

Code of Practice on Procurement of Supplies, Goods and Services (Revised Version)

1.0 INTRODUCTION

- 1.1 This Code of Practice on Procurement of Supplies, Goods & Services (Code of Practice) is issued by the Secretary for Home Affairs, as the Authority under the Building Management Ordinance (Cap. 344) (BMO), under section 44(1)(a) of the Ordinance. This Code of Practice shall be read in conjunction with the relevant provisions in the BMO.
- 1.2 All owners' corporations (OCs) shall comply with this Code of Practice.
- 1.3 For buildings without an OC, pursuant to section 34E of the BMO, the provisions in Schedule 7 shall be impliedly incorporated into every Deed of Mutual Covenant (DMC) made before, on or after the material date as provided under section 34D of the BMO. The DMC manager or any other person who for the time being is, for the purposes of the DMC, managing the building, shall comply with Schedule 7 to the BMO and this Code of Practice in relation to the procurement of supplies, goods and services.
- 1.4 All OCs shall comply with section 20A of the BMO in relation to the procurement of supplies, goods and services. For the avoidance of doubt, all OCs shall comply with the requirements related to tendering in this Code of Practice if invitation to tender is required for the procurement of the supplies, goods or services under section 20A of and paragraph 5 of Schedule 7 to the BMO.

2.0 CODE OF CONDUCT

- 2.1 A Management Committee (MC) shall conduct a tender exercise in an open and fair manner.
- 2.2 In the exercise of his powers and the performance of his duties under the BMO, a member of the MC shall not solicit or accept any advantage from any supplier or contractor in relation to the tender.
- 2.3 An agent¹ (including its employees) or employee of an OC is prohibited from soliciting or accepting any advantage arising from the performance of his duties. An agent or employee of an OC shall declare in writing any actual or potential conflict of interest arising from the performance of his duties in accordance with the guidelines issued by the Independent Commission Against Corruption (ICAC)².

¹ For the purposes of this section, a manager or other professional trade or business firm or person retained and remunerated by the corporation and to carry out any of the duties or powers of the corporation under the BMO or the DMC (if any) pursuant to section 18(2)(c) of the BMO would be regarded as an agent.

² The guidelines in the Building Management Toolkit issued by the ICAC are accessible via the following link:
http://www.bm.icac.hk/en/education_and_publicity_materials/education_and_publicity_materials.aspx

- 2.4 An agent (including its employees) or employee of an OC should declare in writing whether he has any actual, potential or perceived conflict of interest at the start of preparation or deliberation of tender documents or as soon as he becomes aware of a potential conflict.
- 2.5 An agent (including its employees) or employee of an OC should take steps to avoid any conflict of interest with any prospective tenderer or tenderer by not putting himself in a position of obligation towards any of them, for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.
- 2.6 A member of the MC shall disclose in writing to the MC any personal, business or pecuniary interest or any other relationship that he may have with the DMC Manager, Property Management Company, consultants or professional service providers for the OC, or in any of the tenders to be considered by the MC or the OC. An MC member who has indicated a personal, business or pecuniary interest in the tender shall withdraw from the meeting during the discussion concerned and abstain from voting on the selection of such tender at an MC meeting.
- 2.7 The DMC Manager or the Property Management Company (if any) and its employees shall be required to disclose in writing to the MC any personal, business or pecuniary interest that he may have with any MC member, consultants or professional service providers for the OC, or in any of the tenders to be considered by the MC or the OC. The DMC Manager or the Property Management Company (if any) and its employees who have indicated a personal, business or pecuniary interest in the tender shall refrain from participating in any tender assessment or negotiation.
- 2.8 Any declaration by a member of an MC/an agent (including its employees) or employee of an OC should be recorded in the minutes of relevant MC meetings or as part of the tender documents and should be kept for at least six years.

3.0 PREPARATION OF INVITATION TO TENDER

- 3.1 The MC shall prepare an invitation to tender setting out the types of supplies, goods or services required, the respective estimated costs, the period open for tender and other terms and conditions of the relevant contract. A copy of the invitation to tender shall be displayed in a prominent place in the building.
- 3.2 MCs are advised to as far as practicable, having regard to the nature of the procurement, adopt open tendering, such as putting advertisements on newspapers, to enhance tender competition and minimise the risks of tender collusion.
- 3.3 The MC shall prepare an invitation to tender setting out the types of supplies, goods or services required, the respective estimated costs, the period open for tender and other terms and conditions of the relevant contract. A copy of the invitation to tender shall be displayed in a prominent place in the building.
- 3.4 The closing date and time for acceptance of tenders shall be clearly stated in the invitation to tender. Late submissions shall not be accepted.
- 3.5 MCs are advised to build in probity and anti-collusion clauses in the related tender documents. MCs may refer to the Building Management Toolkit³ issued by the ICAC for the sample probity and anti-collusion clauses.

