



Engage Professional Work Consultant for the Rehabilitation Project



Step 2 Milestones :

2.1 Define Works Consultant's Service Scope

- Understand the reasons for engaging works consultant
- To understand the service scope of works consultant



2.2 Engage Work Consultant in Compliance with *Building Management Ordinance* and *Code of Practice on Procurement of Supplies, Goods and Services*

- Understand the regulations on procurement of works consultant stipulated in *Building Management Ordinance*
- Understand the codes of practice on procurement of works consultant stipulated in *Building Management Ordinance*
- Understand 'Smart Tender' Building Rehabilitation Facilitating Services



2.3 Open and Analyse Tenders

- Open, analyse and assess tenders received

2.4 Interview Works Consultant

- Understand the interview flow
- Understand the reference questions for interview

2.5 Convene Owners' Meetings on Selection of Works Consultant

- Recommended procedures

2.6 Enter into Consultancy Contract with Successful Tenderer

- Use recommended sample document
- Understand works consultant supervision measures



Step 2: Engage Professional Works Consultant for the Rehabilitation Project



(Scan QR Codes to Watch Videos on 'Building Rehab Platform' Website)

Section 2.1 Define Works Consultant's Service Scope

Before engaging a professional works consultant, **owners/OCs** should understand thoroughly the consultancy service scope. It is advisable to specify clearly and lucidly the scope of services in the tender documents for interested tenderers to grasp **owners/OCs'** requirements, so that more precise, comprehensive and reasonable estimation of necessary manpower and service pricing can be reached. This, in turn, will facilitate easier comparison while minimising the risk of future disputes between **owners/OCs** and the works consultant.

2.1.1 What is a Works Consultant?

Since interdisciplinary expertise is involved in building rehabilitation works, **owners/OCs** should engage appropriate building professionals and/or works consultancy firms ('works consultant') to assist in building inspection, make recommendation on the scope of works, formulation of tender documents, procurement of works contractors, supervision of works quality and progress, verification of work expenses, provision of professional advices on technical issues and acceptance inspection, etc. In addition to professional knowledge, expertise and resources, integrity and impartiality are also essential for works consultant to fulfil their professional and contractual responsibilities.

Engage an Appropriate Works Consultant

In general, works consultant are qualified building professionals involved extensively in matters concerning building construction, reconstruction and rehabilitation, such as architects, engineers and surveyors. They must comply with the code of professional ethics/conduct stipulated by individual **professional institutes**¹ and **registration boards**².

¹ Professional institutes include The Hong Kong Institute of Architects, The Hong Kong Institute of Engineers, The Hong Kong Institute of Surveyors and Royal Institution of Chartered Surveyors, etc.

² The relevant registration boards include Architects Registration Board, Engineers Registration Board and Surveyors Registration Board.

(i) **Authorised persons, registered inspectors and registered structural engineers**

Authorised persons, registered inspectors, registered structural engineers and registered geotechnical engineers are prescribed building professionals³ registered at and regulated by the **Building Authority** on its approval

(ii) **Building professionals**

Owners/OCs can refer to the latest list of qualified members published by the relevant **professional institutes**. It is imperative to note that not all qualified building professionals are registered as authorised persons, registered inspectors or registered structural engineers, nor do all of them possess extensive experience on building rehabilitation. Therefore, **owners/OCs** should take into account the relevant experience of building professionals before engaging them.

(iii) **Works consultancy firms⁴**

While building professionals are registered and qualified as an individual, the actual provision of works consultancy services are generally executed as a firm, where active and sufficient provision of resource support are usually in place to guarantee the quality of professional services. **Owners/OCs** should take into account their needs and the scope and nature of their intended works items to decide whether building professionals operating as an individual or amateur without organisational support are to be engaged.

³ ‘Prescribed building professionals’ are building professionals registered at and approved by the **Building Authority**. They are qualified to execute tasks and procedures stipulated in the *Buildings Ordinance*, and shall fulfil their relevant responsibilities in planning, supervising and certifying the satisfactory completion of building rehabilitation works. A list of prescribed building professionals with their contact numbers is available on the Buildings Department (BD) website (<https://www.bd.gov.hk/en/resources/online-tools/registers-search/index.html>) for reference.

⁴ In general, ‘Work consultancy firms’ offer work consultancy services as a company, not an individual. While their responsible personnel can be building professionals, other such professionals and technicians may also be appointed to support day-to-day operations and provide relevant services.



Useful Tip

What are the differences between work consultancy firms and building professionals?

	Authorised persons, registered inspectors and registered structural engineers	Building professionals (such as architects, engineers and surveyors)	Works consultancy firms
Identity	Individual	Individual	Company

Registration or Regulatory Authority	Buildings Department	Architects Registration Board, Engineers Registration Board and Surveyors Registration Board	Companies Registry
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Factors for consideration Owners/OCs should evaluate the following factors against the scope of works, their complexity and owners/OCs' understanding of and trust in the work consultants when determining the type of work consultant to be procured and its mode of operation.

- Resource sufficiency
- Ability to fulfil the contract (may refer to their track records) / Professional standard and qualifications
- Manpower allocation (backup and support)
- Financial capacity

Why Engage Works Consultant?

Before building rehabilitation works commence, **owners/OCs** should understand the specific requirements for the personnel carrying out or supervising rehabilitation works as stipulated in *Buildings Ordinance* (e.g. Minor Works Control System⁵, which stipulates that **owners/OCs** shall, subject to the class of the works concerned [3 classes in total], engage **prescribed building professionals** and/or **prescribed registered contractors** to carry out minor works in compliance with statutory requirements).

The *Buildings Ordinance* also stipulates that **prescribed building professionals** shall submit designated forms and relevant documentation for specific types and classes of works to the **Building Authority**. The works consultant should verify and sign other relevant documentation such as building inspection reports, rehabilitation proposals and advices, etc. before submitting them to **owners/OCs**.

On the other hand, since many **owners/OCs** may not possess the professional knowledge involved in assessing building conditions and drafting tender documents and work specifications, it is imperative for them to engage qualified works consultant to handle such tasks. **Owners/OCs** should consult relevant government departments or the works consultant to grasp relevant statutory requirements.

➔ **To learn more about the Minor Works Control System – Please refer to [Section 4.1.2](#)**



Useful Tip

Implementing other professional repair and maintenance works

If **owners/OCs** intend to carry out, in parallel to the rehabilitation project, other repair and maintenance works that require certain expertise, such as fire service, asbestos, gas pipes and lifts etc., they must take into account the complexity of the works concerned and consider engaging relevant consultants (professionals) to assess and advise on the matter, and/or hire relevant work contractors to carry out such works in compliance with relevant statutory requirement.

To understand the laws concerning professional repair and maintenance projects – Please refer to [Appendix I](#)



⁵ For details of the Minor Works Control System, please refer to BD website (<https://www.bd.gov.hk/en/building-works/minor-works/index.html>).



Simulated Scenario

The "Fire Safety Directions" issued by the BD and FSD which instructed the **owners / OCs** to carry out improvement works on fire safety installations and equipment. The **owners/OCs** convened a meeting to discuss the appointment of consultants and contractors to deal with the matters. At the meeting, some owners said that they could appoint a registered fire contractor to carry out fire improvement works directly instead of appointing a consultant.

Point to discuss:

Under the Fire Safety (Buildings) Ordinance, **owners/OCs** are required to employ registered fire service installation contractors to carry out installation or improvement works on "fire service installations and equipment" (such as Automatic sprinkler system, Fire hydrant and hose reel system, etc.) and Construction works (such as fire doors, fixed windows and enclosures to non-emergency services installations, etc.) for the "Fire Safety Construction" require the engagement of a registered general building contractors / registered minor works contractors.

Some of **owners/ OCs** would appoint the consultant at the early stage to prepare the preliminary design, calculate the structural load of the improvement work of fire safety construction. The purpose is to shorten the approval time of contractor's submission at post contract stage.

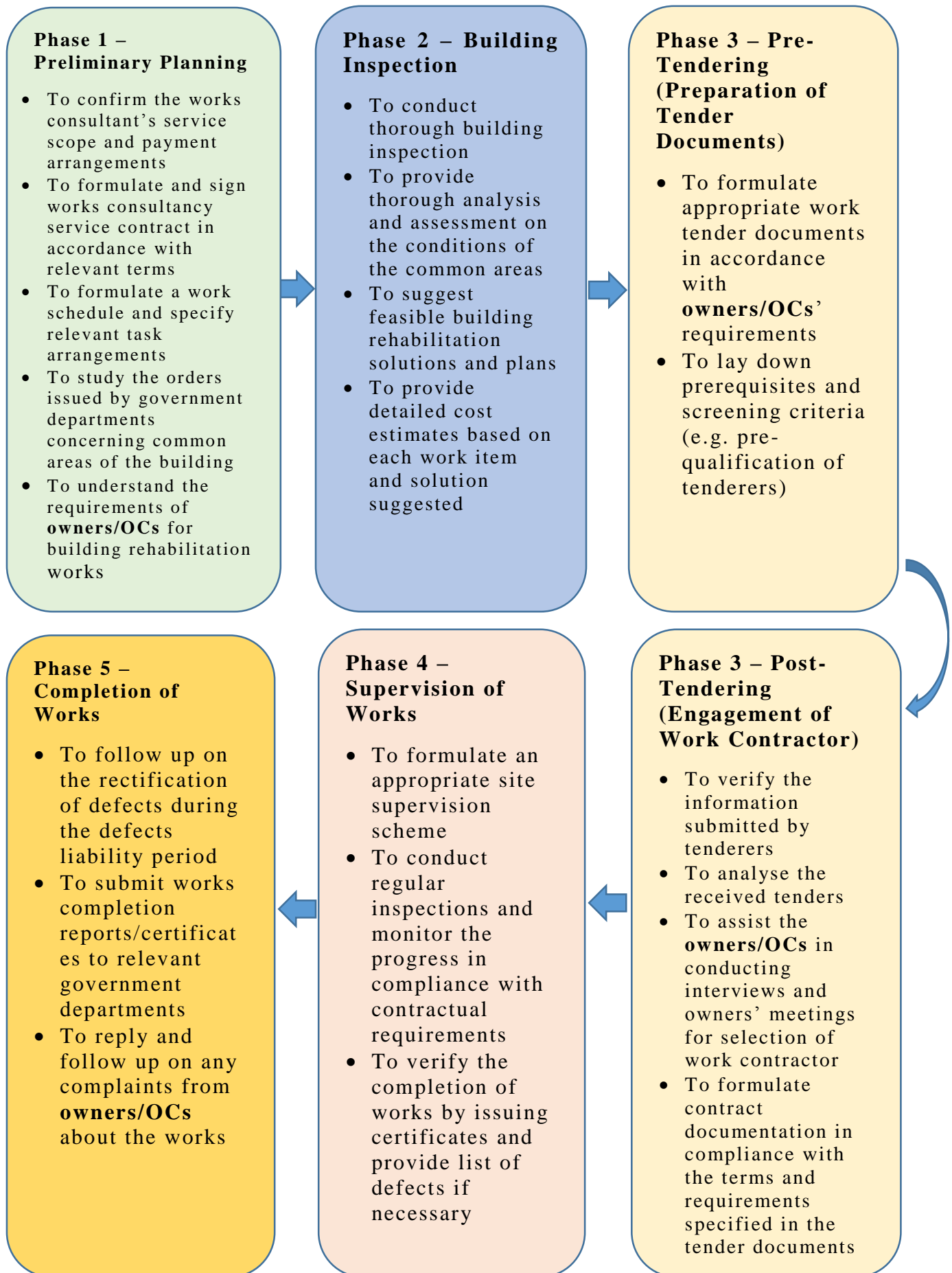
As the fire improvement works are more complicated, the approval procedures of different government departments will be involved. If the **owners/OCs** can receive the advice and comment of the relevant departments on the preliminary design of the works in advance, this will not only help the **owners/OCs** to understand the project prepare a more detailed tender document, and estimates of cost can be more accurate. This not only to reduce the additional works after the commencement and helps the contractors to know more about the scope of the works, by having a better grasp of the duration of the works and the budget, contractor will be more willing to submit bid and the reasonable quotations.

