



# **Development Bureau**

The Government of the Hong Kong Special Administrative Region

# **Contractor Management Handbook**

First Issue Date: March 2001

Revision Date: [November 2022](#)

## REVISION SHEET

First Issue Date: March 2001

### Amendment History (after Revision No. 21)

Revision No.	Revision Date	Amendments
22	November 2022	<ul style="list-style-type: none"> <li>- Revision of Section 5 to incorporate a new requirement that a tender will not be considered or accepted if the tenderer concerned is under suspension from tendering due to misconduct, suspected misconduct, poor site safety record, serious incident or conviction of site safety offences at any point of time between close of tender and the tender award date (both dates inclusive). Similar revisions are made for tender exercise adopting prequalification.</li> <li>- Revision of Section 7 and addition of Appendix 8 to incorporate the checking procedures on the status of contractors in relation to suspension.</li> <li>- General updating of Sections 3, 4, 7, Appendix 1, Appendix 2A and Appendix 3C</li> </ul>

**Amendment History (Revision No. 21 in January 2021)**

<b>Section / Appendix</b>	<b>Amendments</b>
1	<ul style="list-style-type: none"> <li>- Editorial change: <ul style="list-style-type: none"> <li>• provision of a brief introduction of public works procurement, the List of Approved Contractors for Public Works (the “List”) and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works (the “Specialist List”)</li> <li>• re-organisation of general provisions applicable to both the List and the Specialist List in Sections 2 &amp; 3 to Section 1</li> <li>• other general updating</li> </ul> </li> </ul>
2 Appendices 2A & 2B	<ul style="list-style-type: none"> <li>- Revisions in tender limits, financial criteria and admission/ confirmation/ promotion/ retention requirements for contractors on the List</li> <li>- Revision of the procedures of admission</li> <li>- Introduction of the process of regular verification and updating of Contractor Profile for retention</li> <li>- Editorial change: <ul style="list-style-type: none"> <li>• re-organisation of provisions relevant to tendering to new Section 7</li> <li>• combination of original Appendices 2A to 2C into a new Appendix 2A and renaming Appendix 2D to Appendix 2B</li> <li>• other general updating</li> </ul> </li> </ul>
3 Appendices 3A to 3C	<ul style="list-style-type: none"> <li>- Revisions in tender limits, financial criteria and admission/ confirmation/ promotion/ retention requirements for contractors on the Specialist List</li> <li>- Revision of the procedures of admission</li> <li>- Introduction of the process of regular verification and updating of Contractor Profile for retention</li> <li>- Deletion of four categories<sup>1</sup></li> <li>- Editorial change: <ul style="list-style-type: none"> <li>• re-organisation of provisions relevant to tendering to new Section 7</li> <li>• other general updating</li> </ul> </li> </ul>
4 Appendices 4A to 4D	<ul style="list-style-type: none"> <li>- Editorial change: <ul style="list-style-type: none"> <li>• clarification of the procedures of maintaining records and recommending regulating action of domestic sub-contractors and minor works contractors due to poor performance in paragraph 4.5.1 and Appendix 4B</li> <li>• updating the guidance notes for individual aspects of performance in Items 6.6, 6.10, 7.5 &amp; 7.7 in Appendix 4B</li> <li>• other general updating</li> </ul> </li> </ul>

<sup>1</sup> Repair of Motors, Transformers and Switchgear Category; Fabrication of Steel Pipe Specials Category; Motor Vehicle Body-building and Painting Category; and Space Frame System Category.

<b>Section / Appendix</b>	<b>Amendments</b>
5	<ul style="list-style-type: none"> <li>- Editorial change:               <ul style="list-style-type: none"> <li>• clarification of the policy intent and procedures of regulating actions</li> <li>• clarification of the circumstances under which contractors, who have been suspended from tendering for all/some categories of public works or removed from the List and/or the Specialist List, may act as sub-contractors on a public works projects</li> <li>• other general updating</li> </ul> </li> </ul>
6 Appendices 6A to 6E	<ul style="list-style-type: none"> <li>- Editorial change               <ul style="list-style-type: none"> <li>• re-organisation of provisions in Sections 2 and 3 relevant to change of company structure in this Section</li> <li>• other general updating</li> </ul> </li> </ul>
7 Appendix 7A	<ul style="list-style-type: none"> <li>- Editorial change               <ul style="list-style-type: none"> <li>• re-organisation of provisions in Sections 2 and 3 relevant to tendering and related parties in this Section.</li> <li>• other general updating</li> <li>•</li> </ul> </li> </ul>

**Amendment History (up to Revision B-15 dated 20 July 2018)**

<b>Revision No.</b>	<b>Revision</b>	<b>Date</b>	<b>TC No.</b>	<b>Amendment</b>
0	0	10/03/2001	5/2001	-
1	A	21/06/2002	25/2002	As shown in the Annex to WBTC No. 25/2002.
2	B	16/06/2005	9/2005	As shown in paragraph 7 of ETWB TCW No. 9/2005.
3	B-1	16/2/2007		Change from 3-grade to 5-grade Contractors' Performance Reporting System – Appendices 4A, 4B & Annex 1 to Appendix 4B as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (01CXS-01-4) in ETWB(PS) 108/34 of 9 Feb 2007.
4	B-1A	2/5/2007		Extension of time allowed for Contractor's Performance Report processing – paragraph 4.6.4 & Appendix 4D as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (01FK7-01-2) in DEVB(PS) 108/34 of 14 May 2007.
5	B-2	2/3/2009		Revision of Section 9 of Contractor's Performance Report and Guidance Notes – Appendices 4A & 4B as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (01YTL-01-4) in DEVB(PS) 108/34 of 6 Mar 2009.
6	B-3	12/6/2009		Revision of Tender Limit - paragraphs 2.2.1 and 2.5.1 & Appendix 2A as promulgated by letter to all contractors on the List of Approved Contractors for Public Works ref: (0213J-01-1) in DEVB(PS) 108/6/2 of 29 May 2009.

<b>Revision No.</b>	<b>Revision</b>	<b>Date</b>	<b>TC No.</b>	<b>Amendment</b>
7	B-4	17/7/2009		Change of contract sum and financial criteria including employed and working capital and change of category name – Appendices 3A, 3B & 3C as promulgated by letter to all contractors on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (021JC-01-5) in DEVB(PS) 108/6/2 of 3 July 2009.
8	B-5	11/11/2009		Revision of academic qualifications – Annex 15 to Appendix 3C as promulgated by letter to all contractors under the “Ground Investigation Field Work” category of the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (0240X-01-4) in DEVB(PS) 108/34 of 11 Nov 2009.
9	B-5A	1/6/2011		Revision of Section 7 of Contractor’s Performance Report and Guidance Notes – Appendices 4A & 4B as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02BUT-01-7) in DEVB(PS) 108/34 of 18 May 2011.
10	B-5B	5/8/2011		Checklist for Projects of Considerable Scope and Complexity under Buildings category – Annex 1 to Appendix 2B as promulgated by letter to all contractors under the “Buildings” category of the List of Approved Contractors for Public Works ref: (02CPG-01-2) in DEVB(PS) 108/34 of 5 Aug 2011.
11	B-6	1/9/2011		Change in eligibility of Award of Contracts to Probationary Contractors – Sections 2 & 3.
12	B-7	30/4/2012		Review of the re-inclusion requirements for contractors who have been removed due to misconduct, and other routine updates in Sections 2, 3 and 5 as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02FBC-01-9) in DEVB(PS) 108/34 of 30 April 2012.

<b>Revision No.</b>	<b>Revision</b>	<b>Date</b>	<b>TC No.</b>	<b>Amendment</b>
13	B-8	28/11/2012		Update on Items 5.8 and 6.7 of “Guidance Notes for Completion of Reports” as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02H8Y-01-5) in DEVB(PS) 108/34 of 28 November 2012.
14	B-9	11/1/2013		Revision of Sections 1 & 6 of the Report on Contractor’s Performance and the Guidance Notes for Completion of Reports at Appendices 4A & 4B as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02HNX-01-4) in DEVB(PS) 108/34 dated 11 Jan 2013.
15	B-10	25/3/2013		Promulgation of the establishment of the category of “Plumbing Installation”, and revision of the scope and the “minimum technical and management criteria for admission, confirmation and promotion” of the category of “Landscaping: Class I – General Landscape Work” as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02J7J-01-5) in DEVB(PS) 108/34 dated 25 March 2013.
16	B-11	1/9/2013		Revision of the procedures for substitution of listing status in Sections 2 and 6 as promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02J81-01-3) in DEVB(PS) 108/34 dated 23 August 2013.  Rectification of the typographic errors on items 6.8, 7.5 and 7.6 of the Report on Contractor Performance, Part II, Appendix 4A.

