

Best Practice Checklist



Management of Works Consultancies



防止貪污處

Corruption Prevention Department

Introduction

A consultant is a person or a company engaged under a term contract or on a job basis to provide professional service in works projects, such as design work, sourcing and selection of contractors, and monitoring of their work quality on behalf of the organization hiring the service.

Past corruption cases showed that poor performance of the consultant condoned by compromised staff of the organization could result in financial loss to the organization. There were also cases of corrupt collusion between the employees of the consultant and the contractor, leading to sub-standard works which affect public safety.

This Best Practice Checklist aims at providing organizations with a user friendly and step-by-step procedural guide, with recommendations on safeguards to minimize corruption risks, for the employment of consultants and monitoring of their services. Organizations are expected to adapt the recommended safeguards to suit their organizational structure, resources, risk exposures, and any statutory requirements applicable to the works projects.

The Advisory Services Group of the Corruption Prevention Department of the Independent Commission Against Corruption provides free, confidential, and tailor-made corruption prevention service to private companies on request. The Group also stands ready to tender further advice on how to apply the recommended practices in this Best Practice Checklist to suit individual needs. For more information, please contact the Group at :





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How to Use This Best Practice Checklist

For quick and easy reference, users will find the following icons throughout this Best Practice Checklist. They serve to lead users to the information required :

	Reference Guideline – standard code of conduct, procedural guideline or work manual for quick reference
	Sample Form – samples forms for adoption where applicable
	Legislation – extracts of relevant ordinances
	Pointer – cross reference to other sections of the Checklist



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1 KEY PROCESSES

Listed below are the key processes in the procurement and management of consultancy agreements. The recommended control measures for each process are provided in Chapter 2 (the relevant paragraphs are quoted below)



2.1 Identifying Needs for Consultants

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> <input type="checkbox"/> Set up a project team comprising staff with the necessary technical knowledge. <input type="checkbox"/> Require all staff to be involved in the selection of consultants and the administration of the consultancy agreement to declare any actual or potential conflict of interest that may arise.
Project Team	<ul style="list-style-type: none"> <input type="checkbox"/> Identify the need for works consultants and define the scope of consultancy. <input type="checkbox"/> Justify the need for engaging consultants in writing.
Management	<ul style="list-style-type: none"> <input type="checkbox"/> Assess and approve the engagement of consultants, having regard to the availability of expertise and resources within the organization.

2.2 Preparing Project Brief

Responsible Parties	Recommended Control Measures
Project Team	<ul style="list-style-type: none"> <input type="checkbox"/> Clearly define the extent of work, skills and expertise required, deliverables and milestones for payment of the services provided. <input type="checkbox"/> Specify the size of the firm, the minimum number of staff and the professional qualifications required. <input type="checkbox"/> Require the consultant to submit for approval a site supervision plan proposing the work supervision arrangements, such as the types of work to be inspected, frequency of inspection, and the level of staff to be deployed before commencement of works.

- ❑ Require the consultant to commit to ethical practices by issuing a code of conduct (📄 *Appendix 1*) or probity guidelines to the employees.
- ❑ Include in the code of conduct :
 - the organization’s or company’s core values, mission statement if appropriate, and stance on anti-corruption.
 - the policy governing solicitation and acceptance of advantages and entertainment, with reference to the relevant provisions under the Prevention of Bribery Ordinance (📄 *Annex 1 of Appendix 1*) and the procedures for handling acceptance.
 - guidelines on reporting the gifts received (📄 *Annex 2 of Appendix 1*), declaration of conflict of interest and the procedures for handling the declared conflicts (📄 *Annex 3 of Appendix 1*).
 - the policy for staff taking outside or part-time jobs and the procedures for approval, if applicable.
 - rules for protection and use of confidential or proprietary information.
 - rules for use of resources of the organization or company such as vehicles and computers and their disposal.
- ❑ Consider the need to include a clause to debar the consultant from assisting or partnering with contractors to bid for the works contracts arising from the consultancy agreement, and to declare any investment in the business of any appointed contractors whom they supervise (🔗 2.7).

2.3 Short-listing Consultants

Responsible Parties

Recommended Control Measures

Management

- ❑ Determine the way to shortlist qualified consultants for invitation to tender (e.g. by way of a pre-qualification exercise through openly inviting expression of interest from consultants in case of sizeable projects, or through compiling a list of consultants for small projects).
- ❑ Specify the number of consultants to be shortlisted for tender invitation to ensure there is adequate competitiveness.

