

PROPERTY MANAGEMENT SERVICES AUTHORITY

Code of Conduct

Carrying out Procurement for Clients and Prevention of Bid-rigging

Code No.: C11/2022

Effective Date: 22 April 2022

Preamble

The following code of conduct (“Code”) is issued by the Property Management Services Authority pursuant to section 5 of the Property Management Services Ordinance (“PMSO”) and contains practical guidance for the purposes of section 4 of the PMSO (disciplinary offences). Although a licensee¹ does not incur a legal liability only because the licensee has contravened a provision of the Code, the Code is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code may be relied on as tending to establish or negate a matter that is in issue in the hearings.

2. Licensees, during the provision of property management services (PMSs) for properties, may carry out procurement in respect of the supply of goods or provision of services for clients².

3. When licensees carry out procurement for clients, they have to comply with the Building Management Ordinance (Cap. 344) (BMO) and the Code of Practice on Procurement of Supplies, Goods and Services (Code of Practice)³ issued by the Secretary of Home Affairs under the BMO.

4. Moreover, bid-rigging occurs if two or more bidders that would otherwise be expected to compete, secretly agree that they will not compete with one another for particular projects during the procurement process. For example, they may agree among themselves which bidder will win the bid, and the outcome of the process is therefore rigged. Bid-rigging is inherently a serious anti-competitive conduct and will contravene the Competition Ordinance (Cap. 619)⁴.

¹ The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

² The term “client” has the same meaning as defined in section 16 of the PMSO, i.e. “in relation to a property for which a licensed PMC provides property management services, means— (a) the owners’ organization of the property; and (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services”. According to such definition, a tenant is not a client.

³ The Code of Practice (Revised Version Effective from 1 September, 2018) is issued by the Secretary of Home Affairs under section 44(1)(a) of the BMO. For details, please refer to [https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20\(eng\)\(full\).pdf](https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20(eng)(full).pdf)

⁴ The explanation of bid-rigging is extracted from the “Fighting bid-rigging” brochure published by the Competition Commission and is consistent with the definition of bid-rigging stipulated in Section 2 of the Competition Ordinance.

Code of conduct

- Code:** A(1) A licensed PMC has to ensure that the procurement process is competitive, fair and accountable⁵ when carrying out procurement for clients.
- A(2) When a licensed PMC carries out procurement for clients, the licensed PMC (including its employees) must not solicit or accept any unauthorized advantage or hospitality that would impair its impartiality. A licensed PMC (including its employees) has to, as far as practicable and to the best of its knowledge, declare conflict of interest arising from any financial (including investments) or personal (including family members or relatives) relationship with the suppliers or service providers bidding for contracts.

Bidding for service contracts

- Code:** B(1) A licensed PMC is not to exercise or participate in “serious anti-competitive conduct”⁶ when bidding contracts for PMSs.
- B(2) After a licensed PMC has successfully won a tender, it has to, for the property for which PMSs are provided by it, adopt appropriate measures to minimise the risk of “serious anti-competitive conduct” such as bid-rigging during procurement.

Raising employees’ awareness of procurement and establishing internal procedure

- Code:** C(1) A licensed PMC has to provide proper training for employees to strengthen their awareness of issues (e.g. competitive issues) involved in procurement procedures and procurement process. This helps the employees to formulate appropriate procurement procedures to avoid contravening relevant regulations and to minimize the risk of cartel such as bid-rigging.

⁵ For details, please refer to Section 3.3 of the Building Management Toolkit issued by the Independent Commission Against Corruption (ICAC), the Home Affairs Department (HAD), the Hong Kong Housing Society (HKHS), jointly with the Law Society of Hong Kong (LSHK), the Hong Kong Institute of Surveyors (HKIS), the Hong Kong Institute of Housing (HKIH), the Housing Managers Registration Board (HMRB), the Chartered Institute of Housing Asian Pacific Branch (CIHAPB), and the Hong Kong Association of Property Management Companies (HKAPMC). (https://cpas.icac.hk/UploadImages/InfoFile/cate_43/2019/280eaea-d72a-4b9c-be2f-37fb305c86ec.pdf)

⁶ The definition of “serious anti-competitive conduct” is consistent with Section 2 of the Competition Ordinance. This includes price fixing, market sharing, output restriction and bid-rigging.

Procurement mechanism

- Code: D(1)** Without contravening the BMO and the Code of Practice³, a licensed PMC has to, for the property for which PMSs are provided by it,
- (a) establish a policy by itself (in case there is no owners' organization); or
 - (b) agree with the owners' organization (if any)⁷ on various procurement services, including making purchase by petty cash, quotation and tender in order to proceed with the procurement.

Procurement by petty cash

- Code: E(1)** A licensed PMC has to, for the property for which PMSs are provided by it,
- (a) establish a policy by itself (in case there is no owners' organization); or
 - (b) agree with the owners' organization (if any)⁷ on the limit of petty cash to be kept by it to carry out procurement in respect of minor purchases of goods or services for clients.

- E(2) A licensed PMC has to, for the property for which PMSs are provided by it, establish a policy by itself (in case there is no owners' organization) or follow the guidelines as agreed with the owners' organization (if any)⁷ when carrying out procurement by petty cash for clients.

Procurement by quotation

- Code: F(1)** A licensed PMC has to, for the property for which PMSs are provided by it, establish a policy by itself (in case there is no owners' organization) or follow the guidelines under the agreement formed with the owners' organization (if any)⁷ when carrying out procurement by quotation for clients.

Procurement by tender

- Code: G(1)** A licensed PMC has to, for the property for which PMSs are provided by it, carry out procurement of goods or services according to Section 20A or paragraph 5 of Schedule 7 to the BMO (refer to the regulations in **Appendix 1**).