<b>Revision No.</b>	<b>Revision</b>	<b>Date</b>	<b>TC No.</b>	<b>Amendment</b>
17	B-12	1/12/2013		<p>Revisions in tender limits/financial criteria and admission/confirmation/promotion requirements for contractors on the List of Approved Contractors for Public Works – Sections 1 and 2, as well as Appendices 2A and 2B as promulgated by letter to all contractors on the List of Approved Contractors for Public Works ref: (02LMY-01-11) in DEVB(PS) 108/34 of 28 November 2013.</p> <p>Revisions in admission/confirmation/promotion requirements for specialist contractors under the categories of Landslip Preventive/Remedial Works to Slopes/Retaining Walls and Turn-key Interior Design &amp; Fitting-out Works – Appendix 3C and Annex 18 to Appendix 3C as promulgated by letters to all specialist contractors under the two relevant categories on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: DEVB(PS) 108/34 of 28 November 2013.</p>
18	B-13	9/5/2014		<p>As promulgated by letter to all contractors on the List of Approved Contractors for Public Works List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (02MQF-01-05) in DEVB(PS) 108/34 of 9 May 2014:</p> <p>(1) Revision of Sections 2 and 6, as well as Appendices 6A to 6E to align with the provision of the new Companies Ordinance (Cap. 622), which commenced operation on 3 March 2014;</p>



Revision No.	Revision	Date	TC No.	Amendment
				<p>(2) Revision of Section 2 to clarify the counting of Housing Authority contracts associated with the eligibility to tender and for the award of contracts, and to align with the updated guidelines on public works tender procedures issued in pursuant to the revised Agreement on Government Procurement of the World Trade Organization which came into force on 6 April 2014 that contractors not yet on the approved contractor list in the relevant category / group / status will be permitted to take tender documents and may also submit a tender according to the tender notice;</p> <p>(3) Revision of Section 5 to clarify the need to report tendering performance of contractors in tender exercises which have been cancelled, and to update the distribution list in relation to the regulating actions associated with contractors given the 2nd consecutive Adverse report on performance;</p> <p>(4) Revision of Appendices 4A and 4B to incorporate new aspects and the relevant guidelines for the assessment of contractors' performance on training of workers to meet manpower demands and productivity enhancements into the Report on Contractor's Performance and the Guidance Notes for Completion of Reports respectively; and</p> <p>(5) General updating of Sections 2 to 5, Appendices 3B, 4A, 4B and 5A to 5D, and Annex 1 to Appendix 3C,</p> <p>Revisions of Section 4 to subsume the requirement on deferment of preparation of a report on contractor's performance if the contract commences shortly before the end of the reporting period as previously promulgated by letter to all contractors on the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works ref: (01RYD-01-6) in DEVB(PS) 108/34 of 26 May 2008.</p>

<b>Revision No.</b>	<b>Revision</b>	<b>Date</b>	<b>TC No.</b>	<b>Amendment</b>
19	B-14	1/12/2016		<p>Revisions in tender limits/financial criteria and admission/confirmation/promotion requirements for contractors on the List of Approved Contractors for Public Works – Sections 1 and 2, as well as Appendices 2A, 2B and 2C as promulgated by letter to all contractors on the List of Approved Contractors for Public Works ref: (02VFH-01-2) in DEVB(PS) 108/34 of 30 November 2016.</p> <p>Revision of Section 2 to update values of contracts normally required financial vetting in paragraph 2.9.2.</p> <p>General updating of Section 2.</p>
20	B-15	20/7/2018		<p>Clarification of some terms in Section 2.</p> <p>Update value of contract normally required financial vetting in paragraph 3.9.2.</p> <p>Revise “Deputy Secretary for Development (Works)2” to “Deputy Secretary for Development (Works)” in paragraph 5.2.1.</p>

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contract. In addition, the contractor may be subject to regulating actions for poor integrity such as negligence, misconduct and impropriety as proven in cases where his employees, agents or subcontractors have solicited, accepted or been given advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) in relation to any public works contract.

## 1.2 Effective Date

1.2.1 This Handbook was first promulgated via Works Bureau Technical Circular (WBTC) No. 5/2001 – Contractor Management Handbook in 2001 and thereafter is updated as and when needed. The current version of this Handbook took effect from **23 November 2022**. When there is any update in the future, the revision date will be stated at the top right corner of the relevant page.

## 1.3 Effect on Existing Technical Circulars

1.3.1 The relevant Technical Circulars which have been superseded or subsumed by this Handbook or shall be read in conjunction with this Handbook are listed in **Appendix 1**. The prevailing Technical Circulars are available at DEVB's website: <https://www.devb.gov.hk/TechnicalCirculars.aspx?section=53&lang=1>.

## 1.4 Amendments in **Revision No. 21 in January 2021**

1.4.1 The major amendments made in **Revision 21** of the Handbook are listed below for ease of reference:

	<u>Brief Description</u>	<u>Reference</u>
(a)	General updating and restructuring	All Sections and appendices except Annexes 3 to 5, 10, 12, 22, 23, 25, 28, 34 to Appendix 3C, Annex to Appendix 4B and Appendix 5A
(b)	Adjustment of Group Tender Limits, Probationary Limits and Financial Criteria	Section 2, Section 3, Appendices 2A (Annex 2), 3B and 3C

	<u>Brief Description</u>	<u>Reference</u>
(c)	Revamping of admission and retention requirements	Section 2, Section 3, Appendices 2A, 3A and 3C

1.4.2 The revised admission/ confirmation/ promotion/ retention management and technical requirements for the contractors on the List and the Specialist List in Section 2 and Section 3, Appendices 2A and 3C took effect from **1 March 2021**. Existing contractors on the List and the Specialist List have been given a transitional period after which they are required to fully comply with these revised requirements by **1 March 2024**. Notwithstanding this transition period, contractors shall meet these revised requirements when tendering for a new contract with tender invitation date falling on or after the effective date, viz. **1 March 2022**.

## 1.5 Amendments in this Revision

1.5.1 Changes incorporated in the previous revisions of this Handbook are listed in the Revision Sheet and the details of amendments are available at DEVB's website: [https://www.devb.gov.hk/en/construction\\_sector\\_matters/contractors/index.html](https://www.devb.gov.hk/en/construction_sector_matters/contractors/index.html).

1.5.2 The major amendments made in November 2022 version of this Handbook are listed below for easy reference:

	<u>Brief Description</u>	<u>Reference</u>
(a)	Incorporating (i) a new requirement that a tender will not be considered or accepted if the tenderer concerned is under suspension from tendering due to misconduct, suspected misconduct, poor site safety record, serious incident or conviction of site safety offences at any point of time between close of tender and the tender award date, and (ii) the associated checking procedures	Paragraphs 5.2.2A & 5.2.2B, subsection 7.6 and Appendix 8
(b)	General updating and renumbering	Paragraphs 3.3.6 & 4.5.3, Subsections 5.9 & 7.7 and Appendices 1, 2A and 3C



- (v) Should the applicant disagree with the Managing Department's rejection decision referred to in the sub-paragraph (b)(iv), he may write to the Managing Department within two weeks of receiving the rejection letter, to request for reconsideration of his application. The Deputy Director or an equivalent D3 officer of the Managing Department should make a decision within two calendar months of the receipt of applicant's request. If the applicant is still not satisfied with the decision, he may further lodge an appeal to DEVB within two weeks of the receipt of the reply from the Managing Department and the decision of DEVB shall be final and binding.
  
- (c) Admission will be subject to the applicant meeting the financial criteria, having the appropriate technical and management capabilities and in all other ways being considered suitable for admission in the Specialist List. For the avoidance of doubt, an applicant satisfying all applicable criteria in **Appendix 3C** may nonetheless be considered unsuitable for admission if there exist any matters which in the DEVB's view may affect the applicant's capabilities in undertaking public works.

3.3.6 Financial checking is not required for applicants of the following 12 categories but shall be subject to review from time to time (see also paragraph [7.7.2](#)):

- (a) Broadcast Reception Installation
- (b) Catering Equipment Installation
- (c) Fabrication of Unfired Pressure Vessels
- (d) Land, Engineering and Hydrographic Survey Services
- (e) Liquefied Petroleum Gas Installation
- (f) Radio Electronics Installation
- (g) Repair and Restoration of Historic Buildings
- (h) Soil and Rock Testing

for information. Upon the receipt of recommendations, reports and other relevant information from departments, Managing Department(s) should conduct a review on all recommendations and make a recommendation to DEVB on the follow-up action(s) required.