- Designate a panel comprising staff of the project team with the necessary technical knowledge, and including staff from the user department to pre-qualify consultants who have expressed interest.

Project Team

- For major projects, conduct a pre-qualification exercise by openly inviting expression of interest.
- For minor projects, compile a reasonably long list of consultants through industry referrals, users' nominations, search from the consultant lists posted on the website of the relevant government departments (e.g. list of consultants in the Building Surveying Category of Architectural and Associated Consultants Selection Board maintained by the Architectural Services Department and the registered Authorized Persons list maintained by the Buildings Department).
- Pre-determine the pre-qualification criteria, such as size of firm, expertise, experience, etc. and invite those consultants who have expressed interest or those on the long list to submit the required information for prequalification assessment.

Designated Panel

- Select qualified consultants to form the shortlist for invitation to tender based on the laid down criteria and document the reasons if the number of consultants falls short of the number specified.

Management

- Review and approve the shortlist.

2.4 Inviting and Receiving Tenders

Responsible Parties**Recommended Control Measures****Tender Briefing****Project Team**

- Conduct a briefing for all short-listed consultants on the same occasion, if necessary.

Tender Information

- Provide all short-listed consultants with the same information, such as tender forms and tender submission deadline, etc.

- ❑ Ensure all material tender information released in response to enquiries is given to all tendering consultants.
- ❑ Include in the tender document the need for a presentation, if required, and provide all tendering consultants with an equal opportunity to make a presentation.
- ❑ Allow sufficient time (at least two weeks) for the consultants to prepare tender proposals.

Tender Evaluation Method

- ❑ Adopt a two-envelope system¹ for selecting tenders if price is not the only consideration, and require tenderers to submit tenders in duplicate (copies should be kept for record to facilitate future audit checks).
- ❑ Pre-determine the evaluation criteria and their weightings which should be included in the tender document.

Probity and Anti-Collusion Clause

- ❑ Include in the tender document a clause prohibiting bribery and collusion in tendering (📄 *Appendix 2*) and requiring the consultant to submit, as part of the tender submission, a declaration pledging compliance with the anti-collusion clause (📄 *Annex of Appendix 2*).

Tender Security

- ❑ Take precautionary measures to prevent leakage of tender information, for examples :
 - receive tenders in a double locked tender box with the keys kept by different staff members.
 - task an independent team to witness tender opening.
- ❑ Record the tendered sums of all tenders received in a summary sheet for future audit checks, or make copies of the tenders if duplicate copies are not submitted.
- ❑ Return tenders submitted beyond the deadline to the tenderers unopened as late tenders should not normally be accepted for the sake of fairness.

¹ Under the two-envelope system, tenderers are required to submit in separately sealed envelopes a technical proposal (containing information such as size of firm, resources, relevant experience, past projects, etc.), and a price proposal. Tenders are assessed using a marking scheme, and a weighting, e.g. 40:60, is given to the technical and the price proposals.

- ❑ Accept late tenders only with the endorsement of the management (or the tender board if any) on justifiable grounds.

2.5 Evaluating Tenders

Responsible Parties Recommended Control Measures

Designated Assessment Panel

- Management**
- ❑ Deploy the designated panel aforementioned or designate an assessment panel comprising members with the required technical knowledge to evaluate the tenders and to make recommendations for selection.
 - ❑ Invite an independent member from another department to sit on the panel (as far as practicable) to enhance checks and balances.
 - ❑ Require the assessment panels to keep the tenders and records of assessment results for a specified period (say two years).

Tender Presentation

- Designated Assessment Panel**
- ❑ Remind all tenderers not to take the opportunity to revise their technical proposals or to disclose their financial proposals at the presentation.
 - ❑ Observe the rule prohibiting assessment panel members from disclosure of information concerning the technical merits of other tender proposals to any competing consultants at the presentation.

Tender Evaluation

- ❑ Open the price proposals only after the technical proposals have been assessed if a two envelope system is used.
 - ❑ Require assessment panel members to independently evaluate the tenders according to the pre-determined criteria before calculating the total score.
 - ❑ Recommend the tender with the highest total scores and give justification in writing if this is not the case.
 - ❑ Document the assessment results properly.
- Management**
- ❑ Consider all tender proposals and approve the panel's recommendation.