2.1.2 Basic Service Scope of Works Consultant ⁶

A works consultant with a high degree of integrity and professionalism is the right hand of **owners/OCs**, who helps accomplishing the remaining milestones in '6 Steps to Building Rehabilitation'. Generally speaking, the duties and service scope of a works consultant cover key areas in all the stages from Step 2 to Step 6. These can be categorised roughly into five service phases, including but not limited to:

⁶ **Owners/OCs** may add this section to the tender document and contract for work consultant, with appropriate amendments based on the conditions of individual buildings.

Five Phase of Works Consultancy



To learn more about work consultant’s basic service scope – Please refer to [Appendix II](#)

Section 2.2 Engage Works Consultant in Compliance with *Building Management Ordinance and Code of Practice on Procurement of Supplies, Goods and Services*

Rehabilitation is a highly complex task in building management. It entails not just general building management knowledge possessed by owners or managers in charge of the task, but also relevant expertise and experience. Moreover, the huge expenses involved make owners an easy prey for unethical works consultant or contractor, resulting in rip-offs or worse still, unfinished works. Therefore, compliance with the relevant laws and code of practice is a must for all parties involved if integrity and best practice are to be ensured in the course of building rehabilitation, in particular in the process of tendering and supervision.

2.2.1 Regulations on *Building Management Ordinance and Code of Practice on Procurement of Supplies, Goods and Services*^{7, 8}

Applicable to the buildings with OCs

All OCs are required to comply with the requirements for the procurement of supplies, goods and services under section 20A of the *Building Management Ordinance*. For the avoidance of doubt, all procurement by OCs of supply of goods, goods and services which are required to be obtained by tendering under section 20A of the *Building Management Ordinance* and paragraph 5 of the Seventh Schedule, must follow the provisions on the *Code of Practice* for the Procurement of Goods, Goods and Services ("*Code of Practice*")

⁷ This *Code of Practice* on Procurement of Supplies, Goods & Services (*Code of Practice*) is issued by the Secretary for Home Affairs, as the Authority under the *Building Management Ordinance* (Cap. 344) (BMO), under section 44(1)(a) of the Ordinance. *Code of Practice* on Procurement of Supplies, Goods & Services (Effective from 1 September 2018) , please refer to Home Affairs Department's website (https://www.buildingmgt.gov.hk/en/legislation/3_3.htm).

⁸ Recommended also refer to The *Administrative Guidelines on Best Practices on Building Management* was published by the **Home Affairs Department** on 1st January 2019, please achieve the information from below website https://www.buildingmgt.gov.hk/pdf/Admin_Guidelines_2019_Chi.pdf

Applicable to the buildings without OCs

For buildings without an OC, pursuant to section 34E of the BMO, the provisions in Schedule 7 shall be impliedly incorporated into every Deed of Mutual Covenant (DMC) made before, on or after the material date as provided under section 34D of the BMO. The DMC manager or any other person who for the time being is, for the purposes of the DMC, managing the building, shall comply with Schedule 7 to the BMO and this *Code of Practice* in relation to the procurement of supplies, goods and services.

 **To know more about the *Code of Practice*?—Please refer to [Appendix III](#)**



Useful Tip

Important note for buildings without OCs:

Items resolved during the planning phase of the rehabilitation project may require unanimous approval of all owners or be subject to the relevant terms in the Deed of Mutual Covenant (DMC). For details, please consult legal professionals.

Summary of procurement procedures⁹

- (i) If contract value of appointment of consultant which exceeds or is likely to exceed :
- \$200,000¹⁰ ; or
 - 20% of the annual budget of the OC¹¹ ; (subject to the lower)

Shall be procured by invitation to tender by the OC.

- (ii) Moreover, if the contract value of appointment of consultant which exceeds or is likely to exceed 20% of the annual budget of the OC, the MC shall submit all the tenders received to a general meeting of OC. Whether a tender is accepted or not shall be decided by a resolution passed by a majority of votes at the general meeting of the OC. Where there are more than two alternatives and no option receives majority votes in the first round of voting, the general meeting of the OC will have to conduct a second round of voting in order to comply with the majority requirement. Some plausible methods of voting are –

⁹ Refer to Section 20A and 44 of BMO

¹⁰ Refer to Section 20A (2)(a) of BMO

¹¹ Refer to Section 20A (2)(b) and (2B) of BMO

- (a) Progressive elimination – After the first round of voting, the general meeting of the OC may eliminate the option with the least number of votes and then carry out the second round of voting. If there is no option which receives majority votes, another round of voting will be carried out, with one more option being eliminated. If this goes on, only two options will be left in the final round of voting. Either one of the options will receive majority votes;
- (b) Short-listing – After the first round of voting, the general meeting of the OC may short-list the two options which gain the greatest number of votes for a second round of voting. This also means that the ultimate choice fulfils the majority requirement;
- (c) Confirmation – A second round of voting could be carried out to confirm the option which has attained the greatest number of votes in the first round. This also ensures that majority votes are achieved.

Value of the supplies, goods or services	Shall be procured by invitation to tender	Whether a tender is accepted or not shall be decided at a general meeting of the OC
> \$ 200,000	✓	Please refer to p. 79 Useful Tip
> 20% of the annual budget of the OC	✓	decided by a resolution passed by a majority of votes at the general meeting of the OC

- (iii) To reduce possible disputes arising from the signing of contracts between OCs and suppliers/contractors ¹² within a very short period of time after the passing of resolutions on certain major projects, for tenders whose value exceeds 20% of the annual budget of the OC, the OC concerned should consider, having regard to the circumstances of the case, signing the contract with suppliers/contractors at least one month after the passing of the relevant resolution at a general meeting of the OC. ¹³

¹² All the supplier should be included, for example the consultant company which providing consultancy services

¹³ Paragraph 8.1 under *Code of Practice* on Procurement of Supplies, Goods and Services.



Useful Tip

If the contract value of appointment of consultant does not exceed 20% of annual budget of OC, the tenders should be submitted for MC to decide whether to adopt or not. However, it is still recommended to convene the owners' meeting if possible in order to increase the transparency and acceptability. After reviewing the tender, the MC may select a number of them for recommending to the owners.



Useful Tip

Waiver for tendering ?

According to section 20A(2A) of BMO, if the OC intends to continue the engagement of the incumbent supplier and the following conditions are met, the tendering requirement stipulated in the BMO may be waived. In other words, though the value of procurement exceeds \$200,000 or 20% of the annual budget of the OC, tendering is not required if the following conditions are met.

Conditions are as follow :

- ◆ the supplier concerned must be the one engaged by the OC for the time being;
- ◆ the supplies, goods or services to be procured by the OC are of the same type as those which are for the time being supplied by the supplier; and
- ◆ the OC decides by a resolution of the owners passed at a general meeting of the OC that
 - invitation to tender will not be made; and
 - the supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution.

All the above conditions must be met for the OC to be allowed to waive the tendering requirement. However, OCs should conduct tenders to obtain the latest market information.



Please refer to *A Guide of Building Management Ordinance (Cap. 344)* (Chapter 10 Procurement Arrangement for Owners' Corporation)



Useful Tip

Consequences of non-compliance with procurement requirements

If the OC does not comply with the Code of Practice, the matter itself will not expose the OCs to any kind of criminal legal process. However, the failure of the corporation to comply with the Code of Practice can help to determine or deny the legal liability in the relevant legal proceedings.

- Any procurement contract made by the OC shall not be void by reason only that it does not comply with Code of Practice.
- Failure of the OC to comply with the procurement requirements stipulated in the BMO (i.e. to procure by invitation to tender or decide whether a tender is accepted or not by a resolution of the owners passed at a general meeting of the OC) may have effect on
 - the validity of the procurement contract
 - the personal liability of the person who enters into the contract.



Please refer to *A Guide of Building Management Ordinance (Cap. 344)* (Chapter 10 Procurement Arrangement for Owners' Corporation)

2.2.2 How to Engage Works Consultant

Before engaging a works consultant, **owners/OCs** shall prepare tender documents and choose a tendering method.




Content of Tender Documents

The content of tender documents includes but not limited to:

- Orders issued by government departments (if any);
- Service scope of works consultant ➡ **For details, please refer to Section 2.1.2**
- General terms and conditions of the works consultancy service contract¹⁴
 - Rights of the employer (e.g. the right for the employer to decide whether or not to proceed with the subsequent phases towards the end of each project phase)
 - Payment arrangements
 - Insurance
 - Service termination procedures
 - Indemnification undertaking¹⁵
 - Contractual dispute handling procedures



¹⁴ Wherever possible, **owners/OCs** are recommended to use tender and sample document prepared by **professional institutes** (e.g. The Hong Kong Institute of Architects, The Hong Kong Institutes of Engineers, The Hong Kong Institutes of Surveyors and Royal Institution of Chartered Surveyors etc.) or those to be launched by Building Rehabilitation Platform. For details, please refer to Building Rehabilitation Platform website (<http://www.brplatform.org.hk>).

