廉政公署
ICAC

# Corruption Prevention Guide on PROCUREMENT for Public Bodies

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# FOREWORD

In Hong Kong, over a hundred organisations are designated by the law as public bodies. These organisations provide vital public services, receive substantial public funds or are being placed in a position of special trust by the Government. As such, there are high public expectations on public bodies in maintaining a clean and corruption-free operating environment.

Public bodies have been increasingly entrusted to assume a boarder array of public functions. The performance of these functions inevitably involves the procurement of goods and services, often on a substantial scale and with considerable amount of money. Besides, past corruption cases have highlighted the vulnerability of the procurement process to corruption and manipulation. Given the substantial financial implications associated with procurement activities and the inherent public interest at stake, any instance of corruption or malpractice in the procurement process not only leads to misuse or abuse of resources of the public bodies, jeopardises the effective discharge of public functions due to the substandard goods or services procured, but also tarnishes the reputation of the public bodies.

In view of the above, the Corruption Prevention Department (CPD) has been committed to assisting public bodies in building effective control against corruption and malpractice in their procurement processes and ensuring goods/services are procured in an open, fair, competitive and accountable manner. As previous reviews of the procurement processes of public bodies have revealed common, frequently observed control inadequacies in various procurement processes, CPD has therefore taken the initiative to develop this Corruption Prevention Guide on Procurement for Public Bodies (the Guide) to assist public bodies in strengthening their relevant control measures.

The Guide sets out the common risks and recommended measures to assist public bodies to enhance their corruption prevention capability in procurement. Management of public bodies are advised to review and benchmark the existing control systems of their organisations against the control practices provided in the Guide, and adopt and adapt the recommended measures in the Guide to suit their operational needs. CPD stands ready to assist individual public bodies in this regard. Public bodies are also welcomed to seek CPD's further services in their reviews and capacity building training for staff. They can contact CPD for corruption prevention advice on using this Guide through the appointed liaison points of the respective Corruption Prevention Groups or Liaison Groups or through the following channels –

**Phone** : 2826 3202
**Fax :** 2521 8479
**E-mail :** cpd@icac.org.hk

## HOW TO USE THIS GUIDE

For quick and easy reference, users will find the following icons throughout this Guide which lead them to the following information –

**Major Corruption Risks**
major corruption risks and malpractice

**Common Inadequacies**
inadequacies commonly observed in systems and procedures

**Red Flags**
indicators of areas where management oversight is required to safeguard against possible corruption and malpractice

**Case Scenarios**
hypothetical case scenarios in perspective

**Corruption Prevention Controls**
recommended control measures for corruption prevention

**Reference**
useful reference or points to note for more information

**Pointers**
cross references to other parts of the Guide

## ELECTRONIC VERSION OF THE GUIDE

The Guide is available at

https://www.icac.org.hk/filemanager/en/content_198/procurement_pb.pdf

## FROM THE EDITORIAL BOARD

Descriptions and explanation of legal requirements under the Prevention of Bribery Ordinance (Cap. 201) and other relevant ordinances/laws in this publication are necessarily general and abbreviated for ease of understanding. Users of this publication are advised to refer to the original text of the relevant ordinances/laws or seek legal advice on particular issues where necessary. The Independent Commission Against Corruption will not accept any responsibility, legal or otherwise, for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

Case scenarios are used in this publication to illustrate the legal requirements and corruption risks. These case scenarios should be taken as hypothetical and not referring to any particular real case or any particular organisation or person. Moreover, the advice and recommendations given in this publication are by no means prescriptive or exhaustive, and are not intended to substitute any legal, regulatory or contractual requirements. Users should refer to the relevant instructions, codes and guidelines issued by the relevant authorities, and adopt the appropriate measures that best suit the operational needs and risk exposure of their organisations. The information contained in this publication is updated as at the last revision date shown.

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

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December 2023

## ABBREVIATIONS

| | |
|---|---|
| **AI** | Artificial Intelligence |
| **CPD** | Corruption Prevention Department |
| **IT** | Information Technology |
| **MIPO** | Misconduct in Public Office |
| **ML** | Machine Learning |
| **POBO** | Prevention of Bribery Ordinance |

# 1 INTEGRITY MANAGEMENT

1.1 INTRODUCTION
1.2 LEGAL REQUIREMENTS
1.3 INTEGRITY REQUIREMENTS

# 1 INTEGRITY MANAGEMENT

## 1.1 INTRODUCTION

To ensure compliance with the law and adherence to a high standard of integrity, and avoid pitfalls of corruption in carrying out procurement activities, all staff and members of the governing body[1] of public bodies (hereafter referred to as governing members) should have a clear and adequate understanding of the relevant legal and integrity requirements. This Chapter provides an overview of the anti-bribery laws in Hong Kong, and highlights the key aspects in relation to integrity requirements.

## 1.2 LEGAL REQUIREMENTS

The Prevention of Bribery Ordinance (POBO, Cap. 201) criminalises the bribery of public servants, including staff and governing members of public bodies. Also, these personnel are subject to the common law offences such as Misconduct in Public Office (MIPO).

### 1.2.1 Prevention of Bribery Ordinance

The following are major sections of the POBO relevant to staff and governing members of public bodies in relation to their procurement duties –

- **Section 4 – Bribery**
  It is an offence for any public servant (e.g. a staff or governing member of a public body), in Hong Kong or elsewhere and without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for his performing or abstaining from performing any act in his capacity as a public servant.

- **Section 5 – Bribery in regard to Public Contracts**
  It is an offence for any public servant, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for his giving assistance or using influence in regard to contracts with the public body.

- **Section 6 – Bribery for Procuring Withdrawal of Tenders for Public Contracts**
  It is an offence for any person, without lawful authority or reasonable excuse, to solicit or accept any advantage as an inducement to or reward for withdrawal of a tender or refraining from making a tender for any contract with a public body.

[1] *They include the members of the committees, sub-committees and panels established under the governing body of the public body.*

- **Section 8 – Bribery of Public Servants by Persons having Dealings with Public Bodies**
  It is an offence for any person, without lawful authority or reasonable excuse, to offer any advantage to a public servant while having dealings of any kind with the public body in which the public servant is employed.
  [Remarks: For the purpose of Section 8, there is no need to have a request for any reciprocal act by the public servant connected with the offering of the advantage.]

- **Section 9(3) – Use of Misleading/False/Defective Document to Deceive Principal**
  It is an offence for any agent (e.g. a staff or governing member of a public body), with an intent to deceive his principal (e.g. the public body), to use any receipt, account or other document which contains any statement which is misleading, false or defective in any material particular in respect of which the principal is interested.
  [Remarks: Section 9(3) does not require the element of offering and/or acceptance of advantage.]

For Sections 4, 5 and 6 of the POBO, the person who offers an advantage is also liable to the offence.

The maximum penalty is a fine of $500,000 and imprisonment of seven years (for Sections 4, 8 and 9(3)) or ten years (for Sections 5 and 6).

## Points to Note

- **Advantage** – It refers to anything that is of value such as money, gift, discount, commission, loan, employment, service or favour (except entertainment).

- **Entertainment** – It 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 provision.

- **Offering Advantage** – A person is regarded as offering an advantage if he, or any other person acting on his behalf, directly or indirectly gives, or agrees/promises to give, an advantage to or for the benefit of another (Section 2(2) of the POBO).

- **Soliciting/Accepting Advantage** – A person is regarded as soliciting/accepting an advantage if he, or any other person acting on his behalf, directly or indirectly demands or asks for / receives or agrees to receive, an advantage, whether for himself or for another person (Section 2(2) of the POBO).

- **Purpose of Bribery Being not Carried Out** – The offeror and the recipient of a bribe will be guilty irrespective of whether or not the purpose of bribery has actually been carried out. It is not a defence for the recipient to claim that he "did not actually have the power to do so", "did not intend to do so" or "did not, in fact, do so" (Section 11 of the POBO).

- **Custom not to be a Defence** – It is not a defence to claim that any advantage accepted or offered is customary in any profession, trade, vocation or calling (Section 19 of the POBO).

## Case Scenarios – Offences under the POBO

### Section 4

An administration head of a public body was responsible for engaging a security service contractor. An owner of a security service contractor offered bribes to the administration head as a reward for tipping off other bidders' prices to the contractor owner. Also, although repeated complaints about the contractor's substandard service (e.g. absence of security guards) had been received, the administration head did not take follow-up actions against the complaints. Both the administration head and the contractor owner were found to have breached Section 4 of the POBO.

### Section 8

A renovation company was awarded with an office renovation contract for a public body. During the contract period, the proprietor of the renovation company provided free renovation service to the flat owned by a manager of the estate office of the public body, who was assigned to supervise the office renovation progress and certify monthly payments. The proprietor was found guilty of Section 8 of the POBO.

### Section 9 (3)

A manager of a public body was responsible for the procurement of office stationaries. The manager owned a trading company which supplied office stationaries. During a stationary procurement exercise, the trading company submitted a quotation to the public body. The manager made up bogus quotations with higher bidding prices in order to ensure his own company secured the contract. The manager was convicted of using false documents to deceive his principal (i.e. the public body), contrary to Section 9(3) of the POBO.

## Useful Reference

Full text of the POBO can be found in the Hong Kong e-Legislation – https://www.elegislation.gov.hk/hk/cap201

### 1.2.2 Misconduct in Public Office

Corrupt activities in the public sector have over the years evolved from straightforward bribery to illegal acts involving varying nature and degree of abuse of authority, conflict of interest or other misconduct. Such malpractice may amount to the common law offence of MIPO. The key elements of the offence of MIPO are –

- a public official[2];
- in the course of or in relation to his public office;
- wilfully misconducts himself, by act or omission (e.g. by wilfully neglecting or failing to perform his duty);
- without reasonable excuse or justification; and
- where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

#### Case Scenario – Offence under MIPO

An assistant general manager of a public body misused his office by exerting improper influence over the award of a computer system development project amounting to several million dollars to a company (Company X) in which his relative had financial interest. As stipulated in the tender specifications, the project team should comprise a specified number of personnel with related qualifications and working experience, otherwise the tender of the bidder concerned would not be considered. Knowing that Company X did not have sufficient number of qualified personnel to handle the project, the assistant general manager requested his subordinate, who was the head of Information Technology (IT) department and the chairman of tender evaluation panel, not to pay due consideration on the project team composition during tender evaluation as such shortfall could be easily rectified during the project implementation stage. Although the assistant general manager did not accept advantages from his relative, his act involved serious conflict of interest and abuse of his authority, and amounted to an offence of MIPO.

[2] *A person who is vested with powers, duties, responsibilities or discretions which he is obliged to exercise or discharge for the benefit of the general public can be regarded as public official.*

## 1.3 INTEGRITY REQUIREMENTS

Integrity goes beyond compliance with the law. Public bodies should impose suitable integrity requirements that go beyond legal requirements to keep their staff and governing members from abusing their powers, rights and privileges. They should also develop their own Codes of Conduct or guidelines on integrity-related matters having regard to their own circumstances and operational needs. The following highlights the key integrity issues for attention.

### 1.3.1 Acceptance of Advantages and Entertainment

Public bodies should issue clear guidelines on the acceptance of advantages and entertainment (Chapter 1.2.1) to –

- prohibit staff and governing members from soliciting or accepting advantages from persons having business dealings with the public bodies, except accepting, but not soliciting, certain advantages within specified permissible natures, values and circumstances where no improper influence is involved (please refer to ***Appendix 1*** for a sample form to report such advantages accepted or to be accepted); and
- restrict staff and governing members from accepting lavish, unreasonably generous or frequent entertainment, or indeed any entertainment which could potentially give rise to conflict of interest, put them in an obligatory position in the discharge of their duties, compromise their impartiality or judgement, or bring them or the public bodies into disrepute bearing in mind public perception.

#### Case Scenarios – Undue Acceptance of Entertainment

A staff of a public body responsible for monitoring suppliers' performance accepted frequent and lavish entertainment (e.g. wine and dine at five-star hotel) from the suppliers. While acceptance of such entertainment does not amount to an offence under the POBO, this may have or be seen to have a sweetening effect and may lead to corrupt behaviour (e.g. connivance at substandard performance of the suppliers) in future.

### 1.3.2 Management of Conflict of Interest

A conflict of interest situation arises when the "private interests" of a staff or governing member of a public body compete or conflict with the interests of the public body, or the official duties of the staff or governing member. Private interests include financial and other interests of –

- the staff or governing member himself;
- his family and 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 to whom he may be obligated in any way.

Public bodies should issue clear guidelines on proper management of conflict of interest, covering the following key aspects –

#### Common Examples of Conflict of Interest

In the Codes of Conduct or other related guidelines, public bodies should provide some common examples of conflict of interest related to procurement activities for the information of their staff and governing members. Below are some examples but they are by no means exhaustive –

- A procurement staff or tender evaluation panel member is closely related to or has beneficial interest in a supplier being considered by the public body.
- A procurement staff leaks confidential information to favour his friend or relative who intends to participate in the upcoming tender exercise of the public body.
- A procurement staff involved in the management of suppliers list of the public body is closed related to or has beneficial interest in a listed supplier.
- A staff who is responsible for monitoring the performance of a cleaning service contractor borrows money from the contractor.
- A staff responsible for tender evaluation is a part-time consultant of the tenderer.

#### Mechanism to Manage Conflict of Interest

- Public bodies should devise a robust mechanism in managing conflict of interest, comprising at least the following elements –
    - **Avoid** – All staff and governing members should remain alert to and avoid any actual, potential or perceived conflict of interest situation;

- **Declare** – If the conflict is unavoidable, the staff and governing member should report it to the designated approving authority once he becomes aware of the conflict; and
- **Mitigate** – The designated approving authority, after assessing the impact of the conflict and the risk of impropriety, should take appropriate mitigating measure as early as possible.

- Proper documentation of the declaration, the rationale for the decisions made and the course of mitigating measure taken should be maintained. It is advisable for public bodies to design a standard form for making the declaration, recording the decision made and mitigating measure taken (please refer to ***Appendix 2*** for a sample declaration form).

- The mitigating measure to be taken would depend on the circumstances of individual cases, and the level of mitigation should commensurate with the severity of the conflict. Mitigating measures which the designated approving authority may consider adopting are at ***Appendix 3***.

- It would be helpful to designate an office or staff of appropriate rank to keep the precedent cases of management of declared conflict of interest, so as to enhance consistency and facilitate sound decisions in managing declared conflict in future.

- To uphold the integrity over the tender process, public bodies are advised to require their staff and governing members who participate in tender exercises to declare if they have or do not have any conflict of interest in relation to the subject tender exercises upon their taking up of the respective responsibilities in the tender exercises (please refer to ***Appendix 4*** for a sample undertaking form), and as soon as they become aware of such conflict of interest (please refer to ***Appendix 2*** for a sample declaration form).

### Case Scenario – Concealing Conflict of Interest

A staff of a public body was a project coordinator of research and development projects. He was responsible for making recommendations in respect of appointment of suppliers, and approving purchase orders relating to the projects. The public body required its staff to declare whether they had or did not have conflict of interest in the procurement exercises they involved. In handling a procurement exercise, the project coordinator falsely declared to the public body that he had no conflict of interest but the suppliers under consideration were in fact controlled by him. The staff was convicted of MIPO (Chapter 1.2.2) for failing to declare a conflict of interest.

