

Partner for Excellence



Procurement



Partner for
Excellence



Procurement

Introduction

The tertiary education institutions (TEIs) are statutorily autonomous corporations with substantial freedom in the control of curricula and academic standards, the selection of staff and students, initiation and acceptance of research, and the internal allocation of resources. Nevertheless, because the TEIs are also entrusted with significant public and private resources, and in view of their pivotal role in the development of higher education in Hong Kong, the Government and the community at large expect that TEIs are providing the highest possible standards of education in the most cost-effective way and managing their affairs in an accountable and transparent manner.

In early 2011, the Independent Commission Against Corruption (ICAC) joined hands with all the 11 TEIs to set up a Working Group to address public concerns on a number of issues pertaining to the governance of TEIs, including administration of donations, technology transfer and commercialization, procurement, outside practice and financial reporting. The Working Group agreed to conduct reviews by the ICAC Corruption Prevention Department (CPD) on these five identified areas with a view to further strengthening institutional governance and corruption prevention safeguards in TEIs' procedures and guidelines. Based on the findings of the reviews, the Working Group has produced this Corruption Prevention Guide (the Guide), comprising a set of five modules which consolidate the good practices and corruption prevention measures being in force by individual local and overseas institutions. The Guide is designed as reference for TEIs for the purpose of corruption prevention and is not mandatory in nature. TEIs are encouraged to suitably adapt and adopt the good practices and corruption prevention safeguards recommended in the Guide with regard to their unique character, cultural heritage, size, organizational structure and resource capability.

We hope TEIs will find the Guide useful, informative and stimulating. CPD stands ready to provide free, confidential and tailor-made corruption prevention services to help TEIs implement the recommended measures in the Guide. CPD could be contacted by telephone at 2826 3198, by fax at 2521 8479, or by email at cpd@icac.org.hk.

Working Group on Tertiary Education Institutions Governance
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DISCLAIMER

The recommendations as contained in this Guide including the sample forms or documents are for general guidance only. The sample forms and documents should be modified and adapted as appropriate to suit individual organizations' operational needs before use. The ICAC will not accept any liability, legal or otherwise, for loss occasioned to any person acting or refraining from action as a result of any material including the sample forms or documents in the Guide.

Throughout this Guide, the male pronoun is used to cover references to both the male and female. No gender preference is intended.

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Background

TEIs procure a great variety of goods and services to cope with their diversified needs, including those for research and educational purposes. Things procured may be classified into common items (e.g. distilled water, general office equipment and furniture, cleaning and security services, and advertising) and strategic items (e.g. laboratory tools, research equipment, and survey services). A single purchase may vary in value from a few hundred to several million dollars and the annual total expenditure is often substantial. Past corruption cases show that procurement is one of the most vulnerable areas for corruption. Any manipulation would not only bring financial losses to the TEI concerned, but also adversely affect its reputation.

Various staff members are involved throughout the procurement process. It is imperative for TEIs to establish consistent practice and put in place adequate safeguards in the system to prevent abuse. This Module outlines the good practices for TEIs to ensure “value for money” in the procurement of goods and services and to prevent impropriety in the process - initiating purchase requisitions (**Chapter 4**); maintaining suppliers’ lists (**Chapter 5**); inviting tenders/quotations (**Chapter 6**); evaluating tenders/quotations (**Chapter 7**); placing orders and receiving goods (**Chapter 8**); administering service contracts (**Chapter 9**); and making payments (**Chapter 10**). Policy issues relating to procurement principles and internal control framework are analyzed from the corruption prevention perspective in **Chapter 2** and **Chapter 3** respectively. To supplement these recommended safeguards, the **Module on Financial Reporting** of the Guide further suggests corruption prevention measures in the procurement procedures from the financial reporting perspective with a view to strengthening TEIs’ internal control mechanism.

CHAPTER 2

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Setting Procurement Principles

2.1 Introduction

The procurement of goods and services by TEIs may be centralized by a designated procurement office or decentralized by individual users under different budget controllers¹. In either way, it is advisable for TEIs to have a Central Procurement Office (**Chapter 3.6**) dedicated to develop the procurement principles and set out the internal control framework, upon endorsement by the governing body (e.g. Council) for compliance by budget controllers and their staff. This Chapter provides the basic principles and control safeguards for a prudent procurement system.

2.2 Procurement Principles

A good procurement system comprises the following elements:

- **Value for money** – excellence in terms of the monetary value and quality of the goods or services procured.
- **Accountability** – obligation of staff members (e.g. budget controllers and approving authorities) to bear the consequences for failure to perform as expected.
- **Transparency** – ease of understanding by and timely disclosure of procurement information (e.g. procedures and guidelines or tender specifications) to staff members and external parties (e.g. prospective bidders).
- **Open and fair competition** – a level playing field for all bidders in procurement, without discriminating goods and services from different suppliers or countries of origin.
- **Avoidance of conflict of interest** – avoiding situations that may arise in the procurement process which would lead to actual or perceived conflict of interest by procurement staff (**Chapter 2.3**).
- **Confidentiality of commercially sensitive information** – due care for preventing leakage of commercially sensitive information to unauthorized people (**Chapter 2.5**).

¹ Budget controllers can be the Heads of Departments, the Deans of Faculties, the Principal Investigators of research projects or the Directors of TEIs' wholly-owned subsidiary companies, etc. Please refer to **Chapter 3.2.1** of the **Module on Financial Reporting** of the Guide for further details of the roles and responsibilities of budget controllers.

- **Segregation of duties** – divorcing the responsibility of staff members for incompatible activities to assist in detecting errors and deterring improper activities.
- **Compliance with the law and other requirements** – including but not limited to the Prevention of Bribery Ordinance (Cap. 201) (POBO) on acceptance of advantage, and requirements imposed by, say, the University Grants Committee (UGC) (applicable to UGC-funded TEIs), the Innovation and Technology Commission on the projects funded by it, and donors².

2.3 Conflict of Interest³

TEIs should be wary of situations that the private interest of a staff member competes or conflicts with the interest of the TEI. While it is impossible to define or describe all potential conflict of interest situations, some common examples include the following:

- A staff member involved in the management of suppliers' lists of the TEI is closely related to or has beneficial interest in a listed supplier.
- A tender board member has investment in a supplier who is being considered by the TEI in the tender exercise.
- A staff member involved in the selection of a supplier for the TEI engages in frequent or excessive gambling with one of the suppliers under consideration.
- A staff member responsible for monitoring the performance of a cleaning service contractor borrows money from the contractor.
- A staff member responsible for tender evaluation is a part-time consultant of the tenderer.