¹⁵ The works consultant shall indemnify the OC for any losses caused by professional negligence.

- Breakdown of Professional Consultancy Service Fees
- Other tender terms
 - Probity and Anti-Collusion Clauses ([Sample 1](#)) 
 - Ethical Commitment Clauses ¹⁶ ([Sample 2](#)) 
 - Non-Collusion Clauses and Non-Collusive Tendering Certificate ([Sample 3](#)) 
 - Due date, time and address for tender submission

Tender for Works Consultancy Service Contract

Common tendering methods for works consultancy service contract include :

Method	Note
Open tendering	<ul style="list-style-type: none"> • Invite works consultant to submit expressions of interest/tenders through public channels such as newspaper advertisement (Template 4)  / (Template 5) . • In the case where pre-qualification (non-mandatory) process is in place, the relevant criteria must be specified in the open request for expression of interest, followed by distribution of tender documents to all eligible and interested tenderers.
Selective Tendering	<ul style="list-style-type: none"> • A shortlist of works consultant must be drawn up beforehand in compliance with <i>Building Management Ordinance</i> and <i>Code of Practice</i>, followed by distribution of tender documents to shortlisted works consultant.



Useful Tip

Best Practice on Building Management

The *Administrative Guidelines on Best Practices on Building Management* was published by the **Home Affairs Department** on 1st January 2019, featuring best practices on building management in various fields, including the formation of **OC**, procurement procedures, owners' meetings and the use of proxy instruments and financial arrangement, etc.

For more information, please visit the following website

https://www.buildingmgt.gov.hk/pdf/Admin_Guidelines_2019_Eng.pdf.

¹⁶ **Owners/OCs** are recommended to include the relevant terms in the tender documents for tenderers' information in advance. **Owners/OCs** should ask the successful tenderer to confirm and sign the 'Declaration on Compliance with Ethical Commitment Requirements' as part of the work consultancy contract awarded.

 **Useful Tip**

In addition to compliance with relevant requirements in the *Building Management Ordinance*, OCs are also recommended to adopt open tendering and convene an owners' meeting for the voting and selection of work consultant wherever possible to enhance transparency and legitimacy. It is advisable to waive all administrative fees, otherwise interested tenderers may be discouraged and competitiveness of returned tenders may be undermined.

2.2.3 Understand 'Smart Tender' Building Rehabilitation Support Services¹⁷

Purpose

To assist building owners in getting more information about building rehabilitation and the market, with a view to enhancing fairness, impartiality and competitiveness in the procurement of works consultant and contractor.

Eligibility Criteria

All private residential or composite (for both commercial and residential uses) buildings not in single ownership, except buildings of three storeys or less and New Territories Exempted Houses.

Service Scope

- To provide 'DIY Toolkit' covering standard templates and advices/mandatory terms and clauses for the procurement of authorised persons/registered inspectors and registered works contractors, as well as relevant guidelines and points to note in the planning of building rehabilitation works;
- The Urban Renewal Authority (URA) will engage independent professionals for the successful applicants to offer expert and technical advices on general building rehabilitation matters at various stages, such as provision of cost estimates, and review of inspection reports, tender documents, work cost estimates and tender analysis reports prepared by authorised persons/registered inspectors;
- The URA will act as an agent to provide an electronic tendering platform for successful applicants to engage works consultant and contractor; and to engage Certified Public Accountant (CPA) (or independent professional) to handle tender opening procedures for successful applicants.

¹⁷ For details, please refer to 'Building Rehab Platform' website (<http://www.brplatform.org.hk>). Information about work consultant procurement services will be announced in due course

Section 2.3 Open and Analyse Tenders

2.3.1 Analysis and Assessment of Consultancy Service Proposals

When the deadline for tender submission is due, **owners/OCs** should commence tender opening procedures in which received tenders are analysed. To ensure the confidentiality of information, owners/OCs should take appropriate measures to protect received tenders and their collection boxes. In addition to the fulfilment of basic tendering requirements, **owners/OCs** should also assess tenderers by making detailed comparisons for prices and other non-pricing related factors. This section suggests non-mandatory but practical measures that helps prevent corruption and minimise the risk of collusive tendering.

 **For more information about anti-corruption – Please refer to [Appendix V](#)**



Useful Tip

Verifying professional qualifications of work consultants

Owners/OCs can verify if the work consultants are holders of valid registered documentation (e.g. registration certificate as authorised person/registered inspector) and other professional qualification documentation/licences (e.g. certificates issued by professional institutes). They can also visit the websites of the BD and the professional institutes concerned to review the relevant registers.



For more information about work consultants – Please refer to [Section 2.1.1](#)

Price comparison alone does not constitute a thorough analysis of consultancy service proposals. In addition to service quotation, **owners/OCs** should also ask tenderers to provide information facilitating the analysis of their capability. This includes the tenderer's background, track records (such as past work projects and their costs submitted for reference), company resources and current workload, its responsible personnel's qualification/relevant experience, duties and level of involvement, as well as level of expertise and goodwill etc. In so doing, **owners/OCs** can gain a thorough understanding of the tenderers while ensuring their provision of effective and sufficient professional services for the intended works.

2.3.2 Risk management/Tips for preventing corruption and malpractices (Tender Assessment Panel)

When conducting evaluation of tenders for consultancy agreement, OCs/MCs are advised to:

To do

- ✓ assign a tender assessment panel which may comprise representatives from property owners, MC and the property management company (if any) to assess the tenders ;
- ✓ require all members of the panel to declare whether or not they have any conflict of interest arising from their relationship with the tenderers ;
- ✓ determine the evaluation criteria, e.g. any essential/mandatory non-price factors, before tender opening (e.g. working experience and size of company) ;
- ✓ disclose the broad evaluation criteria to all tenderers in the tender invitation (if applicable) ;
- ✓ assess the reasonableness of the consultancy fees, based on the consultants' proposed manpower input and the fees breakdown for consultancy services at various stage or making reference to the fee scale published by the Hong Kong Institute of Surveyors or practices of reputable firms.

Avoid

- × making untrue / unfair comments on the performance of other tenderers ;
- × changing the evaluation criteria, adding new and irrelevant criteria/ requirements to screen out the lowest bidder, etc. during evaluation ;
- × accept the additional services provided by the tenderer for free.



Useful Tip

Do make sure the tendering exercise is fair and unbiased, if **owners/ OCs** , decide not to recommend the best tender assessed based on the criteria after tender evaluation, there must be a valid reason. You have to record it clearly and explain to owners in details.

2.3.3 The Tender Price as the only assessment criteria is not recommended

For the consultancy services tender assessment, the price may be the essential factor for consideration. However, it is not satisfactory to use the price factor only and adopt the lowest price. And it may overlook other important factors such as the scope of services of consultants, working hours and the level of involvement of professionals.

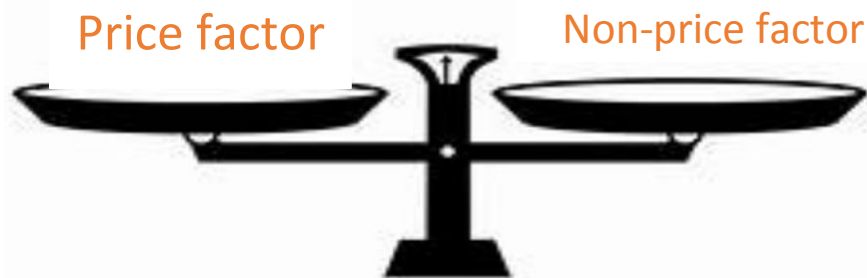
There is not much information of the fee level of consultancy services in market for reference. Owners/OCs should also try to analyse the consultancy service proposals from various angles. Except the price factor, non-price factors should also be considered to ensure that the consultants provide effective and sufficient professional input to the building rehabilitation project.



Useful Tip

Owners/ OCs should pay attention to the fee level of the consultants which should be at reasonable level. The owners/corporations may try to understand the following issues:

- Is the charge too low in proportion to the resources to be placed? Can the consultant make profit?
- Does the consultant have reasons for the high fees?



2.3.4 Checklist of Common non-price factors (Assessing and considering factors other than the tender price)

Experience on Building Rehabilitation project

For consultant's relevant experience in overseeing building rehabilitation projects of similar scope and complexity, request consultant to provide the project details and contract value in the past few years. When setting the evaluation criteria, Owners/ OCs should consider the scale and the scope of services commensurable to their project. It is not appropriate to set unnecessary requirements which may lead to reduced numbers of tenderers and push up the price.

Company resources and workload

Consultant's company resources and current workload, i.e. the number of full-time/part-time professional and technical staff, (e.g. APs, RSEs, resident inspectors of works and works supervisor), and the number and details of ongoing projects.

Consultant's staffing proposal for the building maintenance project

- Qualifications and relevant experience of key personnel (e.g. Authorized Person, project manager, inspector of works)
- Responsibilities and degree of involvement of key personnel (e.g. proposed man/hours of individual key personnel)
- Consultant's past performance
- Letters of recommendations from previous employers/OCs



Simulated Scenario

An OC invited open tenders for the selection of works consultant for its building maintenance project. A works consultant submitted a bid of a fixed amount that was unreasonably low. When queried, the works consultant made up excuses such as only aiming at gaining a reference in the district, having a number of projects in the district that shared out the overhead costs, etc. The OC was attracted by the low price and voted for the works consultant.

When implementing the project, the works consultant accepted rebates from the works contractor, who colluded with other tenderers to inflate the prices of the maintenance works required, and used inferior materials with the works consultant's connivance.

In the end, the OC paid much more than what they would have for their maintenance works that were inferior in quality.

Section 2.4 Interview Works Consultant



2.4.1 Why interview?

While interview is not mandatory in the procurement process of works consultant, doing so offers **owners/OCs** a chance to gain a thorough understanding of each works consultant and to enquire about the tender contents.

By asking appropriate questions in the interviews, **owners/OCs** may gain a better understanding of the service scope and pricing, with a chance, too, to direct communicate with works consultant about matters concerning exceptional or individual circumstances.

Useful Tip

Choosing a works consultant on the sole merits of its interview performance?

While **owners/OCs** may arrange interviews if they see fit, it is not advisable to select a works consultant on the merits of its interview performance only. To minimise the risk of engaging an unethical works consultant, **owners/OCs** should understand each works consultant thoroughly from aspects including their professionalism, experience, qualification, goodwill, problem-solving capability and integrity.

Simulated Scenario

The OCs will arrange an interview for some of the works consultants after tender opening. Some of the works consultants will provide preliminary survey reports and related building rehabilitation proposals during the interview.