4.5.2 Subject to paragraphs 4.5.3, 4.5.5 and 4.5.6 below, the reports should normally be quarterly from the commencement of the Works until the issue of the Maintenance Certificate or the Defects Liability Certificate, or until completion of all Works Orders in the case of term contracts.

4.5.3 It is noted that there may be few activities taking place in the very early period of a contract. To address this situation, the Reporting Officer shall generally not be required to prepare a report on a contractor's performance for a reporting period in which the contract has commenced less than 3 weeks before the end of such a reporting period. The Reporting Officer should include this short period in the report on contractor's performance for the subsequent reporting period instead. Notwithstanding this, if the Reporting Officer considers that a report on a contractor's performance is necessary for such a period, e.g. due to occurrence of a serious incident as defined in DEVB TC(W) No. [4/2022](#), the Reporting Officer shall prepare the report and provide reasons in the report to substantiate the need for reporting for such a short reporting period.

4.5.4 For reporting of contractors' performance during the maintenance or defects liability periods, "Attitude to claims" and a minimum of four out of the ten major aspects of performance shall be assessed and rated. It should be noted that the performance to be reported during such periods would mainly cover performance of outstanding works and repair or rectification of defects<sup>1</sup>.

4.5.5 After the Maintenance Certificate or the Defects Liability Certificate has been issued, quarterly reports are no longer required. Instead, except for term contracts for which no further reports are required, a report on contractor's performance should be made upon issue of the final payment certificate (which will cover the resolution of claims).

4.5.6 If a contractor's overall performance is poor and close monitoring is desirable, additional six-weekly intervening reports between the normal reporting periods may be made by the Reporting Officer provided that the contractor shall be given written notice of not less

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<sup>1</sup> In case when there are no outstanding works and repair/rectification of defects are completed, Reporting Department may evaluate the need for preparing a quarterly report on contractor's performance. Subject to agreement of the relevant Managing Department, Reporting Department may not be required to prepare a quarterly report within the maintenance or defects liability period. In such case, SEO(PS), DEVB should be informed accordingly.

## 5.2 Removal, Suspension, Downgrading or Demotion of Contractors

5.2.1 Letters notifying contractors of their removal, suspension, downgrading or demotion from the List and/or the Specialist List will be issued only by DEVB and be signed by the Deputy Secretary for Development (Works).

5.2.2 If the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is under suspension from tendering for public works in a particular category or in all categories, his tender for that particular category or for all categories, as the case may be, will not be considered unless the suspension is lifted by the Works Department or DEVB by the date set for the close of tender, or if this has been extended, the extended date. If the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is under voluntary suspension from tendering for public works in a particular category or in all categories, at the date of tender invitation but subsequently revokes the voluntary suspension without agreement in writing from either the Works Department or DEVB, his tender for that particular category or for all categories, as the case may be, will not be considered.

5.2.2A In addition to paragraph 5.2.2 above, if a tenderer or if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture, is:

- (a) under suspension from tendering for public works in all categories pursuant to paragraphs 5.2.3(c)(i) or 5.2.3(c)(vi) below; or
- (b) under suspension from tendering for public works in a particular category arising from “poor site safety record in a category” specified in paragraph 5.2.3(d)(ii) or the occurrence of serious incident or conviction of site safety offences specified in DEVB Technical Circular (Works) No. 4/2022,

and if the aforesaid suspension is in force at any point of time between (i) the date set for the close of tender or if this has been extended, the extended date, and (ii) the date on which the contract is awarded (both dates inclusive), its tender will not be considered or accepted.

5.2.2B Where prequalification stage is involved in a tender exercise, if the applicant or prequalified contractor is under suspension from tendering in a particular category or in all

categories due to the circumstances mentioned in paragraph 5.2.2A (a) or 5.2.2A (b) above, and if the aforesaid suspension is in force at any point of time between (i) the date set for the close of prequalification or if this has been extended, the extended date and (ii) the date on which the contract is awarded (both dates inclusive), its prequalification application or tender will not be considered or accepted.

5.2.3 As a general requirement, when a case arises in a public works contract which warrants taking of regulating action against a contractor/supplier on the List and/or Specialist List, the department (“**the department concerned**”) which administers the works contract directly or indirectly through entrustment to another party should be responsible for initiating the process of taking regulating actions against the contractor/supplier concerned in accordance with the guidelines below. Prompt action shall be taken by the head of the department concerned to decide whether the contractor/supplier concerned should be removed, suspended, downgraded or demoted, and recommend the proposed regulating action to the Managing Department of the categories concerned. The department concerned should also copy its correspondences with the Managing Department to DEVB. In considering the recommendation made by the department concerned, the Managing Department may consult other departments which may be affected by the case. The Managing Department shall make a recommendation to DEVB for consideration within a reasonable period of time (preferably not more than six weeks after the receipt of the recommendation of the department concerned). Such a recommendation should be personally endorsed by an officer at D3 rank or above of the Managing Department. In drawing up its recommendation to DEVB, the Managing Department should make reference to the following guidelines which indicate the normal sanction to be imposed in given circumstances. It is open to the department concerned and the Managing Department to recommend a more severe or less stringent action if particular circumstances warrant it. When a case arises in a non-Government construction contract which warrants taking of regulating action against a contractor/supplier on the List and/or Specialist List, the Managing Department may initiate a recommendation on its own in the absence of a recommendation from the department concerned, if it thinks fit. In any case, DEVB has its right to initiate any regulating actions that it considers necessary.

- (a) Circumstances warranting removal from all categories in which the contractor is listed
  - (i) Serious misconduct.
  - (ii) Complicity in the serious misconduct of an employee, agent or sub-contractor.

- (iii) Removal by the Registered Contractors' Disciplinary Board from the Contractors' Register maintained under the Buildings Ordinance. If a contractor is disciplined by the Registered Contractors' Disciplinary Board, the Director of Buildings shall inform DEVB so that consideration may be given to the imposition of an appropriate penalty (removal, suspension, downgrading or demotion in respect of the contractor's position on the List and/or the Specialist List. When a contractor, who is also on the Contractors' Register kept by the Building Authority, is removed from the List and/or the Specialist List for misconduct, DEVB may refer the case to the Building Authority who may then decide under the Buildings Ordinance whether or not to refer the case to the Registered Contractors' Disciplinary Board.
- (iv) Bankruptcy and winding up of business.
- (v) Poor performance or other serious causes which is/are considered by the Secretary for Development as serious in any public or private sector works contract.
- (b) Circumstances warranting removal from a particular category
  - (i) Failure to submit a competitive tender within a period of three years in any category despite being eligible to do so, or submission of non-conforming tenders on three or more occasions within a period of three years in any category; provided that such practice gives rise to reasonable suspicions as to the capability or integrity of the contractor concerned. For the purpose of this sub-paragraph, tenders withdrawn after the tender closing date shall be considered as non-submission of tender. Where the provision of certain information is an “essential requirement” of a tender, the tender without giving such information or giving incomplete information stipulated as essential requirement shall be considered as non-conforming. A competitive tender is defined as a conforming tender which is capable of being accepted under the Government’s procurement guidelines, rules and procedures and the tender price<sup>1</sup> does not exceed 25% of the average tender price of all tenders received under the tender exercise. Any tender which is non-conforming or is not capable of being accepted under the Government’s procurement guidelines, rules and procedures shall not be considered as a competitive tender. A warning letter shall be sent by the Managing Department, copied to DEVB at least six months but not more than one year before the expiry of the three-year period, to any contractors who appear

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<sup>1</sup> For NEC, tender price shall be the forecast total of the Prices submitted.

likely to fall into this situation. If, at the expiry of the period, no tenders have been submitted or there are submissions of non-conforming tenders on three or more occasions, a further letter seeking explanation shall be sent. The Managing Departments should take all explanations into account before recommending removal. Nevertheless, if the circumstances of the cases warrant, the Managing Departments may recommend DEVB to take other regulating actions (such as suspension, downgrading to probationary status or demotion to a lower group) against the contractor concerned. A contractor who tenders for a project open to contractors in more than one category shall be credited with having tendered in each of those eligible categories for which he is listed. Records of contractors' tenders, whether accepted or not, are to be maintained by the Managing Department of the relevant category. When a department other than the Managing Department calls tenders in a category, the tenders shall be reported to the Managing Department after acceptance, or as the case may be, approval of the cancellation of the tender exercise by the Central Tender Board or Public Works Tender Board or other relevant approving authority.