2.3.1 Managing Conflict of Interest

While it is the responsibility of individual staff to judge and decide if a situation constitutes a conflict of interest, TEIs should provide their staff with detailed procedural guidelines for managing conflict of interest situations, which may include the following:

- **Observing conflicts** – be alert to conflict of interest situations and consult supervisors if in doubt.
- **Avoiding conflicts** – avoid conflict of interest, whether actual, potential or perceived, arising between their official duties and their private interests.

² Please refer to **Chapter 7.2 of the Module on Administration of Donations** of the Guide on ensuring compliance with the donors' requirements.

³ A conflict of interest situation arises when the "private interests" of an employee compete or conflict with the interests of the TEI or his official duties. "Private interests" include any financial or other personal interests of the employee concerned, his family members or other relations, his personal friends, the clubs and associations to which he belongs, any other groups of people with whom he has personal or social ties, or any person to whom he owes a favour or is obligated in any way.

- **Making declaration** – make a declaration in a timely manner, preferably in writing, if the conflict is unavoidable (**Annex 3 of Appendix 1**). When a declaration is made by a verbal report at a meeting, such declaration should be recorded in the minutes.

2.3.2 Handling a Declared Conflict

As soon as a staff member has reported a conflict of interest situation, his supervisor should consider whether a conflict exists having regard to the duties of the staff concerned and, if yes, consider the following courses of action for recommendation to the approving authority:

- **Redeployment** – if the supervisor or the chairperson of the assessment panel/board rules that the staff member who has declared an interest in the procurement exercise should not continue to handle the specific procurement exercise, they should redeploy another staff member to replace him.
- **Stepping up control** – if it is not practicable to redeploy another staff member, the supervisor should closely monitor the staff member’s performance (e.g. his decisions made during the procurement process, such as drawing up specifications and conducting evaluation on the technical proposal of the tenders).
- **Divestment** – if the staff member has financial investment in the company of a supplier/contractor and the supervisor or the chairperson of the assessment panel/board considers that redeployment is not feasible or stepping up control is inadequate to mitigate the conflict, the staff member may be asked to divest his investment.

2.4 Acceptance of Advantage and Entertainment

Suppliers and vendors or their agents may sometimes offer procurement staff promotional gifts, samples, sponsored inspection package tours, or personal discounts on goods which are all described as advantages under the POBO (**Annex 1 of Appendix 1**).

Procurement staff should be reminded to be wary of being “sweetened” by such advantages that may affect their judgement and impartiality in discharging their duties. TEIs should:

- lay down a “zero tolerance” policy on the acceptance of advantages by staff members in relation to their official duties without approval;
- issue to staff members clear procedural guidelines on acceptance of advantages, including the requirements for reporting and seeking approval as well as the means of disposal. To consider granting the approval, the following factors should be taken into consideration, irrespective of the value of the advantage:
 - The acceptance of advantage will not bring the TEI into any disrepute;
 - The TEI is not obliged to do something in return for the offeror; and
 - The acceptance will not give rise to any actual, potential or perceived influence in making a procurement decision; and

- remind procurement staff to avoid any lavish, unreasonably generous or frequent entertainment that may lead to embarrassment in performing official duties or invite criticism of favouritism.

Staff should be required to decline any offer of gifts and advantages if the acceptance could affect their objectivity in conducting the procurement exercise, or induce them to act against the interest of the TEI, or lead to allegations of impropriety. Any acceptance of advantages should be reported in writing to a designated senior staff member for approval (**Annex 2 of Appendix 1**).

TEI should, as far as possible, refrain from accepting dubious advantages to avoid placing the staff concerned in a vulnerable position. If the acceptance is deemed reasonable and necessary, TEIs should:

- **Goods samples** – control valuable samples by recording the estimated value and disposal;
- **Sponsored visits** – form a panel to review the nomination of representatives to carry out the duty visit and recommend to the designated authority for approval; and
- **Discounts** – ensure the offer of discounts by suppliers/contractors are not exclusive to procurement staff.

2.5 Commercially Sensitive Information

Information relating to tenders and contracts could be of commercial value to competing bidders. Due care should be exercised to prevent leakage of sensitive information which may jeopardize the procurement exercise. To safeguard against malpractice, TEIs should:

- make known to staff members the classification system for classifying information relating to procurement and documents of tenders and contracts;
- restrict access to classified information to authorized staff only and require them to protect it from leakage (e.g. to lock the documents up when not in use); and
- require the relevant staff, such as members of the tender opening team and the tender evaluation team/tender board, to undertake in writing not to divulge, without permission, any classified information (**Appendix 2**).

CHAPTER 3

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Establishing Internal Control Framework

3.1 Introduction

The level of internal control over procurement activities is a policy matter for individual TEIs based on their assessment on their exposure to corruption risks and fraudulent practices. To ensure that there are adequate safeguards against abuses, this Chapter sets out a host of essential ingredients for the effective control of procurement activities.

3.2 Designating Approving Authorities

To enable the efficient performance of procurement activities with suitable accountability, staff of the appropriate levels should be designated by the highest authority, usually the governing body, to approve key decisions in the procurement process, having regard to the financial limit of the purchase and the TEI's operational needs. Raising purchase requisitions, drawing up specifications of goods or services to be procured, selecting suppliers or contractors, accepting offers, and making payments are the corruption prone processes warranting effective control measures.

The schedule of authorities should be set out in the procurement procedural guidelines (**Chapter 3.6**) and made known to all staff members for strict compliance, with the specimen signature(s) of the authorized personnel kept by the Central Procurement Office (**Chapter 3.6**) for verification, if required. Any exceptions or deviations from the laid down procurement rules (such as adoption of single tender instead of competitive tendering or inviting inadequate number of suppliers for quotations) should be approved by the next higher level of the approving authority.

3.3 Determining Procurement Methods

To ensure that procurement is carried out in a timely and effective manner, TEIs should specify the appropriate procurement methods (**Chapter 3.4**). In determining this, TEIs should take into account various factors, such as:

- value and quantity of the purchases;
- urgency of the procurement;
- whether the goods or services are strategic or common items; and
- whether the price is the sole consideration for the purchase.

3.4 Procurement Methods

To meet the diversified needs of various users within TEIs, different procurement methods may be adopted for different purchases.