Point to discuss:

Do you think those works consultants behave properly?

In fact, this phenomenon is partly a consequence of vicious competition in the industry. Building surveys and provision of building rehabilitation programmes should be part of the services that the works consultants need to provide after their appointment. They should not provide such services free of charge during the interview period.

2.4.2 Interview Process Flow

In general, each interview should take about 20 to 30 minutes (to be adjusted depending on actual situation), which may begin with a self-introduction of the works consultant, followed by **owners/OCs'** questions. **Owners/OCs** may convene a meeting beforehand to discuss and define a pre-set list of interview questions. To ensure fair comparison, the interview duration for all works consultant shall not vary.

 **For questions to be asked in interviews with works consultant – Please refer to [Appendix IV](#)**



Useful Tip

Any negative opinions, disagreements or dissents expressed by members of tender assessment task force/Management Committee (MC) or owners during the interview should be documented in detail by **owners/OCs** for all owners' reference.

2.4.3 Arrangement for Price Negotiation (Optional)

After tender evaluation, some property **owners/OCs** may wish to get a better bargain and hence conduct negotiation with the tenderers for reduction of their tender prices. However, they should be wary of the opportunity for corruption and manipulation that this may open up.

 **To know more preventing corruption and malpractices? – Please refer to [Appendix V](#)**

Section 2.5 Convene Owners' Meetings on Selection of Works Consultant

2.5.1 Recommended Procedures

As mentioned, if the value of works consultancy services does not exceed 20% of the annual budget of the **OC**, then the **MC** may decide if the received tenders are to be accepted. Yet it is still recommended that the **OC** convene an owners' meeting wherever possible for **owners** to vote for desirable works consultant to enhance transparency and legitimacy of the process

➔ **To understand the procedures of convening a meeting and its requirements – Please refer to [Section 1.3](#)**



Useful Tip

Recommended Procedures

Owners/OCs should prepare an assessment report on received tenders in accordance with relevant criteria to communicate the assessment results and relevant information to owner. This will help enrich owners' understanding of the works consultants and their tenders, while allowing sufficient time for owners to raise questions and express opinions, thus eliminating unnecessary disputes in the future.

Owners/OCs can:


- Place a copy of complete analysis report with all necessary details at the property management office (if any) or other prominent location for **owners'** reference;
- Provide all **owners** with an abstract of the analysis report summary (say one to two pages) by mailbox drop, post or other feasible way to facilitate understanding of received tenders;
- Invite interested **owners** to participate in the interviews of works consultants wherever possible;
- Convene an owners' meeting to decide on the selection of works consultant wherever possible. **Owners** are recommended to participate actively in the meeting to enhance transparency and legitimacy of the process.

Section 2.6 Enter into Consultancy Contract with Successful Tenderer

2.6.1 Use Recommended Sample Documents

Upon passing the resolution on the engagement of the selected works consultant, **owners/OCs** should clarify the consultancy service scope, responsibilities of each contracting party and confirm the terms therein with the successful tenderer. To protect the interests of each contracting party, the Building Rehabilitation Platform is discussing with stakeholders on the preparation of sample documents for **owners/OCs**' use. Details are to be announced in due course.

2.6.2 Measures for Supervising Works Consultant

The works consultant's service scope, responsibilities and charges are generally stipulated in common consultancy contracts. The engaged works consultant shall provide professional consultancy services in compliance with the contract terms, and shall be managed by **owners/OCs** in compliance with such terms or relevant code of practice  ([Appendix VI](#)). As the majority of **owners/OCs** lack experience in works consultant supervision and contract management, which may result in the delay of progress and poor quality of works, this section will focus on the points to note and recommended feasible measures for better supervision of works consultant.

Contract Terms

Before signing the consultancy contract, **owners/OCs** should ensure the required service items/scope and proper indemnification clauses are specified in detail in the contract to protect their own interests. These include the responsible personnel, their service scope, responsibilities, charges, contract validity period, and arrangement relating to compensation for professional misconduct and contract termination.

⇒ **For more details on consultancy contract terms – Please refer to [Section 2.1.2](#)**

Works Schedule

Owners/OCs should instruct the works consultant to table a works schedule specifying task arrangement, workflow and estimated duration for discussion and approval. This will serve as a basis for supervision and for the works consultant to work in line with the agreed schedule. In case of delay, **Owners/OCs** should instruct the works consultant to provide explanations and rectification plans. **Owners/OCs** may request for and verify amendments to the approved schedule whenever necessary. The works schedule may also be posted at the lobby for reference and supervision purposes.

Organisational Chart of Management with Contact Telephone Numbers

An organisational chart of management helps identify discrepancies in the allocation and qualification between the manpower actually deployed and the relevant contract terms. It also offers a glimpse at the organisational structure of the responsible personnel and their contact information, which facilitates prompt resolution of possible problems in future.

Works Supervision Plans

It is imperative for the works consultant to formulate an appropriate management scheme for the whole rehabilitation project. The works consultant may, at the request of **Owners/OCs**, table the scheme for approval after signing the contract or before works commence. The works supervision proposal should cover code of practice for professionals and other engineers (such as supervision criteria and requirements), as well as frequency and arrangement of site supervision and inspection, etc.

Documents and Proofs Submitted

Upon completion of each phase, **owners/OCs** should instruct the work consultant to provide complete documentation of the works (e.g. inspection reports, work cost estimates and tender documents, etc.). These documents are to be kept for a reasonable period of time. Moreover, **owners/OCs** may seek additional information from the works consultant to support and justify individual professional advice or recommendation wherever necessary.

Regular Meetings

Owners/OCs should take the initiative to arrange and participate in regular meetings with the works consultant to understand the issues arisen in the planning of rehabilitation project and their solutions, with meeting minutes properly documented and archived.

Variation of Works

In the case of any contract modifications, **owners/OCs** should instruct the works consultant to provide evaluation and analysis on their impact on the works schedule and cost for consideration. **Owners/OCs** should also ensure that the works consultant shall not instruct the works contractor to proceed without their approval (except emergency works).

Payment Arrangement

Owners/OCs should pay the works consultancy fees on contract terms, and may request for documents such as reports, photos, certificates and government approval notices, etc. from the works consultant for reference and documentation. In the case where the services provided by the works consultant fail to meet the prescribed standards in the contract, the **owners/OCs** may, subject to the relevant contract terms, suspend relevant payments until the quality of services is rectified.

Termination of Service Contract

In the case where **owners/OCs** deem it necessary to terminate the works consultancy contract on the ground that the works consultant fails to meet the prescribed service standards or improve substandard service quality, or due to any other reasons, the **owners/OCs** may, at the end of each service phase and subject to the relevant contract terms, determine if they are to proceed with the subsequent service phases and notify the works consultant in writing of their decision to terminate the contract if necessary.

Indemnity

Subject to the relevant contract terms, **owners/OCs** may seek indemnification from the works consultant for losses caused by defects, negligence, faults or breaches of contract, etc. of the services provided by the latter (including its persons in charge, employees or agents).

Reference

1. Building Maintenance Toolkit published by ICAC
2. Building Management Toolkit published by ICAC
3. Building Maintenance Guidebook published by Buildings Department
4. Smart Tender DIY toolkit published by URA

Appendix – Relevant Information

Step 2

Appendix 1 – Laws Relating to Professional Rehabilitation Works

Appendix 2 – Basic Service Scope of Works Consultant

Appendix 3 – Summary of *Building Management Ordinance (Cap. 344)* & *Code of Practice on Procurement of Supplies, Goods and Services*

Appendix 4 – Reference Questions for Works Consultant Interview

Appendix 5 – Anti-Corruption Information (Building Rehabilitation Workflow – Step 2)

Appendix 6 – Code of Practice for Works Consultant

Laws Relating to Professional Rehabilitation Works

Departments	Related Legislation	Sources/ Hyperlinks
BD	Fire Safety (Buildings) Ordinance Cap.572 (Fire Safety Provision) ¹	http://www.bd.gov.hk/chineseT/services/index_fsi.html
FSD	Fire Safety (Buildings) Ordinance Cap.572(Fire Service Installations and Equipment) ²	http://www.hkfsd.gov.hk/chi/fs_buildings_commercial_premises_ordinance.html
EPD	Air Pollution Control Ordinance (Cap. 311) ³	http://www.epd.gov.hk/epd/tc_chi/environmentinhk/air/asbestos/asbestos.html
EMSD	Gas Safety Ordinance (Cap. 51) ⁴	https://www.emsd.gov.hk/tc/gas_safety/index.html
	Lifts and Escalators Ordinance (Cap. 618) ⁵	https://www.emsd.gov.hk/tc/lifts_and_escalators_safety/index.html

Remarks :

1. Shall appoint of Authorized Persons and/or Registered Structural Engineers and Registered Contractors to carry out required fire safety improvement works in accordance with the instructions.
2. Shall appoint registered Fire Service Installation Contractors for the improvement works of Fire Service Installations and Equipment.
3. Shall appoint a registered asbestos contractor to carry out the removal of the asbestos containing materials. They shall give a written notice to the Environmental Protection Department (EPD) not less than 28 days prior to the commencement of the work.
4. Shall appoint a registered gas contractor employing registered gas installers for regular check and repair.
5. Shall appoint Registered Lift and Escalator Contractor(s) for commissioning, examination, maintenance, repair, alteration or demolition of Lifts/ escalators.

Basic Service Scope of Works Consultant

Phase 1: Preliminary Preparation

1. To draft works consultancy service contract in accordance with the submitted tender and other undertakings agreed upon with **owners/OCs** (if any);
2. To clarify the scope of consultancy services and the responsibilities of each contracting party, so as to confirm contract terms;
3. To ratify the identities, qualifications, biographies and contact information of responsible personnel (such as authorised persons/registered inspectors /project managers);
4. To validate measures facilitating smooth change of personnel in the future, such as prior written notices stating the reason for such change;
5. To verify the identities of professionals responsible for building inspection and preparation of technical reports (with their names specified) and the number of meetings they are to attend (if applicable);
6. To verify the consultancy contract terms and validity period;
7. To validate measures relating to the future addition of any extra work items;
8. To clarify payment arrangements for each phase, other extra expenses and any reimbursements;
9. To sign the ‘Probity and Anti-Collusion Clauses’ and ‘Ethical Commitment Clauses’;
10. To sign the ‘Non-Collusion Clauses and Non-Collusive Tendering Certificate’ prepared by Competition Commission;
11. To discuss with **owners/OCs** on their purposes of and requirements for building rehabilitation (to be elucidated in the engagement contract if applicable);
12. To discuss with **owners/OCs** on the building’s rehabilitation track records and relevant information (such as previous defects and their rectification);
13. To study statutory orders, notices, advisory letters and written warnings issued by government departments concerning the building’s common areas, and to liaise between **owners/OCs** and government departments on rehabilitation and improvement works;
14. To draw up an estimated work schedule specifying task arrangements and workflow;
15. To formulate criteria and proposals for the supervision of contractor and work quality and progress in the future.