### 1.3.3 Handling of Confidential Information

Information relating to tenders and contracts could be of commercial value to competing bidders. Due care should be exercised to prevent leakage of confidential information which may jeopardise the procurement exercise. To safeguard against malpractice, public bodies should –

- put in place a classification system for classifying confidential information relating to procurement;
- make known to staff and governing members such classification system;
- restrict access to confidential information to authorised personnel only and require them to protect it from leakage (e.g. lock up the confidential documents when not in use, not to use them for personal gain); and
- require the relevant personnel (e.g. members of the tender opening team and the tender evaluation panel) to undertake in writing not to divulge, without permission, any classified information (***Appendix 4***).

**Useful Reference**

**Sample Codes of Conduct for Members/Employees of Public Bodies**
https://www.icac.org.hk/filemanager/en/content_198/pb_sample_code_members.pdf
https://www.icac.org.hk/filemanager/en/content_198/pb_sample_code_employees.pdf

The Corruption Prevention Department (CPD) has compiled Sample Codes of Conduct for reference by public bodies to ensure that the ethical requirements and integrity standard of their staff and governing members meet the public's high expectation. Public bodies are welcomed to make reference to the Sample Codes in developing their own Codes of Conduct for use by their staff and governing members, and approach CPD for advice if required.

# 2 INTERNAL CONTROL FRAMEWORK

2.1 INTRODUCTION
2.2 POLICIES AND GUIDELINES
2.3 CHECKS AND BALANCES
2.4 TRANSPARENCY
2.5 RECORD-KEEPING
2.6 INFORMATION SECURITY
2.7 SUPERVISION AND MONITORING MECHANISM
2.8 TRAINING AND COMMUNICATION
2.9 HANDLING OF REPORTS OF CORRUPTION AND VIOLATIONS
2.10 SAFEGUARDING NATIONAL SECURITY
2.11 INTERNAL AUDIT

# 2 INTERNAL CONTROL FRAMEWORK

## 2.1 INTRODUCTION

Effective internal controls are important for public bodies as they provide the framework for plugging the corruption loopholes from the outset. This Chapter highlights the major corruption risks arising from ineffective or weak controls over the procurement processes, common inadequacies identified, and key elements in the internal control framework of a public body.

### Major Corruption Risks

- Manipulation of the procurement processes to favour colluded suppliers due to lack of supervision or inadequate segregation of duties.
- Inconsistent practices in the procurement processes due to unclear policies/guidelines or inadequate training, giving rise to the risk of favouritism.
- Bidders resorting to corrupt means to obtain essential procurement information due to lack of transparency.
- Leakage of privileged procurement information to potential bidders due to insufficient access control.
- Corruption or other malpractice being covered up due to absence of proper record-keeping requirement, insufficient supervision or management oversight, ineffective internal audit, or lack of reporting channel and complaint handling mechanism.

### Common Inadequacies

- Unclear procurement policies/guidelines, or no regular review on the policies/guidelines with obsolete procedures referred.
- Inadequate segregation of duties in procurement processes (e.g. a single staff responsible for sourcing suppliers, evaluating bids, receiving goods/services).
- Lack of transparency of procurement policies and procedures to potential bidders and suppliers.
- No proper documentation maintained for procurement activities, undermining accountability in the procurement processes.

**Common Inadequacies**

- Privileged information (e.g. internal scoring guidelines for tender exercises) is accessible to staff or governing members who are not involved in the procurement functions.
- Insufficient supervision or management oversight, rendering difficulties in detecting and deterring malpractice.
- Inadequate training provided such that staff responsible for procurement functions are not conversant with the related policies/guidelines.
- Absence of reporting channel or mechanism to handle reports of corruption or violations of the policy of the public body.
- No internal audit function to conduct independent evaluation on the effectiveness of risk management, control and governance processes.

## 2.2 POLICIES AND GUIDELINES

- Lay down clear procurement policies and guidelines to ensure fair and consistent treatments of all procurement cases, having regard to the operational structures, business processes, and operational needs of the public bodies.
- Ensure the policies and guidelines carry the formal endorsement of top management to underscore their importance.
- Define clearly the roles and responsibilities of each level of staff and post of governing members, and specify the procurement methods for goods/services of different values and the corresponding levels of approving authorities –
  - Open tendering – High-value purchases of a specified amount normally require open invitation for bids from all interested suppliers. The approving authority should be at the top management level;
  - Selective tendering or quotation – Other purchases above a specified amount (except for petty cash purchases) require invitation of a specified number of bidders. The approving authority should be at the managerial level (selective tendering for higher-value purchases) or supervisory level (quotation for lower-value purchases); and
  - Petty cash purchases – Small-value purchases below a certain amount should be made directly with suppliers by authorised personnel only.
- Set out clearly the documentation requirements (including proper documentation of the salient processes, outcome and justifications for the decisions, records to be maintained, and document retention period) to enhance accountability.
- Review the policies and guidelines periodically or as a need arises; and update them on a timely basis to reflect the latest requirements in force.

## 2.3 CHECKS AND BALANCES

- Segregate the duties in critical procurement processes as far as practicable (e.g. segregate duties of sourcing suppliers, evaluating bids, accepting goods/services, certifying payments).
- Introduce other mitigating measures if segregation is operationally not feasible (e.g. conducting more frequent supervisory checks, and automating the workflow to reduce the need for discretion where practicable (Chapter 5.3.1)).

## 2.4 TRANSPARENCY

- Suitably make the public bodies' procurement policies and procedures transparent to the stakeholders concerned (e.g. potential bidders and suppliers) so as to reduce the chance of unscrupulous personnel taking advantages of such information for a corrupt purpose, and facilitate external monitoring by the stakeholders concerned.

## 2.5 RECORD-KEEPING

- Require procurement processes and activities to be properly documented and promptly recorded, in particular decisions and approvals for exceptional cases (e.g. not selecting the lowest conforming bid) or any deviation from the normal procedures (e.g. not inviting or receiving the prescribed number of bids) with justifications.

## 2.6 INFORMATION SECURITY

- Lay down the policies and rules on classification and handling of information (e.g. proper classification of privileged information, restrict access of such information on a need-to-know basis to authorised staff and governing members only).
- Ensure that paper-based privileged information is kept in a secure manner with appropriate security measures (e.g. keeping information under lock and key, with the keys in the custody of designated staff, and maintaining proper records of key movement).
- Build in appropriate security safeguards to protect procurement data and records in computer systems (Chapter 5.2.2).

## 2.7 SUPERVISION AND MONITORING MECHANISM

- Build in sufficient monitoring controls in the procedures by requiring supervisors at all levels to –
  - exercise due diligence in supervision to ensure the compliance with the rules/regulations and prescribed procedures;
  - be alert to the behaviour of personnel involved in procurement for any signs of improper relationships or activities (e.g. over-socialising with suppliers (Chapter 1.3.1)) and provide the latter with early guidance;

- conduct spot checks to deter and detect irregularities, and monitor the whole procurement workflow (in particular those processes conducted by a single staff which are more vulnerable to malpractice or abuse);
- stay vigilant to potential risks of malpractice (e.g. red flags in individual Chapters); and
- take prompt follow-up actions on any malpractice identified.

- Promote the culture of supervisory accountability, in which a supervisor not only needs to ensure the satisfactory discharge of his own duties, but also accounts for acts/omissions by his subordinates, if these acts/omissions are serious, repeated or widespread that by reasonable diligence the supervisor should have known of them had he exercised the level of leadership, management and supervision required of his position.

- Compile management information and exception reports regularly to facilitate management oversight, for example –
  - frequency and aggregate value of purchases of same types of goods/services and with each supplier to detect possibility of split orders;
  - quotation/tender exercises not meeting the prescribed number of bids required; and
  - suppliers with unsatisfactory performance warranting suspension from bidding or removal from the suppliers list.

## 2.8 TRAINING AND COMMUNICATION

- Ensure the integrity requirements (Chapter 1.3) and procurement policies/guidelines (Chapter 2.2) are well understood by all staff and governing members through circulars, briefings or training sessions.

- Provide staff and governing members with appropriate training on anti-bribery laws and integrity requirements, as well as corruption risks and common pitfalls in relation to procurement, and guidance on how to properly deal with them.

- Issue periodic reminders of the anti-bribery policy of the public body such as before festivals when business partners may offer gifts.

## 2.9 HANDLING OF REPORTS OF CORRUPTION AND VIOLATIONS

- Establish a whistleblowing policy and system, covering the following areas –
  - state the public bodies' anti-bribery policy and provide suitable channels for reporting corruption and violations of the policy;
  - require all personnel of the public bodies to report promptly any corruption to the Independent Commission Against Corruption or through the reporting channels provided as appropriate;
  - encourage business partners (e.g. suppliers, contractors) to report corruption or corruption attempts by any of the personnel of the public bodies;
  - provide assurance of confidentiality, prompt handling by sufficiently senior authority and non-retaliation to the staff, governing members or other persons who make a report in good faith;
  - avoid any acts that may jeopardise or hinder future investigation by a law enforcement agency;

- reiterate the zero-tolerance policy towards any corrupt behaviour detected, which will result in reporting to the relevant law enforcement agency and disciplinary action such as termination of employment (in the case of staff), removal from office (in the case of governing members), or termination of contract and exclusion from future bidding (in the case of suppliers/contractors); and
- inform the appropriate authority (e.g. board) regularly on the report received (e.g. number, type, handling of complaints).

## 2.10 SAFEGUARDING NATIONAL SECURITY

- Personnel involved in procurement should exercise their professional judgement, maintain a high degree of sensitivity and prudence in assessing any potential national security risks or issues that may be involved in every stage of the procurement.

## 2.11 INTERNAL AUDIT

- Put in place an internal audit function to independently evaluate the effectiveness of risk management, control and governance processes.
- Ensure that the internal audit function –
  - is independent from operations under audit, sufficiently staffed with qualified and trained personnel, has unfettered access to all records, assets, personnel and premises, and has the authority to obtain such information and explanations as and when required;
  - develops an audit programme setting out the auditing assignments to be performed and conducts regular review to the programme taking into account the risks of key business processes;
  - conducts audit assignments in accordance with the audit programme, focusing not only on checking compliance with the stipulated guidelines and procedures, but also identifying warning signals or signs that may lead to corruption or malpractices, with special attention given to the common inadequacies and red flags highlighted in this Guide; and
  - reports directly to the audit committee, if established, or the top management and draws their immediate attention to any significant irregularities detected in the course of audit review.
- Give due consideration to the opinions and findings of the internal audit function and take timely actions in response to its recommendations/findings.

# 3 PROCUREMEMT

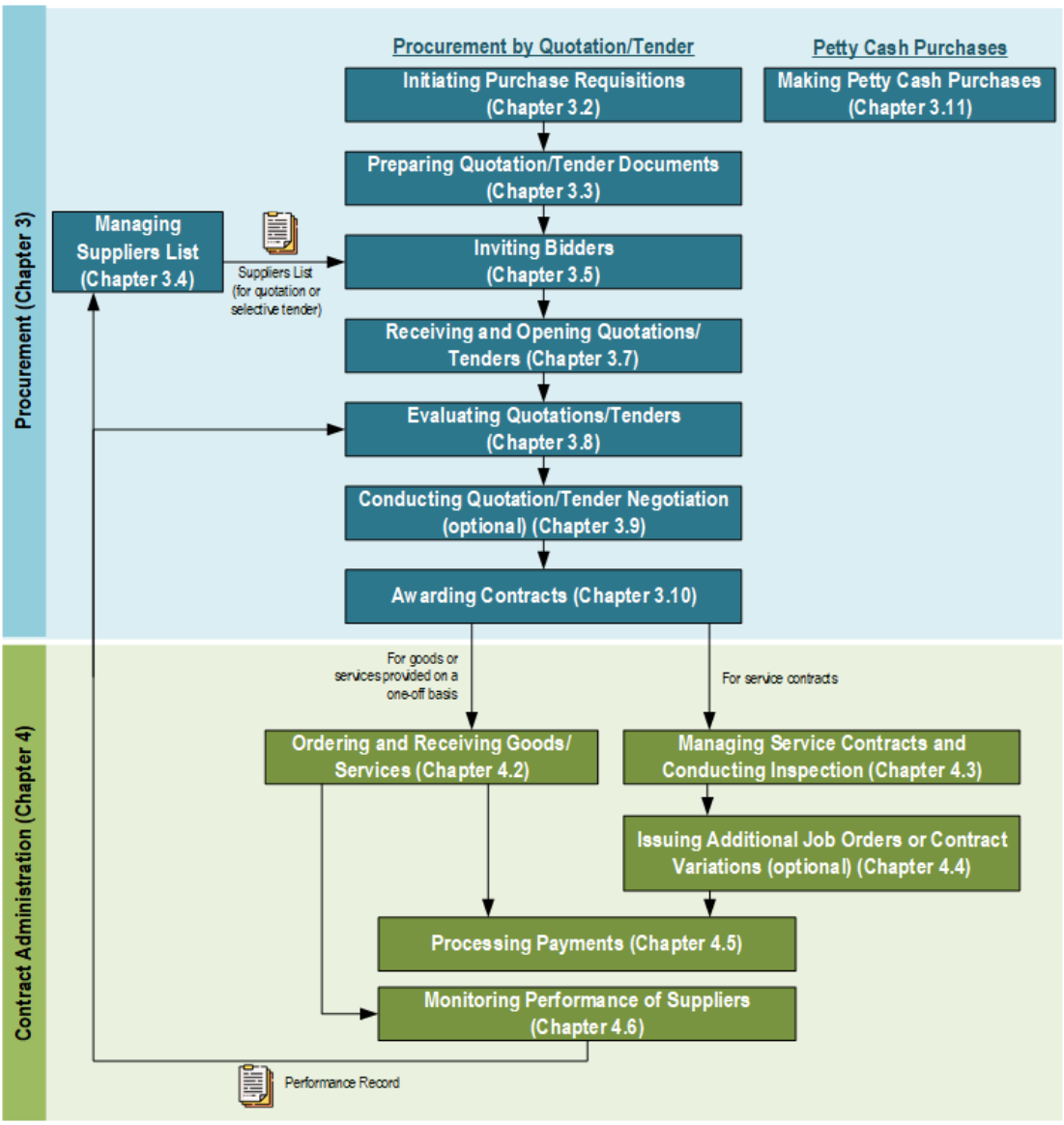

3.1 INTRODUCTION
3.2 INITIATING PURCHASE REQUISITIONS
3.3 PREPARING QUOTATION/TENDER DOCUMENTS
3.4 MANAGING SUPPLIERS LIST
3.5 INVITING BIDDERS
3.6 COMMUNICATION WITH BIDDERS
3.7 RECEIVING AND OPENING QUOTATIONS/TENDERS
3.8 EVALUATING QUOTATIONS/TENDERS
3.9 CONDUCTING QUOTATION/TENDER NEGOTIATION
3.10 AWARDING CONTRACTS
3.11 MAKING PETTY CASH PURCHASES

# 3 PROCUREMENT

## 3.1 INTRODUCTION

Procurement is inherently prone to corruption and malpractice. Implementing adequate safeguards throughout the entire procurement processes not only can prevent corruption but also help public bodies achieve value for money in procurement, and ensure that goods/services are purchased in an open, fair, competitive and accountable manner. This Chapter highlights major corruption risks, common inadequacies, red flags, and the corresponding control measures at various stages of the procurement processes.