3.4.1 Collaborative Procurement

This refers to different TEIs joining force to negotiate for better terms and gain price advantages on their commonly required items from suppliers. Collaborative procurement may operate in the following manner:

- Holding regular meetings among participating TEIs;
- Identifying commonly required items such as distilled water, laboratory gases and photocopying papers;
- Taking turns by individual TEIs to conduct a tender exercise in accordance with its own procurement rules on behalf of all participating TEIs, with prospective suppliers recommended by individual TEIs for tender invitation;
- Providing participating TEIs access to the tender results such as the lowest conforming bid or the best offer regarding the technical and financial proposals so that they may place purchase orders direct with the selected supplier; and
- Obtaining approval for purchases by individual TEIs in accordance with their own approval mechanism based on the value of the purchase order.

TEIs may benefit by adopting this method to:

- reduce the risk of corruption or malpractice when a tender exercise is monitored by representatives of participating TEIs;
- achieve economy of scale through purchasing in bulk;
- create an opportunity for the procurement staff of participating TEIs to share information (e.g. suppliers' performance) and experience; and
- save time and administrative effort in procuring common items by individual TEIs.

3.4.2 Tender

To ensure fairness and competitiveness, it is advisable for TEIs to adopt open tender as far as possible to invite all prospective suppliers (**Chapter 6.2**). The following tender methods may, however, be adopted to meet specific purchase requirements:

- **Selective tendering** – it may be adopted when not all suppliers/contractors in the market are capable of providing the required goods or services. Usually a list of qualified suppliers/contractors should first be established so that only the qualified ones are invited to tender.
- **Single tendering** – to guard against allegations of favouritism to a particular supplier, it should only be used on exceptional circumstances, such as sole supplier for a patented or

licensed item, with the special approval sought in accordance with the schedule of authorities (**Chapter 3.2**).

3.4.3 Direct Purchase

For urgent and minor purchases of common items, direct purchases may be deployed through the following means:

- **Quotation** – it refers to the invitation of a minimum number of suppliers to provide their quotes either verbally or in writing through fax or email. To adopt this method, TEIs should invite qualified suppliers from an approved suppliers' list (**Chapter 5**).
- **Corporate credit card** – it should only be used by authorized corporate credit card holders for making minor purchases, e.g. buying books in an overseas conference, settling the bill of an official meal in a restaurant. Large payment should normally be resorted to other means such as cheques, autopayment by banks, etc.
- **Petty cash** – it is used for low value purchases or reimbursement of expenditures such as traveling expenses or drinks for guest speakers.

3.4.4 Term Contract

For frequently procured common items, it is advisable for TEIs to appoint a term supplier/service contractor through a competitive tender exercise (**Chapter 3.4.2**) to help obtain the best price and save the time and effort in making numerous purchases individually.

3.5 Procurement of Budgeted Items

A good budget planning is an effective means to prevent abuse in procurement. To do so, it is essential for the budget controllers (**Chapter 2.1**) to:

- prepare budget for approval by the supervisors prior to the start of a procurement exercise;
- provide in the budget a realistic estimate and breakdown of the items to be procured; and
- approve a purchase requisition only if it has been budgeted for, unless there are justifications for the otherwise under special circumstances.

3.6 Setting up a Central Procurement Office

To provide the necessary professional support to users in all procurement matters, TEIs should set up a dedicated Central Procurement Office to:

- promulgate and issue guidelines and instructions for procurement, preferably in the form of an operation manual;
- provide training for staff members involved in procurement activities;
- maintain a central suppliers' list and conduct periodic performance review of the listed suppliers (**Chapter 5**);

- co-ordinate the purchase of commonly required goods and services by different users within the TEI to achieve economy of scale;
- represent the TEI in the collaborative procurement exercises (**Chapter 3.4.1**), if any;
- place approved purchase orders with selected suppliers for users;
- co-ordinate any disposal of obsolete inventory/stock items (**Chapter 8.5**);
- monitor compliance with the established procurement rules/guidelines and recommend improvement measures to the budget controllers and Heads of Departments concerned if inadequacies are observed; and
- report any irregularities (e.g. split orders) or non-compliances to the budget controllers or the governing body for detection of any crime or malpractice.

3.7 Establishing a Monitoring Mechanism

To safeguard against manipulation and abuse, the Central Procurement Office/budget controllers/supervisors should:

- review direct purchases to detect any split orders raised for the purpose of circumventing the financial limit set for direct purchases;
- verify the authenticity of quotations by making random checks with the suppliers concerned to confirm particulars of their quotations;
- conduct random checks on procedural compliance of procurement activities; and
- document findings of the supervisory checks/reviews and the follow-up actions, if any.

In addition, procurement should form the subject of regular audit reviews by an independent audit unit of the TEI. Audit findings should be directly reported to the top management, such as the President and the Council.

3.8 Compiling Management Reports

To detect irregularities and malpractice, the Central Procurement Office should compile management reports for the scrutiny of supervisors, budget controllers and the top management. The following reports are recommended:

- **Periodic reports** – purchase reports should be compiled on regular intervals to review the trend of purchases.
- **Exception reports** – reports should be prepared to draw management's attention to irregularities, including those of long outstanding purchase orders and deviations from normal procurement practice.

3.9 Electronic Procurement System

Where resources allow, TEIs should develop a computerized system to enable the procurement be made through electronic means. The system log can record procurement process, including action taken, recommendation made by procurement staff and approval granted by the designated approving staff. Furthermore, the data and information captured can be used for generating management reports for timely monitoring. However, TEIs should ensure the security of the system, including but not limited to the following control measures:

- Use of unique login name and password to verify the authenticity of each authorized user;
- Well-defined levels of access right and approving authority;
- Any amendment to the approved purchase requisitions and orders should be approved in the system by the designated authority with audit trails to facilitate monitoring; and
- Encrypted transmission of confidential data to and from outside parties, such as suppliers and contractors.

Initiating Purchase Requisitions

4.1 Introduction

Users of goods and services should be consulted on their requirements and requested to provide input for drawing up the procurement specifications. To avoid the provision of a biased specification in favour of a particular supplier/contractor or making excessive and unnecessary purchase requests, this Chapter focuses on the safeguards to prevent such malpractice and abuse.

4.2 Raising Purchase Requisitions

To ensure consistent practice by users, the Central Procurement Office (**Chapter 3.6**) should devise a standard purchase requisition form for their use and require them to:

- make reference to the previous purchase order, if any, on the same item made within a prescribed period of time to detect split orders;
- place orders with the term contractors if the goods/services to be procured are covered in valid term contracts;
- consult the Human Resources Office on engaging individuals for service contracts, particularly on areas such as contract terms and pay scale; and
- confirm that the purchase requisition is a budgeted item.