Phase 2: Implementation of Thorough Building Inspection and Formulation of Rehabilitation Proposal (Applicable to Common Areas Only)

Conduct Building Inspection

1. To conduct thorough building inspection covering structures of all common areas and public facilities through practical or feasible method (such as visual inspection, infrared detection and CCTV survey of underground drains);
2. To inspect, wherever possible, public facilities installed in private units to understand their conditions, and to document any areas where first-hand inspection is not possible;
3. To conduct questionnaire survey to gauge owners/residents' opinions on common areas; and to collect information about the condition of individual units for a more comprehensive analysis and assessment on the condition of common areas wherever necessary;
4. To carry out a thorough assessment of building condition based on all information collected, including any existing defects, dilapidations and disrepairs; and to indicate any existing installations and structures that contravene the regulations and ordinances in force;
5. To provide detailed analysis of the building's current condition and defects with explanations of their possible causes instead of photos and brief descriptions only. Where necessary, sketches or floor plans can be attached as supplementary information (Note: Owners should facilitate the building inspection carried out by the consultant wherever possible).

Formulate Rehabilitation Proposal with Detailed Cost Estimates

6. To suggest feasible rehabilitation plans and solutions in accordance with building inspection results for owners' approval;
7. To propose remedial or enhancement measures for each issue or defect found in the building;
8. To provide detailed cost estimates for each suggested work item and solution detailing any references and assumptions made;
9. To indicate any uncertainties that may arise from the works concerned, such as procedures that require individual owner's assistance, where the OC and the owner concerned should be notified beforehand for early planning and better coordination.

Phase 3: Engagement of Work Contractor and Analysis of Tenders

Pre-Tendering

1. To gain a thorough understanding of **owners/OCs**' expectations or requirements on the quality, results and budgeting of the rehabilitation project;
2. To reflect the **owners/OCs**' expectations and requirements in the tender documents through indication of material and work specifications;
3. To discuss and identify the scope of works to be covered in the tender documents with the **owners/OCs** in accordance with the above points;
4. To suggest appropriate tender submission methods for **owners/OCs**' consideration, and to assist in the pre-qualification of tenderers (non-mandatory) where necessary;
5. To set reasonable prerequisites and screening criteria for essential items before bid solicitation, and avoid unnecessary or unreasonably high threshold for tender submission or charging tenderers any 'administrative fee';
6. To publish bid solicitation in newspapers in the name of the subject building/OC only, with no mentioning of the consultant's names and identities (Note: Buildings that have met the relevant criteria are eligible to apply for 'Smart Tender');
7. To assist **owners/OCs** in handling enquiries during tender submission period in a professional and fair manner;
8. To specify written correspondence as the only means of communication between tenderers and **owners/OCs** on enquiries during tender submission period, with copies of such correspondences properly archived;
9. To use sample document prepared by professional organisations (if applicable) at present or the Building Rehabilitation Platform in the future under general circumstances, with appropriate amendments made in accordance with individual works.

Post-Tendering

10. To lay down parameters, criteria and assumptions for quantity and quality analysis before tender opening;
11. To confirm the quantity of tenders to be analysed with the **owners/OCs** beforehand (e.g. if all received tenders or only those who have met the basic criteria be analysed);
12. To verify whether the basic qualification and relevant licences of each tenderer have met the criteria. These include ‘registered work contractor’ licence issued by the BD or relevant government departments;
13. To analyse each received tender in terms of quantity, quality and pricing;
14. For quantitative analysis, price comparison charts must be furnished with detailed analysis on breakdowns;
15. For qualitative analysis, it is imperative to thoroughly evaluate all documents submitted by tenderers and verify their validity;
16. To shortlist works contractors for interview and propose recommendations with detailed rationale to **owners/OCs**;
17. To lay down relevant questions and workflow prior to the contractor interviews, and to host the interviews where all necessary information and clarification of any ambiguities in the tenders are to be collected from each tenderer;
18. To analyse the additional information collected after the contractor interviews and submit the finalised tender analysis report;
19. To offer **owners/OCs** a detailed elucidation and highlights of the tender analysis report before owners’ meetings;
20. To assist the owners/OCs with relevant paperwork during the owners’ meeting for the selection of works items and contractor; and to answer owners’ questions about the rehabilitation project;
21. To draft works contract in accordance with the terms and requirements stipulated in the tender documents after a tenderer is selected.

Phase 4: Supervision of Works Progress and Quality

1. To formulate an appropriate site supervision scheme specifying inspection frequency during work and the qualification and background of the inspectors;

2. To review and verify the adequacy and comprehensiveness of the documents submitted on contract terms, e.g. staff organisational charts, work schedule and procedure arrangements;
3. To confirm all necessary documents have been duly prepared, e.g. works insurance policy and performance bond (if applicable), etc. before the commencement of works;
4. To schedule progress meetings to be held in the course of works with the contractor and the **owners/OCs**;
5. To carry out management services prescribed in the consultancy contract during works;
6. To conduct regular site inspections to supervise the work progress and determine if the work quality complies with contractual requirements. It is advisable to give appropriate instructions to the works contractor on the spot whenever necessary;
7. To provide professional advice on the necessity and feasibility of additional works items suggested by the works contractor; and to assess whether the quote is reasonable;
8. To handle applications for interim payment and any claims made by the works contractor;
9. To conduct acceptance inspection upon completion of the works in compliance with contractual requirements and specifications; and to advise **owners/OCs** on the acceptance of each completed work item in terms of quality standards;
10. To certify substantial completion of rehabilitation works and prepare a schedule of defects for rectification by the contractor during defects liability period.

Phase 5: Completion of Works

1. To monitor the progress and quality of defect rectification works by the contractor and issue certificate of final completion before the defects liability period ends;
2. To liaise with relevant government departments on the completion of works stipulated in statutory orders/notices, including preparation and submission of reports/certificates of works completion wherever necessary;
3. To conduct regular building inspections and monitor the progress of rectification works during the defects liability period;
4. To reply and follow up on any complaints from **owners/OCs** about matters relating to the works.

Summary of *Code of Practice on Procurement of Supplies, Goods and Services under Building Management Ordinance (Cap.344)*

1. A Management Committee (MC) shall conduct a tender exercise in an open and fair manner.
2. In the exercise of his powers and the performance of his duties under the BMO, a member of the MC shall not solicit or accept any advantage from any supplier or contractor in relation to the tender.
3. An agent (including its employees) or employee of an OC is prohibited from soliciting or accepting any advantage arising from the performance of his duties. NA agent or employee of an OC shall declare in writing any actual or potential conflict of interest arising from the performance of his duties in accordance with the guidelines issued by the Independent Commission Against Corruption (ICAC).
4. An agent (including its employees) or employee of an OC should declare in writing whether he has any actual, potential or perceived conflict of interest at the start of preparation or deliberation of tender documents or as soon as he becomes aware of a potential conflict.
5. An agent (including its employees) or employee of an OC should take steps to avoid any conflict of interest with any prospective tenderer or tenderer by not putting himself in a position of obligation towards any of them, for example, by not accepting any favour or lavish or excessive entertainment, and not over-socialising with any of them.
6. A member of the MC shall disclose in writing to the MC any personal, business or pecuniary interest or any other relationship that he may have with the DMC Manager, Property Management Company, consultants or professionals service providers for the OC, or in any of the tenders to be considered by the MC or the OC. An MC member who has indicated a personal business or pecuniary interest in the tender shall withdraw from the meeting during the discussion concerned and abstain from voting on the selection of such tender at an MC meeting.

7. The DMC Manager or the Property Management Company (if any) and its employees shall be required to disclose in writing to MC any personal, business or pecuniary interest that he may have with any MC member, consultants or professional service providers for the OC, or in any of the tenders to be considered by the MC or the OC. The DMC Manager or the Property Management Company (if any) and its employees who have indicated a personal, business or pecuniary interest in the tender shall refrain from participating in any tender assessment or negotiation.
8. Any declaration by a member of an MC. An agent (including its employees) or employee of an OC should be recorded in the minutes of relevant MC meetings or as part of the tender documents and should be kept for at least six years.
9. The MC shall prepare an invitation to tender setting out the types of supplies, goods or services required, the respective estimated costs, the period open for tender and other terms and conditions of the relevant contract. A copy of the invitation to tender shall be displayed in a prominent place in the building.
10. MCs are advised to as far as practicable, having regards to the nature of the procurement, adopt open tendering, such as putting advertisements on newspapers, to enhance tender competition and minimise the risks of tender collusion.
11. An MC shall not split a contract of procurement from a contract which should have been made for the procurement of greater value for the sole purpose of avoiding the compliance of requirements in section 20A of the BMO.
12. The closing date and time for acceptance of tenders shall be clearly stated in the invitation to tender. Late submissions shall not be accepted.
13. MCs are advised to build in probity and anti-collusion clauses in the related tender documents. MCs may refer to the Building Management Toolkit issued by the ICAC for the sample probity and anti-collusion clause.
14. IF the tendering exercises involve mandatory works as stipulated in relevant statutory notices(s), order(s) or direction(s) issued by relevant government department(s) or authority(ies) (collectively referred to as government repair orders), such information should be made available to the owners-

- a) Before the invitation to tender is prepared (e.g. posting the government repair orders in a conspicuous place if the building when received; making available a copy of the government repair orders at the management office for inspection by the owners) ; and
- b) Before the resolution concerned is put to vote (e.g. attaching a copy of the government repair orders to the notice of meeting at which the tender is to be approved),

So as to facilitate the MC members/ owners in understanding and making a well informed decision on the scope of the procurement.

