

**Best Practices on Tendering Procedures for Engagement of
Registered Inspectors/Qualified Persons and Registered Contractors under the
Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window
Inspection Scheme (MWIS)**

Introduction

Through the implementation of the Operation Building Bright (OBB) jointly launched by the Government, the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA), valuable experience has been gained in the adoption of the appropriate engagement procedures for the reference of the public, building owners and building professionals. In close liaison with the Independent Commission Against Corruption, the Maintenance Guidelines (“the Guidelines”) (「維修工程指引」) have been jointly issued by the HKHS and URA to advise on the roles and responsibilities of the parties involved, the best practices against tender-rigging and proper procedures for selection and management of consultants and contractors. The Guidelines (in Chinese version only) are available for reference on the websites of HKHS (http://www.hkhs.com/chi/business/pdf/OBB_MTC_guide_2round.pdf) and URA (http://www.ura.org.hk/tc/pdf/schemes/OBB_MTC_guide_2round.pdf). This practice note draws the attention of the building practitioners to the Guidelines on the best practices on the tendering procedures for the engagement of consultants and contractors in pursuance of the MBIS and MWIS.

Best Practices on Tendering Procedures

2 The Guidelines suggest certain best practices on the tendering procedures for the engagement of consultants and contractors. To follow the same principles therein, the engagement of Registered Inspectors (RIs), Qualified Persons (QPs) as well as Registered Contractors (RCs) under the MBIS and MWIS should normally be conducted through invitation to tender. When bidding for and/or entering into a contractual agreement with the building owners for the engagement of RIs or QPs for the carrying out of prescribed building inspections or window inspections respectively, and in providing the supervision of and arranging for the prescribed repair works as found necessary, the attention of RIs and QPs is drawn to the best practices on tendering procedures as stipulated in the Guidelines. The attention of RCs is also drawn to the similar practices when submitting tenders and/or entering into an agreement for the carrying out of prescribed building and/or window repairs. The following issues are highlighted for particular attention:

/(A) Engagement

(A) Engagement of RI or QP

(a) Any RI/QP who is interested in the tender is recommended to make reference to the Guidelines and provide a declaration signed by the RI/QP and his company when submitting the tender (even if no such requirements are included in the documents of invitation to tender), which confirm that before any tendering result is announced by the owners, he, the directors and employees of his company, agents and sub-consultants did not and will not:-

- disclose the tender price to any persons other than the owner;
- adjust the tender price by arrangement with any other persons;
- make any agreement on tendering with any other persons;
- make any fraud in any way or with any other persons in respect of the tender; and
- be involved in any offence regarding corruption, fraud etc. in any projects.

(b) Upon confirmation of appointment, the RI/QP should consider submitting a letter signed by himself to the owners, in which he would declare if he has or has not been convicted of any offence regarding corruption, fraud etc. in any projects. Irrespective of whether there are any ethical commitment clauses in the contract, the RI/QP may also submit a declaration signed by himself and his company on compliance with the following ethical commitments:-

- The RI/QP, the directors and employees of his company, agents and sub-consultants are prohibited from offering, soliciting or accepting any advantages as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting any business in relation to the contract;
- The RI/QP, the directors and employees of his company, agents and sub-consultants must disclose, in writing, any conflict of interest or potential conflict of interest, whether personal or financial, in relation to their duties under the contract. After making such disclosure, those persons must take all reasonable steps or measures to alleviate or remove any opportunity of conflict of interest;
- The RI/QP, the directors and employees of his company, agents and sub-consultants are prohibited from engaging in any business or works (with or without pay or salaries) that may induce conflict of interest, whether personal or financial, in relation to their duties under the contract; and
- The RI/QP and his company will take all measures as necessary to protect any confidential/privileged information or data entrusted to the RI/QP, the directors and employees of his company, agents and sub-consultants by or on behalf of the owners from being divulged to a third party other than those allowed in the contract.

/(c) The

- (c) The declarations submitted by the RI/QP as mentioned in (a) and (b) above may form part of the employment contract/agreement of the RI/QP.
- (B) Engagement of RC
 - (a) When arranging tendering for the prescribed repair, the RI/QP is recommended to also observe the best practices stipulated in the Guidelines. The RI/QP is to ensure that all tendering procedures should be conducted preferably by open tendering and, if so intended, should include the invitation to RCs having good performance records. In addition, all tender documents are to be issued on behalf of the owners and any details of the RI/QP and his company should not be disclosed. The RI/QP may submit a declaration signed by himself to the owners before the tender assessment, in which he would declare that he, the directors and employees of his company, agents and sub-consultants have not had any connection with the bidders.
 - (b) Any contractor who submits tender may be required to submit a declaration on integrity and anti-tender-rigging as recommended in the Guidelines. The contract is to be incorporated with ethical commitment clauses and upon appointment, the contractor so appointed would be required to submit a declaration on compliance with the ethical commitment clauses and also a confirmation letter declaring if he has or has not been convicted of any offence regarding corruption, fraud etc. in any projects.
 - (c) Apart from the above references from the Guidelines, pursuant to Section 13(2)(c) of the Building (Inspection and Repair) Regulation, the RI appointed to supervise the prescribed repair must, within 14 days after completion of a prescribed repair in respect of a building, submit to the Building Authority a certificate in the specified form certifying that the RI is not a partner, director, or authorized signatory of the registered contractor appointed to carry out the prescribed repair.

3. This practice note should be read in conjunction with PNAP ADV-18 and PNRC 43 on “Corruption Prevention”. It is reminded that any RI/QP/RCs convicted of any offence concerning corruption or fraud in relation to building works may be subject to disciplinary actions under the Buildings Ordinance.

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