The flowchart below provides an overview of the key processes of procurement and contract administration (Chapter 4), and each process will be discussed in detail in the respective Chapters.



## 3.2 INITIATING PURCHASE REQUISITIONS

### Major Corruption Risks

- Placement of unnecessary or excessive orders.
- Splitting of orders to circumvent more stringent controls for higher-value purchases.

### Common Inadequacies

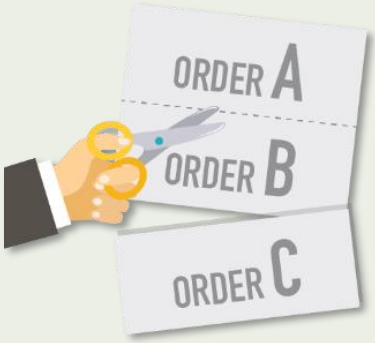
- Lack of an established budgeting process.
- No justifications on the need for raising purchase requisitions.
- Inadequate monitoring or scrutiny to assess the need for purchase.
- Lack of a mechanism to detect split orders.

### Red Flags

- Instances where quantities of items requested significantly exceed the typical usage pattern without a valid reason.
- Repeated purchases of the same goods/services with the value often just below a monetary threshold warranting approval from a higher authority.
- Instances of unbudgeted purchases or purchases exceeding budgeted amounts without proper justifications.
- A pattern showing purchases being pooled together while the normal approving authority is away from office.

### Case Scenario – Splitting Orders

A director of an organisation solicited and accepted illegal kickbacks from a contractor as a reward for awarding a number of contracts to that contractor. The organisation required contracts worth over a specified monetary threshold to be approved by a committee. To circumvent the control, the director split the purchases into smaller contracts and instructed the contractor to submit bids just below the specified threshold.



## Corruption Prevention Controls

- Put in place a robust budgeting process to facilitate a proper control on initiating purchase requisitions –
  - formulating a budget covering, among others, major procurement items and the estimated expenditure;
  - taking into consideration any expiration of term/service contracts;
  - stating any major assumptions made;
  - explaining any significant difference with the budget and actual expenditure on procurement of the previous years;
  - submitting the budget for approval by the designated authority (e.g. board, finance committee); and
  - subjecting the approved budget to mid-year review to ensure any significant variance has been accounted for.

- Raise purchase requisitions in writing (e.g. by using sequentially-numbered purchase requisition forms), and seek endorsement by a designated authority. The purchase requisition should cover the following items –
  - descriptions/specifications and quantities of goods/services to be procured;
  - purpose/justifications for the purchase;
  - estimated cost and confirmation as to whether it is a budgeted item; and
  - for repeated purchases of the same items within a prescribed period, justifications that the requests cannot be raised in the last purchase and that stipulated approval requirements and controls are not circumvented.

- Conduct analysis on the frequency and cumulative value of purchases related to the same types of goods/services to detect split orders, and identify the need for term contracts for items which are frequently purchased.

## 3.3 PREPARING QUOTATION/TENDER DOCUMENTS

### Major Corruption Risks

- Drawing up tailor-made, biased or overly-restrictive specifications, or using vague or unclear evaluation criteria to favour colluded suppliers.
- Bidders offering bribes for insider information (e.g. evaluation criteria and weightings) with a view to drawing up a competitive bid.
- Personnel involved in procurement has conflict of interest with prospective bidders.

### Common Inadequacies

- Lack of a mechanism or expertise to identify tailor-made, biased or overly restrictive specifications, especially for goods/services that are highly specialised or technical in nature (e.g. IT systems and equipment).
- Failure to include all specifications essential for formulation of bids by the bidders in the quotation/tender documents.
- Absence of probity clauses in the quotation/tender documents.
- Lack of clear and objective criteria for quotation/tender evaluation.
- Evaluation criteria and their weightings (for two-envelope approach) not pre-determined or disclosed to bidders.
- Lack of supervisory checks on tender documents before issuance.
- No requirement for declaring conflict of interest with prospective bidders.

### Red Flags

- Instances where a staff responsible for drawing up specifications insists on specifying a particular brand or model, or features copied directly from the catalogues of certain products.
- Situations where only one bid is received in most procurement exercises, coupled with feedback from other bidders about difficulties in meeting the specifications.
- Instances where bids received are significantly higher or lower than the estimated cost, possibly indicating that the specifications are too vague or unclear.

## Case Scenarios – Biased/Missing Specifications

### Biased Specifications

An IT company was an exclusive distribution agent for servers of a specific brand. The company owner induced the head of IT of an organisation to specify in the tender document some unique specifications of a particular server model of that exclusive brand in the upcoming IT revamp projects. As no other bidders could meet the specifications, only that IT company could submit a conforming bid for the contract.

### Missing Specifications

Due to office relocation, an organisation planned to replace the existing office furniture. The quotation documents were drawn up by an administrative officer alone. After receiving the quotations, the administrative officer discovered that certain green specifications required by the organisation (e.g. at least half of the wood material is from recycled/waste wood) were mistakenly omitted. To cover up, the administrative officer disqualified the lowest bidder which proposed products not meeting the green specifications during the evaluation process, and selected the second lowest bidder.

## Corruption Prevention Controls

### 3.3.1 Specifications of Goods/Services

- Draw up detailed specifications, service level and performance standard of the goods/services required based on the operational needs and technical requirements of public bodies and the availability of the goods/services in the market.
- For procurement involving goods/services that are highly specialised or technical, appoint a panel comprising personnel with necessary expertise to draw up, vet or endorse the specifications.
- For goods contracts, specify only the required functions/standards, and avoid overly stringent requirements or specifying a particular brand name and model number.
- If the use of proprietary or brand name products is considered necessary (e.g. compatibility with existing equipment), provide justifications, include the phrase "or equivalent" in the specifications, and obtain approval from a higher authority.
- For service contracts, include output-based requirements that are objectively assessable/measurable as far as possible to facilitate contractor performance monitoring (Chapters 4.3 and 4.6).

- Ensure all potential bidders receive adequate and equal information necessary to formulate their best competitive bids, in particular crucial information for the formulation of bids/proposals (e.g. sufficient details on specifications, past utilisation data, required documents to be submitted).

- Subject quotation/tender documents to review or approval by a designated authority before issuance.

- Avoid disclosing the estimated contract value to the potential bidders to prevent them from being influenced in the preparation of proposals which undermines competitiveness.

- Remind all personnel involved in preparing quotation/tender documents to declare conflict of interest. For higher-value procurement (e.g. tender), require them to confirm in writing whether they have or do not have a conflict of interest and undertake to make such declaration as soon as they become aware of the conflict (Chapter 1.3.2).

- Debar the outside technical experts/consultants involved in a procurement exercise (e.g. drawing up specifications and evaluation criteria, or evaluating bids) from bidding and/or assisting other bidders, and make them aware of such restriction prior to the engagement.

- In case where there is little or even no response in the past quotation/tender exercise and a re-quotation or re-tender exercise will be conducted, review critically whether the specifications or requirements are too restrictive and refine them as appropriate.

### 3.3.2 Probity Requirements

- Include essential probity requirements to govern the conduct of bidders and suppliers in –
  - quotation/tender documents (***Appendix 5***) covering prohibition of the offering, solicitation and acceptance of advantages; and
  - contract documents (***Appendix 6***) covering –
    - prohibition of offering, solicitation and acceptance of advantages;
    - avoidance, declaration and management of conflict of interest; and
    - non-divulgence of confidential information.

- For service contracts, require successful contactors to promulgate essential probity requirements to their directors, staff, agents and sub-contractors where appropriate (e.g. through a Code of Conduct (see "**Useful Reference**" on the next page)), and submit such to the public body for vetting.

**Useful Reference**

**Sample Code of Conduct for the Private Sector**
https://psic.icac.org.hk/en/resources/sample-documents

CPD has compiled a Sample Code of Conduct for reference by the private sector, setting out basic standard of conduct expected of all directors and staff of a private company. Public bodies are advised to request their contractors to make reference to this Sample Code when compiling their own Code of Conduct.

### 3.3.3 National Security Clauses

- Incorporate clauses relating to safeguarding national security in the quotation/tender documents and contract documents, including provisions allowing disqualification of bidders and termination of contracts in the interest of national security.

### 3.3.4 Contract Requirements

For service contracts, include the following requirements to facilitate effective monitoring of contractors' performance –

- Contract Period;
- Service Standards and Deliverables –
  - incorporate the technical proposal submitted by the successful bidder such that it becomes enforceable;
  - require the contractor to draw up its own supervision plan or performance management system (e.g. site supervision, site inspections by the contractor's head office, digital attendance system (Chapter 5.4.2)) and subject them to the approval of the public body;
- Reporting Requirements –
  - specify the information to be submitted by the contractor and the frequency of submission (e.g. daily staff lists and weekly duty rosters for cleaning/security contracts, progress/completion reports);
  - require the contractor's designated personnel (e.g. contract manager) to certify any reports/statements submitted;
  - specify situations that warrant immediate reporting (e.g. manpower shortfall, delay in completing specified milestones);
- Record-keeping Requirements –
  - specify the types of records to be kept by the contractor, the document retention period and the public body's right to inspect/audit the contractor's work and records (e.g. wage receipts acknowledged by workers for cleaning/security contracts);

- Contract Enforcement Actions against Non-compliance –
  - specify the situations, gauged against objective yardsticks as far as possible, which could lead to regulatory actions (e.g. payment deduction, warning, liquidated damages, or even contract termination);
- Compliance with the relevant statutory and regulatory requirements (e.g. the Employment Ordinance (Cap. 57), Employees' Compensation Ordinance (Cap. 282));
- Provisions to prohibit the assignment of the contract, or subletting of any services under the contract without the permission of the public body; and
- Provisions for issuing additional job orders or contract variations (Chapter 4.4) and payment terms (Chapter 4.5).

### 3.3.5 Marking Scheme with Evaluation Criteria

- Distinguish clearly in the quotation/tender documents the requirements for which any non-compliance will result in straight disqualification, from those desirable features (i.e. qualities, attributes or aspects to be assessed using a marking scheme).
- Devise a marking scheme with clear and objective evaluation criteria before inviting bids.
- Make known to bidders the evaluation criteria and their relative weightings in broad terms, and the overall price to technical ratio to facilitate bidders in preparing for bid submissions.
- Establish internal scoring guidelines to provide objective yardsticks or benchmark on each evaluation criterion as far as practicable (e.g. if a rating scale of "excellent", "good", "fair" and "poor" is used, provide objective yardsticks, benchmarks or examples for each rating to facilitate consistent assessment).
- Incorporate bidders' past performance records (Chapter 4.6.2) into the evaluation criteria.
- If bidders are required to submit samples for testing or bid evaluation, specify clearly in the quotation/tender documents the quantity and type of samples required, as well as the evaluation criteria.

## 3.4 MANAGING SUPPLIERS LIST

### Major Corruption Risks

- Unqualified suppliers resorting to corrupt means for admission to the suppliers list.
- Undue discretion exercised by staff in adding or removing suppliers to/from the suppliers list due to lax supervisory control.
- Connivance at underperformance of suppliers by allowing them to stay on the list and bid for future contracts.

### Common Inadequacies

- Lack of an open channel for admission to the suppliers list.
- No laid down admission criteria, procedures or processing timeframe.
- Inadequate number of suppliers in each category of goods/services.
- Overly-broad or inaccurate categorisation of suppliers in the suppliers list.
- Inadequate vetting on the information submitted by suppliers, or lack of supervisory checks on the recommendation for admission to the suppliers list.
- Absence of periodic performance review conducted for listed suppliers.
- Lack of an established system to remove underperforming or inactive suppliers from the suppliers list.

### Red Flags

- Users resorting to an informal suppliers list for daily use even though there is a centralised suppliers list in place, possibly due to deficiencies such as inaccurate categorisations, or a vast number of inactive or obsolete suppliers.
- Existence of several similar categories of suppliers (e.g. “catering”, “food & beverage” and “refreshment” for catering service).
- Addition of suppliers not meeting the admission criteria to the suppliers list.
- Retention of inactive suppliers on the suppliers list for the sake of making up an adequate number of suppliers in the relevant categories.

## Corruption Prevention Controls

- Maintain a centralised list of suppliers for frequently purchased goods/services.
- Categorise the suppliers on the list accurately based on the types of goods/services required by public bodies and provided by suppliers.
- Ensure a sufficient number of active suppliers for each category of goods/services.
- Lay down and publicise (e.g. on the public body's website) the criteria and procedures for admission to and removal from the list.
- Openly invite suppliers to apply for inclusion in the list and provide a standard application form setting out the information required[3].
- Vet all applications for inclusion, including those nominated by in-house users, against the admission criteria, and recommend qualified suppliers to a designated authority for approval.
- Provide each newly included supplier a guidance note detailing the essential probity requirements expected of them (e.g. no offering of advantages to staff and governing members of the public body, requirement to declare conflict of interest).
- Regularly review the list to identify and remove inactive suppliers (e.g. those which do not respond to quotation/tender invitations for a specified period of time without justifications), suppliers that have gone out of business, and those with unsatisfactory performance (Chapter 4.6.2), or even found guilty of bribery or other related offences.
- Notify suppliers of their removal from the list with reasons for the decision.
- Maintain a centralised register of removed suppliers, and devise a mechanism for handling their re-application (e.g. prohibition of re-application, or if re-application is allowed, the conditions and time period before such will be considered).

[3] *Examples include (i) company information (e.g. business registration certificate, annual return, profile of the board of directors and key personnel), (ii) details of the products/services that could be supplied, (iii) years of experience in the industry, and (iv) reference for previous projects.*

## 3.5 INVITING BIDDERS

### Major Corruption Risks

- Limited competition (e.g. direct engagement of a supplier instead of competitive bidding by way of quotation/tender).
- Manipulation of the shortlisting process to favour particular suppliers.
- Conflict of interest when staff or governing members have personal interests in the suppliers invited to bid.

### Common Inadequacies

- Lack of guidelines or control for inviting bidders (e.g. criteria/circumstances for using different procurement methods, a fair shortlisting mechanism, a sufficient time period allowed for submission of bids).
- No requirement for staff to provide justifications and obtain approval from a higher authority for inviting non-listed suppliers or inviting suppliers out-of-turn (e.g. frequently inviting a particular supplier, removing certain supplier rotated from the suppliers list).
- Inadequate measures in place to mitigate the conflict declared.