- (ii) Withdrawal of tenders in a category within the tender validity period therefor on two or more occasions within a 12-month period as stipulated under Sub-section 5.13 below.
- (iii) Poor site safety record in a category.
- (iv) Poor performance in a category, normally but not necessarily on more than one contract.
- (v) Failure to obtain Quality Management System certification after having been suspended for three years (including voluntary and mandatory suspension).
- (vi) Failure to submit a tender in a category within a period of three years despite being eligible to do so.
- (vii) Failure/continued failure to satisfy requirements on the management and technical capability after having been suspended from tendering in a particular category under sub-paragraph 5.2.3(d)(v) below.

- (c) Circumstances warranting mandatory suspension from tendering in all categories (*Unless otherwise directed by DEVB, a review should be carried out by the Managing Department at appropriate timing prior to the expiry of suspension period.*)
- (i) Misconduct or suspected misconduct.
  - (ii) Indications of cash flow problems (care must be taken that suspension on these grounds will not aggravate the problems).
  - (iii) Poor performance, where it is desirable to ensure that the contractor completes his current commitments before undertaking further projects. Guidelines for monitoring of performance in Sub-section 5.4 below should be followed prior to a recommendation for suspension.
  - (iv) Suspected serious poor performance or other serious causes in any public or private sector works contract.
  - (v) Poor environmental protection record.
  - (vi) Poor site safety record.
- (d) Circumstances warranting mandatory suspension from tendering in a particular category (*Unless otherwise directed by DEVB, a review should be carried out by the Managing Department at appropriate timing prior to the expiry of suspension period.*)
- (i) Poor performance in a contract. Guidelines for monitoring of performance given in Sub-section 5.4 below should be followed prior to a recommendation for suspension. While poor performance in a particular category will generally warrant suspension only in that category of work, departments may consider recommending to DEVB for suspension to be extended to other categories if the contractor repeatedly shows poor performance in aspects, such as poor management ability, which are likely to adversely affect other categories.
  - (ii) Poor site safety record in a category.
  - (iii) Failure to comply with the provisions for employment of Technician Apprentices

and Building and Civil Engineering graduates as required.

- (iv) Failure to comply with the provisions for employment of sub-contractors registered under the Specialist Trade Contractors Registration Scheme of the Construction Industry Council as required.
  - (v) Failure to submit information and/or satisfy requirements on the management and technical capability.
  - (vi) Failure to obtain Quality Management System certification as required.
  - (vii) Withdrawal of tenders in a category within the tender validity period therefor on two or more occasions within a 36-month period as stipulated under Sub-section 5.13 below.
  - (viii) Failure to submit Sub-contractor Management Plans as required.
- (e) Circumstances warranting downgrading or demotion in a particular category
- (i) Poor performance, normally but not necessarily on more than one contract (in the case of probationary contractors in the lowest groups, this will normally warrant removal from the List and/or the Specialist List).
  - (ii) Failure/continued failure to satisfy the requirements on the management and technical capability after having been suspended from tendering in a particular category under sub-paragraph 5.2.3(d)(v) above but the management and technical capability satisfies the requirements of a probationary contractor in the same group or a lower group within a specified category.

5.2.3A Further to the above paragraph 5.2.3, removal or suspension from the List and/or the Specialist List or from a particular category thereof **will normally prohibit** a contractor from acting as a sub-contractor on a public works project, **unless**:

- (a) the contractor concerned has been awarded the sub-contract at a time prior to the effective date of his removal or suspension from the List and/or the Specialist List;  
or
- (b) the removal or suspension of the contractor concerned from the List and/or the



Specialist List was due to reasons in accordance with Sub-section 5.5 or 5.6 below;  
or

- (c) the works to be undertaken by the contractor as a sub-contractor is NOT specified in a public works contract to be supplied or carried out by contractor on the List and/or the Specialist List.

5.2.4 For the purpose of paragraphs 5.1.3(v), 5.2.3(a)(i) and 5.2.3(c)(i) in determining whether a contractor has committed acts of serious misconduct, misconduct or suspected misconduct, the acts or omissions of:

- (a) a director of a contractor (if the contractor is a company) or a partner in a contractor (if the contractor is a partnership) or a participant/shareholder of a joint venture contractor; or
- (b) any person who, under the immediate authority of the board of directors of the contractor, exercises managerial functions; or
- (c) any employee, agent or sub-contractor of the contractor (other than the persons referred to in (a) or (b) above), if the contractor has knowledge (actual or implied) or ought to have known or is being reckless as to the serious misconduct, misconduct or suspected misconduct of the employee(s), agent(s) or sub-contractor(s) concerned,

shall be deemed to be the acts or omissions of the contractor.

- 5.2.5 (a) For the purpose of paragraphs 5.1.3(v), 5.2.3(a)(i), 5.2.3(a)(ii), 5.2.3(c)(i) and 5.2.4, “misconduct” means any unlawful behaviour involving corruption or fraud or breach of faith whether or not the person charged with an offence is convicted for offence involving the unlawful behaviour but a conviction of a criminal offence shall be conclusive for the requirement of misconduct. “Suspected misconduct” shall be construed accordingly but if the person is charged with any offence involving corruption, fraud or breach of faith, it shall be conclusive for the requirement of suspected misconduct. In determining whether there is “serious misconduct”, all relevant factors including but not limited to (i) the facts and circumstances giving rise to the misconduct concerned, (ii) the ranking, the involvement and role of the contractor’s employee, agent and sub-contractor who has been involved in the misconduct concerned, (iii) the contractor’s immediate response to the

misconduct concerned, (iv) the contractor's benefit that could have arisen or has arisen out of the misconduct concerned, and (v) the consequences brought about by the misconduct concerned, shall be considered.

- (b) For the purpose of paragraph 5.2.4(c), "reckless" means "heedless of the risks of misconduct where the person can foresee, or should reasonably have foreseen, some probable or possible harmful consequence of risks but nevertheless decides to continue with those actions or omissions with an indifference to, or conscious disregard of, the consequences of risks". The nature of the risk is to be assessed by reference to whether it is obvious to an ordinary prudent person that the act or omission of the contractor is capable of causing misconduct which gives rise to the consideration of regulating action(s).
- (c) For the avoidance of doubt, "sub-contractor" referred to in paragraphs 5.1.3(xiii), 5.2.3(a)(ii) and 5.2.4, and this paragraph includes all tiers of sub-contractors, and employees and agents of all tiers of sub-contractors.

5.2.6 Pursuant to paragraphs 2.4.3 and 3.4.3, a contractor failing to provide proof of complying with all the IMS requirements for the purpose of upkeeping the operation of the IMS will be mandatorily suspended from tendering in all categories. The contractor shall prove to DEVB that the IMS requirements are met before he is considered for reinstatement.

5.2.7 The Secretary for Development may additionally initiate regulating actions on contractors under the following circumstances:

- (a) Persistent convictions pertaining to site safety and other construction activities;
- (b) Repeated failure to submit accounts and supplementary information and satisfy retention requirements in force at the time;
- (c) Be convicted of illegal worker offences for more than two times within a rolling 12-month period;
- (d) Contravention of the Employment Ordinance;
- (e) Contravention of the Competition Ordinance (Cap. 619).

5.2.8 Notwithstanding paragraph 5.2.3 above, the department concerned and/or the Managing Department should take note of the following requirements to facilitate the timely action to be taken by DEVB: -

- (a) Departments concerned should report immediately to DEVB (Attention: Principal Assistant Secretary (Works)<sup>4</sup>) cases of prosecution and/or conviction of integrity-related offences involving contractor(s) in relation to contracts under their purview when such cases come to their knowledge.
- (b) For any cases involving more than one department concerned and/or Managing Departments, DEVB may assign a department to take a leading role in following up the case.
- (c) For any cases involving serious or suspected serious poor performance of the contractor, or other serious causes in respect of any non-Government construction contracts, DEVB may assign an appropriate department to conduct an investigation and make a recommendation to DEVB.
- (d) For the purpose of recommending an appropriate regulating action(s) (e.g. the period of suspension commensurate with the severity of the case) to DEVB in accordance with paragraph 5.2.3, the following factors should be considered: -
  - (i) the facts and circumstances giving rise to the case which warrants the consideration of taking regulating action;
  - (ii) the ranking, involvement and role of the contractor's staff who has been involved in the case concerned;
  - (iii) the contractor's immediate response to the case concerned;
  - (iv) the contractor's remedial/preventative measures taken before and after the occurrence of case concerned;
  - (v) records of the contractor's past performance and regulating action(s) taken against it;
  - (vi) the consequences brought about by the case concerned (e.g. the losses to the Government if the cases were NOT revealed and whether the losses are irrecoverable);

- (vii) the contractor's benefit that has arisen or could have arisen by the case concerned;
- (viii) whether the contractor is a repeated offender for the case(s) of similar nature;
- (ix) whether the contractor is genuinely contrite or remorseful about the occurrence of the case concerned; and
- (x) any special consideration warranting a more severe or less stringent action.