2.6 Conducting Negotiations

Responsible Parties	Recommended Control Measures
Management	<ul style="list-style-type: none"> <input type="checkbox"/> Determine the need for negotiation after the selection of consultants and, if this is necessary, designate a negotiation team comprising at least two persons to conduct the negotiation. <input type="checkbox"/> Determine whether negotiation should be conducted with the selected consultant or with the highest scoring two or three consultants. <input type="checkbox"/> Define the parameters or baseline for negotiation. <input type="checkbox"/> Instruct the negotiation team members <u>not</u> to : <ul style="list-style-type: none"> • indicate the price that must be met to qualify for further consideration at the negotiation. • disclose information about other tender proposals if negotiation is conducted with more than one consultant.
Designated Negotiation Team	<ul style="list-style-type: none"> <input type="checkbox"/> Conduct the negotiation in official settings and within the defined parameters/baseline. <input type="checkbox"/> Document the key points of the negotiation to facilitate future audits. <input type="checkbox"/> Require the consultants to submit in writing a best and final offer after negotiation to confirm their offers.
Designated Assessment Panel	<ul style="list-style-type: none"> <input type="checkbox"/> Recommend the best offer for approval.
Management	<ul style="list-style-type: none"> <input type="checkbox"/> Consider and approve the best and final offer after the negotiation.

2.7 Awarding Consultancy Agreements

Responsible Parties Recommended Control Measures

Probity Clauses in the Consultancy Agreement

- Project Team**
- ❑ Include probity clauses (📄 *Appendix 3*) in the consultancy agreement to commit the consultant to ethical practices and require the consultant to submit, as part of the payment application (➡2.9), a declaration pledging compliance with the clauses (📄 *Annex of Appendix 3*).
 - ❑ Include, where necessary, a clause to debar the consultant from assisting other consultants or contractors to bid for contracts arising from the consultancy agreement to avoid conflict of interest (📄 *Appendix 4*).

General Provisions in the Consultancy Agreement

- ❑ Include the following provisions in the consultancy agreement to protect the interest of the organization :
 - specify the key personnel and their qualifications/experience to be provided by the consultant.
 - specify the requirement that the consultant should notify the organization of any change in key personnel.
 - clearly state the payment method and time limit for processing payment applications.
 - include a clause to “cap” expenses and fees to avoid excessive charges.
 - include the condition for the consultant to submit a site supervision plan for agreement before commencement of work for projects to be supervised by the consultant.
 - include the requirement for the consultant to seek approval from the project team for ordering any variation of work with cost implications, and comments from the project team for assessment of claims and extension of time applications submitted by the works contractors.
 - make provisions for the project team to issue instructions to the consultant.

- make provisions for deduction of payment and termination of the agreement in case of deficiencies in performance (e.g. shortage of manpower).

Tender Award

- Project Team**
- Notify all successful and unsuccessful consultants of the results as soon as possible.
 - Set up a system for the issue of instructions to the consultants for task assignments in term consultancy agreement and define the levels of authority for issuing instructions and conduct supervisory checks on the need and issue instructions, in particular those involving expenses.

2.8 Monitoring Consultants' Performance

Responsible Parties Recommended Control Measures

- Management**
- Set up a mechanism for regular reporting of the consultants' performance or for adverse reporting by the project team.
 - Lay down the procedures for taking action in case of unsatisfactory performance, such as the issue of verbal advice, written notice or warning in case of persistent deficiencies.
 - If applicable, maintain a database containing the details of individual consultancy agreements, their scope and records of the respective consultants' performance to facilitate the future selection of consultants (→2.3 to 2.5).
 - Require project teams to make reference to any adverse performance records in future selection of consultants (→2.3 to 2.5).
- Project Team**
- Prepare reports on project progress and consultants' performance at suitable intervals and upon completion of the consultancy agreement for management information, including any notices or warnings issued and suggesting sanctions as necessary.
- Management**
- Impose sanctions, such as deduction of payment as provided for under the agreement, suspension from invitation to bid in the future, or termination of agreement as the last resort.