### Red Flags

- Staff often citing urgency resorting to exceptional procedures to bypass the more stringent process (e.g. use direct engagement instead of quotation/tendering procedures).
- Presence of unfamiliar suppliers or suppliers with questionable reputation and reliability on the invitation list, who either consistently win bids or are put on the invitation list but never having any contracts awarded.
- Anomalies in the invitation list (e.g. suppliers not appearing to be in the relevant business field, identical or suspiciously similar contact details among suppliers, details of key supplier personnel matching with that of a staff of the public body).
- Setting an unreasonably short period for bid submission.
- Lack of records on suppliers invited.

## Case Scenario – Out-of-turn Invitations

A procurement officer of an organisation was the sole officer in charge of the procurement of telecommunication equipment. The organisation maintained a suppliers list for this type of equipment and had a rotation mechanism to invite listed suppliers for quotation. However, the procurement officer repeatedly invited one of the suppliers and its associated companies to submit bids, in violation of the rotation requirement. As a result, that colluded supplier and its associated companies secured a majority of the telecommunication equipment contracts in the material period.

## Corruption Prevention Controls

### 3.5.1 General Measures

- Specify the method of submission and the deadline, including both date and time.
- Establish a reasonable timeframe for invited bidders to prepare and submit their bids, and if a shorter timeframe is allowed, ensure justifications are provided for approval by a higher authority.
- Set out clear documentary submission requirements including –
  - supporting documents necessary for verifying compliance with the quotation/tender requirements (e.g. audited accounts or financial statements, professional certificates or other proof of key personnel's qualification and experience); and
  - company information (e.g. profiles of their directors, major shareholders, senior management and/or project teams) and annual returns to facilitate declaration of conflict of interest by all personnel involved in the procurement exercises (Chapter 1.3.2).
- Require bidders to submit their bids in blank envelopes (i.e. without company logos) under seal to ensure their identities are concealed.
- If two-envelope approach is adopted, require bidders to submit their technical and price proposals in two separate sealed envelopes.
- Require bidders to submit bids at least in duplicate, with one for assessment and another one for audit or control purpose, in particular for higher-value quotation and tender.

- Maintain proper record of all invitations sent out to facilitate supervisory checks or audit.
- Remind all personnel involved in the shortlisting process to declare conflict of interest, and for higher-value procurement (e.g. tender), require them to confirm in writing whether they have or do not have a conflict of interest, and undertake to make such declaration as soon as they become aware of the conflict (Chapter 1.3.2).

### 3.5.2 Invitation from Suppliers List

- If the required number of bidders for invitation for quotations or selective tenders could not be met, provide justifications for approval by a higher authority.
- Ensure that the listed suppliers are shortlisted to bid in a fair manner (e.g. inviting all listed suppliers of the relevant category, adopting a rotation mechanism, using a computer-aided random selection (Chapter 5.3.5)), with the last successful bidder always included provided that its performance was satisfactory.
- Document the justifications for any out-of-turn invitation in writing and subject it to approval by a higher authority.
- If additional suppliers outside the suppliers list are nominated, –
  - require users or staff to give justifications for such nominations;
  - invite them only if they meet the listing criteria;
  - disallow replacing those shortlisted from the suppliers list; and
  - add them to the suppliers list (Chapter 3.4) for future invitation.
- Send the invitations to all prospective suppliers on the same date and set a common deadline for submission of quotations/tenders.
- Maintain proper documentation on the category of goods/services used in shortlisting.

### 3.5.3 Sourcing Bidders for Ad Hoc Purchases[4]

- Pre-determine the shortlisting criteria and subject them to the endorsement of the approving authority.
- Source bidders through more than one party/channel (e.g. nomination by users or the administration/procurement office, market research).
- Shortlist bidders according to the pre-determined criteria, and if the required number of bidders could not be met with reference to the procurement value, provide justifications for approval by a higher authority.

[4] *Refer to goods/service contracts which are not frequently procured and for which there is no suppliers list.*

### 3.5.4 Inviting Tender

- Adopt open tendering for high-value procurement as far as practicable, with tender invited openly through the public body's website or newspaper, and notify listed suppliers under the relevant category of such invitations.
- In case open tendering is not adopted, provide justifications on the use of alternative methods (e.g. selective tendering, direct engagement) for approval by a higher authority.

## 3.6 COMMUNICATION WITH BIDDERS

**Major Corruption Risks**

- Favouritism to a particular bidder by selectively providing insider information to that bidder but not others.
- Unfair dissemination of responses to bidders' enquiries (e.g. providing delayed responses to other bidders).

**Common Inadequacies**

- No mechanism to ensure information/clarifications given in response to a bidder's enquiry is equally and promptly disseminated to all other bidders.
- Lack of sufficient control in the communication process (e.g. bidders' enquiries are handled by different staff with different answers given, verbal replies are not documented).

**Red Flags**

- Supplementary information provided in the quotation/tender addenda (i.e. not included in the original invitation document), which is critical in the formulation of bid price, is incorporated in the winning bid only but not others, possibly indicating unfair dissemination of such supplementary information.
- Alteration of the contact information of certain bidders, resulting in replies and supplementary information being unable to reach those bidders.
- Frequent instances where important communications are consistently sent late to bidders.
- Absence of record of all communications with bidders.
- Communication with bidders through unofficial channels or personal contacts.

### Corruption Prevention Controls

- Ensure that any supplementary information given in response to a bidder's enquiry is made available to all prospective bidders (e.g. through the public body's website, or issuing quotation/tender addenda) in a timely manner.
- Require all enquiries to be directed to and handled by a designated staff.
- Properly document all communications with bidders, including verbal enquiries.

## 3.7 RECEIVING AND OPENING QUOTATIONS/TENDERS

### Major Corruption Risks

- Leakage of bid information (e.g. offered price), and tampering or loss of quotations/tenders, to favour a particular bidder.
- Bogus quotations.

### Common Inadequacies

- Acceptance of late quotations/tenders.
- Inadequate security controls over the receipt and opening of quotations/tenders, leading to unauthorised opening of bids before the submission deadline.
- No requirement to open bids shortly after the submission deadline.
- Absence of proper documentation on the quotations/tenders received.
- Inadequate checks and balances (e.g. quotations/tenders are opened by a single staff only, price proposals are kept by an evaluation panel member before completion of technical evaluation).

### Red Flags

- Winning bids consistently coming in just slightly below the next lowest bids.
- Complaints received from suppliers about not being invited to bid for an extended period of time.
- Suppliers who usually respond actively to bid invitations have shown no interest in bid submission without any explanation.
- Similar or identical bids from different suppliers.

## Case Scenario – Leakage of Bid Price

A manager of an organisation was responsible for receiving tenders for the upcoming video production service contract. The organisation did not have a tender opening team and allowed the manager to open the bids by himself. The manager exploited such opportunity and leaked other tenderers' prices to one of the contractors. With such insider information, the colluded contractor submitted the tender with price just slightly below the second lowest price and obtained the contract from the organisation.

## Corruption Prevention Controls

### 3.7.1 Receiving Quotations/Tenders

- Prohibit opening of bids before the submission deadline.
- Put in place appropriate security measures for receiving quotations/tenders, for example
  - By email or computer system – Chapter 5.3.7;
  - By fax – use e-fax with proper access control as far as possible, and if a traditional fax machine has to be used, designate a specific machine with restricted access; or
  - By hand or post – require bids to be deposited into a double-locked quotation/tender box, with the two keys kept by different staff not involved in the procurement exercises.
- Request for written quotations from bidders as far as practicable, and in case verbal quotations are allowed for low-value purchases, require staff to record in writing the bid details (e.g. the date, offered price, name of staff responsible and supplier contacted).

### 3.7.2 Opening Quotations/Tenders

- Open the bids received shortly after the submission deadline.
- Do not accept any bids submitted late or using an unapproved method.
- Assign a quotation/tender opening team comprising at least two staff from different departments/sections who are not involved in the evaluation process.

- Date-stamp and initial the bids received, and prepare a summary of the bids, including the company names and offered prices.
- If two-envelope approach is adopted, reseal the price proposals after opening and keep them (together with the price summary) under safe custody by a designated staff not involved in the evaluation process until the completion of technical assessment.
- Maintain a duplicate copy of the quotations/tenders received as a control copy (Chapter 3.5.1) by designated staff not involved in the procurement processes (or in the computer system or web-based platform in the case of e-quotation/tender (Chapter 5.3.7)) for future reference, in particular for higher-value quotation and tender exercises.
- Request uninterested invitees to submit a reply of "nil return" and indicate the corresponding reason.
- Conduct random checks with the bidders who have submitted bids to verify the authenticity of their bids, and those who have not submitted bids to verify that they have received the invitation and have not submitted their bids.

## 3.8 EVALUATING QUOTATIONS/TENDERS

**Major Corruption Risks**

- Manipulation in the evaluation to favour particular bidders.
- Evaluation panel members have conflict of interest with bidders.

**Common Inadequacies**

- Lack of objective evaluation criteria.
- Qualitative evaluation is conducted by a single staff, or inadequate checks and balances in the composition of the evaluation panel (e.g. all panel members belonging to the same unit with unit head as chairperson without the presence of an independent party).
- Collective assessment in the quotation/tender evaluation meeting where the panel chairperson or a particular panel member dominating the discussion and decision-making.
- Absence of proper documentation on the evaluation panel's discussion and decisions.
- Allowing changes of evaluation criteria after the receipt of bids.
- No requirement for declaring conflict of interest with bidders.

## Red Flags

- The evaluation criteria for technical assessment are unclear and open to interpretations among evaluation panel members, and as a result, a wide range of scores are given by different evaluation panel members on the same criterion.
- A new company with limited track records has been repeatedly awarded with contracts.
- The evaluation panel consists of individuals only from a single department/unit.

## Case Scenario – Undue Influence in Tender Evaluation

An organisation invited bids for a security service contract. A tender evaluation panel was formed to evaluate the bid submissions. The panel was chaired by the head of the administration department and comprising two of his subordinates. The organisation did not pre-determine evaluation criteria and relied on the panel to work out the criteria after reviewing the bids.

During the panel meeting, the chairman showed a strong preference for Company Y. One panel member expressed concerns regarding the company's capability due to its limited track record, highlighting the potential risks associated with awarding the contract to this company. Despite these concerns, the panel ultimately recommended Company Y for contract award.

The internal audit subsequently discovered that Company Y was owned by the panel chairman when the annual return of Company Y attached to the bids was checked.

## Corruption Prevention Controls

- Pre-determine the evaluation criteria, their relative weightings, and a marking scheme before tender invitation if price is not the only selection criterion (Chapter 3.3.4), and disallow the modification of the criteria, weightings or marking schemes after the receipt of bids.

- Avoid communication with bidders during the evaluation process as far as practicable, and if clarification of bids is required, conduct it in writing with proper documentation, confine the clarification to factual information only, and disallow submission of any new information which may improve the bids.

- For procurement exercises where price is not the only consideration, establish an evaluation panel comprising at least two staff of appropriate ranks from different units and/or governing members possessing the required knowledge and expertise, to conduct the evaluation.

- Require all personnel involved in tender evaluation process to declare in writing whether they have or do not have a conflict of interest and undertake to make such declaration as soon as they become aware of the conflict (Chapter 1.3.2). To facilitate their declaration, company information (e.g. profiles of bidders' directors, major shareholders, senior management and/or project teams) and annual returns submitted by bidders should be made available to them (Chapter 3.5.1).

- Vet the bids against the submission requirements (including verifying the authenticity of supporting documents or company information provided by bidders (Chapter 3.5.1)), and submit the result to a designated authority (when price is the only consideration) or the evaluation panel (when price is not the only consideration) for review.

- If bidders are invited to present their submissions, ensure that –
  - all bidders are given an equal and fair opportunity to present their proposals (including providing them with same amount of presentation time, assigning the presentation order in random);
  - bidders' presentations are confined to their technical proposals without modification or including additional information which may improve their bids;
  - bidders are reminded not to disclose their price offers during presentations; and
  - salient points discussed during the presentations are properly documented.

- For technical evaluation, require evaluation panel members to –
  - make assessments on their own against the evaluation criteria using standard evaluation forms (***Appendix 7***) and making reference to the internal scoring guidelines (Chapter 3.3.4), and keep copies of individual forms on file for record;
  - meet to discuss the individual scores in particular those with large discrepancies; and

- document all discussion and deliberations made during the meeting, especially controversial or special points of interest raised and dissenting views among panel members.

- Open the price proposals only after the completion of technical evaluation, and prohibit subsequent amendments to the technical scores.

- In exceptional circumstances (e.g. due to time urgency) where technical and price evaluations must be conducted in parallel, carry out the respective evaluations by separate teams which should not communicate with each other until their own assessments have completed.

- When optional items or additional job orders (e.g. ad hoc cleaning/security services requests) are likely to be required, factor in the rates and the expected quantities as part of the total notional tender price when conducting price evaluation.

- Assess the reasonableness of the bidders' price offers, and devise procedures for handling bids with unrealistically high or low price offers in comparison with the price of similar procurement in the past or in relation to other market information (e.g. if all bids received are much higher than the market price, it may indicate that the bidders have communicated with each other, giving rise to the risk of bid rigging; whereas for unrealistically low price offers, it could give rise to contract administration risk such as non-compliance with contract requirements or substandard performance).

- Select the lowest conforming bid (in the case of price-only evaluation), or the bid with the highest combined score (in case a marking scheme is adopted for evaluation of both price and non-price factors), otherwise provide justifications.

- Prepare a written recommendation for quotation exercises, or a tender evaluation report (please refer to ***Appendix 8*** for a sample tender evaluation report) for tender exercises which covers the following aspects –
  - description of contract;
  - details of invitation (e.g. date and mode of invitation, list of suppliers invited);
  - details of bids received (e.g. number of bidders with bids returned, showed no interest, or did not provide any response);
  - compliance with goods/services specifications;
  - evaluation and analysis of bids, including the deliberations and discussion of the evaluation panel, details of negotiations with bidders (if any) (Chapter 3.9);
  - comparison with the pre-tender estimate, past similar contracts and approved budget;
  - management of conflict of interest (e.g. for a tender exercise, confirm that all personnel involved in that exercise have declared absence of conflict, or otherwise, the nature of the conflict and mitigating measures taken);
  - safeguarding national security (e.g. confirm that the need for safeguarding national security has been fully taken into account, the recommendation would not be contrary to the interest of national security); and
  - recommendation and justifications.

- Submit the recommendation for approval by a designated authority, who should not be involved in the evaluation process. In case the lowest conforming bid or the bid with the highest combined score is not selected, subject the case for approval by a higher authority.

## 3.9 CONDUCTING QUOTATION/TENDER NEGOTIATION

### Major Corruption Risks

- Undue discretion in selecting tenderers for negotiation.
- Manipulating the evaluation criteria after negotiation to favour a particular bidder.
- Disclosing restricted information (e.g. other bidders' technical proposals or price offers, baseline of the public body) to a particular bidder in the course of negotiation.

### Common Inadequacies

- No requirement to obtain approval before conducting negotiation.
- Absence of pre-approved negotiation strategies.
- Lack of negotiation procedures and guidelines for staff's compliance.
- Conducting negotiation by a single staff rather than a team.
- Allowing substantial changes to the original requirements after negotiation instead of initiating a re-quotation or re-tender.
- Lack of proper record for negotiation.