4.3 Drawing up Specifications and Preparing Procurement Documents

To prevent the provision of restrictive specifications which may be perceived as favouritism to a particular supplier or ambiguous specifications to allow manipulation in subsequent tender/quotation assessment, the users should:

- specify only the required functions/standards and avoid brand names or models as far as practicable;
- differentiate the mandatory and desirable requirements to prevent discretionary assessment;
- provide required quantities to be procured within the contract period to enable bidders to submit a realistic bid;

- state the TEI's stance on "zero tolerance" to corruption by inserting a warning against bribery (**Appendix 3**) and an anti-collusion clause (**Appendix 4**) in the tender/quotation document;
- include the following as a contract condition for successful bidders:
 - require the service providers/contractors to abide by probity rules and providing them with a sample Code of Conduct (**Appendix 1**) which stipulates the probity requirements for their employees, covering acceptance of advantage, conflict of interest and confidentiality of information; and
 - restrict sub-contracting arrangement unless with the TEI's prior written approval;
- make known to prospective bidders the evaluation criteria in broad terms to ensure a transparent and competitive process; and
- appoint a panel comprising personnel with the necessary expertise if the procurement involves strategic items such as highly specialized or technical equipment.

Maintaining Suppliers' Lists

5.1 Introduction

To ensure that only qualified and reliable suppliers are invited for selective tenders (**Chapter 3.4.2**) or quotations (**Chapter 3.4.3**) and an adequate number of available suppliers when required, it is essential for TEIs to compile and maintain a central suppliers' list categorized by types of goods and services. This Chapter provides corruption prevention tips in the maintenance of such suppliers' list.

5.2 Sourcing Prospective Suppliers

To ensure that the central suppliers' list contains sufficient number of qualified suppliers, the Central Procurement Office (**Chapter 3.6**) should openly invite interested suppliers in the market to submit an application for inclusion in the TEI's central suppliers' list by:

- devising a standard application form;
- drawing up and making known the admission criteria (**Chapter 5.3.1**) for inclusion in the suppliers' list;
- inviting openly interested suppliers which meet the laid down admission criteria through newspaper advertisements and notifications on the website;
- inviting nomination of suppliers by users who may have better market information; and
- seeking references from other TEIs or public organizations such as the government which also maintain a similar list of suppliers.

5.3 List Management

To manage the suppliers' list, the Central Procurement Office should devise a mechanism for admission, performance review and taking disciplinary action against underperforming suppliers.

5.3.1 Admission Criteria

To ensure fairness in admitting interested suppliers into the central suppliers' list, the Central Procurement Office should set out and publicize the admission criteria which may include the following:

- Company information (e.g. business registration and profile of Board of Directors and key executive personnel, etc.);
- Years of experience in the trade/industry;
- Financial and technical capability;
- Project references; and
- Integrity checks, e.g. whether there are conviction records such as employment of illegal workers.

The Central Procurement Office should conduct random checks to verify information supplied in the applications and recommend qualified suppliers to the approving authority for inclusion in the list.

5.3.2 Performance Review

To ensure that only active suppliers with satisfactory performance remain in the central suppliers' list, the Central Procurement Office should:

- establish an appraisal system for users to conduct periodic review on the performance of suppliers, including their response to tender/quotation invitation, prompt delivery of goods and services, and after-sale service;
- require users to report on a standard form any adverse performance or deficiencies found on the quality of goods and services procured; and
- demand rectifications by the suppliers on the reported deficiencies within a prescribed period of time, failing which disciplinary actions (**Chapter 5.3.3**) will be instituted.

5.3.3 Disciplinary System

To properly sanction the suppliers/contractors for any deficiencies, the Central Procurement Office should promulgate a disciplinary system and make it known to all listed suppliers. Depending on the seriousness of the deficiency, the Central Procurement Office should take the following disciplinary measures against the underperforming suppliers:

- Issuing of warnings and monitoring of the rectification of the problem identified;
- Suspension from bidding the TEI's tenders/quotations for a prescribed period of time; or
- Deletion from the central suppliers' list.

Suppliers/contractors which give no response to the TEI's tender/quotation invitations for a specified period of time without justification (**Chapter 6.4**) or found guilty of bribery or other offences should be deleted from the central suppliers' list. For transparency sake, the suppliers concerned should be informed of the reasons for the disciplinary action taken.

Inviting Tenders/ Quotations

6.1 Introduction

To achieve competitiveness and fairness in the bidding process, it is advisable to obtain as many offers to a tender/quotation invitation as possible. While an open tender may serve such purpose, a restrictive tender or quotation invitation could not and there could be a risk of perceived favouritism and collusion between the staff involved and individual prospective suppliers. This Chapter provides measures to ensure fairness in inviting and receiving tenders/quotations.

6.2 Inviting Suppliers to Bid

Subject to the procurement method adopted (**Chapter 3.4**), TEIs should, as far as possible, invite all prospective suppliers to bid and keep a control record of the invitations sent. The invitation methods for different procurement methods are listed as follows:

- **For open tender** – invitation can be advertised through newspaper advertisements and notifications on TEIs' website. TEIs should also notify listed suppliers of such invitation.
- **For selective tenders/quotations** – suppliers on the approved list should be invited to bid based on a fair share principle (e.g. by rotation). In addition, the last successful supplier with satisfactory performance and any suppliers nominated by the users may be included in the invitation list. TEIs should designate the Central Procurement Office (**Chapter 3.6**) to check the invitation list to ensure its fairness and completeness.
- **Conducting tender/quotation briefings** – where explanation of requirements or demonstration of service standard is required, it is advisable to hold a tender/quotation briefing or site visit, and invite all bidders to attend. If required, the Central Procurement Office should provide the bidders with supplementary information (e.g. in the form of tender addendum). To ensure fairness, all bidders should receive the same information which is essential to tender/quotation preparation before the submission deadline.

6.3 Receiving Tenders/Quotations

To prevent leakage of tender/quotation information and acceptance of late submissions, the following safeguards should be adopted:

- **Submission deadline** – allow sufficient time for the bidders to prepare and submit their bids. If the deadline of submission has to be deferred (e.g. due to inclement weather), TEIs should postpone it to the same time on the next working date. Late tenders should be disqualified.