- 15. A tender shall be in writing and be sealed and deposited in a strong double locked box marked “Tender-Box(投標箱)” provided for that purpose only and such box shall be securely located in a prominent place in the building. The two keys of the tender-box are to be separately kept by the chairman, secretary or treasurer.
- 16. Where it is impracticable or difficult to comply with the requirement under paragraph 15 above, the OC may, by a resolution passed at a general meeting of the OC, accept tenders handed in or sent by post to the registered office of the OC or to a specific venue as resolved at a general meeting. The tenders shall be properly acknowledged and kept safely.
- 17. All tenders shall be opened at the same time in the presence of at least three members of the MC who shall countersign and date each of the tenders.
- 18. Notwithstanding the requirements set out in this section, where any procurement of supplies, goods and services by an OC is conducted under any Rehabilitation Schemes operated by the Urban Renewal Authority (URA) the OC should comply with all relevant rules, guidelines and / or requirements relating to the conduct of the tender exercise adopted in such service/ scheme instead.
- 19. For procurement of supplies, goods and services whose value does not exceed the sum stipulated in section 20A(2)(b) of the BMO, all tenders received shall be submitted to the MC for decision on acceptance at a meeting of the MC.

20. After approving the award of consultancy agreement/ works contract, MCs are advised to notify all tenderers, property owners and occupants in writing of the tender result.
21. The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect all tender documents, copies of contracts, accounts and invoices and any other documents in the possession of the OC and relating to a procurement of supplies, goods and services at any reasonable charge, supply copies of the relevant documents.
22. The documents referred to in paragraph 21 shall contain sufficient information to enable the person doing inspection to calculate the financial liability (including any future financial liability) of the OC at the time of inspection.

Reference Questions for Works Consultant Interview

Information and Background of Works Consultant

- What profession does the authorised person/registered inspector hold (such as architects/engineers/surveyors)?
- Is the authorised person/registered inspector the director/person in charge/staff member of the works consultant?
- With regard to the works consultant's financial status, are there any debts or considerable overdrafts? Has it balanced income and expenditure in the past three years?
- Are there any proper work quality management measures in place? Does the works consultant hold valid and recognised certificates of quality management systems?
- Has the authorised person/registered inspector been penalised (such as condemnation, fine or suspension of licence) for professional misconduct by a disciplinary board panel formed under the *Buildings Ordinance*?
- Has the authorised person/registered inspector been penalised by any relevant professional institute or registration committee?
- Has the works consultant purchased a policy of professional liability insurance? What scope does the policy cover?
- Has the works consultant been, or is it currently being involved in any litigations arising out of the provision of works consultancy services?
- Are the authorised person/registered inspector and responsible personnel serving in other works consultancy firms/works contractors?

Service Pricing and Contract Management

- If the consultancy service fees are deemed unreasonably low or high with respect to factors such as the number of professionals provided for the works items and their working hours, the interviewer may request for a detailed elaboration.
- Will the whole or part of the works consultancy services be subcontracted?
- What professional tasks and services are covered by the consultancy fees? Is supervision included? What are the arrangements of site supervision during work?
- What are the terms for the fees and project termination?

Works Related Matters

- Inquire about the recommended solutions for the building's actual rehabilitation needs.
- Inquire about the proficiency of the works consultant in handling building rehabilitation orders (e.g. Statutory Notice on Mandatory Building Inspection or Fire Safety Direction).

Specific Issues and Other Questions

- How to avoid delay or unfinished works?
- How will the works consultant assist in handling unauthorised building works (UBW) at common parts (e.g. façade/rooftop) of the building?
- How will the works consultant assist in handling owners' refusal to allow the contractor to replace common facilities in their flats (e.g. drainage pipes)?

Anti-Corruption Information (Building Rehabilitation Workflow – Step 2)

Stage	Risk of corruption and malpractices	Tips of preventing corruption
Receiving and Opening Tenders	<ul style="list-style-type: none"> - No requirement for tenderers to submit tenders in sealed envelopes, and tenders received by hand by the consultant or MC/staff member may expose the tenders to risk of leakage or tampering - Accepting a late tender, with the risk that the other tenderers' bids may have been leaked to the latecomer 	<p>When receiving and opening tenders, OCs/MCs are advised to:</p> <ul style="list-style-type: none"> - use a double-locked tender box with keys separately held by different persons, such as the MC Chairman and the treasurer; - keep the tender box in a prominent and secure place in the building until the opening time; - in the tender invitation, advise tenderers to deposit the tenders directly into the tender box, and require any staff/MC member to deposit any tenders received by post or other means into the tender box immediately; - assign an opening team comprising representatives of property owners or MC (preferably at least 3 MC Members), consultant and property management company to open the tenders immediately after the submission deadline; - require members of the tender opening team to countersign and date each of the tenders received and keep the duplicate copies of the tenders for checking in the future, if available, or keep a record of the tenders (including the tenderer and his bid) received if duplicate copies are not available; - reject late tenders received after the tender submission deadline and return them unopened to the tenderers concerned; - keep tenders under lock before tender evaluation.

Stage	Risk of corruption and malpractices	Tips of preventing corruption
Conducting Tender Negotiation (Optional)	<ul style="list-style-type: none"> - Only negotiating with a particular consultant/contractor who is not the lowest bidder or best tenderer - Negotiating with all or a number of tenderers at the same time, rendering the previous tender exercise meaningless, and running the risk of unfair leakage of tender information to a particular tenderer for corrupt purpose 	<p>To minimise the risks of corruption and malpractices, OCs/MCs are advised to :</p> <ul style="list-style-type: none"> - avoid conducting tender negotiation ; <p>If it is decided to conduct tender negotiation to gain a price reduction, OCs/MCs are advised to :</p> <ul style="list-style-type: none"> - seek the OC's endorsement of the tender evaluation result, with the tenderers ranked, and approval for the plan to conduct tender negotiation ; - conduct tender negotiation only with the tenderer with the highest ranking (where there are practical difficulties or genuine needs, OC/MC may conduct tender negotiation with no more than three tenderers that are within very close range in terms of their bids) ; - assign a negotiation team which may comprise representatives from property owners, MC and the property management company (if any) to conduct the tender negotiation ; - require all members of the negotiation team to declare whether or not they have any conflict of interest arising from their relationship with the tenderer concerned ; - lay down the negotiation guidelines, including : <ul style="list-style-type: none"> ▪ prohibiting disclosure of other tenderers' bids ▪ prohibiting any change of tender requirements and evaluation criteria to favour a particular tenderer ▪ documenting the negotiation and the results ▪ requiring the tenderer(s) to submit the "best and final" offer in writing after negotiation, following the standard requirements on receipt and opening of tenders

Code of Practice for Works Consultant

The works consultant must provide consultancy services in compliance with the code of professional ethics/conduct and relevant laws stipulated by individual professional institutes and registration boards, as well as this Code of Practice.

Bidding

1. The works consultant shall verify that the qualified building professionals appointed (e.g. authorised persons/registered inspectors/registered structural engineers) are its direct employees /staff members;
2. The works consultant shall sign the probity and ethical commitment clauses, anti-collusion clauses and ‘Non-Collusion Clauses and Non-Collusive Tendering Certificate’; it shall undertake to refrain from acting against the *Competition Ordinance* (Cap. 619) and *Prevention of Bribery Ordinance* (Cap. 201);
3. The works consultant shall allocate reasonable human resources with regard to the consultancy service scope, where the relevant service fees must reasonably reflect the cost and profit involved;
4. The works consultant shall clearly set out any charges not included in the consultancy service quotes (if any);
5. The works consultant shall not offer any value-added or gratuitous services not included in the tender, in particular those fall outside the scope of works consultancy (such as legal services for cost recovery actions against owners);
6. The works consultant shall clearly define the level of involvement of the qualified building professionals and other technicians in charge.

Preliminary Preparation

1. The works consultant shall provide and perform works consultancy services in strict compliance with the tender and contract terms;
2. The works consultant shall appoint personnel possessing relevant works experience and professional qualifications to provide services in their field of expertise and handle services concerning technical matters;
3. The works consultant shall submit relevant information of responsible personnel (e.g. building professionals/project managers), including identities, qualifications, biographies and contact information together with the tender;
4. The works consultant shall provide the employer with emergency contact numbers of the responsible personnel during the service period;
5. The works consultant shall not initiate personnel changes without written notices or explanations;

6. The works consultant shall not terminate the works consultancy service contract awarded without reasons;
7. The works consultant shall not charge the employer any hidden or excessive fees (any charges for extra services must be set out in the contract);
8. The works consultant shall formulate appropriate internal guidelines to ensure the professional and ethical conduct of its staff;
9. The works consultant shall draw up an tentative works schedule with task arrangements and workflow clearly laid down;
10. The works consultant shall give the best effort to complete all tasks in various service phase in accordance with the agreed schedule;
11. The works consultant shall actively participate in regular meetings with the employer to follow up on the works progress;
12. The works consultant shall reply and follow up on the employer's enquiries or instructions within a reasonable timeframe;
13. The works consultant shall procure or keep in force a policy of professional liability insurance during the service provision period;
14. The works consultant shall formulate a detailed site supervision plan before the commencement of works;
15. In the case where the building has joined any subsidy or incentive schemes administered by government departments or public/private organisations, the works consultant shall fully comply with relevant regulations.

Building Inspection

1. The works consultant shall conduct building inspection using a practical or feasible method (such as visual inspection, infrared detection and CCTV survey of underground drains, etc.);
2. The works consultant shall provide detailed analysis of the building's current condition and defects with explanations of their possible causes instead of simple photos and brief descriptions only. Where necessary, sketches or floor plans can be attached as supplementary information;
3. The works consultant shall not propose unnecessary rehabilitation plans and solutions to the employer without valid reasons;
4. The works consultant shall provide appropriate and feasible rehabilitation or enhancement solution for each issue or defect found in the building;
5. Where possible, the works consultant shall provide the employer with the estimated number of works items and unit cost estimates.

Works Contractor Tendering

Pre-Tendering

1. The works consultant shall not neglect the employer's expectations or requirements on the quality, results and budgeting of the rehabilitation project;
2. The works consultant shall not selected inappropriate materials or those with an unusually high specification, nor shall it formulate works specifications with an unusually high standard;
3. In the case where a pre-qualification of tenderers is recommended, the works consultant shall provide valid reasons for to be tabled for resolution at an owners' meeting;
4. The works consultant shall avoid setting unnecessary or unreasonably high threshold for tender submission without valid reasons
5. Before receipt of tenders, the works consultant shall formulate tender assessment criteria to be tabled for resolution at an owners' meeting;
6. The works consultant shall avoid recommending the employer to charge the tenderers any 'administrative fee';
7. The works consultant shall not mention or disclose works consultant' names and identities in any form;
8. The works consultant shall assist the employer in handling relevant enquiries during tender submission period within a reasonable timeframe in a professional and fair manner;
9. The works consultant shall recommend the employer to use the sample documents prepared by professional institutes at present or the Building Rehabilitation Platform in the future wherever possible, with appropriate amendments made in accordance with individual works and the building's actual needs;
10. The works consultant shall make declaration of interest to the employer in case of any existing or potential conflicts of interest found in the returned tenders;
11. The works consultant shall not give rise to any unfairness during the tender submission by provide any information (particularly quotes provided by tenderers) to any third parties.