### Red Flags

- Selective negotiation, such as a staff arbitrarily proposing to conduct negotiation with the bidder submitting the second lowest bid only, but not the lowest conforming bid.
- Negotiation is conducted without pre-determined strategies or parameters.
- A single staff conducts negotiation outside the public body's premises.
- Significant change to the original requirement without resorting to re-quotation or re-tender.

## Case Scenario – Corrupt Dealings in Negotiation Process

An organisation invited contractors to submit bids for an upcoming renovation project. After evaluation, all of the received bids exceeded the budget. The tender evaluation panel decided to conduct post-tender negotiation with a view to reducing the cost. In the absence of any laid down guidelines, the evaluation panel chairman discretionarily decided to negotiate solely with the second highest tenderer, Contractor Z, which had performed a project of similar scale.

At Contractor Z's office where the negotiation took place, the director of Contractor Z offered a bribe to the panel chairman in exchange for other bidders' price offers and the organisation's baseline, and alteration of the specifications in a manner that would favour Contractor Z.

## Corruption Prevention Controls

- Lay down the valid grounds for the conduct of negotiation (e.g. the lowest conforming bid exceeds the approved budget and re-tender is not possible, no one tender is clearly more advantageous), and conduct negotiation only upon approval by a designated authority who should not be involved in the earlier evaluation process.
- Set out objective criteria or work out a competitive range in selecting bidders to conduct negotiation (e.g. whether only the lowest conforming bid should be selected, or whether the second or third lowest conforming bids should also be selected) for approval by the designated authority.
- Appoint a team to conduct negotiation and take into account the followings –
  - appoint a managerial staff with sufficient seniority to lead the negotiation team, having regard to the complexity and importance of the negotiation;
  - appoint at least two staff of appropriate ranks possessing relevant expertise/knowledge (e.g. staff from the procurement department for compliance with the procurement policies/guidelines, the legal department for legal aspects, the user department for user requirement aspects, the IT department for IT technical aspects) as the negotiation team members; and
  - require team members to declare in writing whether they have or do not have a conflict of interest (Chapter 1.3.2).

- Pre-determine the negotiation strategies, parameters and objectives, and require the negotiation team to conduct negotiation within predefined parameters, beyond which approval of the designated authority should be sought before making any commitment.
- Issue written guidelines on prohibited conducts during negotiation, for example –
  - disclosing other bidders' sensitive commercial information (e.g. technical proposals, intellectual properties, and price offers);
  - indicating to the bidders the baseline that the public body is prepared to accept;
  - disclosing information that helps the bidders to supplement their proposals; and
  - soliciting or accepting advantages or entertainment from the bidders or engaging in any social contacts with the bidders during the negotiation process.
- Conduct negotiation at the public body's office as a normal practice.
- Document the salient points of negotiation and the result after negotiation meetings.
- Require the bidders to submit their "best and final" offers in a sealed envelope at the end of the negotiation, or before a stipulated deadline.
- Evaluate the "best and final" offers and submit a recommendation in writing for approval by the designated authority.
- If substantial change to the original requirements is required, critically review the need for re-quotation or re-tender to avoid perception of unfairness to the unsuccessful bidders.

## 3.10 AWARDING CONTRACTS

**Major Corruption Risks**

- Prolonged delay in announcing the results for quotation/tender exercises, creating opportunity for an unscrupulous staff to exploit the gap period to solicit advantages from the successful bidder by purporting to provide assistance to him.
- Misappropriation of the samples submitted during quotation/tender exercises.

**Common Inadequacies**

- Lack of laid down timeframe for the notification of results, or such timeframe not being publicised for the bidders' information.
- Lack of transparency in the award of contracts.
- Lack of procedures for handling samples submitted during the quotation/tender exercises.

## Red Flags

- Quotation/tender results are announced long after obtaining approval from a designated authority.
- Samples submitted during the quotation/tender exercises are not returned to the bidders.

## Corruption Prevention Controls

- Set out a prescribed timeframe for result notification after the necessary approval has been obtained, and ensure compliance with the timeframe.
- Notify all unsuccessful bidders of the outcome, and provide the reasons why their bids are unsuccessful as far as practicable.
- For tenders, publicise the award of contract (including the name of the successful bidder and the contract value).
- Return the samples to unsuccessful bidders as soon as practicable after the contract award.

## 3.11 MAKING PETTY CASH PURCHASES

### Major Corruption Risks

- Fraudulent claims (e.g. claiming expenses that are not work-related, or making repeated claims for the same expense).
- Embezzlement of petty cash funds.

### Common Inadequacies

- Absence of proper documentation on claims (e.g. no requirement for submitting original receipts).
- Inadequate supervisory checks (e.g. failing to scrutinise the necessity and appropriateness of the petty cash purchases).
- Insufficient control measures in managing and safeguarding the petty cash fund.

### Red Flags

- Claims made by a staff that do not align with his job responsibilities.
- Instances where petty cash balances cannot be reconciled with the claims made.
- Lack of receipts or supporting documents for petty cash claims.
- Unusually high number of petty cash transactions and frequent petty cash replenishment.
- A pattern of expenses that are just below the limit requiring approval from a higher authority.

### Case Scenario – Making False Claims

A staff of an organisation submitted expense claims on multiple occasions for the reimbursement of petty cash purchases for gifts and decorations for staff events. However, some of these items were actually purchased for personal use. The supervisor did not duly review and verify the expense claims before approving the reimbursements. As a result, the staff was able to fraudulently obtain reimbursements from the organisation.

## Corruption Prevention Controls

- Lay down comprehensive policies (e.g. only allowing petty cash purchases for small and miscellaneous purchases, upper limits for such purchases and claims) and procedures for petty cash purchases and handling petty cash fund, as well as the authorities for approving petty cash transactions.
- Design a standard form for petty cash claims, and require claimants to justify their purchases and submit original receipts to support their claims.
- Require the supervisor to certify the necessity of the purchases and scrutinise the reasonableness of rates adopted or amounts claimed before approving the claims.
- Require the petty cash holder to vet the claim forms and supporting documents before making payments, sign the claim forms, and stamp "Paid" on the receipts to prevent their re-use for claims.
- Require the claimant to acknowledge the receipt of petty cash payments.
- Require the petty cash holder to keep the petty cash fund locked, and attach all claim forms and supporting receipts when seeking replenishment.
- Require proper documentation of all petty cash purchases made.
- Conduct random supervisory checks on the physical petty cash held and regular reconciliation of the petty cash account.
- Identify petty cash purchases that are frequently required, and arrange for bulk purchases or term contracts for provision of such items.

# 4 CONTRACT ADMINISTRATION

4.1 INTRODUCTION
4.2 ORDERING AND RECEIVING GOODS/SERVICES
4.3 MANAGING SERVICE CONTRACTS AND CONDUCTING INSPECTIONS
4.4 ISSUING ADDITIONAL JOB ORDERS OR CONTRACT VARIATIONS
4.5 PROCESSING PAYMENTS
4.6 MONITORING PERFORMANCE OF SUPPLIERS

# 4 CONTRACT ADMINISTRATION

## 4.1 INTRODUCTION

A robust contract administration system can help ensure the quality of goods/services procured, provide assurance on compliance of contractual obligations, and uphold integrity and accountability of the contract administration process. Therefore, it is imperative for public bodies to put in place adequate safeguards against corruption and malpractice in the administration of contracts, covering areas including placing orders and receiving goods/services, managing service contracts and conducting inspections, issuing additional job orders or contract variations, processing payments, and monitoring performance of suppliers. This Chapter highlights major corruption risks, common inadequacies, red flags, and the corresponding control measures in these areas.

## 4.2 ORDERING AND RECEIVING GOODS/SERVICES

**Major Corruption Risks**

- Placement of excessive orders to favour particular suppliers.
- Lax supervision on goods/services deliveries due to acceptance of bribes.
- Connivance at short or late deliveries.
- Acceptance of substandard goods/services.

**Common Inadequacies**

- Lack of supervisory checks on the issuance of purchase orders and receipt of goods and services.
- Lack of or inadequate checking on the goods/services received before certification of acceptance and payment.
- Inadequate segregation of duties (e.g. selection of suppliers and receipt of goods/services by the same person).
- Lack of a mechanism for handling short deliveries, defective goods or substandard services.
- Failure to take into consideration the substandard goods/services in appraising suppliers.

## Red Flags

- Discrepancies between the quantities or specifications of goods/services ordered and those of the actual goods/services received.
- Unexplained or frequent delays in the deliveries of goods/services.
- Increase in complaints regarding the quality of goods/services procured.

## Case Scenario – Acceptance of Substandard Goods

A production manager was entrusted with the responsibility of purchasing video equipment for his organisation, including both the issuance of orders and receipt of goods. During a large-scale purchase for video equipment, the manager inspected the goods himself and certified acceptance of goods despite knowing that they were not compliant with the specifications. As there was no requirement for an independent staff to inspect the goods delivered, the fraudulent dealing was only surmised after repeated complaints in relation to frequent breakdowns of the video equipment.

## Corruption Prevention Controls

- In placing a purchase order, which are sequentially-numbered, with an approved bidder, require users and/or the procurement department to –
  - verify all the details on the purchase order to ensure accuracy (e.g. item specifications, quantity, delivery date, price and payment terms);
  - obtain approval from a designated authority who should review the accuracy of purchase order and confirm the availability of the budget;
  - monitor the satisfactory delivery of goods/services and follow up on any long outstanding orders; and
  - if amendments to an issued purchase order are required, seek approval from the designated authority with justifications properly documented.
- In certifying acceptance of goods or satisfactory delivery of services, –
  - require the receiving staff, preferably someone not involved in selecting the supplier, to ensure full compliance with the purchase orders and/or contract specifications by

checking the quantity, specifications and quality of goods/services received against the purchase order and the sample of the goods provided by the supplier (if any);

- in case of any short deliveries, defective goods or substandard services, follow up immediately with the supplier to ensure that the supplier rectifies without delay, and record the supplier's adverse performance where necessary for consideration in future procurement exercises (Chapter 4.6.2);
- for high-value purchases, assign a supervisor to monitor the receiving process and counter-sign the receipt;
- arrange testing of goods by competent staff before acceptance where necessary; and
- set a timeframe within which staff have to certify acceptance of goods or satisfactory delivery of services.

## 4.3 MANAGING SERVICE CONTRACTS AND CONDUCTING INSPECTIONS

### Major Corruption Risks

- Undue discretion in enforcing or administering the contracts.
- Lax supervision (e.g. not checking high risk areas), or turning a blind eye to substandard services.
- Leakage of inspection schedules, or fabrication/manipulation of inspection records.

### Common Inadequacies

- Unclear or ambiguous contract terms and conditions, or absence of objective yardsticks/benchmarks for monitoring compliance with the contract terms.
- Ineffective inspection strategy employed (e.g. predictable inspection pattern, misalignment of timing and/or scope of inspections with the service requirements).
- Inadequate security control over surprise inspection schedule.
- Lack of a monitoring mechanism or inadequate checking/inspections on services delivered by contractors.
- Absence of proper documentation on the inspection results and supporting evidence for observations.
- Insufficient verification or supervisory checks on inspection results.
- Unspecified timeframe for taking follow-up actions against non-compliance with contract conditions.

## Red Flags

- Increase in complaints regarding the quality of services.
- Regular delays in the completion of services.
- Irregularities shown in the proof of observations (e.g. identical photos attached to the inspection reports for different dates).

## Case Scenario – Lax Monitoring over Contractor's Performance

An organisation outsourced its cleaning service to a contractor. The contract stipulated that failure to meet the required standard would result in payment deduction. To monitor the contractor's service, the organisation assigned an inspector to perform regular inspections. However, the inspector was not required to document the inspection observations, undermining the accountability of the inspection results and making it difficult for management to monitor the quality of service provided. The contractor exploited the opportunities and offered bribes to the inspector in exchange for lax monitoring of his performance.

## Corruption Prevention Controls

- Establish a monitoring mechanism having regard to the nature of service and requirements in the contract (e.g. conducting inspections, reviewing contractors' work records/reports), lay down the monitoring requirements and guidelines, and ensure the staff responsible for contract administration are familiar with the requirements and guidelines.
- Appoint staff of appropriate rank to monitor the standards of service and conduct inspections, and subject the process to supervisory checks.
- For the conduct of inspections, –
  - devise clear inspection guidelines covering areas including inspection scope, timing and frequency (e.g. unannounced, unpredictable and covering services performed during odd hours such as nights and weekends), sampling method (e.g. risk-based) and documentation requirements;
  - put in place measures to ensure unpredictability/randomness of and prevent leakage of the inspection schedule;

- ensure that the inspections cover the following areas –
  - the satisfactory completion of the tasks (e.g. standards of cleanliness by checking immediately after the scheduled completion time);
  - the locations where contractor staff work (e.g. guard posts) and results of inspections on their carrying out of duties; and
  - headcounts on duty (if the strength is pledged in the contract).
- devise an inspection checklist detailing the major items and performance standards to be monitored during inspection;
- require the inspection staff to document the observations in the inspection checklist and support them with evidence (e.g. photos) as appropriate;
- ensure the contractor is informed of the observations by giving the contractor a copy of the inspection checklist where appropriate;
- follow up duly with the contractor regarding substandard services or non-compliance with contract conditions identified;
- conduct random supervisory or independent checks to verify the inspection findings;
- provide justifications and seek approval from a designated authority if the inspection schedule could not be met; and
- digitalise the inspection process as far as practicable (Chapter 5.4.2).

- Maintain proper documentation of the monitoring process (e.g. inspection results, progress reports or work records submitted by the contractors).

- Make adverse reports on the contractors' substandard performance, and step up monitoring (e.g. increasing the inspection frequency) if there are increased complaints or repeated irregularities observed.

- Ensure the adverse reports to be duly reflected in the performance appraisal of the suppliers concerned (Chapter 4.6.2), which should be taken into consideration in future procurement exercises.

- Enhance transparency of service standards (e.g. contactors' cleaning schedule) to facilitate user monitoring.

## 4.4 ISSUING ADDITIONAL JOB ORDERS OR CONTRACT VARIATIONS

### Major Corruption Risks

- Issuing unnecessary job orders or contract variations to colluded contractors.
- Fraudulently underestimating the scope of work during bid invitation, and subsequently issuing contract variations to colluded contractors.

### Common Inadequacies

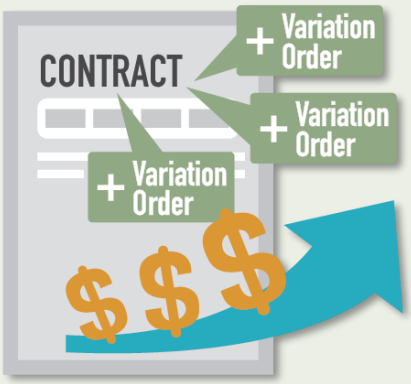
- Lack of a mechanism for assessing the necessity of additional job orders or contract variations, or the reasonableness of their rates and the overall cost.
- No requirement to document the justifications for the needs of and the rates adopted in additional job orders or contract variations.

