proposal (e.g. Section X of [document name])
	agreement? Has the school sought independent legal advice as and when necessary?	
<b>22.</b>	Under the proposed Contractor Agreement, are the above-standard facilities still in possession and controlled by the school?	
<b>Compliance with Rules and Regulations</b>		
<b>23.</b>	Has the school complied with prevailing rules, regulations and guidelines?	

Schools should read and strictly follow all relevant stipulations and guidelines. For enquiries, please contact the respective Senior School Development Officers.