2.9 Processing Payment Applications

Responsible Parties Recommended Control Measures

- | | |
|---------------------|---|
| Management | <input type="checkbox"/> Issue guidelines to the project team on the processing of application for payment to ensure consistency in practice and compliance with the conditions of payment in the consultancy agreement. |
| Project Team | <input type="checkbox"/> Make readily available to the management expenditure reports on consultancy agreement, detailing the fees charged, interim payments made, and total amount paid, etc.
<input type="checkbox"/> Require the consultant to provide billing details for payment claims.
<input type="checkbox"/> Subject the reimbursable components of the consultant's fees to random sampling verifications. |

2.10 Monitoring Variations to the Consultancy Agreement

Responsible Parties Recommended Control Measures

- | | |
|-------------------|--|
| Management | <input type="checkbox"/> Specify the levels of authorities and their financial limits for approving variations to the scope of the consultancy agreement which involves additional cost. |
|-------------------|--|

2.11 Enforcing Documentation

Responsible Parties Recommended Control Measures

- | | |
|---------------------|--|
| Project Team | <input type="checkbox"/> Maintain proper records in regard to the selection of consultants and monitoring of their performance, including preparation of management information reports. |
| Management | <input type="checkbox"/> Subject the records to independent audit review. |

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 I.)

Acceptance of Advantage

3. It is the Company's policy that directors and staff should not solicit or accept an advantage 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

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

- (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.

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 public official, whether directly or indirectly through a third party, when conducting the Company's business.

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

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.

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 (Cap. 486).

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 cases of suspected corruption a report should be made to the ICAC and 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).

(Name of Company)

Date :

Extracts of the Prevention of Bribery Ordinance

Section 9

- (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

‘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

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.

(Company Name)
REPORT ON GIFTS RECEIVED

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 and (assessed) value of the gift : _____

Suggested Method of Disposal :

Remark

() Retain by the Receiving Staff

() Retain for Display / as a Souvenir in the Office

() Share among the Office

() Reserve as Lucky Draw Prize at Staff Function

() Donate to a Charitable Organization

() Return to Offeror

() Others (please specify) :

 (Name of Receiving Staff)

(Date)

(Title)

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 : _____.

 (Name of Approving Authority)

(Date)

(Title)

* Delete as appropriate.

(Company Name)

DECLARATION OF CONFLICT OF INTEREST**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 Company (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 Company's interest without being influenced by your private interest.
- Others (please specify) : _____

(Date)

 (Name of Approving Authority)
 (Title)

* Delete as appropriate.

Offering Gratuities

- (1) The tenderer shall not, and shall procure that his employees, agents and sub-consultants 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-consultant of the tenderer shall, without affecting the tenderer's liability for such failure and act, result in his tender being invalidated.

Anti-collusion

- (3) The tenderer shall not communicate to any person other than the *[name of employer] (hereafter referred to as the Employer)* the amount of any tender, adjust the amount of any tender by arrangement with any other person, make any arrangement with any other person about whether or not he or that other person should or should not tender or otherwise collude with any other person in any manner whatsoever in the tendering process until the tenderer is notified by the Employer of the outcome of the tender exercise. Any breach of or non-compliance with this sub-clause by the tenderer shall, without affecting the tenderer's liability for such breach or non-compliance, invalidate his tender.
- (4) Sub-clause (3) of this Clause shall have no application to the tenderer's communications in strict confidence with his own insurers or brokers to obtain an insurance quotation for computation of tender price and communications in strict confidence with his sub-consultants to solicit their assistance in preparation of tender submission.
- (5) The tenderer shall submit to the Employer a duly signed letter in the form set out in *Annex*. The letter shall be signed by a person authorised to sign the contracts on the tenderer's behalf.

Declaration Form
by Consultants on Their Compliance with the
Anti-Collusion Requirements

To: [Name of the Employer]

Dear Sir / Madam,

Contract No. []

[I/We]¹, [(Name of the tenderer)² of (Address of the tenderer)² refer to [my/our]¹ tender for the above Contract.

