**Section VI Procurement Procedures for Subcontractor and Suppliers**

**VI:1 Applicability of Procurement Procedures**

| **VI:1** | **Applicability of Procurement Procedures** | **Guidelines** |
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| (1) | The procurement procedures stated in this Section VI do not apply to emergency works in relation to   1. public health, 2. public safety or 3. removal of imminent risk to any person, property or the environment.   The *Contractor* keeps full record of the emergency works. |  |
| (2) | Unless otherwise accepted by the *Project Manager*, if *Project Manager* instructs a change to the Scope that is a compensation event which renders it necessary for the *Contractor* to appoint a Subcontractor/supplier, which is assessed on the Defined Cost plus the Fee basis, the *Contractor* appoints the Subcontractor/supplier in accordance with the procedures stated in this Section VI.  ***Note: this sub-clause (2) is only applicable for Option A and Option B and not used in Option C and Option D.*** |  |
| (3) | 1. If prior to the Contract Date, the *Contractor* has pursuant to Special Conditions of Tender Clause SCT [18] proposed a Subcontractor/supplier for the item(s) stipulated as subject to pre-bid arrangement in **Appendix** [S] to the *additional conditions of contract* and the *Client* considers the requirements in Special Conditions of Tender Clause SCT [18] are satisfied (“**such Subcontractor/supplier**”), the procurement procedures stated in this Section VI do not apply to such Subcontractor/supplier. The *Contractor* submits such Subcontractor in accordance with NEC Clause 26.2 to the *Project Manager* for acceptance or appoints such supplier to undertake the supply of such item. The procedures stated in this Section VI do not apply. 2. If after the Contract Date, the *Contractor* becomes aware that any such Subcontractor/supplier cannot undertake/supply such items in unforeseen circumstances, or such Subcontractor is not accepted by the *Project Manager* pursuant to NEC Clause 26.2, it submits a proposal for subcontracting/selection of supplier to the *Project Manager* for acceptance. The proposal includes, but is not limited to, the rationale for change of such Subcontractor/supplier, the programme, the *Contractor*’s estimate for the subcontract/supply contract and any further justifications for the proposal if instructed by the *Project Manager*. After the *Project Manager*’s acceptance of such proposal, the *Contractor* appoints a Subcontractor/supplier in accordance with the procedures stated in this Section VI.   ***Note: this sub-clause (3) is only applicable if pre-bid arrangement for Subcontractor/supplier is adopted in Option C and Option D.*** |  |
| (4) | If the *Contractor* indicates in Contract Data Part two (Section 1) that it is prepared to undertake/supply any of the item(s) stipulated as subject to Mandatory Pre-bid Arrangement in Part [B] of **Appendix** [S] to the *additional conditions of contract* by itself, and the *Contractor* cannot undertake/supply such item(s) by itself in unforeseen circumstances, the *Contractor* appoints a Subcontractor/supplier in accordance with the procedures stated in this Section VI.  ***Note: this sub-clause (4) is only applicable if Mandatory Pre-bid Arrangement for Subcontractor/supplier is adopted in Option C and Option D.*** |  |
| (5) | Any cost savings as a result of any change of such Subcontractor/supplier pursuant to sub-clause (3) or (4) above, which is calculated as the difference between the lump sum prices for such works/item as shown in the \*Activity Schedule *[for Option C]* / \*Bill of Quantities *[for Option D]* and the lump sum prices for the same works/item under the proposed subcontract, as assessed by the *Project Manager*, is to be deducted from the total of the Prices. Nevertheless, the total of the Prices is not in any case increased due to a change of such Subcontractor/supplier.  ***Note: this sub-clause (5) must be adopted if either (3) and/or (4) is adopted.*** |  |