5.2.9 The measures referred to Sub-section 5.2 are cumulative and not mutually exclusive. The Secretary for Development may take one or more measures where the circumstances of the case warrant so.

### **5.3 Uplifting of Suspension**

5.3.1 Except those voluntary suspensions mentioned in Sub-section 5.4 below and those suspensions mentioned in Sub-sections 5.7 to 5.14 below, which will be dealt with in accordance with the procedures provided therein, as a general requirement, contractors suspended by DEVB for whatever reason are required to meet the normal entry criteria including submission of the latest audited financial statements and/or management accounts where appropriate for a financial check, and other additional requirements imposed by DEVB before consideration can be given to their reinstatement on the List and/or the Specialist List. Failure to meet these requirements may result in extension of the suspension period, downgrading to probationary status, demotion to a lower group or removal from a category of the List and/or the Specialist List.

### **5.4 Contractors Given Adverse Reports on Performance**

5.4.1 The purpose of removal, suspension, downgrading or demotion of contractors from the List and/or the Specialist List following an Adverse report is to ensure that: -

- (a) only suitable competent contractors are allowed to tender for contracts;
- (b) pressure is put on the contractor to improve his performance; and
- (c) contractors are all treated alike: firmly, but with consistency and fairness.

5.4.2 Please note sub-paragraph 4.6.4(c) above for the requirement of sending an advance copy of the Report on Contractor's Performance to the contractor.

5.4.3 For tenders invited without the exact category of works having been specified, the department managing the contract will act as the Managing Department for the purpose of performance reporting and taking appropriate regulating actions.

5.4.4 The Government must act fairly when taking regulating actions. Contractors must, therefore, be provided with the gist of the Government's case and be given adequate warning of proposed actions so that they may have the opportunity to present their view of the matter. Full consideration must be given to any points raised by contractors before action is taken.

5.4.5 Because the circumstances of contracts and contractors vary greatly, the following actions to be taken for consecutive Adverse reports are not rigid requirements, but if they are not followed, written justification is required on file.

(a) 1st Adverse report: -

(i) Warning Letter - The Chairman of the Reporting Review Committee ("**RRC**") shall write on behalf of his Director to the contractor within two weeks of the reporting date advising him that the report is Adverse and the reasons for the Adverse report, and warning him of the need to improve (standard letter at **Appendix 5A**). The Managing Department will be advised of the same.

(ii) Interview - The Chairman of the RRC or his representative shall interview the contractor within three weeks of the reporting date to discuss the shortcomings in his performance, the seriousness of the situation, and the need to suspend him from further tendering should there be a consecutive Adverse report. The Chairman shall write on behalf of his Director to the contractor confirming the points made. It is particularly important to include the warning of possible suspension in the letter to the contractor. The Managing Department will be advised of the same.

(b) 2nd consecutive Adverse report: -

(i) Voluntary Suspension - The Chairman of the RRC or his representative shall write to the Managing Department for approval to interview the contractor with the aim of seeking the contractor's agreement to voluntary suspension i.e. to refrain from tendering. Upon receipt of the approval from the Managing Department (which

should be issued promptly), the Chairman of the RRC will then interview the contractor (normally within 2 weeks after obtaining the approval from the Managing Department) explaining that his continuing poor performance requires action to protect Government's interests by ensuring that the contractor is not awarded any further contracts in the category until confidence in his performance is restored. At the same time, the Chairman of the RRC will invite the contractor to agree to voluntary suspension and to confirm this in writing to the Director of the Managing Department within 1 week after the interview date. The contractor should be warned that failure to agree to voluntary suspension within 1 week after the interview date could lead to mandatory suspension which will result in publication of the suspension by DEVB through appropriate means including DEVB's webpage, press release, gazette, etc. as DEVB thinks fit. The Chairman of the RRC should also confirm other points made at the interview and warn the contractor that at the end of the contract his performance will be assessed and if the overall assessment is Adverse, he may be downgraded, demoted or removed. The contractor should also be informed at the interview that he will be placed on a six weekly reporting schedule.

- (ii) On receipt of confirmation of voluntary suspension in writing, the Director of the Managing Department will circulate this confirmation to all the Works Departments, the Housing Authority and DEVB under restricted cover. The start date of the voluntary suspension shall be the date the contractor agrees to the suspension in writing or the date the Managing Department receives the written confirmation from the contractor concerned, whichever is the later. The period of voluntary suspension should continue until the suspension has been uplifted by the Managing Department. Uplifting of the voluntary suspension should be considered when the contractor has performed satisfactorily for a minimum of six months or until and in any event an overall review of the situation should be carried out at the first quarterly review after substantial completion/satisfactory completion of the contract (or de facto completion<sup>2</sup> where certificates of substantial completion/satisfactory completion have not been issued), whichever is the later. If voluntary suspension was made during the maintenance period or defects liability period, uplifting of the voluntary suspension should be considered when the contractor has performed satisfactorily for a minimum period of three months. The Chairman of the RRC shall write to the Director of the Managing Department recommending uplifting of voluntary

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<sup>2</sup> For re-entered contracts, the de facto completion would be taken as at the time when all remaining works left by defaulting contractor and other necessary works (including rectification or remedial works) arising out of re-entry have been completed by others.

suspension who shall then consult all the other Works Departments to ensure that there are no objections to the uplifting. Confirmation of the uplifting of suspension shall then be made by the Managing Department to all the Works Departments, the Housing Authority and DEVB under restricted cover.

- (iii) If the contractor does not agree to voluntary suspension, the Chairman of the RRC shall write to the Managing Department recommending that the contractor be suspended on a mandatory basis for the same period and subject to the same follow-up action as if the contractor agreed to voluntary suspension. If the Managing Department agrees to the RRC's recommendation, a proposal for mandatory suspension of the contractor shall be made to DEVB and copied to the RRC. In general, the Managing Department should only disagree with the recommendation of the Chairman of the RRC if there is a possibility that suspension of the contractor could adversely affect other contracts held by the contractor. Notwithstanding the above, if the case warrants, DEVB may request the Managing Department to review the justification(s) of the RRC's recommendation and to interview the contractor further to ensure that the RRC's recommendation is fair and reasonable. The Chairman of the Managing Review Committee ("MRC") shall write under restricted cover to all the Works Departments, the Housing Authority and DEVB advising why the recommendation for mandatory suspension of the contractor has not been supported. Mandatory suspension of a contractor will be actioned by DEVB and published through appropriate means as DEVB thinks fit.
  - (iv) Six Weekly Reporting – This shall be introduced after the second consecutive Adverse quarterly report and continued until a Not Adverse report is received. Thereafter normal quarterly reports apply. If the six weekly reports on a contract have been discontinued and the contractor subsequently receives a further Adverse report, the six weekly reports should be immediately reintroduced until a Not Adverse report is received. Six weekly reports carry the same weight as quarterly reports and should be completed and processed in exactly the same manner. The RRC should normally review the six weekly reports shortly after they have been received, to ensure the effectiveness of the more intense monitoring system.
- (c) Continuing Adverse reports: -

Six weekly reporting should continue. Further interviews with the contractor shall be at the discretion of the Reporting and Managing Department.

(d) End of contract: -

At the first quarterly review after substantial completion/satisfactory completion of the contract (or de facto completion<sup>2</sup> where certificates of substantial completion/satisfactory completion have not been issued) for which any Adverse report has been received, an overall review should be carried out by the RRC to decide whether or not a recommendation should be made to downgrade, demote or remove the contractor from the List and/or the Specialist List. The Managing Department should be informed of the RRC decision. To ensure fair and proper conduct of the end of contract review and consistent practices adopted for reviews by different RRCs, Managing Departments should draw up tailored guidelines for RRCs' reference.