Post-Tendering

1. The works consultant shall not modify the tender assessment criteria after tendering;
2. The works consultant shall access each tender received in accordance with the predefined criteria, including detailed analysis of breakdowns instead of simple bid comparisons (refer to Section 2.4 for details);

3. The recommendation of shortlisted tenderers and proposals must include reasons for their selection;
4. The works consultant shall assist the employer in drafting interview questions and workflow in advance (e.g., to dispatch invitation to interview in a reasonable timeframe; to set a uniform duration for each interview, say 30 to 45 minutes; and to request written explanations from tenderers failing to attend the interview);
5. The works consultant shall assist the employer in obtaining all necessary information and clarifications of any ambiguities in the received tenders from tenderers;
6. The works consultant shall offer detailed elucidation and highlights of the tender analysis report before the relevant owners' meeting;
7. The works consultant shall assist the employer with relevant paperwork during the owners' meeting for the selection of works items and contractor; and to answer owners' questions the rehabilitation project;
8. The works consultant shall assist the employer in drafting the works contract after a tenderer is selected. The drafted contract must not include additional contents or terms or delete any content or terms from tender documents without the prior approval of the employer.

Works Supervision

1. The works consultant shall formulate an appropriate site supervision scheme specifying the frequency of site inspection during works and the qualification and background of the inspectors. Regular site patrols must be conducted in accordance with the supervision scheme to ensure the works progress and quality comply with contractual requirements, with appropriate instructions given to the contractor on the spot when necessary;
2. The works consultant shall review and verify the adequacy and comprehensiveness of the documents submitted on contract terms, e.g. organisational chart of workers, works schedule and procedure arrangements;
3. The works consultant shall schedule regular meetings with the contractor and the employer to follow up on the progress of works, solutions of technical issues and complaints from owners and residents, etc.;
4. The works consultant shall provide professional advice on the necessity and feasibility of additional works items suggested by the works contractor and assess whether the quotes are reasonable; it is imperative to discuss with the employer on potential decline in quality or increase in costs caused by the modification of works and obtain the employer's approval before giving relevant instructions to the contractor;

5. The works consultant shall not modify any works or material specifications prescribed in the tender documents without valid reasons. In the case where modifications are necessary, the works consultant shall give lucid explanations to the owners and obtain their approval;
6. The works consultant shall actively follow up on complaints of owners and residents about the works within a reasonable timeframe; and shall develop an appropriate mechanism to facilitate the collection of owners' opinions about the works;
7. The works consultant shall assist the employer in handling interim payment applications and any claims made by the contractor;
8. The works consultant shall keep the works related documents and information in proper condition;
9. The works consultant shall conduct acceptance inspection upon completion of the works in compliance with contractual requirements and specifications; and shall advise the employer on the acceptance of each completed works item in terms of quality standard;
10. The works consultant shall certify substantial completion of works and prepare a schedule of defects (if applicable) for rectification by the contractor during the defects liability period. The certificate of final completion should be issued within a reasonable timeframe after the acceptance inspection. Such action should not be postponed until the defects liability period prescribed in the contract has expired.

Works Completion Stage

1. The works consultant shall monitor the progress and quality of defect rectifications and issue certificate of final completion before the defects liability period ends;
2. The works consultant shall arrange timely acceptance inspection after the contractor has reported completion of works; it shall certify works completion and prepare a schedule of defects (if applicable) for the contractor to follow up;
3. The works consultant shall liaise with relevant government departments on the completion of works stipulated in statutory orders/notices, including preparation and submission of reports/certificates of works completion (if applicable);
4. The works consultant shall conduct regular building inspections and monitor the progress of rectification works during the defects liability period;
5. The works consultant shall reply and follow up on any complaints forwarded by the employer from owners about the works.



Sample/ Form/ Template

Step 2

Sample 1 – Probity and Anti-collusion Clauses in Tender Documents

Sample 2 – Ethical Commitment Clauses in Consultancy Agreement

Sample 3 – Model Non-Collusion Clauses and Non-Collusive Tendering Certificate

Sample 4 – Tender Advertisement(EOI)

Sample 5 – Tender Advertisement (Tender)

Probity and Anti-collusion Clauses in Tender Documents

To : _____ [Name of IO]

To whom may concern :

[Name and address of Building/ Estate]

We _____ , address _____
and _____¹ , _____¹
[Name of tenderer] [Address of tenderer]
[Name of AP] [No. of registration certificate]

_____ refer to [my/our]¹ tender for the above Consultancy Agreement

We confirm that, before sign this letter, other than the Excepted Communications referred to in the last paragraph of this letter, and until have been notified by the Employer of the outcome of the tender exercise, we have not

- communicated to any person other than the Employer the amount of the tender price or any part thereof ;
- fixed the amount of the tender price or any part thereof by arrangement with any person ;
- made any arrangement with any person as to whether [I/we]¹ or that other person will or will not submit a tender; and
- otherwise colluded with any person in any manner whatsoever in the tendering process.

We confirm that, before sign this letter, other than the Excepted Communications referred to in the last paragraph of this letter, and until have been notified by the Employer of the outcome of the tender exercise, [I/we]¹ will not

- communicate to any person other than the Employer the amount of the tender price or any part thereof ;
- fix the amount of the tender price or any part thereof by arrangement with any person ;
- make any arrangement with any person as to whether [I/we]¹ or that other person will or will not submit a tender; and
- otherwise collude with any person in any manner whatsoever in the tendering process.

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

(representative of tenderer)²

(Signature of AP)

(Date)

(No. of Registration Certificate)

(Date of registration)

(Date)

1. Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.
2. Where the tenderer comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign the Consultancy Agreement/Contract on behalf of that person or as the case may be company.

Ethical Commitment Clauses**Confidentiality**

- (A) Except as necessary for the performance of the Services the Consultant shall not (except with the prior written consent or as instructed by the Employer) disclose the terms and conditions of this Agreement or any report, document, specification, drawing, plan, software, data or other particulars furnished by or on behalf of the Employer in connection therewith, or any such or similar information generated or produced by the Consultant pursuant to this Agreement, to any person other than a person employed or engaged by the Consultant in carrying out this Assignment, an agent of the Consultant, any approved sub-consultant or the Consultant' accountants, insurers and legal advisers.
- (B) Any disclosure to any person, agent, sub-consultant, accountant, insurer, legal adviser permitted under sub-clause (A) of this clause shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purposes of this Agreement
- (C) The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents, sub-consultants, accountants, insurers and legal advisers as mentioned in sub-clause (A) are aware of and shall comply with the confidentiality and non-disclosure provisions contained in this Agreement. If required by the Employer, the Consultant undertake to procure for and on behalf of the Employer a confidentiality agreement in a form to be prescribed by the Employer from any director, employee, agent, sub-consultant, accountant, insurer and legal adviser to whom any confidential information is to be disclosed
- (D) The Consultant shall not without the prior written consent of the Employer publish, either alone or in conjunction with any other person, in any newspaper, magazine, periodical or through any electronic medium, any article, photograph or illustration relating to this Agreement.
- (E) The Consultant shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential arising out of or in connection with any breach by the Consultant or their directors, employees, agents, sub-consultants, accountants, insurers or legal advisers of this clause.
- (F) The provision of this clause shall survive the termination of this Agreement (however occasioned) and shall continue in full force and effect notwithstanding such termination.

Prevention of Bribery

(G) The Consultant shall prohibit their directors, employees, agents and sub-consultants who are involved in this Agreement from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap 201). The Consultant shall also caution their directors, employees, agents and sub-consultants against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Assignment. The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants are aware of the aforesaid prohibition and will not solicit or accept any advantages, excessive hospitality, etc. when conducting business in connection with this Agreement.

Declaration of Interest

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

(I) The Consultant shall prohibit their employees who are involved in this Agreement from engaging in any works or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Agreement. The Consultant shall require their agents and sub-consultants to impose similar restriction on their employees by way of a contractual provision.

(J) The Consultant shall take all necessary measures (including by way of a code of conduct or contractual provisions where appropriate) to ensure that their employees, agents and sub-consultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses (H) and (I).

Declaration of Ethical Commitment

(K) The Consultant shall submit a signed declaration in a form (see Annex 2(b) - Appendix) prescribed or approved by the Employer to confirm compliance with the provisions in aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest. If the Consultant fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Consultant shall not be entitled to interest in that period. To demonstrate compliance with the aforesaid sub-clauses (A), (B), (C), (D), (E), (F), (G), (H), (I) and (J) on confidentiality, prevention of bribery and declaration of interest, the consultant and their sub-consultants employed for the performance of duties under this Agreement are required to deposit with the Employer a code of conduct issued to their staff.

Model Non-Collusion Clauses and Non-Collusive Tendering Certificate



USER GUIDE TO PROCURERS

Why do we need competition?

In a free market economy, businesses compete with each other by offering the best range of goods and services at the best prices to consumers. A competitive market leads to better prices, products and choices for everyone. Competition can also drive efficiency and innovation, and lead businesses to meet consumer demands by providing the right product at the right price and quality.

The Competition Ordinance (the “Ordinance”) was enacted to promote competition and prohibit anti-competitive practices by businesses. Cartel conduct, which includes market sharing, bid-rigging, price fixing and output restriction, is generally regarded as a particularly harmful form of anti-competitive conduct which raises prices while reducing choices and innovation – harming consumers, businesses and the economy as a whole.

Bid rigging and market sharing

Bid-rigging generally involves two or more undertakings agreeing that they will not compete with one another in tenders for particular projects. It may take the form of an agreement, arrangement, understanding, promise or commitment, whether express or implied, written or oral, and whether or not enforceable or intended to be enforceable by legal proceedings.

Bid rigging can also involve other forms of anti-competitive collusive conduct, such as market sharing and price fixing. For example, competitors may have agreed to allocate their tenders as part of the market sharing agreement. In view of the rising public concerns over anti-competitive collusive conduct in Hong Kong, the Competition Commission (the “Commission”) has taken steps to provide guidance on how to detect and prevent them.