### Red Flags

- Lack of justifications for contract variations or additional job orders.
- Contract variations issued shortly after contract award.
- High frequency of contract variations.
- A consistent pattern of the timing of issuing contract variations (e.g. always issued at the end of a billing cycle, or just before contract renewal).
- Disproportional aggregate value of contract variations compared to the original contract sum.

### Case Scenario – Inflating Contract Sum through Variation Orders

A marketing manager of an organisation was assigned to shortlist contractors for bidding in a large-scale publicity campaign and to monitor the selected contractor. In collusion with a contractor, the manager deliberately omitted certain essential service items from the specifications. Shortly after the contract was awarded, the manager proposed to his supervisor to issue contract variations to expand the service scope such as market research, social media advertising, video production, claiming that these could enhance the campaign's overall effectiveness. As a result, the total contract sum was substantially inflated.



### Corruption Prevention Controls

- Require any request for additional job orders, ad hoc services or contract variations to be supported by justifications, and where appropriate, supporting documents (e.g. photos, certification of defects).
- Designate the authorities for approving additional job orders or contract variations in commensurate with the monetary value and magnitude of the requests (e.g. as a percentage of the original contract sum).
- Benchmark the additional work requested against the past additional service requirements (if any) to ascertain the reasonableness.
- Conduct supervisory vetting on the requests for additional job orders or contract variations, so as to ensure that the needs are properly justified, and the rates and overall cost estimates are reasonable.
- Ensure the additional work requested is not covered by the existing contract, and that proper terms and rates are adopted (e.g. the rates provided in the contract).
- Check and certify completion of additional job orders and contract variations within a specified timeframe after job completion.
- Conduct a separate procurement exercise if the additional work is of significant value compared to the original contract sum.
- Compile periodic reports on the issuance of additional job orders and contract variations to facilitate management oversight and detect anomalies.

## 4.5 PROCESSING PAYMENTS

### Major Corruption Risks

- Overpayment or premature payments to contractors.
- Undue delay or acceleration of payments to contractors.

### Common Inadequacies

- No requirement to check the supporting documents (e.g. certifications of job completion) when processing payment requests.
- Lack of payment schedules/milestones in the contracts.
- Absence of stipulated timeframe for processing payments.

## Red Flags

- Repeated complaints received from suppliers in relation to the timeliness of payments.
- Full payment is made before the completion of work.
- Frequent delay in payments.

## Case Scenario – Premature Payments to a Contractor

An organisation engaged a long-standing contractor for a large-scale exhibition project, and assigned a marketing manager to oversee the work of the contractor. Upon the completion of about half of the project, the contractor expressed liquidity issues affecting the payment of staff salaries and requested advance payment for the entire project. Due to the personal friendship with the contractor, the marketing manager acceded to the request and instructed the finance department to release the payment. Despite the lack of documentary proof confirming the project completion, the finance staff processed the payment without any queries. Shortly after receiving the payment, the contractor disappeared. As a result, the organisation had to incur extra costs to engage another contractor to complete the remaining project.

## Corruption Prevention Controls

- Establish authorisation levels for approving payments of different values, and specify different payment methods (e.g. by cash, cheque, bank transfer) based on the nature/amount of transactions.
- Segregate the duties in relation to certifying invoices (e.g. by users) and verifying payments (e.g. by finance staff).
- Specify clearly the supporting documents required for making payment claims (e.g. certified invoices, goods delivery notes, records of service delivery, originated purchase orders, contract, approved budget).
- Require users to submit payment claim forms in writing and attach the supporting documents required.

- Check for any non-compliance records (e.g. short deliveries or defective goods returned, records of shortage of workers) and make necessary payment deductions in accordance with the contract conditions where applicable.
- Require finance staff to sign off on the payment claim forms after verifying their accuracy against the supporting documents to enhance accountability, and stamp "Paid" on all invoices settled to prevent double payment.
- Set an internal timeframe, or publicise a performance pledge for processing payments where practicable, and ensure that the payment claims are processed within the performance pledge, internal timeframe or according to the timeframe specified in the contract.
- Conduct supervisory checks to ensure that payments made are in order, and make enquiries into delays or other exceptions.

## 4.6 MONITORING PERFORMANCE OF SUPPLIERS

### Major Corruption Risks

- Selective or delay in taking follow-up actions on complaints or adverse feedback received.
- Undue discretion or inconsistent practices in taking follow-up actions against underperforming suppliers.
- Favouritism to a particular supplier in the conduct of performance appraisal.

### Common Inadequacies

- Lack of a performance management system for suppliers.
- Lack of objective benchmarks in appraising suppliers.
- Performance track records including adverse records are not considered in future tender/quotation exercises.

### Red Flags

- Persistently unsatisfactory performance of a supplier, despite repeated adverse feedback or complaints, with no follow-up action taken against the supplier.
- Favourable performance appraisal given to a supplier despite noticeable underperformance.

### 4.6.1 Collecting Feedback/Complaints and Handling Underperforming Suppliers

- Establish a dedicated channel which facilitates the submission of views, comments, suggestions and complaints on suppliers' performance.
- Appoint a staff of an appropriate rank not involved in day-to-day monitoring of suppliers to handle reports of feedback and complaints (e.g. conducting investigations, requesting the suppliers to rectify the situations, replying to the complainants within a prescribed timeframe), and assign a different staff to handle repeated complaints.
- Lay down contract enforcement policies and procedures for dealing with the non-conformance with contract conditions and unsatisfactory performance of suppliers, including –
  - follow-up actions that may be taken in accordance with the contract conditions, having regard to the seriousness of the issues (e.g. verbal/written warning for a minor/substantive breach, liquidated damages for delays in contract performance, suspension from invitation to bid for a prescribed period in case of repeated breaches, termination of contract and/or removal from the suppliers list for a serious breach);
  - criteria/circumstances and authorities for taking and approving such actions; and
  - procedures for handling disputes from suppliers (e.g. dispute over whether there is non-conformance), and subject the result for review by a higher authority.
- Take prompt follow-up actions in accordance with the contract enforcement policies and procedures, and contract conditions.
- Maintain proper records of all feedback/complaints received and follow-up actions taken, and where practicable, maintain a dossier of follow-up actions taken to facilitate consistent decision-making in future.

### 4.6.2 Conducting Performance Appraisal

- Put in place a performance appraisal system with the following features –
  - adverse reporting system, for which users are required to report any substandard performance or breaches identified to the staff responsible (e.g. procuring staff);
  - periodic and end-of-contract appraisals of suppliers' performance, for which users are required to give rating on pre-determined aspects (preferably using a standard evaluation form (***Appendix 9***)); and
  - centralised records of suppliers' performance (preferably using a computer system (Chapter 5.4.5)), which will be taken into account in future procurement exercises (Chapter 3.3.4) and in periodic review of suppliers list (Chapter 3.4) as appropriate.

- Hold periodic meetings with the contractors' management to review performance and discuss issues of concern (if any).
- Ensure contract renewal/extension is based on satisfactory performance, ascertain the availability of other competitive alternatives, and where appropriate, conduct a fresh procurement exercise to source new contractors.

# 5 DIGITALISED CORRUPTION PREVENTION FUNCTIONALITIES FOR PROCUREMENT

5.1 INTRODUCTION
5.2 SYSTEM CONTROL ENVIRONMENT
5.3 PROCUREMENT
5.4 CONTRACT ADMINISTRATION

# 5 DIGITALISED CORRUPTION PREVENTION FUNCTIONALITIES FOR PROCUREMENT

## 5.1 INTRODUCTION

In today's digital age, computer system becomes an integral part of procurement processes. With the use of the procurement computer system, it offers various functionalities that can help mitigate corruption risks and malpractice. These functionalities can reduce non-essential human interference or discretion, ensure compliance with laid down requirements, provide real-time monitoring and reporting, enhance transparency, and improve data accuracy. By leveraging these functionalities, public bodies can establish a more robust procurement system that is transparent, accountable and efficient, ultimately leading to better outcome for public bodies, their stakeholders, and the society at large.

To facilitate public bodies to fully unleash the benefits of utilising computer systems in procurement, this Chapter highlights major corruption risks arising from ineffective use of IT in the e-procurement processes, common inadequacies identified, and digitalised corruption prevention functionalities in relation to the system control environment, as well as procurement and contract administration processes.

**Major Corruption Risks**

- Manipulation of the e-procurement processes to favour colluded suppliers due to manual data processing across different computer systems/modules, inadequate segregation of duties in system workflow, or ineffective user account management.
- Leakage of privileged e-procurement information to potential bidders due to ineffective access control in procurement computer system.
- Corruption or other malpractice in the e-procurement processes being covered up due to lack of supervision or management oversight, ineffective IT risk assessment and audit, absence of reporting channel, or under-utilisation of digitalised functionalities in the e-procurement processes.

**Common Inadequacies**

- Heavy reliance on manual data processing that is inefficient, prone to human errors and non-compliance, due to lack of automatic data flow across different computer systems/modules.
- Leakage of sensitive e-procurement information (e.g. e-quotations/tenders received before the submission deadline) due to inadequate information security in computer system.
- Inadequate accountability and traceability of the procurement processes due to ineffective user account management (e.g. sharing of user accounts, no audit trail of access/changes to important data).
- Non-compliance in the e-procurement processes due to lack of supervision or management oversight (e.g. supervisors are not alerted when required steps are omitted, system-generated reports are not utilised for management review), or absence of reporting channel in computer system.
- Inadequate assurance of data/process integrity due to ineffective use of computer-aided audit tools, or lack of periodic IT risk assessment and audit.
- Under-utilisation of computer functionalities in various procurement and contract administration processes.

## 5.2 SYSTEM CONTROL ENVIRONMENT

### Corruption Prevention Controls

#### 5.2.1 Data Capture and System Integration

- Auto-capture the procurement-related data, steps, and outcome in the computer system to uphold accountability of the procurement processes.
- Integrate the procurement computer system/module with other business systems/modules (e.g. finance, human resources, supply chain management, asset management) to ensure seamless data flow and process alignment.

### 5.2.2 Information Security

- Build in security safeguards to protect the information in the computer system, for example –
  - adopt clear security classification of data/information and appropriate security measures for different classifications (e.g. access to bid information before the submission deadline should be strictly prohibited);
  - implement proper encryption to protect sensitive procurement data/information from unauthorised access;
  - build in audit trail function for tracking access/changes to important data/information, and review the audit logs on a risk-based approach or by way of exception reports to detect and deter any abuse (e.g. unauthorised access to privileged information, tampering of information); and
  - adopt blockchain technology, where appropriate, which upholds data integrity by recording transactions across multiple databases and making the procurement data/information tamper-proof.

### 5.2.3 User Account Management

- Assign user roles based on their procurement functions, granting each role specific permissions to perform certain actions and access on a need-to-know basis.

- Restrict the access to the procurement computer system/module to designated staff and governing members using unique login accounts and passwords.

- Promptly deactivate the user accounts when the staff or governing members have left the public body or were no longer involved in the procurement processes.

- Regularly review usage of individual user accounts to identify any irregularities or inactive user accounts warranting deactivation.

- Enforce a strong password policy which includes complexity requirements, password expiration and history.

- Implement strong authentication mechanisms such as two- or multi-factor authentication for procurement processes warranting a higher level of control (e.g. opening of tenders, approval of payments over a prescribed monetary threshold).

- Authorise the system administrator accounts only to the personnel who have a legitimate need to manage or configure the system (e.g. IT manager), as these accounts are typically granted with elevated privileges or access to all areas of the computer system.

### 5.2.4 Supervision and Monitoring Mechanism

- Build in automatic alerts and leverage data analytics to facilitate compliance checks and detection of irregularities, including red flags highlighted in this Guide, such that

supervisors or management could be promptly notified of any abnormal patterns or irregularities detected (e.g. suppliers' bid prices being significantly deviated from the average or previous bid prices).

- Generate periodic information or exception reports to facilitate management oversight and alert them of possible anomalies, for example –
  - manual removal of a supplier from the system-generated bidder list;
  - frequency and aggregate value of purchases of the same types of goods/services and those from the top patronised suppliers to detect possibility of split orders; and
  - non-compliance with the internal payment processing timeframe or contract payment terms.

- Implement data analytics, visualisation tools or dashboards to facilitate the monitoring of procurement activities, for example –
  - using data analytics to track procurement metrics such as supplier performance, contract compliance, price fluctuation, and duration of procurement cycle; and
  - adopting visualisation tools or dashboards to convert complex procurement data sets into easy-to-understand charts, graphs, or other visual formats to enable more informed decision-making.

- Use advanced techniques such as artificial intelligence (AI) to detect fraudulent behavior in the procurement processes, for example –
  - **anomaly detection** – train a machine learning (ML) model using procurement data/information of the public body (e.g. supplier details, item descriptions, invoice amounts) to learn what normal procurement activity looks like, and if a new transaction comes in that significantly deviates from the normal pattern, the ML model can flag it as an abnormal case or a potential fraud requiring attention; and
  - **text analysis** – AI can be used to analyse the text of documents involved in the procurement processes (e.g. contracts, invoices, and receipts) to detect unusual language or terms that may indicate fraudulent activities (e.g. flagging an invoice if AI detects the same exact amount billed twice in a short period of time, detecting potential bid rigging cases if identical uncommon typographical errors identified at the same part of different tender submissions).

### 5.2.5 Feedback and Fraud Reporting

- Establish in the computer system and/or web-based platform –
  - a feedback channel to facilitate the receipt of feedback from suppliers and staff on the procurement processes; and
  - a fraud reporting channel which provides a secure, confidential, and easy-to-use means for reporting suspected fraud or other malpractice.

- Enable a case management module in the computer system, and generate automatic system alerts to the staff responsible and supervisors at different key checkpoints (e.g. issuance of interim/final replies, reporting of investigation progress, case conclusion) before the due dates for monitoring the follow-up process.

### 5.2.6 Audit

- Build in computer-aided audit tools in the computer system to automate the audit process, enabling a more comprehensive, effective, efficient and accurate detection of anomalies and non-compliance.

- Conduct periodic IT risk assessment and audit on the computer system to ensure that the security measures, user access controls, and procedural workflow are aligned with the procurement policies and guidelines of the public body.

## 5.3 PROCUREMENT

### 5.3.1 Automation of Workflow

- Implement an automated workflow to guide staff through the whole procurement processes to ensure all necessary steps are taken (e.g. each completed action could trigger an automatic notification to the party responsible for the next process in the computer system via email).

- Ensure the automated workflow is consistent with the procurement policies and guidelines of the public body.

- Provide auto-validation functions to avoid or detect duplicating roles that are key to the procurement exercise (e.g. the person approving a purchase should not be the same person who requested it) to ensure adequate segregation of duties.

### 5.3.2 Management of Conflict of Interest

- Require all staff and governing members involved in particular tender exercises to indicate in the computer system whether they have or do not have any actual, potential or perceived conflict of interest before they are allowed to get involved in that particular exercises.

- Automate the workflow for forwarding a declared conflict to the designated authority to determine appropriate mitigation measures, and automatically capture such declaration in the tender report (Chapter 3.8) submitted to the approving authority for information and consideration.