(e) More than one contract receiving Adverse reports in a category: -

- (i) If a contractor receives 1st Adverse reports simultaneously in several contracts in a category, the Managing Department may consider stronger regulating action than those recommended in sub-paragraph 5.4.5(a) above.
- (ii) At the stage when voluntary suspension is proposed, if the contractor has Adverse reports in contracts under two Reporting Departments, but in the same category, the Director of the Managing Department may decide to interview the contractor personally.

(f) Adverse reports in several categories: -

At the stage when voluntary suspension is proposed, within the general framework of the guidelines, Managing Departments of the several categories involved should agree as to who should interview the contractor and to which category or categories the suspension should apply. If this cannot be resolved, the matter should be referred to DEVB for a decision.

5.4.6 Departments may consider recommending suspension to be extended to other categories if a contractor consistently shows poor performance in aspects, such as poor management ability, which are likely to affect other categories of works. In such cases, the Chairman of the RRC shall write to the Chairman of the MRC recommending suspension in more than one category. The Chairman of the MRC will assess the reasons given by the RRC and make a follow-up recommendation to DEVB.



5.4.7 Notwithstanding the provisions given in paragraph 5.4.5 above for consecutive Adverse reports, the RRC should consider recommending suspension in cases of repeated Adverse reports which are not consecutive. The procedure shall be similar to that set out in sub-paragraph 5.4.5(b) above.

5.4.8 As a general principle, in the case of contracts being carried out by joint venture, partnerships or consortia, the regulating actions arising from poor performance on a contract shall be applied equally to all individual members of the joint venture. Nevertheless, if the case warrants, DEVB may take different regulating actions against individual members of the joint venture.

## **5.5 Non-submission of Accounts and Information**

5.5.1 Failure to submit accounts, answer queries or provide information within the prescribed time will warrant: -

- (a) mandatory suspension from tendering; or
- (b) removal from the List and/or the Specialist List.

5.5.2 Contractors failing to submit annual audited financial statements/ half-yearly management accounts within the following time limits shall be suspended automatically from tendering. Regarding the submission of annual audited financial statements, if the auditor has issued a disclaimer of opinion or adverse opinion on the annual audited financial statements, the contractor shall be deemed as failing to submit the required annual audited financial statements, unless or until the contractor submits another audited financial statements for the same accounting year or for a subsequent period with the auditor's opinion that the financial statements fairly present the financial position of the contractor. Contractors deemed as failing to submit the annual audited financial statements shall be suspended automatically from tendering.

<u>Submission</u>	<u>Contractors</u>	<u>Time Limit</u>
Annual Audited Financial Statements	Contractors on the List of Approved Contractors for Public Works - Groups A, B & C	6 months after the end of the accounting period
	Contractors/Suppliers on the List of Approved Suppliers of Materials and Specialist Contractors for Public Works	6 months after the end of the accounting period
Half-yearly Management Accounts	Contractors on the List of Approved Contractors for Public Works - Group C	6 months after the end of the accounting period

5.5.3 Within two months but not less than one month before the prescribed time limit, a letter shall be sent by registered post to contractors to warn them that they will be suspended unless annual audited financial statements/ half-yearly management accounts are submitted within the time limit. Under no circumstances would extension of the due date be granted.

5.5.4 A contractor suspended under paragraph 5.5.2 above will not be reinstated automatically upon submission of annual audited financial statements/ half-yearly management accounts. The reinstatement shall only be considered after the contractor has submitted all his omitted annual audited financial statements/ half-yearly management accounts and has proved to the satisfaction of DEVB that his financial position meets all the criteria appropriate to his group and status.

5.5.5 If a contractor fails to answer queries or provide information within the specified time for financial assessment, he shall be suspended from tendering automatically until he has proved that his financial position meets all the criteria appropriate to his group and status.

5.5.6 Should the contractor fail (or be deemed to fail) to submit two consecutive audited financial statements within 6 months after the end of the last accounting period, or be suspended for one full year under paragraph 5.5.2 or 5.5.5 above and yet to provide (a) the annual audited financial statements and/or half-yearly management accounts, the outstanding answer(s), or information, which gave rise to the aforesaid suspension, and (b) other documents/information

required by DEVB as specified in the letter of suspension, he shall be removed automatically from the List and/or the Specialist List.

5.5.7 These procedures will be applied by DEVB. The Works Departments will not be consulted prior to taking action but will immediately be informed.

5.5.8 If any member of a joint venture or consortium is suspended from tendering under these procedures, then the joint venture or consortium shall be ineligible to tender.

## **5.6 Failure to Meet the Financial Criteria**

5.6.1 Failure to meet the financial criteria or requirements as established by DEVB within the prescribed time will warrant: -

- (a) mandatory suspension from tendering (a time limit for review to be set and the contractor will be subject to a financial vetting before being considered for reinstatement); or
- (b) downgrading to probationary status or demotion to a lower group of the List and/or the Specialist List; or
- (c) removal from the List and/or the Specialist List.

5.6.2 If a contractor fails to make good the shortfall in share capital, employed capital and/or working capital within the time period as specified by DEVB for retention purpose, he shall be suspended automatically from tendering for a minimum period of six months starting from the commencement of the suspension notified by DEVB in the letter of suspension or until the shortfall is rectified, whichever is later.

5.6.3 Should the contractor fail to meet any financial criteria (including, but not limited to, to make good the shortfall in capital(s)) within one year from the commencement of the suspension shown in the letter of suspension, he shall be removed automatically from the List and/or the Specialist List.

5.6.4 The following regulating actions shall be applicable to the contractors on the List and/or the Specialist List and be imposed against those contractors incurring substantial loss in their business: -

- (a) If any contractor suffers from an average loss rate greater than 20% in any one year, a warning letter shall be sent by the Finance Section of DEVB (copied to SEO(PS), DEVB and all the Works Departments) reminding the contractor that should the average loss rate exceed 30% based on the audited financial statements of the subsequent financial year, the contractor may be downgraded, demoted or removed from all the categories in which he is listed. Upon notification, the Works Departments shall increase their general vigilance in supervising the contractor's works.
- (b) If any contractor suffers from an average loss rate greater than 30%, the contractor shall be:
  - (i) downgraded to probationary status if he holds a confirmed status in any group or category; or
  - (ii) demoted to confirmed status of a lower group if he holds a probationary status in the higher group; or
  - (iii) demoted to a lower group if he is under a category in the Specialist List which has no probationary status; or
  - (iv) suspended from tendering if he holds a probationary status in the lowest group or category or is under a category in the Specialist List which has no probationary status.
- (c) For contractors regulated under sub-paragraph (b) above, if their average loss rates continue to be above 30% based on the audited financial statements for the following two financial years, the regulating actions in sub-paragraph (b) above shall be imposed again. A contractor who has been suspended from tendering under sub-paragraph (b)(iv) above will be removed from the List and/or the Specialist List.
- (d) Provided that the contractor has not been removed from the List and/or the Specialist List, if his latest audited financial statements show that the average loss rate is less than 30%, the regulating action imposed under sub-paragraph (b) or (c) above could be uplifted and the contractor could reinstate his status to that just before the latest regulating action subject to meeting all the criteria including

financial requirements appropriate to his group and status.

- (e) If the contractor's audited financial statements show that the average loss rate exceeds 30%, the contractor can inject capital to strengthen the shareholder's funds or net worth, which will be taken into account in determining the revised loss rate for the year under review.
- (f) A contractor who is regulated under the Profitability Trend Analysis ("PTA") may apply to waive the application of PTA upon the provision of full justification. In this regard, approval will be granted only under special circumstances.

5.6.5 These procedures will be applied by DEVB. The Works Departments will not be consulted prior to taking action but will immediately be informed.

## **5.7 Contractors Convicted of Contraventions of the Employment Ordinance (Cap. 57)**

5.7.1 Any contractors convicted of three or more offences under the Employment Ordinance (Cap. 57), in respect of separate incidents in a rolling 12-month period, shall be compulsorily and automatically suspended from tendering for public works for six months. The suspension shall take effect from the date of the last conviction. Convictions in respect of all public and private contracts shall be counted.

5.7.2 On expiry of the six-month suspension period, if there have been no further convictions as defined in paragraph 5.7.1 above under the Employment Ordinance (Cap. 57) during the suspension period, the suspension shall be lifted. If there have been any further conviction/convictions as defined in paragraph 5.7.1 above during the suspension period, the suspension shall automatically continue for six months from the date of the last conviction until there is no further conviction during the extended period or further extended period.