⁷ The guideline or guide does not affect a licensed PMC as the manager to carry out its duties according to the BMO or the deed of mutual of covenant of the respective property. The term "manager" has the same meaning as that defined by section 34D of the BMO.

G(2) A licensed PMC has to comply with the requirement in respect of minimum number of tenders to be invited⁸ as stipulated in the Code of Practice³ if it carries out procurement for clients according to Section 20A or paragraph 5 of Schedule 7 to the BMO:

- A minimum of three invited tenders are required 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;

- A minimum of five invited tenders are required in the case of a contract for the procurement of supplies, goods or services, the value of which exceeds \$200,000.

Where the number of valid tenders obtained is fewer than the number of tenders stipulated above, a licensed PMC has to report to the owners' organization (if any) and propose that the owners' organization has to pass a resolution to accept or reject the result of the tender.

Preparing tender documents

Code: H(1) A licensed PMC has to set out clearly the relevant requirements, e.g. a clear description of the required goods, its specifications and criteria that tenderers have to meet, etc. in the relevant tender document.

H(2) A licensed PMC has to include integrity, non-collusion and anti-bid-rigging clauses in the relevant tender document and require tenderers to sign a "Non-collusive Tendering Certificate" when submitting a tender.

Reducing communication between suppliers/tenderers

Code: I(1) A licensed PMC has to, as far as reasonably practicable, adopt appropriate measures to avoid communication on the supply of goods concerned, provision of services and tendering matters between potential suppliers/tenderers.

Assessing tender

Code: J(1) A licensed PMC has to formulate the assessment criteria by itself (in case there is no owners' organization) or agree with the owners' organization (if any)⁷ on the assessment criteria, and disclose the assessment criteria in the invitation for tender before arranging the tender. If the assessment criteria are to be amended, the licensed PMC has to record in writing the reasons for the amendment.

⁸ Section 4.1 of the Code of Practice: "Where tender is required pursuant to section 20A of or paragraph 5 of Schedule 7 to the BMO (Cap. 344), the minimum number of tenders to be invited shall be as follows". For details, please refer to [https://www.buildingmgmt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20\(eng\)\(full\).pdf](https://www.buildingmgmt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20(eng)(full).pdf)

- J(2) A licensed PMC has to remind the relevant assessment panel:
- (a) the formation of the assessment panel, declaration of conflict of interest and the assessment procedures and mechanism concerned cannot contravene the BMO and the Code of Practice³; and
 - (b) to assess the tenders in accordance with the assessment criteria. If the tender assessed as the best according to the assessment criteria is not accepted, the licensed PMC has to remind the relevant assessment panel to provide reasonable causes and make record.

Incorporating protection clauses in contract

- Code: K(1)** A licensed PMC has to include suitable clauses in the contract with the suppliers or winning tenderers so as to ensure that it has the contractual protection if any illegal acts (including cartel such as bid-rigging) are discovered during the quotation or tendering process.

Keeping records

- Code: L(1)** Licensed PMCs have to keep all the relevant documents and records of procurement for not less than six years⁹.

Reporting contravention of procurement procedures and bid-rigging

- Code: M(1)** A licensed PMC has to establish an internal reporting mechanism for employees to report suspected contravention of procurement procedures or bid-rigging.

— END —

If there is any inconsistency between the Chinese version and the English version of the Code, the Chinese version shall prevail.

⁹ This guideline is consistent with Section 20A(4) of the BMO.

Schedule 7 to the Building Management Ordinance

[ss. 34D, 34E, 34J, 40D & 42]

(Amended 69 of 2000 s. 25)

Mandatory Terms in Deeds of Mutual Covenant

5. Contracts entered into by manager

- (1) Subject to subparagraphs (2) and (3), the manager shall not enter into any contract for the procurement of any supplies, goods or services the value of which exceeds or is likely to exceed the sum of \$200,000 or such other sum in substitution thereof as the Authority may specify by notice in the Gazette unless—
 - (a) the supplies, goods or services are procured by invitation to tender; and
 - (b) the procurement complies with the Code of Practice referred to in section 20A(1).
- (2) Subject to subparagraph (3), the manager shall not enter into any contract for the procurement of any supplies, goods or services the value of which exceeds or is likely to exceed a sum which is equivalent to 20% of the annual budget or such other percentage in substitution thereof as the Authority may specify by notice in the Gazette unless—
 - (a) if there is a corporation—
 - (i) the supplies, goods or services are procured by invitation to tender;
 - (ii) the procurement complies with the Code of Practice referred to in section 20A(1); and
 - (iii) whether a tender submitted for the purpose is accepted or not is decided by a resolution of the owners passed at a general meeting of the corporation, and the contract is entered into with the successful tenderer; or
 - (b) if there is no corporation—
 - (i) the supplies, goods or services are procured by invitation to tender;
 - (ii) the procurement complies with the Code of Practice referred to in section 20A(1); and
 - (iii) whether a tender submitted for the purpose is accepted or not is decided by a resolution of the owners passed at a meeting of owners convened and conducted in accordance with the deed of mutual covenant, and the contract is entered into with the successful tenderer.
- (3) Subparagraphs (1) and (2) do not apply to any supplies, goods or services which but for this subparagraph would be required to be procured by invitation to tender (referred to in this subparagraph as relevant supplies, goods or services)—
 - (a) where there is a corporation, if—
 - (i) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the corporation by a supplier; and
 - (ii) the corporation decides by a resolution of the owners passed at a general meeting of the corporation that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender; or
 - (b) where there is no corporation, if—
 - (i) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the owners by a supplier; and
 - (ii) the owners decide by a resolution of the owners passed at a meeting of owners convened and conducted in accordance with the deed of mutual covenant that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

(Replaced 5 of 2007 s. 32)