**VI:2 Subcontractor Tendering Procedures**

| **VI:2** | **Subcontractor Tendering Procedures** | **Guidelines** |
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| (1) | If the *Contractor* subcontracts work, it complies with the following procedures and requirements in sub-clauses (2)-(11) below:   |  |  | | --- | --- | | **Estimated subcontract value** | **Procedure** | | <=HK$1,000,000 | The *Contractor* may select a Subcontractor without inviting tenders. | | >HK$1,000,000 | The contractor submits an estimated value of the subcontract work to the *Project Manager* for acceptance at least two weeks before inviting tenders for the subcontract. A reason for not accepting the estimated values of the subcontract works is that it is not justified. Unless otherwise agreed with the *Project Manager*, the *Contractor* selects a Subcontractor by inviting **not less than three tenderers** to submit tenders for the subcontract. | |  |
| (2) | Before inviting tenders the *Contractor* submits to the *Project Manager* for acceptance its proposal for preventing corrupt practices. The proposals comply with Section [A6.5.2] of the Practice Notes for New Engineering Contract – Engineering and Construction Contract for Public Works Projects in Hong Kong published by the Development Bureau. |  |
| (3) | Unless otherwise agreed by the *Project Manager*, the *Contractor* selects the conforming tender with   1. the lowest tender price or 2. the highest tender evaluation score if a tender evaluation mechanism is used.   Unless otherwise instructed by the *Project Manager*, if the number of tenders received is less than the minimum number in sub-clause (1) above, the *Contractor* selects from the tenders received. |  |
| (4) | The *Contractor* ensures that the pricing information in the proposed subcontract documents represents open market or competitively tendered prices, and does not contain items which are substantially over-priced or under-priced, or erratically priced. |  |
| (5) | The *Contractor* submits to the *Project Manager* for acceptance:   1. details of the work to be subcontracted, 2. the name of each proposed tenderer, 3. the proposed tenderer’s categories, groups, classes and status (i.e. confirmed, probationary, suspended, etc.) in the “List of Approved *Contractor*s for Public Works” or the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works”, if applicable, 4. details of each proposed tenderer’s past performance including contract reference and work done, 5. information demonstrating each proposed tenderers’ experience and technical capability, and 6. a tender evaluation mechanism, if applicable.   A reason for not accepting the list of the proposed tenderers is that any of the proposed tenderers does not comply with the minimum qualification and experience requirements, or more potential tenderers should be included in the list of the proposed tenderers.  The *Contractor* does not invite tenders until the *Project Manager* has accepted each proposed tenderer and, if applicable, the estimated value of the subcontract work. |  |
| (6) | Before inviting tenders the *Contractor* and the *Project Manager* agree on   1. the size of the tender box, 2. the location of the tender box if it is not located in the common area within the joint site office of the *Project Manager*, *Supervisor* and *Contractor*, 3. the security measures for the tender box and the arrangement for safe custody of the tenders received and subsequently opened, 4. the subcontract number to be assigned, and 5. the number of copies of the tender to be issued to the *Project Manager.* |  |
| (7) | The tender instructions include   1. the address and telephone number of the office from which the tender documents can be obtained, 2. the location of the tender box in which the tenders are to be deposited*,* 3. the number of copies of the tender to be submitted, 4. the subcontract number to be marked on the sealed envelope containing the tenders and 5. the closing date and time for receipt of the tenders.   A tender that does not comply with the above requirements is not considered. |  |
| (8) | Unless otherwise agreed by the *Project Manager*, the proposed subcontract is the latest edition of the Standard Form of Domestic Sub-contract published by the Hong Kong Construction Association. |  |
| (9) | The sealed envelopes containing the tenders are only opened in the presence of both the *Project Manager*’s staff and the *Contractor*’s staff. |  |
| (10) | To ensure fairness and transparency during the tender period the *Contractor* provides all tenderers with   1. tender queries received, 2. responses to tenderer’s questions, and 3. revised tender documents if appropriate.   The *Contractor* does not make amendments to the amount of work items or tender prices of the received tenders, except corrections for tender errors accepted by the *Project Manager*. |  |
| (11) | The *Contractor* states in the tender documents that any qualification may result in the tender being disqualified. Subject to the *Project Manager*’s agreement, the *Contractor* may clarify the purpose or meaning of a tender qualification with a tenderer. The *Contractor* agrees with the tenderer to remove a qualification, unless otherwise agreed between the *Contractor* and the *Project Manager.* |  |

**VI:3 Supplier Selection Procedures**

| **VI:3** | **Supplier Selection Procedures** | **Guidelines** |
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| (1) | Within three weeks of the Contract Date, the *Contractor* submits to the *Project Manager* for acceptance its procedure for competitive selecting suppliers of   1. Plant and Materials, 2. Equipment, and 3. insurance covered by item 91 of the Schedule of Cost Components or, where applicable the Short Schedule of Cost Components.   The *Contractor* selects a supplier in accordance with the accepted procedure, unless otherwise agreed by the *Project Manager*. If the *Contractor* encounters genuine difficulties to comply with the accepted procedure, the *Contractor* seeks the *Project Manager*'s acceptance to dispense with the accepted procedure. |  |
| (2) | The *Contractor* ensures that the pricing information in the proposed supply contract for any supplier represents **open market or competitively tendered prices**, and does not contain items which are substantially over-priced or under-priced, or erratically priced. |  |
| (3) | The *Contractor* states in the submission requirements for supply contracts that any qualification may result in the submission being disqualified. Subject to the *Project Manager*’s agreement, the *Contractor* may clarify the purpose or meaning of a qualification with a proposed supplier. The *Contractor* agrees with the proposed supplier to remove a qualification, unless otherwise agreed between the *Contractor* and the *Project Manager.* |  |