5.7.3 The date of conviction, not the date of commission of the offence, shall be used in determining action under these procedures.

5.7.4 These procedures will be applied by DEVB. The Works Departments will not be consulted prior to taking action but will immediately be informed.

5.7.5 The General Condition of Tender in relation to the statement of convictions under the Employment Ordinance (Cap. 57), as shown in the website of DEVB, shall be included in all tender documents.

5.7.6 A tender will not be considered if, by the date set for the close of tender, or the extended date if this has been extended, the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is suspended from tendering under the provisions of this Sub-section.

5.7.7 Departments shall include in the tender reports submitted to the relevant Tender Board a statement stating that the recommended tenderer is not suspended from tendering under the provisions of this Sub-section.

5.7.8 A conviction against each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall be counted as a conviction against a partnership or an unincorporated joint venture or incorporated joint venture with different participants for the partnership or unincorporated joint venture or different shareholders for the incorporated joint venture for which the conviction was made.

5.7.9 For a limited company which substituted a partnership or sole proprietor or a limited company which substituted another limited company as defined in Sub-section 6.5, the limited company shall disclose the name of the entity prior to the substitution, where such substitution takes place within the 12-month period prior to the tender closing date. Convictions of the limited company including convictions of the entity (which includes partnership or sole proprietorship or limited company) before substitution, which fall within the 12-month period prior to the tender closing date, shall be taken into account in the tender assessment.

5.7.10 Where the tenderer is a partnership or an unincorporated or incorporated joint venture, the provisions of paragraph 5.7.9 above shall apply to participants of the partnership or unincorporated joint venture or shareholders of the incorporated joint venture who is/are limited company/companies.

## **5.8 Contractors Convicted of Employing Illegal Workers or of Having Illegal Workers on Sites under their Control**

5.8.1 Any contractors convicted of three or more offences under the Immigration Ordinance (Cap. 115), for employing illegal workers or for having illegal workers on sites under their control in respect of separate incidents in a rolling 12-month period, either as main contractors or sub-contractors (whether nominated, specialist or domestic) or otherwise as persons/companies who have control over or are in charge of the construction sites, shall be

compulsorily and automatically suspended from tendering for public works for six months. Illegal workers shall mean any persons on construction sites who are illegal immigrants; or any persons who, being not lawfully employable by virtue of Section 17G(2) of the Immigration Ordinance, have committed an offence under Section 41 by contravening the conditions of stay in force in respect of them. The suspension shall take effect from the date of the last conviction. Convictions in respect of all public and private contracts shall be counted.

5.8.2 On expiry of the six-month suspension period, if there have been no further convictions as defined in paragraph 5.8.1 above under the Immigration Ordinance (Cap. 115) during the suspension period, the suspension shall be lifted. If there have been any further conviction/convictions as defined in paragraph 5.8.1 above during the suspension period, the suspension shall automatically continue for six months from the date of the last conviction until there is no further conviction during the extended period or further extended period.

5.8.3 The date of conviction, not the date of commission of the offence, shall be used in determining action under these procedures.

5.8.4 These procedures will be applied by DEVB. The Works Departments will not be consulted prior to taking action but will immediately be informed.

5.8.5 The General Condition of Tender in relation to the statement of convictions under the Immigration Ordinance (Cap. 115), as shown in the web-site of DEVB, shall be included in all tender documents.

5.8.6 A tender will not be considered if the tenderer or, if the tenderer is a partnership or an unincorporated or incorporated joint venture, any participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture is suspended from tendering under the provisions of this Sub-section, unless the suspension is lifted by the date set for the close of tender, or if this has been extended, the extended date.

5.8.7 Departments shall include in the tender reports submitted to the relevant Tender Board a statement stating that the recommended tenderer is not suspended from tendering under the provisions of this Sub-section.

5.8.8 A conviction against each participant of the partnership or unincorporated joint venture or shareholder of the incorporated joint venture shall be counted as a conviction against a partnership or an unincorporated joint venture or incorporated joint venture with different participants for the partnership or unincorporated joint venture or different shareholders for the

incorporated joint venture for which the conviction was made.

5.8.9 For a limited company which substituted a partnership or sole proprietor or a limited company which substituted another limited company as defined in Sub-section 6.5, the limited company shall disclose the name of the entity prior to the substitution, where such substitution takes place within the 12-month period prior to the tender closing date. Convictions of the limited company including convictions of the entity (which includes partnership or sole proprietorship or limited company) before substitution, which fall within the 12-month period prior to the tender closing date, shall be taken into account in the tender assessment.

5.8.10 Where the tenderer is a partnership or an unincorporated or incorporated joint venture, the provisions of paragraph 5.8.9 above shall apply to participants of the partnership or unincorporated joint venture or shareholders of the incorporated joint venture who is/are limited company/companies.

## **5.9 Contractors Convicted of Site Safety or Environmental Offences or Incurring Serious Incidents on a Construction Site**

5.9.1 Please refer to DEVB [TC\(W\) No. 4/2022](#) for details.

## **5.10 Non-compliance with the Provisions for Employment of Technician Apprentices and Building & Civil Engineering Graduates**

5.10.1 Please refer to ETWB TCW No. 12/2003 for details.

## **5.11 Non-compliance with the Provisions for Engagement of Sub-contractors Registered under Registered Specialist Trade Contractors Scheme**

5.11.1 Please refer to Chapter 7 of the PAH, available in the website of CEDD, for details.

## **5.12 Failure to Obtain Quality Management System Certification as Required**

5.12.1 Please refer to WBTC No. 13/2001 and ETWB TCW No. 13/2001A for details.



### **5.13 Withdrawal of Tenders within the Tender Validity Period**

5.13.1 A contractor shall exercise reasonable care in preparing his tender. A contractor who engages in any of the following inappropriate conducts, some of which may involve breaches of contract, may find himself the subject of regulating action:

- (a) withdrawal of his tender within the tender validity period;
- (b) refusal to comply with the Conditions of Tender;
- (c) refusal to withdraw a tender qualification or post-tender qualification irrevocably and unconditionally unless such qualification is explicitly permitted in the Conditions of Tender; and
- (d) refusal to make good the shortfall in share capital, employed capital and working capital within the specified time required for the award of the tender.

5.13.2 Refusal may be by way of positive refusal or failure to respond to requests or enquiry from the Employer or his agent. Failure to respond in the specified manner or by the specified deadline may also be regarded as failure to respond. The inappropriate conducts listed in paragraph 5.13.1 above are regarded as withdrawals of tenders in a particular category within the tender validity period.

5.13.3 Upon becoming aware of the inappropriate conduct as described in paragraph 5.13.1 above, the procuring department shall seek legal advice from the Legal Advisory Division (Works) of DEVB on whether legal action is recommended.

5.13.4 The Government may take legal action against a contractor to recover damages where there has been a breach of an implied contract by the contractor. In any event, withdrawal of a tender by the contractor under any of the situations mentioned in paragraph 5.13.1 above and which gives rise to reasonable suspicions as to the capability or integrity of the contractor shall result in regulating action being taken against the contractor unless the contractor can offer an acceptable explanation for such conduct.

5.13.5 Where it is established that a contractor engages in conduct as described in paragraph 5.13.1 above and which gives rise to reasonable suspicions as to his capability or integrity, the procuring department shall notify the Chairman of the related MRC within one week enclosing copies of the relevant correspondence with a copy to DEVB (Attn: Principal Assistant Secretary (Works)4) advising him of the name of the defaulting contractor, the tender

closing date, the contract number, the contract title, the predominant category of works and the type of conduct as described in paragraph 5.13.1 above.

5.13.6 Upon receipt of the said notification from the procuring department, the Chairman of the MRC shall take the following actions:

- (a) If the notification is the first one in a rolling 36-month period, the following actions should be taken.
  - (i) The MRC Chairman shall write on behalf of his Director to the contractor preferably within two weeks from the date of receipt of the notification from the procuring department, seeking an explanation from the contractor as to the reasons for the inappropriate conduct (using the standard letter at **Appendix 5B**).
  - (ii) If the MRC Chairman is satisfied with the contractor's explanation, the contractor shall be advised (using the standard letter at **Appendix 5C**) that the inappropriate conduct will be recorded but will not be counted for the purposes of taking regulating actions.
  - (iii) If the contractor has failed to respond or if the MRC Chairman is not satisfied with the contractor's explanation and considers that the inappropriate conduct could have been reasonably avoided, the contractor should be warned (using the standard letter at **Appendix 5D**) that should he engage in further inappropriate conduct as described in paragraph 5.13.1 above either in the next 12-month period or 36-month period, regulating actions will be taken in accordance with subparagraphs (b) or (c) below unless the contractor can offer an acceptable explanation for such conduct.
- (b) If the notification is the second one in respect of the same category of works in a rolling 12-month period, the following actions should be taken.
  - (i) The MRC Chairman shall follow the same procedures laid down in subparagraphs (a)(i) and (a)(ii) above.
  - (ii) If the contractor has failed to respond or despite the contractor's explanation, the MRC Chairman is satisfied that the inappropriate conduct gives rise to reasonable suspicions as to the capability or integrity of the contractor, he should recommend to DEVB to remove the contractor from that particular category. DEVB will give a further opportunity to the contractor to present his case before determining

whether to take regulating action against him as recommended by the MRC Chairman.