- **Mode of submission** – specify the mode of submission, such as by using sealed plain envelopes with pre-printed labels with the tender/quotation reference. For tenders where price is not the only consideration, TEIs could adopt a “two-envelope” system, under which proposals for the financial and technical aspects of a tender are submitted in separate sealed envelopes to facilitate evaluation (**Chapter 7.3**).
- **Restricting access to submitted bids/bulky items** – designate staff to record and keep custody of submissions and restrict other staff to have access to them. For submissions deposited into a tender box, the keys to the double-locked box should be separately kept by staff members of different departments. For those submitted through fax, a designated facsimile machine with restricted access should be used. For electronic submission, the submissions should be retrieved by at least two authorized users.

6.4 Opening Tenders/Quotations

To prevent tampering with tenders/quotations, the following measures should be adopted:

- **Forming tender/quotation opening team** – it should be formed with at least a representative from the Central Procurement Office. The team members should be reminded to declare any conflict of interest (**Chapter 2.3.1**).
- **Recording tender/quotation information** – the tender opening team should date-stamp the tenders/quotations received and record the gist of tenders/quotations received in a summary sheet, including the company names and the price offers, if any. Verbal quotations obtained should also be recorded with the contact and offer of invited suppliers.
- **Handling “nil return” or “no response”** – the Central Procurement Office should contact suppliers with “nil return” or “no response” to obtain as far as possible a written declination and the reasons. To encourage prompt response, a reply proforma should be devised for completion by the disinterested invitees.

Evaluating Tenders/ Quotations

7.1 Introduction

To ensure consistent and objective comparison of tenders/quotations for the selection of the best conforming offer, TEIs should ensure that the selected tender/quotation meets the specifications and the selection is free from favouritism. This Chapter sets out the measures for monitoring the evaluation and approval process.

7.2 Setting up an Evaluation Panel/Tender Board

When the price is not the only consideration, TEIs should form an evaluation panel and appoint to it members with the necessary expertise, including at least a representative from the Central Procurement Office (**Chapter 3.6**) to ensure an objective evaluation. TEIs should also:

- **Undertaking by members** – require members of the evaluation panel or tender board to undertake not to divulge, without permission, any information relating to the tender/quotation submissions and declare any conflict of interest situations (**Appendix 2**); and
- **Handling of undertakings** – require the panel/board chairman to review all declarations made in the undertakings and document his decision made where necessary.

7.3 Conducting Evaluation of Tenders/Quotations

To ensure the evaluation is objective, TEIs should require the panel or board members to:

- **Pre-determined assessment criteria and weightings** – use a marking scheme with pre-determined evaluation criteria and weightings for members to mark the technical proposals independently before combining the marks to form the overall technical/quality score;
- **Communication with bidders** – avoid communication with bidders during the evaluation process. If clarification of bids is required, this should normally be done in writing through the Central Procurement Office to avoid any perception of favoritism;
- **Opening of financial offer** – open the financial proposals only after the completion of the technical evaluation;
- **Conducting post-tender negotiation** – forbid post-tender negotiation as it is corruption prone. If it is not avoidable (e.g. if the lowest conforming bid exceeds the approved budget and a re-tender is not an option, a negotiation with the bidder may be inevitably

necessary to lower the tendered price), TEIs should form a negotiation team with at least two members who should be provided with detailed guidelines on conducting the negotiation (**Appendix 5**); and

- **Preparing tender reports** – submit a tender report with the approved budget, the analysis of bids and recommendation with justification to the approving authority for a decision.

7.4 Approving Tenders/Quotations

The approving authority should review the recommendation of the tender report and the procurement process, including the invitation list of tenderers/bidders, return of tenders/quotations, and analysis made to arrive at the recommendation.

7.5 Notification of Results

All tenderers are eager to know whether they are successful in the bidding. If there is delay in the announcement of results, unscrupulous staff may exploit the gap period to solicit advantages from the successful bidder by purporting to provide assistance to him in the tender/quotation exercise. To prevent manipulation, the Central Procurement Office should:

- **Handling of tender results** – notify the successful tenderer in writing as soon as possible after the necessary approval has been obtained; and
- **Notifying unsuccessful bidders** – upon the award of the contract, notify all unsuccessful bidders of the outcome.

Placing Orders and Receiving Goods

8.1 Introduction

Corruption opportunities exist through excessive ordering of goods or services and acceptance of low-end products or default services by compromised users. This Chapter highlights the preventive measures to plug the corruption loopholes.

8.2 Ordering Goods

In placing a purchase order with an approved bidder, it is essential to take the following steps:

- The user should check all the details on the purchase order to ensure accuracy, in particular the procurement specifications and quantity, if applicable;
- If in order, the user should seek approval to issue the purchase order from the approving authority (**Chapter 3.2**) who should review if the goods or services to be procured are needed and budgeted for;
- The budget controllers (**Chapter 2.1**) should monitor the satisfactory completion of the purchase orders issued while the Central Procurement Office (**Chapter 3.6**) should identify any long outstanding orders for necessary action;
- If amendments to the issued orders are required, the user should seek approval and inform the Central Procurement Office, with justifications properly documented; and
- The Central Procurement Office should specify a period of time for identifying long outstanding purchase orders (**Chapter 3.8**) which should be brought up to the budget controllers for follow-up action and consideration to cancel the orders.

8.3 Certifying Receipt of Goods

To detect and deter acceptance of short delivery or sub-standard goods, the Central Procurement Office should require the users to:

- check if the quality and quantity of goods delivered are in accordance with the purchase orders issued and certify the satisfactory receipt of the ordered goods;

- record any shortage or defected goods received, follow up with the supplier concerned for replacement or compensation, and make adverse reports on the supplier's performance (**Chapter 5.3.2**) to the Central Procurement Office; and
- upon satisfactory receipt of the goods, forward the certified document within a specified time limit (e.g. seven days), to the Finance Office for making payment (**Chapter 10.3**).

8.4 Inventory Control

Inventory items are generally those of permanent or non-consumable in nature and with a unit cost at or above a specified limit; others are referred to as stock items. To prevent inventory items from being misused for personal gain by unscrupulous staff, the Central Procurement Office should:

- maintain a record of the quantity and movement of inventory items;
- lay down the loan policy, such as the type of outside practice that warrants the loan of inventory items and the duration of loan period; and
- conduct physical checks to detect any misuse of inventory items.

8.5 Disposal of Obsolete Items

TEIs should draw up guidelines to identify items and methods for disposal of obsolete items with control measures listed below:

- **Identifying items for disposal** – when a budget controller identifies an item to dispose of (e.g. obsolete or damaged and beyond economic repair), he should notify the Central Procurement Office which should check if such items would be of use to other budget controllers.
- **Determining methods of disposal** – once it is determined that an item should be disposed of, the budget controller should consider the following:
 - > If such items still have a resale value;
 - > If donating such items to schools, charities or non-profit making organizations is appropriate; or
 - > Dumping if the item is of no resale value. Any dumping exercise should be conducted by a team of at least two members to ensure the integrity of the disposal process.