[I/We]¹ confirm that as at the time of submission of this letter and other than the Excepted Communications referred to in the last paragraph of this letter [I/we]¹ had not communicated to any person other than the [Name of the Employer] (hereafter referred to as the Employer) the amount of any tender, adjusted the amount of any tender by arrangement with any other person, made any arrangement with any other person about whether or not [I/we]¹ or that other person should tender or otherwise colluded with any other person in any manner whatsoever and undertake that at any time thereafter in the tendering process for the above Contract until the tenderer is notified by the Employer of the outcome of the tender exercise and other than the Excepted Communications referred to in the last paragraph of this letter [I/we]¹ will not communicate to any person other than the Employer the amount of any tender, adjust the amount of any tender by arrangement with any other person, make any arrangement with any other person about whether or not [I/we]¹ or that other person should tender or otherwise collude with any other person in any manner whatsoever.

¹ *Delete as appropriate.*

² *Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.*

In this letter, the expression “Excepted Communications” means [my/our]¹ communications in strict confidence with [my/our]¹ own insurers or brokers to obtain an insurance quotation for computation of tender price and communications in strict confidence with [my/our]¹ sub-consultants to solicit their assistance in preparation of tender submission.

(Signed for and on behalf of the tenderer)³

³ *Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign the contract on behalf of that person or as the case may be company.*

Information not to be Divulged

- (A) The Consultant shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer in the Contract or in any subsequent correspondence or documentation. Any disclosure to any person or agent or sub-consultant for the purpose of the Contract shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purpose of this Contract. The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-consultant. The Consultant shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Consultant or his employees, agents or sub-consultants.

Prevention of Bribery

- (B) The Consultant shall prohibit his employees, agents, and sub-consultants who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.

Declaration of Interest

- (C) The Consultant shall require his employees, agents and sub-consultants who are involved in this Contract to declare in writing to the Consultant any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Consultant shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

- (D) The Consultant shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Consultant shall also require their sub-consultants and agents to impose similar restriction on their employees by way of a contractual provision.
- (E) The Consultant shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that his employees, agents and sub-consultants who are aware of the prohibitions in this clause.

Contractor's Declaration

- (F) The Consultant shall also submit a signed declaration in a form (*Annex*) prescribed or approved by the Employer to confirm compliance with the provisions on ethical commitment as stated in the aforesaid sub-clauses (A), (B), (C), (D) and (E). If the Consultant fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultant shall not be entitled to interest. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D) and (E) on confidentiality, prevention of bribery, and declaration of interest, the Consultant and their sub-contractors employed for the performance of duties under this Contract are required to deposit with the Employer a code of conduct issued to their staff.

Declaration Form
***by Consultants on Their Compliance with the Ethical
Commitments Requirements***

To: [Name of the Employer]

Agreement No.:

Title:

In accordance with the Ethical Commitment clauses of the Contract, we confirm that we have complied with the following provisions and have ensured that our directors, employees, sub-consultants, agents are aware of the following provisions:

- (a) Prohibiting our directors, employees, agents and sub-consultants who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract;

- (b) Requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;

- (c) Prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract and requiring our sub-consultants to do the same;

- (d) Taking all measures as necessary to protect any confidential/privileged information or data entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Contract.

(Name of the Consultant)

(Name of the Signatory)

(Position of the Signatory)

(Date)

- (A) The Consultants shall not, and shall ensure that any of their associated companies, their associates or associated persons or any of their sub-consultants shall not, during the term of this Agreement and for [] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in the proper performance of this Agreement), which touches, concerns or affects the services under this Agreement or which may reasonably be seen to touch, concern or affect the services under this Agreement, except with the prior written approval of the Employer which approval shall not be unreasonably withheld.
- (B) Without prejudice to the generality of clause (A), the Consultants shall not (whether on their own or through their associated companies, associates or associated persons or in joint venture with others), and shall ensure that any of their sub-consultants shall not,
- (i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;
 - (ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which the Consultants are providing a service arising out of or relating to this Agreement;
 - (iii) undertake any services for, including, without limitation, provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer.

In the event that the Consultants have advised on the preparation of the tender, including tender specifications and tender assessment, the Consultants undertake that under no circumstances will they bid, participate or be financially involved in that or related tender exercise.

The Consultants shall take all necessary steps to ensure that under no circumstances will their associated companies, associates, associated persons and sub-consultants participate or be financially involved in the tender exercise referred to in the preceding sub-paragraphs.



Corruption Prevention Department

Independent Commission Against Corruption

303 Java Road, North Point, Hong Kong