³ The Building Management Toolkit can be accessed via the following link:
http://www.bm.icac.hk/en/education_and_publicity_materials/education_and_publicity_materials.aspx

3.6 If the tendering exercises involve mandatory works as stipulated in relevant statutory notice(s), order(s) or direction(s) issued by relevant government department(s) or authority(ies) (collectively referred to as government repair orders), such information should be made available to the owners –

(a) before the invitation to tender is prepared (e.g. posting the government repair orders in a conspicuous place of the building when received; making available a copy of the government repair orders at the management office for inspection by the owners); and

(b) before the resolution concerned is put to vote (e.g. attaching a copy of the government repair orders to the notice of meeting at which the tender is to be approved),

so as to facilitate the MC members / owners in understanding and making a well informed decision on the scope of the procurement.

4.0 NUMBER OF TENDERS TO BE INVITED

4.1 Where tender is required pursuant to section 20A of or paragraph 5 of Schedule 7 to the BMO, the minimum number of tenders to be invited shall be as follows –

(a) three in the case of a contract for the procurement of supplies, goods or services the value of which exceeds \$10,000 but does not exceed \$200,000; or

(b) five in the case of a contract for the procurement of supplies, goods or services the value of which exceeds \$200,000.

4.2 Where the number of valid tenders obtained is fewer than the number of tenders stipulated above, the MC shall pass a resolution to accept or reject the tender exercise.

5.0 COLLECTION AND OPENING OF TENDERS

5.1 A tender shall be in writing and be sealed and deposited in a strong double locked box marked “Tender-Box (投標箱)” provided for that purpose only and such box shall be securely located in a prominent place in the building. The two keys of the tender-box are to be separately kept by the chairman, secretary or treasurer.

5.2 Where it is impracticable or difficult to comply with the requirement under paragraph 5.1 above, the OC may, by a resolution passed at a general meeting of the OC, accept tenders handed in or sent by post to the registered office of the OC or to a specific venue as resolved at a general meeting. The tenders shall be properly acknowledged and kept safely.

5.3 All tenders shall be opened at the same time in the presence of at least three members of the MC who shall countersign and date each of the tenders.

5.4 Notwithstanding the requirements set out in this section, where any procurement of supplies, goods and services by an OC is conducted under any Rehabilitation Schemes operated by the Urban Renewal Authority (URA)⁴ the OC should comply with all relevant rules, guidelines and/or requirements relating to the conduct of the tender exercise adopted in such service/scheme instead.

4 The Rehabilitation Schemes operated by the URA may be referred to via the following link: <https://www.ura.org.hk/>

6.0 CONSIDERATION AND DECISION ON ACCEPTANCE OF TENDERS⁵

- 6.1 For procurement of supplies, goods and services whose value does not exceed the sum stipulated in section 20A(2)(b) of the BMO, all tenders received shall be submitted to the MC for decision on acceptance at a meeting of the MC.
- 6.2 A tender which requires approval from a general meeting of the OC must be passed by majority votes. Where there are more than two alternatives and no option receives majority votes in the first round of voting, the general meeting of the OC will have to conduct a second round of voting in order to comply with the majority requirement. Some plausible methods of voting are –
 - (a) Progressive elimination – After the first round of voting, the general meeting of the OC may eliminate the option with the least number of votes and then carry out the second round of voting. If there is no option which receives majority votes, another round of voting will be carried out, with one more option being eliminated. If this goes on, only two options will be left in the final round of voting. Either one of the options will receive majority votes;
 - (b) Short-listing – After the first round of voting, the general meeting of the OC may short-list the two options which gain the greatest number of votes for a second round of voting. This also means that the ultimate choice fulfils the majority requirement;
 - (c) Confirmation – A second round of voting could be carried out to confirm the option which has attained the greatest number of votes in the first round. This also ensures that majority votes are achieved.
- 6.3 After approving the award of consultancy agreement/works contract, MCs are advised to notify all tenderers, property owners and occupants in writing of the tender result.

7.0 KEEPING AND INSPECTION OF DOCUMENTS RELATING TO THE TENDER PROCESS⁶

- 7.1 The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect all tender documents, copies of contracts, accounts and invoices and any other documents in the possession of the OC and relating to the procurement of supplies, goods and services at any reasonable time. The MC shall on the payment of a reasonable charge, supply copies of the relevant documents.
- 7.2 The documents referred to in paragraph 7.1 shall contain sufficient information to enable the person doing inspection to calculate the financial liability (including any future financial liability) of the OC at the time of inspection.

⁵ Please also refer to section 20A of and paragraph 5 of Schedule 7 to the BMO.

⁶ Please also refer to section 20A of the BMO.

8.0 TIMING OF SIGNING CONTRACTS

- 8.1 To reduce possible disputes arising from the signing of contracts between OCs and suppliers/contractors within a very short period of time after the passing of resolutions on certain major projects, for tenders whose value exceeds 20% of the annual budget of the OC, the OC concerned should consider, having regard to the circumstances of the case, signing the contract with suppliers/contractors at least one month after the passing of the relevant resolution at a general meeting of the OC.