Any disposal decisions should be recommended by the budget controller concerned, endorsed by the Central Procurement Office, and approved by a designated committee comprising a chairman who is a senior staff member and at least two other members from different departments.

Administering Service Contracts

9.1 Introduction

The acceptance or tolerance of any unsatisfactory service is often made possible through the connivance of those staff responsible for monitoring the performance standard of the service contractors. Opportunities also arise in handling contract variations (e.g. acceptance of unreasonably high rates for ordering ad-hoc security service from an existing contractor for unexpected events). This Chapter recommends measures to be adopted for monitoring service contractors.

9.2 Drawing up a Supervision Plan

As an effective means to monitor the performance of a service contractor, it is essential for the user to draw up a supervision plan based on the required service level and performance standards as specified in the tender/quotation invitation documents (**Chapter 4.3**), such as the number of foremen and cleaners required in the provision of cleaning service, cleaning schedule and the state of cleanliness agreed in the contract, etc.

9.3 Users' Feedback

To check the performance of service contractors, the Central Procurement Office (**Chapter 3.6**) should establish a mechanism to collect and record users' feedback on the quality of services procured.

9.4 Conducting Inspections

To maintain the quality of service and prevent malpractice, the Central Procurement Office should devise a checklist for staff responsible for contract administration to conduct inspections on the contractor's performance, in particular, its service deliverables and standards. Any substandard or default service found should be documented and followed up with the contractor in a timely manner.

9.5 Holding Regular Meetings

To ensure effective monitoring and communication, the staff responsible for contract administration should hold regular meetings with the contractors to review their performance, in particular any problems found and complaints received in relation to service delivered. A gist of the meetings and the remedial actions to be taken by the contractors, if any, should be documented for monitoring.

9.6 Ordering Ad-hoc Services

TEIs may use term contracts for incidental services, such as requiring additional security and cleaning services for Open Days. To avoid impropriety in ordering these ad-hoc services, users should:

- include incidental services in the bidding exercise for the appointment of term contractors; and
- avoid issuing retrospective orders and follow the usual procurement rules by specifying details of services required and seeking prior approval as far as practicable.

Making Payments

10.1 Introduction

While terms are usually set out in the contracts with payment to be made after satisfactory acceptance of the goods or services by the users, corrupt practices were found in past corruption cases relating to undue delay in processing payment requests from suppliers/contractors. This Chapter lists out the payment methods and measures to be adopted for processing payments to minimize the risks of manipulation.

10.2 Selecting Payment Methods

To prevent misappropriation of payment to suppliers/contractors by unscrupulous staff, the Finance Office should draw up guidelines to list the payment methods, including the following:

- Cheques should be made and duly signed by at least two authorized signatories within their specified financial limits.
- Autopayment by banks is often used for purchases with regular payments (such as fixed monthly service fees), and bank or telegraphic transfer is selected for payment of other local and overseas purchases.
- Letter of credit may be used to settle payment with overseas suppliers.
- Corporate credit cards are becoming popularly used as a payment method nowadays. The Finance Office should keep a record of the cardholder name, card number and credit limit of individual cards issued and adopt the following measures to monitor their use:
 - > Set a credit limit for using the corporate credit cards subject to the risk and need of individual users;
 - > Issue guidelines for situations where the use of corporate credit cards is allowed, and require cardholders to obtain pre-approval for anticipated purchases as far as possible; and
 - > Conduct monthly checks on all transactions made by individual corporate credit cards and report any irregularities found to the management, including the budget controllers (**Chapter 2.1**) and Head of the Finance Office for follow-up action.

- Petty cash is allowed for paying low value purchases. The Finance Office should specify the limit for low value purchases and require the budget controllers and petty cash holders to:
 - restrict the use of petty cash for buying low value items but not those standard stock which is available from the central store, such as general stationery and photocopying papers; and
 - have all petty cash purchases supported by original invoices or receipts. In exceptional cases like claiming of travel expenses, the claimant should list out details, such as the place/office visited, mode of transport and the corresponding amount claimed, and obtain approval from the supervisor and appropriate authority before claiming reimbursement from the petty cash holder.

10.3 Processing Payments

To avoid undue delay in processing payment requests, the Finance Office should:

- set an internal time limit for processing the payment upon receipt of the certified invoices from the users; and
- verify the payment requests with the approved budget (**Chapter 3.5**) and purchase orders, if any, before payment.

APPENDIX 1

Sample Code of Conduct

Introduction

1. The (*name of company*) (hereafter referred to as the Company) regards honesty, integrity and fair play as our core values that must be upheld by all directors and staff¹ of the Company at all times. This Code sets out the basic standard of conduct expected of all directors and staff, and the Company's policy on acceptance of advantage and handling of conflict of interest when dealing with the Company's business.

Prevention of Bribery**Prevention of Bribery Ordinance**

2. Under the Prevention of Bribery Ordinance (the Ordinance), any director or staff member who, without the permission of his employer or principal (i.e. the Company), solicits or accepts an advantage as a reward or inducement for doing any act or showing favour in relation to the latter's business, commits an offence. The person offering the advantage also commits an offence.

(The relevant provisions of Section 9 of the Ordinance and the definition of "advantage" are detailed at **Annex 1**.)

Acceptance of Advantage

3. It is the Company's policy that directors and staff should not solicit or accept any advantage for themselves or others, from any person, company or organization having business dealings with the Company, except that they may accept (but not solicit) the following advantages when offered on a voluntary basis:

- (a) advertising or promotional gifts or souvenirs of a nominal value; or
- (b) gifts given on festive or special occasions, subject to a maximum limit of \$_____ in value; or
- (c) discounts or other special offers given by any person or company to them as customers, on terms and conditions equally applicable to other customers in general; or
- (d) gifts or souvenirs of nominal value presented to them in official functions.

No director or staff member should accept any advantage from a subordinate, except those mentioned in paragraphs (a) and (b) above.

¹ "Staff" cover full-time, part-time and temporary staff, except where specified.

4. Gifts or souvenirs described in paragraph 3(d) above are deemed as offers to the Company. The directors and staff members concerned should report the acceptance to the Company and seek direction as to how to handle the gifts or souvenirs from *the approving authority*² using Form A (**Annex 2**). If a director or staff member wishes to accept any advantage not covered in paragraph 3, he/she should also seek permission from *the approving authority* using Form A.