- Use auto-matching or AI to help match or analyse the key personnel and other particulars of bidders and those of the public body with a view to identifying potential conflict of interest situations and detect irregularities (e.g. the name of the owner, director or major shareholder of a particular bidder is identical to that of an evaluation panel member).

### 5.3.3 Purchase Requisitions and Quotation/Tender Documents

- Conduct automatic budgetary checking in the commencement of the purchase requisition process.

- Use AI or ML to automate the process of generating and advancing specifications for purchase requisitions and quotation/tender documents, for example –
  - checking whether all essential probity requirements have been incorporated;
  - analysing the item descriptions of previous similar purchases to identify appropriate specifications for inclusion;
  - advising the formulation of the evaluation criteria as well as corresponding technical and price weightings based on historical purchases of similar items; and
  - automatically checking the availability of goods/services in the market.

- Automate the workflow on vetting and approving process on purchase requisitions and quotation/tender documents.

- Utilise internet of things devices to track inventory levels and trigger reordering notifications when stocks fall below a specified level.

### 5.3.4 Managing Suppliers List

- Maintain a centralised suppliers list, which includes all relevant information about suppliers (e.g. contact information, goods/services offered, certifications obtained, procurement history, past performance, and response rate to quotation/tender invitation), in the computer system for use by procuring staff and user departments.

- Set out a web-based platform to facilitate interaction between public bodies and suppliers, for example –
  - receiving online applications for admission to the suppliers list;
  - obtaining the up-to-date information of the registered suppliers;
  - sending notifications on suspension or removal from suppliers list; and
  - disseminating guidance notes to suppliers for dealing with the public bodies, including the essential probity requirements.

- Automate the workflow for vetting and approving any application for inclusion of new suppliers to, or suspension/deletion of existing suppliers from, the suppliers list, or any alteration of information of registered suppliers.

- Leverage big data techniques to identify, manage and utilise supplier information available in the public domain to facilitate the supplier discovery process and enrich the supplier database, in particular for those goods/services categories with limited listed suppliers.

### 5.3.5 Inviting Bidders

- Automatically shortlist suppliers to bid from an appropriate category of the suppliers list adopting a fair basis (e.g. by rotation or random selection, and automatic inclusion of the last successful supplier if his performance was satisfactory), and require procuring staff to provide justifications and seek approval from the designated authority for any alteration to the system-generated bidder list, out-of-turn invitation of suppliers, or nomination of additional suppliers by users or other procuring staff.

- Build in analytics tools to facilitate intelligent sourcing where practicable, such as using AI to help identify, evaluate, and select the most suitable suppliers according to the public bodies' needs, including analysing the suppliers' goods/services specifications, past performance, financial information, and other related factors that may impact suppliers' availability and performance (e.g. litigations, supply chain disruptions).

- Provide the same information essential for quotation/tender preparation to potential bidders via the computer system or web-based platform to enhance transparency and uphold fairness of the procurement processes.

### 5.3.6 Communication with Bidders

- Log all communications with bidders (e.g. invitations to bid, tender/quotation addenda, queries raised by and responses to the bidders) in the computer system or web-based platform, and subject the communications to supervisory review to detect anomalies.

- For online briefing conducted for procurement exercises, put in place suitable controls to help alleviate possible collusion or other malpractice among bidders, including –
  - anonymising bidders' identities at the briefing (e.g. assigning a unique login account to each of them);
  - turning off the web camera function of bidders (or only enabling the host to view their camera image); and
  - disabling the private chat function among bidders (or only enabling messages to be sent directly to the host where necessary).

### 5.3.7 Receiving and Opening Quotations/Tenders

- Enable e-invitation and receipt of quotations/tenders in the computer system or web-based platform with automatic controls built in the process –
  - restricting access to proposals only after the submission deadline;
  - prohibiting opening of late submissions;
  - prohibiting opening of price proposals before completion of technical assessments in case two-envelope approach is adopted;
  - automatic capturing and recording of price offers;
  - safekeeping a control copy of all the proposals submitted;
  - disallowing any alteration of proposals after the submission deadline;

- maintaining audit trails over the receipt and opening process; and
- analysing Internet Protocol addresses of bidders to detect possible bid collusion (e.g. submitting bids from the same Internet Protocol address or shared network).

- Assign quotation/tender opening team in the computer system by designated authority; and put in place suitable authentication mechanisms (Chapter 5.2.3) against unauthorised access.

- If email is adopted in receiving quotations, put in the place suitable security features against tampering or leakage of quotations, including –
  - using a secure email system with encryption connections;
  - setting up a dedicated email account for receiving e-quotations;
  - requiring the open of an email with two passwords which are separately kept by different staff not directly involved in the quotation process;
  - only releasing the passwords to the quotation opening team, which comprises more than one staff, for opening the bids after the submission deadline;
  - archiving all e-quotations received in a secure location to maintain a proper documentation on the process; and
  - refraining staff from using their personal email accounts (both official and private) for receiving e-quotations.

### 5.3.8 Evaluating Quotations/Tenders

- For procurement exercises adopting two-envelope approach, build in the following features to uphold accountability and facilitate unbiased assessment in the evaluation of technical proposals –
  - capturing in the computer system all the scoring information over the technical assessment process, including the scores for each technical aspect given by individual evaluation panel members, any alteration to the scores (with justifications provided) after deliberation, and automatic calculation of the overall technical score; and
  - only releasing the price proposals to the evaluation panel after an independent staff has confirmed the completion of technical assessment in the computer system.

- Enable automatic calculation of the overall combined score (under two-envelope approach), and determination of the ranking of quotations/tenders.

- Generate a standard tender report (Chapter 3.8) incorporating key features including the bid invitation and receipt status, assessment result, and any declaration on conflict of interest made and the corresponding mitigating measures being put in place, etc.

### 5.3.9 Quotation/Tender Negotiation

- Capture the negotiation process in the computer system where practicable (e.g. written correspondence with bidders via the computer system or web-based platform), and maintain audit trails on the actions taken during the process.
- Leverage AI to facilitate the formulation of negotiation agenda, sequence of points to be negotiated, arguments to be used, expected counter-arguments, suggested negotiation tactics, with a view to improving effectiveness and achieving better outcome.

### 5.3.10 Award of Contracts and Contract Management

- Build in computer-aided tools to facilitate the contract creation process (e.g. provision of contract templates and clause libraries, and customisation function to suit individual contracts' needs), and automate the checking on whether mandatory contract clauses (e.g. probity clauses, termination clauses) have been duly included.
- Automate the workflow on contract approval process (e.g. sending email notifications to the relevant parties when their endorsement or approval is needed).
- Maintain a centralised repository for storing all contracts to facilitate contract management (e.g. search and retrieval of contracts).
- Leverage AI to automatically extract key terms, clauses and obligations from contracts, keep track on milestones and deadlines, and generate alerts or reminders to the staff responsible for follow up as appropriate.

### 5.3.11 Petty Cash Purchases

- Utilise data analytics (e.g. by comparing with historical rates of similar purchases) to assess whether the rates in petty cash purchases are reasonable.
- Analyse petty cash purchases to detect split orders, as well as identify frequently required items and arrange term contracts for such items.

## 5.4 CONTRACT ADMINISTRATION

### 5.4.1 Ordering and Receiving Goods/Services

- Utilise internet of things devices (e.g. radio-frequency identification tags and sensors) to provide real-time and up-to-date stock level information.
- Build in stock management tools to generate, automatic alerts for replenishment when the stock level has dropped to a pre-set level, and purchase orders for review and approval by appropriate authority.

- Generate automatic system alerts to the staff responsible for follow up in case there are any delays in goods delivery or completion of milestones.

### 5.4.2 Managing Service Contracts and Conducting Inspections

- Digitalise the conduct and recording of documentary checks in the computer system, for example –
  - provide a system interface to the contractors for uploading the documentary records in accordance with the contract provisions (e.g. submission of contractors' Codes of Conduct, job completion reports, inspection records, payment records to contractors' staff such as cleaning workers and security guards); and
  - automate the checking process to identify any anomalies (e.g. failing to submit the required documentary records by the stipulated deadline or meet the prescribed frequency for inspections), and generate automatic alerts to the staff responsible for follow up.

- For service contracts that rely heavily on non-skilled workers (e.g. cleaning and security contracts), adopt digital attendance systems with biometric authentications (e.g. fingerprint or facial recognition) for staff monitoring and contract payment purposes.

- Utilise mobile devices and technologies during inspections to capture real-time, accurate and reliable data (e.g. time log, location tracking with the global positioning system, video recording or photo taking during inspections), and adopt video/photo analytics functions to automatically identify irregularities, so as to enhance accountability and information integrity, and facilitate supervisory monitoring.

### 5.4.3 Issuing Additional Job Orders or Contract Variations

- Automate the workflow on issuing additional job orders or contract variations with proper controls built in, for example –
  - require provision of justifications (with supporting documents where necessary) in the computer system for initiating an additional job order or contract variation;
  - automatically adopt the rates and terms if they are provided in the contract concerned, or benchmark the rates proposed against past additional service requirements (if any) and generate automatic alerts for any material deviations warranting a closer scrutiny;
  - send email notifications to designated authority to seek approval; and
  - maintain proper documentation to uphold accountability.

### 5.4.4 Processing Payments

- Digitalise the workflow for processing payments, covering receipt of suppliers' invoices, validation of invoices against corresponding purchase orders or contracts, certification of goods delivery or completion of services, and authorisation of payments.

- Build in automatic alert or bring-up function to remind the staff responsible and their supervisors to follow up on any delayed payment cases.

- Utilise robotic process automation to automate the repetitive tasks (e.g. capture information on physical or electronic invoices received from suppliers, match them with the corresponding purchase orders or contracts, and assign expenditure attributes based on previously processed invoices), to enhance efficiency, ensure accuracy and consistency, and deter possible irregularities (e.g. double payments, payment claims are not supported by purchase orders or contracts, certain unallowable expenditures are disguised as miscellaneous expenses).

### 5.4.5 Monitoring Suppliers' Performance

- Embed a suppliers' performance management module in the computer system to automatically track/capture the delivery timeliness, quality of goods/services provided, and adherence to contractual terms and conditions.

- Digitalise the suppliers' performance appraisal process, including –
  - using e-forms for assessment in the computer system;
  - mandating staff to enter their grading for individual assessment aspects (with justifications provided for those unsatisfactory aspects) before the e-forms can be submitted;
  - automatically generating reminders to users and their supervisors when performance assessments are overdue; and
  - maintaining a centralised database of contractors' performance records to facilitate on-going monitoring and subsequent retrieval (e.g. consideration of suppliers' past performance in upcoming tender exercises).

- Utilise AI to automate the evaluation of supplier performance by analysing various metrics, such as delivery timeliness, quality (e.g. substandard goods identified in acceptance), and customer satisfaction level (e.g. warning letters or default notices issued).

# APPENDICES


1 SAMPLE FORM TO REPORT ADVANTAGES RECEIVED IN OFFICIAL CAPACITY
2 SAMPLE DECLARATION FORM OF CONFLICT OF INTEREST
3 MITIGATING MEASURES FOR MANAGING DECLARED CONFLICT OF INTEREST
4 SAMPLE UNDERTAKING FORM FOR PERSONNEL INVOLVED IN TENDER EXERCISE
5 SAMPLE PROBITY CLAUSES IN QUOTATION/TENDER DOCUMENTS
6 SAMPLE PROBITY CLAUSES IN CONTRACT DOCUMENTS
7 SAMPLE QUOTATION/TENDER EVALUATION FORM
8 SAMPLE TENDER EVALUATION REPORT
9 SAMPLE CONTRACTOR PERFORMANCE EVALUATION FORM

# APPENDIX 1
## Sample Form to Report Advantages Received in Official Capacity

**Part A – To be completed by Receiving Staff / Governing Member**

To : (Approving Authority)

Description of Offeror:

*Name & Title of Offeror:* _____

*Company:* _____

*Relationship:* _____

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

Description & (Assessed) Value of the advantage: _____

| **Suggested Method of Disposal:** | | **Remark** |
|---|---|---|
| ( ) | Retain by the Receiving Staff / Governing Member | _____ |
| ( ) | Retain for Display / as a Souvenir in the Office | _____ |
| ( ) | Share among the Office | _____ |
| ( ) | Reserve as Lucky Draw Prize at Staff Functions | _____ |
| ( ) | Donate to a Charitable Organisation | _____ |
| ( ) | Return to Offeror | _____ |
| ( ) | Others (please specify) : | _____ |

Guidelines on disposal method:

- If the gift/souvenir is of perishable nature (e.g. food, drink), it may be donated to a charitable organisation or, when this is not practical, shared among Members/staff of [*The Public Body*] on a suitable occasion.
- If the gift/souvenir is a useful item, it may be donated to a charitable organisation.
- If the gift/souvenir is suitable for display (e.g. a painting, vase), it may be displayed at appropriate locations of [*The Public Body*]'s premises.
- If the gift/souvenir is of low value, it may be donated as a prize in functions organised by [*The Public Body*].
- If the gift/souvenir is a personal item of low value, such as a plaque or pen inscribed with the name of the recipient, it may be retained by the recipient.
- If the gift/souvenir is distributed to all participants in public activities, such as a ball pen, file folder or key clasp, etc, it may be retained by the recipient.
- Any gift/souvenir of high value should be returned to the offeror.

Signature of Receiving Staff / Governing Member: _____

Name and Post/Office of Receiving Staff / Governing Member: _____

Date: _____

**Part B – To be completed by Approving Authority**

To: (Name of Receiving Staff / Governing Member)

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

Signature of Approving Authority: _____

Name and Post of Approving Authority: _____

Date: _____

* *Please delete as appropriate*

## APPENDIX 2
## Sample Declaration Form of Conflict of Interest

**Part A – Declaration** *(To be completed by the Declarer)*

To : (Approving Authority)

I would like to report the following actual, potential or perceived conflict of interest situation arising during the discharge of my official duties:

| Person(s)/organisation(s) with whom/which I have official dealings and/or private interest |
|---|
| |
| My relationship with the person(s)/organisation(s) (e.g. relative) |
| |
| My contact with the person(s)/organisation(s)<br>(Please state the frequency of contact and the usual occasions of contact, etc.) |
| |
| Relationship of the person(s)/organisation(s) with the public body (e.g. supplier) |
| |
| Brief description of my duties which involved the person(s)/organisation(s)<br>(e.g. drawing up goods/services specifications, evaluating quotations/tenders received) |
| |
| File reference, if any, of the mentioned duties |
| |

Signed by: _____

Name of Declarer: _____

Post: _____

Date: _____

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

To : (Declarer)

*Part B(i) – In respect of the declaration in Part A of this form, it has been decided that:*

- ❑ The declaration as described in Part A is noted. You are allowed to continue handling the work as described in Part A, provided that there is no change in the information declared above.