**VI:4 Post-tender Interview**

| **VI:4** | **Post-tender Interview** | **Guidelines** |
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| (1) | For the purpose of this clause, “**post-tender interview**” means a meeting conducted by the *Contractor* after tender opening in the presence of the representative of the *Project Manager* or the *Supervisor* to ensure that the tenderer fully understands the requirements of the relevant subcontract/supply contract. |  |
| (2) | For subcontract works/supply of items that are required to be tendered, the *Contractor* may conduct post-tender interviews with tenderers for subcontracts/supply contracts. If the *Contractor* intends to arrange a post-tender interview, it submits the scope and procedures for conducting post-tender interview to the *Project Manager* for acceptance. |  |
| (3) | Unless otherwise agreed with the *Project Manager*, the post-tender interviews are conducted in accordance with the following requirements.   1. Only tenderers who are shortlisted in accordance with the tender evaluation mechanism are invited. 2. The *Contractor* records each post-tender interview. The tenderer, the *Contractor* and the representative of the *Project Manager* or the *Supervisor* sign the recordto confirm it accurately reflects the post-tender interview discussion at the end of the post-tender interview. 3. The *Contractor* and the representative of the *Project Manager* or the *Supervisor* sign an undertaking to the *Client* to keep in strict confidence all information obtained during the post-tender interviews and to only use any such information with the prior written consent from the *Client*. 4. If any of the tenderers is an associated company (as defined in ACC Clause VI:5) of the *Contracto*r, no post-tender interview is conducted for that subcontract/supply contract. |  |
| (4) | Unless otherwise agreed with the *Project Manager*, the *Contractor* does not change the subcontract/supply contract tender documents for taking into account the information obtained at the post-tender interviews. Nonetheless, commercially sensitive information or intellectual property including designs or any part thereof will neither be solicited from the subcontract/supply contract tenderers nor incorporated into the tender documents. |  |
| (5) | Only tenderers shortlisted for the post-tender interviews in accordance with the tender evaluation mechanism are invited to submit a revised tender price. If the subcontract/supply contract tender documents are substantially changed following the post-tender interviews, all tenderers are invited to submit their respective revised tender prices. |  |
| (6) | The *Contractor* informs all response(s) to questions raised at the post-tender interviews to all tenderers to ensure fairness and transparency, irrespective of whether or not the tenderer has attended the post-tender interview. |  |

**VI:5 Corruption Prevention**

| **VI:5** | **Corruption Prevention** | **Guidelines** |
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| (1) | For the purpose of this clause,   1. An “**associated company**” means any company which is the holding company or subsidiary company or sister company of the *Contractor*. A “**sister company**” means a company which is a subsidiary of or otherwise belongs to the same holding company of the *Contractor*. The existence of a holding-subsidiary relationship shall be determined in accordance with the provisions in sections 13 to 15 of the Companies Ordinance (Cap. 622). 2. An “**associate**” in relation to the *Contractor* means 3. any partner of the *Contractor*, or 4. any company one or more of whose directors is in common with one or more of the directors of the *Contractor*. 5. An “**associated person**” in relation to the *Contractor* means 6. any person who has control, directly or indirectly, over the *Contractor*, 7. any person who is controlled, directly or indirectly, by the *Contractor*, or 8. any person who is controlled by, or has control over, the person at (i) or (ii) above. 9. “**Control**” in relation to another person means holding office as director or the power of a person to secure 10. by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person, or 11. by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person,   that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.   1. “**Director**” means any person occupying the position of director by whatever name called and without limitation a de facto or shadow director. |  |
| (2) | **Declaration of Conflict of Interest**   1. For subcontract works/supply of items that are required to be tendered, the *Contractor* declares if any of the proposed tenderer is its associated company. If a proposed tenderer is an associated company of the *Contractor*, the *Contractor* submits its justifications for inviting it to tender to the *Project Manager* for agreement. |  |
|  | 1. For subcontract works/supply of items that are required to be tendered, and post-tender interviews are conducted, the *Contractor* and each staff of the *Contractor* involved in preparing subcontract tender documentation, assessing the subcontract tenders, or conducting post-tender interviewdeclare, in the form set out in **Appendix** [*insert reference*], any interest if it is considered to be in actual, apparent, potential or perceived conflict with the *Client’s* interest, including any interest or association the *Contractor*, the *Contractor*’s associated companies, associates or associated persons may have with any tenderer. |  |
| (3) | **Anti-collusion**   1. For subcontract works that are required to be tendered, the *Contractor* includes the following requirements in its tender conditions. 2. The tenderer does not disclose the tender price or any part thereof except when necessary to obtain  * an insurance quotation for calculating the tender price, * assistance from proposed subcontractors in preparing the tender, and * financial resources from its bankers for the proposed subcontract.  1. The tenderer does not fix the amount of the tender price or any part thereof by arrangement with any other person, make any arrangement with any person about whether or not it or that other person will or will not submit a tender or otherwise collude with any person in any manner whatsoever in the tendering process. 2. The tenderer indemnifies and keep indemnified the *Contractor* against all losses, damages, costs or expenses arising out of or in relation to any breach of or non-compliance with the above requirements by the tenderer, including but not limited to additional costs due to price escalation, costs and expenses of re-tendering and other costs incurred. 3. The tenderer submits with its tender a duly signed and witnessed letter in the form set out in **Appendix** [*insert reference*]to the *additional conditions of contract*.   A tender that does not comply with the above requirements is invalidated |  |
|  | 1. If instructed by the *Project Manager*, the *Contractor* submits the duly signed letters to the *Project Manager*. |  |
| (4) | **Co-operation with ICAC**  The *Contractor* co-operates with ICAC in order to prevent corruption and allows ICAC to inspect at any time within working hours all documents and records in relation to the tendering of subcontracts and any other record which it is required to keep. |  |