5. However, a director or staff member should decline an offer of advantage if acceptance could affect his/her objectivity in conducting the Company's business or induce him/her to act against the interest of the Company, or acceptance will likely lead to perception or allegation of impropriety.

6. If a director or staff member has to act on behalf of a client in the course of carrying out the Company's business, he/she should also comply with any additional restrictions on acceptance of advantage that may be set by the client.

Offer of Advantage

7. Directors and staff are prohibited from offering advantages to any director or staff of another company or organization, for the purpose of influencing such person or company in any dealings, or any member or staff of a government department or public body while having business dealings with the latter, whether directly or indirectly through a third party, when conducting the Company's business.

Entertainment

8. As defined in Section 2 of the Ordinance, "entertainment" refers to food or drink provided for immediate consumption on the occasion, and any other entertainment provided at the same time. Although entertainment is an acceptable form of business and social behaviour, a director or staff member should avoid accepting overly lavish or frequent entertainment from persons with whom the Company has business dealings (e.g. suppliers or contractors) or from his/her subordinates to avoid placing himself/herself in a position of obligation.

Records, Accounts and Other Documents

9. Directors and staff should ensure that all records, receipts, accounts or other documents they submit to the Company give a true representation of the events or business transactions as shown in the documents. Intentional use of documents containing false information to deceive or mislead the Company, regardless of whether there is any gain or advantage involved, may constitute an offence under the Ordinance.

Compliance with Laws of Hong Kong and in Other Jurisdictions

10. Directors or staff must comply with all local laws and regulations when conducting the Company's business, and also those in other jurisdictions when conducting business there.

² Specify the post of the approving authority in the Code and the Form.

Conflict of Interest

11. Directors and staff should avoid any conflict of interest situation (i.e. situation where their private interest conflicts with the interest of the Company) or the perception of such conflicts. They should not misuse their position or authority in the Company to pursue their own private interests which include both financial or personal interests and those of their family members, relatives or close personal friends. When actual or potential conflict of interest arises, the director or staff member should make a declaration to the management through the reporting channel using Form B (**Annex 3**).

12. Some common examples of conflict of interest are described below but they are by no means exhaustive:

- (a) A staff member involved in a procurement exercise is closely related to or has financial interest in the business of a supplier who is being considered for selection by the Company.
- (b) One of the candidates under consideration in a recruitment or promotion exercise is a family member, a relative or a close personal friend of the staff member involved in the process.
- (c) A director of the Company has financial interest in a company whose quotation or tender is under consideration by the Board.
- (d) A staff member (full-time or part-time) undertaking part-time work with a contractor whom he is responsible for monitoring.

Use of Company Assets

13. Directors and staff in charge of or having access to any Company assets, including funds, property, information, and intellectual property, should use them solely for the purpose of conducting the Company's business. Unauthorized use, such as misuse for personal gain, is strictly prohibited.

Confidentiality of Information

14. Directors and staff should not disclose any classified information of the Company without authorization or misuse any Company information (e.g. unauthorized sale of the information). Those who have access to or are in control of such information, including information in the Company's computer system, should at all times protect the information from unauthorized disclosure or misuse. Special care should also be taken in the use of any personal data, including directors', staff's and customers' personal data, to ensure compliance with the Personal Data (Privacy) Ordinance.

Outside Employment

15. Any full-time staff who wish to take up employment outside the Company must seek the prior written approval of the approving authority. The approving authority should consider whether the outside employment would give rise to a conflict of interest with the staff's duties or the interest of the Company.

Relationship with Suppliers, Contractors and Customers

Gambling

16. Directors and staff are advised not to engage in frequent gambling activities (e.g. mahjong) with persons having business dealings with the Company.

Loans

17. Directors and staff should not accept any loan from, or through the assistance of, any individual or organization having business dealings with the Company. There is however no restriction on borrowing from licensed banks or financial institutions.

[The Company may wish to include other guidelines on the conduct required of directors and staff in their dealings with suppliers, contractors, customers, and other business partners as appropriate to specific trades.]

Compliance with the Code

18. It is the responsibility of every director and staff member of the Company to understand and comply with this Code, whether performing his company duties in or outside Hong Kong. Managers and supervisors should also ensure that the staff under their supervision understand well and comply with this Code.

19. Any director or staff member in breach of this Code will be subject to disciplinary action, including termination of appointment. In case of suspected corruption, a report will be made to the ICAC, and of other criminal offences, to the appropriate authority.

20. Any enquiries about this Code or reports of possible breaches of this Code should be made to *(post of designated senior staff)*.

Date :

(Name of Company)

Extracts of the Prevention of Bribery Ordinance

Section 9

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- 1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –
- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
- shall be guilty of an offence.
- (2) Any person, who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's –
- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,
- shall be guilty of an offence.
- (3) Any agent who, with intent to deceive his principal, uses any receipt, account or other document –
- (a) in respect of which the principal is interested; and
- (b) which contains any statement which is false or erroneous or defective in any material particular; and
- (c) which to his knowledge is intended to mislead the principal,
- shall be guilty of an offence.
- (4) If an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).
- (5) For the purpose of subsection (4) permission shall –
- (a) be given before the advantage is offered, solicited or accepted; or
- (b) in any case where an advantage has been offered or accepted without prior permission, be applied for and given as soon as reasonably possible after such offer or acceptance,
- and for such permission to be effective for the purpose of subsection (4), the principal shall, before giving such permission, have regard to the circumstances in which it is sought.

Section 2

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“Advantage” means :

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e),

but does not include an election donation within the meaning of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), particulars of which are included in an election return in accordance with that Ordinance.

“Entertainment” means :

The provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provisions.

Section 19

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In any proceedings for an offence under this Ordinance, it shall not be a defence to show that any such advantage as is mentioned in this Ordinance is customary in any profession, trade, vocation or calling.