- ❑ You are restricted in the work as described in Part A (e.g. prohibit from handling the specific part/duty that you have conflict, withdraw from discussion on a specific issue/case).
  Details: _____

- ❑ You may continue to handle the work as described in Part A, but an independent person would be recruited to participate in, oversee or review part or all of the decision-making process (e.g. task another staff with the required expertise to provide objective assessment on the matter).
  Details: _____

- ❑ You are relieved of your duty as described in Part A, which will be taken up by another person (e.g. staff, member, expert) through redeployment.
  Details: _____

- ❑ You should relinquish the personal/private interest (e.g. cease to be a member of a club/association, divest the investments until the conflict situation described in Part A no longer exists).
  Details: _____

- ❑ Others (please specify) (e.g. you should not contact the person(s)/organisation(s) concerned until the conflict situation described in Part A no longer exists):
  Details: _____

*Part B(ii) – The justification(s) for the measure(s) as described in Part B(i) above is/are:*
*(Factors of consideration including the materiality of the conflict, link between the conflict and the matter in question, and any possible negative public perception over the conflict/incident.)*

_____

_____

In all cases, please be reminded that you should not disclose any privileged/internal information of the subject matter to the person(s)/organisation(s) concerned and should further report if there are changes in circumstances necessitating reporting.

Signed by: _____
Name of Approving Authority: _____
Post: _____
Date: _____

**Part C – Keeping of Records** *(To be completed by the Declarer)*

To : (Designated office/staff for keeping the completed declaration form)

Via: (Approving Authority)

I noted the decision in Part B. The completed form is for your retention please.

Signed by: _____
Name of Declarer: _____
Post: _____
Date: _____

## APPENDIX 3
## Mitigating Measures for Managing Declared Conflict of Interest

(a) **Record** – Where the risk in a conflict of interest situation is indirect, remote or insignificant, and the occurrence of such a situation is infrequent, it may be sufficient to take note of the conflict only.

(b) **Restrict** – Where a conflict is not likely to arise frequently and the staff or governing member can be effectively separated from the part of activity or process in which the conflict arises, it may be suitable to restrict the staff's or governing member's involvement in the task in which he has a conflict (e.g. withdrawing from discussion on a specific issue, abstaining from voting on the decisions) and access to the related information.

(c) **Recruit** – Where it is impractical to restrict a staff's or governing member's involvement, an independent staff, governing member or expert may be recruited to participate in, oversee, or review part or all of the decision-making process if appropriate (e.g. engaging expert in the selection of highly specialised items).

(d) **Redeploy** – Where it is inappropriate to allow the staff or governing member who has declared a conflict of interest to handle a specific matter, it may be suitable to relieve the staff or governing member of his duty which may then be taken up by another staff or governing member through redeployment. For serious conflict of interest cases with a high likelihood of relapse, it may be suitable to post out the staff or reallocate the office of the governing member to avoid negative public perception.

(e) **Relinquish** – Where a staff's or governing member's commitment to the public duty outweighs his attachment to his private interest, and adopting other mitigating measures are not appropriate or possible, he may be asked to relinquish his personal or private interests (e.g. divesting the investments, ceasing to be a member of a club/association).

## APPENDIX 4
## Sample Undertaking Form for Personnel Involved in Tender Exercise

To : (Approving Authority)

1. I hereby declare that I have no conflict of interest, whether actual, potential or perceived, in discharging my official duties in relation to [*insert the name of the tender exercise concerned*].

2. I undertake to –

   (a) hold in strict confidence all tender information that I have access to. Tender information includes details of quotations/tenders received and any other sensitive, restricted or confidential information relating to the quotations/tenders.

   (b) not to make any unauthorised disclosure or take advantage of any tender information referred to in paragraph 2(a) whether or not for personal gain.

   (c) declare any actual, potential or perceived conflict of interest with my official duty in the tender exercise immediately when I become aware of any such conflict.

   (d) 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/excessive entertainment, and not over-socialising with any of them.

3. I understand that I may be subject to disciplinary action should I fail to observe any of my above undertakings.

Signed by: _____

Name: _____

Post: _____

Date: _____

# APPENDIX 5
## Sample Probity Clauses in Quotation/Tender Documents

**Offering, Solicitation or Acceptance of Advantages**

1. The bidder (for quotation)/tenderer (for tender) shall not, and shall procure that his directors, employees, agents and sub-contractors shall not, offer, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in connection with the quotation/tendering and execution of this contract.

2. Failure to comply with the aforesaid clause (1) by the bidder/tenderer or his directors, employees, agents or sub-contractors shall, without affecting the bidder's/tenderer's liability for such failure and act, result in his tender being invalidated.

*Note: The above clauses are for reference only. Public bodies should consult their own legal advisor in this regard.*

# APPENDIX 6
## Sample Probity Clauses in Contract Documents

**Conflict of Interest**

1. The contractor shall during the contract period –

   (a) ensure that it (including each and every director, officer, employee and agent of the contractor) and each of its sub-contractors and each of their respective directors, employees, officers and agents engaged in the discharge of the obligations hereunder (collectively "Restricted Group") shall not undertake any business, activity, service, task, or job or do anything whatsoever for its own account or for or on behalf of another person (other than in the proper performance of the contract) which conflicts or which may be seen to conflict with the contractor's duties or obligations under the contract without the prior written approval of [the name of the public body]; and

   (b) forthwith notify [the name of the public body] in writing of all or any facts which may reasonably be considered to give rise to a situation where the interests of the contractor or any other member of the Restricted Group, conflict or compete, or may be seen to conflict or compete, with the contractor's duties or obligations under the contract.

2. The contractor shall ensure that itself and each other member of the Restricted Group shall keep themselves informed and that each other member of the Restricted Group shall inform the contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which its and/or their interests conflict or compete, or may be seen to conflict or compete, with the contractor's obligations under this contract.

**Confidentiality**

3. The contractor shall not disclose and shall treat as proprietary to [the name of the public body] and confidential all relevant data, any other information, report, document, plan, record, data, database, code or particulars (a) furnished or disclosed by or on behalf of [the name of the public body] or by any other person to the contractor; or (b) otherwise is accessible by or available to the contractor in the course of performing the contract; or (c) any materials, advice, recommendations, reports or any other materials containing information belonging to [the name of the public body] or specifically relating to or relevant to the services provided to [the name of the public body] (collectively "Confidential Information") in whatever form or media. The restrictions on disclosure contained in this clause shall not apply to the disclosure of any Confidential Information if:

   (a) such disclosure to any person employed, used or engaged by the contractor in performing the contract is made in circumstances where such disclosure is necessary in the reasonable opinion of the contractor for the performance of the contractor's duties and obligations under the contract, provided that the contractor has imposed on the said person employed, used or engaged an absolute and legally binding obligation to the contractor to refrain from disclosing the Confidential Information to a third party;

(b) such Confidential Information is already known to the recipient other than as a result of disclosure by the contractor or any other member of the Restricted Group; or

(c) such Confidential Information is or becomes public knowledge other than as a result of disclosure by the contractor or any other member of the Restricted Group;

(d) such disclosure is made in circumstances where such disclosure is required pursuant to any laws of Hong Kong or an order of a court of Hong Kong; or

(e) with the prior consent in writing of [the name of the public body].

4. The contractor shall indemnify and keep indemnified [the name of the public body] against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the [the name of the public body] 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 contractor or his directors, employees, agents or sub-contractors.

5. The contractor shall use the Confidential Information solely for the purposes of the contract. The contractor shall not, at any time whether during the contract period or after the expiry or termination of the contract, use, disclose, publish or reproduce, and shall procure and ensure each person who may be imparted with any Confidential Information in accordance with Clause 3 above shall not use, disclose, publish or reproduce, the Confidential Information for any other purposes without the prior written consent of [the name of the public body].

6. The contractor shall establish and maintain all necessary security measures and procedures for the safe custody of the Confidential Information in the contractor's possession or under its control and to prevent unauthorised access thereto or use thereof.

7. The contractor shall not, and shall ensure that no other member of the Restricted Group will, save to the extent necessary for performing the contract, peruse, retain possession or control of, or duplicate, any Confidential Information or any copy thereof.

**Probity**

8. The contractor acknowledges it has been reminded that –

(a) dishonesty, theft and corruption on its part or that of its directors, officers, employees, agents or sub-contractors are criminal offences and may lead to prosecution under the Prevention of Bribery Ordinance (POBO, Cap. 201), the Theft Ordinance (Cap. 210) and the Crimes Ordinance (Cap. 200); and

(b) the offering, soliciting, or accepting of advantages, as defined in POBO is not permitted.

9. The contractor shall inform its directors, officers, employees (whether permanent or temporary), agents and sub-contractors that the offering, soliciting or accepting of advantages (as defined in POBO) is not permitted. The

contractor shall also caution its directors, officers, employees and agents and sub-contractors against offering, soliciting or accepting any hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.

10. [The name of the public body] shall have the right to terminate the contract in the event that the contractor or any of its directors, officers, employees, agents and sub-contractors is convicted of an offence under POBO, the Theft Ordinance or the Crimes Ordinance.

11. [Remarks: Applicable for service contract only.] The contractor shall within [two] weeks after the commencement of the contract draw up and submit a staff code of conduct to [the name of the public body] including, among other probity issues, a statement explicitly prohibiting its sub-contractor (if any), or any person employed by it to provide the services from offering, soliciting or accepting any form of advantages in discharging his duties under the contract. It shall ensure that its sub-contractor (if any), or any person employed by it to provide the services is well aware of the prohibited acts explicitly stated in Clause 9 above and of the staff code of conduct. The code of conduct should form part of the employment contract to ensure acknowledgement and compliance by the employees.

*Note: The above clauses are for reference only. Public bodies should consult their own legal advisor in this regard.*

## APPENDIX 7
## Sample Quotation/Tender Evaluation Form

(to be Completed by Individual Evaluation Panel Members)

Quotation/Tender Opening Date: _____

Quotation/Tender Evaluation Date: _____

Goods/Service to be Procured: _____

| | | Evaluation Criteria Note | | | | Total Technical Marks (100%) |
|---|---|---|---|---|---|---|
| | Supplier/ Contractor's Name | Execution Plan (Marks:_%) | Product/ Service Quality (Marks:_%) | Delivery (Marks:_%) | Past Track Record (Marks:_%) | |
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |

[Remarks: If an evaluation panel member is aware of any conflict of interest situation in the course of evaluation, please report it in writing to the designated approving authority soonest possible (please refer to ***Appendix 2*** for a sample declaration form).]

Signature: _____

Name and Post of Evaluation Panel Member: _____

Date: _____

*Note: The evaluation criteria are examples for reference only. To facilitate fair and consistent evaluation, it is advisable to provide some objective yardsticks for each criterion.*

## APPENDIX 8
## Sample Tender Evaluation Report

***Provision of _____ [Type of Goods/Services]***

**Brief Description of Contract:**

_____

**Details of Invitation**

Tender invitation method: *Open tender / Selective tender with _____ invitations issued.

Tender invitation date: _____

Tender closing date: _____

Tender validity period: _____ days from _____

**Tenders Received**

Number of tenders received: _____

**Details of Tenders Received**

| Name of Tenders | Tendered Sums (lowest first) |
|---|---|
| | |
| | |
| | |

*** Name of Non-returning Tenderers**

| Name of Tenderers | Reasons, if known |
|---|---|
| | |
| | |
| | |

**Compliance with Tender Specifications**

| Tenderers (in order of tendered sum) | Compliance with tender specifications | Details of any non-compliance |
|---|---|---|
| | *Yes/No | |
| | *Yes/No | |
| | *Yes/No | |
| | *Yes/No | |
| | *Yes/No | |
| | *Yes/No | |

**Evaluation/Analysis of Tenders**

- Include information relevant to the evaluation/analysis of tenders, covering –
  - composition of the tender evaluation panel;
  - advice from outside technical expert/consultant, if any;
  - details of the technical and price evaluation, including the deliberations and discussion of the tender evaluation panel, especially controversial or special points of interest raised and dissenting views among panel members; and
  - details and results of negotiations with tenderers where applicable, including a confirmation that prior approval has been obtained from a designated authority to conduct such negotiations.
- Attach the marking scheme and tender evaluation forms (***Appendix 7***) duly completed by each evaluation panel member to this report.

**Comparison with Pre-Tender Estimate, Past Similar Contracts and Approved Budget**

- Compare the contract sum or unit rates of the recommended tender with relevant parameters, such as the pre-tender estimate, the contract sum or unit rates of the previous contract or similar contracts, or that of the second and third lowest conforming tenders or highest combined scorers. Explain any significant difference, where applicable.
- Confirm that the recommended tendered sum is within budget.
- Confirm with analysis that the recommended tendered sum is fair and reasonable.

**Recommendation**

- ❑ * The lowest tender/ *The tender with the highest combined score submitted by _____ [*tenderer name*] is recommended for contract award.

  *or*

- ❑ The _____ [*e.g. second, third*] *lowest/*highest-scoring tender submitted by _____ [*tenderer name*] is recommended for contract award.

  Justifications: _____

  _____

**Management of Conflict of Interest**

This is to confirm that persons involved in the tender exercise (e.g. preparing goods/services specifications and tender documents, evaluating tenders and conducting negotiations) have declared conflict of interest. Details are provided as follows –

- ❑ No conflict is declared.
- ❑ The conflict(s) declared is/are as follows:

_____

* The following actions have been taken to manage the conflicts declared –

- ❑ Required the persons _____ [*name*] who have made a declaration to abstain from the procurement process.
- ❑ Other actions taken: _____

**Safeguarding National Security**

This is to confirm that, to the best of the signatories' knowledge, the need for safeguarding national security has been fully taken into account, and the recommendation on the tender to be accepted would not be contrary to the interest of national security.

| | | | |
|---|---|---|---|
| Signature: | _____ | _____ | _____ |
| Name and Post of Evaluation Panel Members: | _____ | _____ | _____ |
| Date: | _____ | _____ | _____ |

*(* Delete as appropriate)*

## APPENDIX 9
## Sample Contractor Performance Evaluation Form

Name of Contractor: _____

Goods/Services Provided: _____

Date of Purchase / Contract Period: _____

Purchase Amount / Contract Sum: _____

| **Performance Evaluation**<br>*(The items listed below are examples for reference only.)* | | |
|---|---|---|
| **Rating** Note<br>0 – Very Poor 1 – Poor 2 – Moderate 3 – Good<br>4 – Excellent | | **Remarks**<br>(Including major defects (if any)) |
| 1. Quality of Goods/Services | | |
| 2. Delivery and timeliness | | |
| 3. Responsiveness to request(s) | | |
| 4. …… | | |
| 5. Others (*Please specify*) : | | |
| **Overall** | | |

| **Recommendation** |
|---|
| ☐ Continue to invite for quotation/tender in the future |
| ☐ Need to provide advice for improvement (please provide information on areas for improvement) |
| ☐ Issue warning letter (please provide reasons and supporting document(s) / evidence) |
| ☐ Not recommended for future appointment (please provide reasons and supporting document(s) / evidence) |

**Prepared by:**

Signature: _____

Name: _____

Post: _____

Date: _____

**Approved by:**

Signature: _____

Name: _____

Post: _____

Date: _____

*Note: To facilitate fair and consistent assessment on a contractor's performance, it is advisable to provide some objective yardsticks for each rating.*

**Corruption Prevention Department**
Independent Commission Against Corruption
303 Java Road, North Point, Hong Kong