The Commission's relevant publications

The Commission has published a number of brochures and educational videos in relation to anti-competitive collusive conduct. These include a "Fighting Bid-rigging" brochure which outlines common types of bid-rigging and guidance on what to do should bid-rigging be suspected; and a "Getting the most from your tender" brochure which is designed to assist procurers in ensuring open and effective competition by preventing and detecting possible bid-rigging cartels; and a "Combat Market Sharing" brochure which outlines key concepts of market sharing with hypothetical examples. The abovementioned brochures as well as educational videos on bid rigging and market sharing are available on the Commission's website. They provide useful guidance to procurers in tender context.

Non-collusion clauses and non-collusive tendering certificate

As stated in the "Getting the most from your tender" brochure, procurers may consider including non-collusion clauses and a non-collusive tendering certificate in tender documents to alert tenderers to the potential concerns and consequences of bid-rigging. Procurers may also want to be alert to other forms of cartel conduct, such as agreements between competitors to fix prices, share markets or restrict output.

Non-collusion clauses may be included in invitations to tender. Such clauses should generally:

- (a) Require the bid be prepared without any anti-competitive collusive conduct; and
- (b) Note the consequences of engaging in bid-rigging or other anti-competitive conduct, in particular that such conduct contravenes the Ordinance and potentially attracts enforcement action by the Commission. The clause may also empower the procuring organisation to invalidate the submitted bid and may provide for the recovery of damages or other redress.

Non-collusion clauses in invitations to tender may require tenderers to sign a non-collusive tendering certificate as part of their tender submission. This certificate acts as written confirmation from the tenderer that the bid was developed independently. The tenderer may be required to certify that they understand the consequences of non-compliance and the certificate may contain other undertakings.

In addition to the above, procurers may also consider including non-collusion clauses in formal contracts entered into with the successful tenderer. These can provide for specific redress (such as termination of the contract) where it is subsequently discovered that the tenderer engaged in bid-rigging or other forms of anti-competitive collusive conduct during the tender process.

Use of the model clauses and certificate

Different businesses may want to set different requirements in their tender documents and there is no standard non-collusion wording. Nevertheless, the Commission understands that businesses may benefit from having recourse to reference material in formulating such wording in their tender documents. Therefore, the Commission has provided, in Appendices 1 and 2, model non-collusion clauses comprising model non-collusion wording for incorporation in invitations to tender, guidance on non-collusion clauses in formal contracts as well as a model non-collusive tendering certificate to members of the public for reference.

Features of the model non-collusion clauses include:

- (a) A clear statement that anti-competitive collusive conduct contravenes the Ordinance;
- (b) Warranties from tenderers stating that they have not colluded with each other in preparing the bids;
- (c) An express right of the procuring organisation to be informed about subcontracting arrangements¹; and
- (d) An express right of the procuring organisation to provide information related to the tender and the tenderer to the Commission.

1. Transparency in relation to sub-contracting arrangements may help the detection of bid-rigging. This is because sub-contracting is sometimes used to implement a bid-rigging arrangement (e.g. a bidder may agree to lose a tender on the understanding that another bidder (intended to be the winning bidder) will sub-contract to it).

The model non-collusion clauses are intended as general references only and may not be appropriate for all tenders or all sectors. Procurers may consider requiring other undertakings to be made in their non-collusion clauses, for example a requirement that tenderers agree to provide information regarding their shareholding structure and/or ultimate controlling entities if requested by the procuring organisation. This would help to ensure greater understanding of the identity of tenderers.

For the avoidance of doubt, the Commission makes no express or implied warranties of accuracy, fitness for use, or enforceability of the model non-collusion clauses and the certificate in relation to any specific tender. Parties should seek independent legal advice if they have any doubts regarding their rights or responsibilities.

If in any case the procuring organisations suspect that their tenders have been subject to bid-rigging or other anti-competitive conduct, they should report this to the Commission immediately.

More information

To learn more about the Competition Ordinance and the Competition Commission's work, please visit our website www.compcomm.hk.

APPENDIX 1

MODEL NON-COLLUSION CLAUSES

This document should be used in conjunction with the User Guide to Procurers.

Users are reminded that the appropriate wording to be used to address bid-rigging will depend on the specific project and tender, and that the wording set out below is intended to act as a general reference only.

Model non-collusion wording in invitation to tender

The following is an example of wording that may be included in an invitation to tender:

“The tenderer must ensure that the bid is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in paragraph 3 of the Non-collusive Tendering Certificate referred to below), including regarding price, bid submission procedure or any terms of the bid. In the event of any breach of this clause by any tenderer, the (procuring organisation) reserves the right to invalidate the bid submitted by that tenderer and seek damages.

Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Cap.619). Tenderers who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

Upon tender submission, the tenderer shall submit to the (procuring organisation) a Non-collusive Tendering Certificate (in the form set out at Schedule [•] to this [invitation to tender]) duly signed by an authorized person on the tenderer’s behalf.”

Guidance on non-collusion clauses in formal contracts

In addition to including wording to address bid-rigging and other anti-competitive collusive conduct in the invitation to tender and requiring the submission of a non-collusive tendering certificate, procurers should consider including clauses in their formal agreements with successful tenderers that provide contractual protections in the event that it is discovered that the tender process was subject to collusion. Such contract clauses may include:

- (a) Wording to state that the formal agreements are entered into in reliance of the statements made by the tenderer in the non-collusive tendering certificate and conditional upon the effectiveness and veracity of the certificate;
- (b) The right for the procuring organisation to terminate the contract with the successful tenderer and recover damages where it is discovered that the tender process was subject to collusion; and
- (c) Exceptions to any confidentiality undertakings that allow the procuring organisation to report and provide documents and information regarding the anti-competitive collusive conduct to the Commission (and other authorities as relevant).

APPENDIX 2

MODEL NON-COLLUSIVE TENDERING CERTIFICATE

This document should be used in conjunction with the User Guide to Procurers.

Users are reminded that the appropriate wording to be used to address bid-rigging will depend on the specific project and tender, and that the wording set out below is intended to act as a general reference only.

This certificate should be signed by a person who is authorized to sign the relevant Contract on behalf of the tenderer. Where the bid is submitted jointly by two or more parties (e.g. multiple persons or companies acting in a joint venture), all such parties should sign the certificate.

To: (Name of the procuring organisation)

Dear Sir/ Madam,

Non-Collusive Tendering Certificate for [Contract No. ()] (the "Contract")

1. We, (name(s) of the tenderer(s)) of (address(es) of the tenderer(s)) refer to the tender for the Contract (the "Tender") and our bid in relation to the Tender.

Non-collusion

2. We represent and warrant that in relation to the Tender:
 - (a) Our bid was developed genuinely, independently and made with the intention to accept the Contract if awarded;

-
- (b) Our bid was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other tenderer or competitor) regarding:
- i) prices;
 - ii) methods, factors or formulas used to calculate prices;
 - iii) an intention or decision to submit, or not submit, a bid;
 - iv) an intention or decision to withdraw a bid;
 - v) the submission of a bid that does not conform with the requirements of the tender;
 - vi) the quality, quantity, specifications or delivery particulars of the products or services to which this tender relates; and
 - vii) the terms of the bid,

and we undertake that we will not, prior to the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:
- (a) the (procuring organisation);
 - (b) a joint venture partner, where joint venture arrangements relevant to the bid exist and which are notified to the (procuring organisation);
 - (c) consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
 - (d) professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to the Tender;
 - (e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement; and

-
- (f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing.

Disclosure of subcontracting

4. We understand that we are required to disclose all intended sub-contracting arrangements relating to the Tender to the (procuring organisation), including those which are entered into after the Contract is awarded. We warrant that we have duly disclosed and will continue to disclose such arrangements to the (procuring organisation).

Consequences of breach or non-compliance

5. We understand that in the event of any breach or non-compliance with any warranties or undertakings in this certificate, the (procuring organisation) may, at its discretion, invalidate our bid, exclude us in future tenders, pursue damages or other forms of redress from us (including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred), and/or (in the event that we are awarded the Contract) terminate the Contract.
6. Under the Competition Ordinance, bid-rigging is serious anti-competitive conduct. We understand that the (procuring organisation) may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the "Commission") and provide the Commission with any relevant information, including but not limited to information on our bid and our personal information.

Signed for and on behalf of the (tenderer)¹:

Signature:

Name:

Position:

Date:

1. Additional signature blocks will need to be used where the tenderer is comprised of multiple parties.



Address : 19/F, South Island Place
8 Wong Chuk Hang Road, Wong Chuk Hang, HONG KONG
(The Competition Commission office address has been changed effective from
24 June 2019)

Telephone : +852 3462 2118

Fax : +852 2522 4997

Email : enquiry@compcomm.hk

Disclaimer

The information provided in this pamphlet is for general reference only. It does not provide an exhaustive guide to the application of the Competition Ordinance (Ordinance). For a complete and definitive statement of the law, refer to the Ordinance itself. The Competition Commission (Commission) makes no express or implied warranties of accuracy or fitness for a particular purpose or use with respect to the above information. The above suggestions will not affect the functions and powers conferred on the Commission under the Ordinance.

© December 2017

Competition Commission (Hong Kong)

(Name of IO/Building)

**Invitation of Express of Interest for Consultancy Service of
Building Rehabilitation Project**

(Name of IO/Building) This is to invite works consultant (including* AP/RI/other professionals [please specify])to express interest in undertaking the above consultancy for the project. Interested consultants please show your intention in writing from the date ____/____/____/(dd/mm/yyyy) to ____/____(dd/mm), not later ____ a.m./p.m.(Time) on ____/____/____(dd/mm/yyyy) submitted the EOI to the collection box which set in _____.

If you have any enquiry , please contact_____(Mr/ Mrs/ Miss) with _____(Telephone no.)(from____to____ (Time)).

_____(Name of IO/Building)

____/____/____/(dd/mm/yyyy)

* Delete if not applicable

(Name of IO/Building)

Invitation of Tender for Consultancy Service of
Building Rehabilitation Project

(Name of IO/Building) This is to invite works consultant (including*AP/RI/other professionals [please specify]) to submit the completed Form of Tender with Schedule of Rates in undertaking the above consultancy for the project. Interested consultants please request for one set of tender with appendixes from the date ____/____/____/(dd/mm/yyyy) to ____/____(dd/mm)by personal from the _____(address) , and submit the tender with relevant documents to Tender box which set in _____(address) from the date ____/____/____/(dd/mm/yyyy) to ____/____(dd/mm), not later. _____a.m./p.m (Time) on ____/____/____(dd/mm/yyyy). IO shall not necessarily accept the lowest or any Tender.

Site visit: Please wait at _____(Time) on ____/____/____(dd/mm/yyyy). (if applicable)

_____(Name of IO/Building)

_____/_____/_____(dd/mm/yyyy)

* Delete if not applicable