Report on Gifts Received

Form A

Part A – To be completed by Receiving Staff

To : (Approving Authority)

Description of Offeror :

Name & Title of Offeror : _____

Company : _____

Relationship (Business / Personal) : _____

Occasion on which the Gift was / is to be received : _____

Description & (assessed) value of the Gift : _____

Suggested Method of Disposal :**Remark**

- | | |
|---|-------|
| <input type="checkbox"/> Retain by the Receiving Staff | _____ |
| <input type="checkbox"/> Retain for Display / as a Souvenir in the Office | _____ |
| <input type="checkbox"/> Share among the Office | _____ |
| <input type="checkbox"/> Reserve as Lucky Draw Prize at Staff Function | _____ |
| <input type="checkbox"/> Donate to a Charitable Organization | _____ |
| <input type="checkbox"/> Return to Offeror | _____ |
| <input type="checkbox"/> Others (please specify) : _____ | _____ |

(Date)

 (Name of Receiving Staff)
 (Title / Department)
Part B – To be completed by Approving Authority

To : (Name of Receiving Staff)

The recommended method of disposal is ***approved / not approved***. *The gift(s) concerned should be disposed of by way of : _____

(Date)

 (Name of Receiving Staff)
 (Title / Department)
*** Please delete as appropriate.**

Declaration of Conflict of Interest

Form B

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

To : (Approving Authority) via (Supervisor of the Declaring Staff)

I would like to report the following actual/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 organization (e.g. supplier)
Brief description of my duties which involved the persons/companies (e.g. handling of tender exercise)

(Date)

 (Name of Declaring Staff)
 (Title / Department)

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

To : (Declaring Staff) via (Supervisor of the 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 organization's interest without being influenced by your private interest.
- Others (please specify) : _____

(Date)

 (Name of Approving Authority)
 (Title / Department)

* Please delete as appropriate.

APPENDIX 2

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Sample Undertaking Form for Tender Evaluation Panel/Opening Team

To : (Approving Authority)

1. I undertake to hold in strict confidence all tender information that I have access to through my position as a member of the *Tender Evaluation Board/Panel/Opening Team. Tender information includes details of quotations/tenders received and any other sensitive, restricted or confidential information relating to the quotations/tenders.
2. I undertake not to make any unauthorized disclosure or take advantage of any tender information referred to in paragraph 1 above whether or not for personal gain.
3. I undertake to declare any actual or perceived conflict of interest with my official duty as a member of the *Tender Evaluation Board/Panel/Opening Team immediately when I become aware of any such conflict.
4. I undertake to take steps to avoid any conflict of interest with any prospective suppliers or suppliers by not putting myself in a position of obligation towards any of them; for example, by not accepting any favour or lavish or excessive entertainment, and not over-socializing with any of them.
5. I understand that I may be subject to disciplinary action should I fail to observe any of my above undertakings.

Signed by: _____

Name: _____

Title: _____

Date: _____

* Please delete as appropriate.

Sample Probity Clause for Tender Documents

Offering Gratuities

(1) The tenderer shall not, and shall procure that his employees, agents and subcontractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in connection with the 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 tenderer or by an employee, agent or sub-contractor of the tenderer shall, without affecting the tenderer's liability for such failure and act, result in his tender being invalidated.

Note: The above clause is meant for sample only. Users should consult their own legal advisor in drawing up tender notices or contract documents.

APPENDIX 4

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Sample Anti-Collusion Clause for Tender Documents

1. By submitting a Tender, the Tenderer represents and warrants that in relation to the Invitation to Tender:
 - a) save with the prior written consent of the [Name of TEI], it has not communicated and will not communicate to any person other than the [Name of TEI] the amount of any price submitted in its Tender;
 - b) it has not fixed and will not fix the amount of any price submitted in its Tender by arrangement with any person;
 - c) 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; and
 - d) it has not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the tendering process.
2. In the event that a Tenderer is in breach of any of the representations and/or warranties in clause 1, the [Name of TEI] shall be entitled to, without compensation to any person or liability on the part of the [Name of TEI]:
 - a) reject the Tenderer's Tender;
 - b) if the [Name of TEI] has accepted the Tender, withdraw its acceptance of the Tender; and
 - c) if the [Name of TEI] has entered into the Contract with the Contractor, terminate the Contract.
3. By submitting a Tender, a Tenderer is regarded to have undertaken to indemnify and keep indemnified the [Name of TEI] 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.
4. A breach by a Tenderer of any of the representations and/or warranties in clause 1 may prejudice its future standing as a [Name of TEI] contractor or service provider.
5. Clause 1 shall have no application to a Tenderer's communications in strict confidence with its own insurers or brokers to obtain an insurance quotation for computation of the prices quoted in its Tender, or with its professional advisers, consultants or sub-contractors to solicit their assistance in preparation of its Tender.
6. The rights of the [Name of TEI] under clause 2 to 4 are in addition to and without prejudice to any other rights or remedies available to it against the Tenderer.

Note: The above clause is meant for sample only. Users should consult their own legal advisor in drawing up tender notices or contract documents.

Sample Guidelines on Conducting Post-Tender Negotiations

1. Post-tender negotiations should be the exception rather than rule. Where no one tender is clearly more advantageous or where the most advantageous tender cannot be determined until the counter-proposals have been resolved or withdrawn, it may be necessary to hold negotiations also with the tenderers who have presented the second or the third best proposals. The criteria for selection of tenderers for negotiations should be objective and reasonable, and should be stated in the invitation to tender to enhance transparency.
2. Post-tender negotiations should proceed only with the approval of the institution, which should also determine the level of staff to undertake the negotiations and the composition of the negotiation team.
3. The following points should be taken into consideration in appointing a negotiation team:
 - a) the negotiation team should be authorized in advance to commit the organization within baselines (e.g. the financial limit for making commitment at the negotiation) set by the institution; and
 - b) team members should be required to declare any actual or perceived conflict of interest.
4. To minimize the corruption risk, negotiations should be planned and conducted according to broad guidelines set by the institution.
5. While the negotiation team may be given a free hand in conducting negotiations, it should be issued with written guidelines on prohibited conduct which include:
 - a) disclosing the contents of other tenders which may contain sensitive commercial information (e.g. technical proposals, intellectual property and price offers) to assist a particular tenderer in enhancing the competitiveness of his tender proposal;
 - b) indicating to the tenderer the baseline price or cost that the institution is prepared to accept;
 - c) disclosing information that helps the tenderer to supplement his tender proposal;
 - d) soliciting or accepting advantages in relation to the business deal under negotiation; and
 - e) soliciting or accepting entertainment from the tenderer or engage in any social contacts with him during the negotiation process.
6. Hold the negotiation in the institution's office as a normal practice.
7. At the end of the negotiation, the tenderer should be required to submit in a sealed envelope the "best and final" offer. This practice could help deter manipulation because in the absence of any written confirmation, the tenderer's offer could be misrepresented or ignored for a corrupt purpose.
8. To enhance accountability, details of the negotiation meeting including the offer of tenderer, the outcome of negotiation and any special points made should be recorded.

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Excellence

**A Corruption Prevention Guide for
Tertiary Education Institutions**