- (c) If the notification is the second one in respect of the same category of works in a rolling 36-month period, the following actions should be taken.
  - (i) The MRC Chairman should follow the same procedures laid down in subparagraphs (a)(i) and (a)(ii) above.
  - (ii) If the contractor has failed to respond or despite the contractor's explanation the MRC Chairman is satisfied that the inappropriate conduct gives rise to reasonable suspicions as to the capability or integrity of the contractor, the MRC Chairman should recommend to DEVB to suspend the contractor from tendering for public works contracts in that category for six months. DEVB will give a further opportunity to the contractor to present his case before deciding whether to take regulating action against him as recommended by the MRC Chairman.

5.13.7 If DEVB decides to take regulating action against a contractor in accordance with this Sub-section 5.13 and where the contractor is a joint venture, then each and every participant (in the case of an unincorporated joint venture) or shareholder (in the case of an incorporated joint venture) shall be subject to the same regulating action.

5.13.8 For the purpose of counting the number of tender withdrawal and taking regulating action, the date of withdrawal shall be taken as the tender closing date of the contract concerned. In the event that there is uncertainty as to which date is the date of withdrawal, the decision of the Secretary for Development in this connection is final.

#### **5.14 Contractors Convicted of Contraventions of Section 27 of the Public Health and Municipal Services Ordinance (Cap. 132)**

5.14.1 Please refer to ETWB TCW No. 22/2003 and 22/2003A for details.

of the existing contract(s) determined as aforesaid shall be added to the total outstanding value of new contracts in the relevant group / class and category of contracts awarded after the tender closing date in checking compliance with the contract limits for probationary contractors.

7.5.6 Where –

- (a) a probationary contractor has submitted tenders and attained the highest combined scores for more than one contract in the same category, class and group; and
- (b) if the award of these contracts are determined at the same time but the award of two or more of these contracts to that probationary contractor will exceed the limits on number and/or value of contracts in the relevant category, class and group stipulated in paragraph 2.5.1 or 3.5.1,

the Government shall be entitled to determine which contract(s) is/are to be awarded to that probationary contractor on the basis of a combination of tender awards of these contracts that would cost least to the Government. An example is provided in **Appendix 7**.

## **7.6 Checking Status of Contractors in Relation to Suspension**

7.6.1 For the purpose of checking whether contractors are suspended from tendering for public works under paragraphs 5.2.2 and 5.2.2A, the department responsible for the tender exercise should observe the following procedures:

- (a) On the tender closing date for the contract being procured, all tenderers shall be checked on whether they are being suspended from tendering;
- (b) On the date the tender report is completed and signed for submission to the relevant tender board or authority (the “**tender report date**”), all conforming tenderers shall be re-checked on whether they are being suspended or have been suspended from tendering arising from any of the circumstances specified in paragraphs 5.2.3(c)(i), 5.2.3(c)(vi), 5.2.3(d)(ii) or occurrence of serious incident or conviction of site safety offences specified in DEVB TC(W) No. 4/2022 at any point of time between the tender closing date and the tender report date (both dates inclusive);

- (c) The tender report should contain a statement confirming that the checking mentioned in sub-paragraph (a) and the re-checking mentioned in sub-paragraph (b) have been duly performed.
- (d) If the re-checking in sub-paragraph (b) above reveals that a conforming tenderer is being suspended / has been suspended from tendering, his tender will not be further considered. The tender report including the tender recommendation should be revised as appropriate; and
- (e) On the contract award date, departments should re-check whether the tenderer to be awarded the contract as accepted by the relevant tender board or authority is being suspended / has been suspended from tendering arising from any of the circumstances mentioned in sub-paragraph (b) above at any point of time between the tender report date to the contract award date (both dates inclusive). If the re-checking is affirmative, such tenderer will not be eligible for award of the contract, and the responsible department should revise the tender report as appropriate for re-submission to the relevant tender board or authority for approval.

7.6.2 For the purpose of checking whether applicants or prequalified contractors are suspended from tendering for public works under paragraph 5.2.2B for tenders adopting prequalification, similar checking should be carried out on the following dates: (a) the date set for close of prequalification; (b) the date on which the recommended list of prequalified contractors is submitted for approval; (c) the tender closing date; (d) the tender report date; and (e) the contract award date.

7.6.3 For operational details of the above checking procedures, please refer to **Appendix 8**.

## **7.7 Award of a Contract**

7.7.1 Before recommending the award of a contract, the department responsible for the contract must be satisfied that the contractor being recommended is both technically and to the best of their knowledge financially capable of successfully carrying out the contract and, all other contracts he may hold.

7.7.2 In checking the financial capability of the tenderers, the department responsible for the contract is required to consult the Finance Section of DEVB:

- (a) in respect of all tenderers for contracts of any values exceeding \$15,000,000;  
and
- (b) in cases where there is reason to doubt the financial capability of tenderers for contracts with a value of \$15,000,000 or less.

For both (a) and (b) above, it is normally only necessary to refer the three highest combined scorers for a contract to the Finance Section of DEVB for financial checking. Financial checking is also required on tenderers for contracts under categories listed in paragraph 3.3.6 if the contract is of a value exceeding \$15,000,000.

[7.7.3](#) A contractor must meet the financial requirements for acceptance of tenders established by DEVB and included in **Annex 2 to Appendix 2A or Appendix 3B** before the award of a contract. It should be noted that should the contractor fail to meet the financial requirements or to rectify the shortfall in capital(s), or if the contractor's average loss rate is greater than 30% under the Profitability Trend Analysis, he will not be recommended for the award of contracts in his prevailing groups.

**Technical Circulars and subsequent revisions to be read in conjunction with this Handbook**

<b>Circular No.</b>	<b>Title</b>
17/96	Supply of Bituminous Pavement Materials and Construction of Special Bituminous Surfacing [subsumed under Chapter 5 of PAH which is available at the website of CEDD]
13/2001 & 13/2001A	Quality Management System Certification of Consultants and Contractors for Public Works Administered by the Works Group of Departments
25/2001 and 25/2001A	Admission of EMSTF onto the List of Approved Suppliers of Materials and Specialist Contractors for Public Works under 25 Categories of E&M, Electronics and Building Services
50/2002	Contractors' Joint Ventures
12/2003	Employment of Technician Apprentices and Building & Civil Engineering Graduates by Contractors of Public Works Contracts
22/2003 & 22/2003A	Additional Measures to Improve Site Cleanliness and Control Mosquito Breeding on Construction Sites
19/2005	Environmental Management on Construction Sites (and Pay for Safety Performance Merit Scheme)
3/2007 & 3/2007A	Contractors' Performance Index System
<a href="#">4/2022</a>	Regulating Action against Contractors for Occurrence of a Serious Incident or Conviction for Site Safety or Environmental Offences
6/2010	Trip Ticket System for Disposal of Construction & Demolition Materials
8/2010	Enhanced Specification for Site Cleanliness and Tidiness
7/2014	Guidance on Execution of Public Works Contracts as a Deed
4/2017	Employment of Skilled Workers in Public Works Contracts
6/2019	Implementation of Mandatory Construction Industry Collaborative Training Schemes in Public Works Contracts
1/2020	Score Card for Assessment of Site Safety Performance

## APPENDIX 2A Minimum financial, technical and management requirements for the List of Approved Contractors for Public Works

The suitability of a contractor for admission, confirmation and promotion to a category and group in the List is assessed mainly under six core elements, (namely experience, management, staff employment, safety, integrity and financial capability), as well as other specific technical requirements. A contractor on the List shall ensure his continuous compliance with the retention requirements. Subject to other provisions in the Handbook, the applicability of the criteria in this Appendix to admission, confirmation, promotion and retention are summarized in the table below.

	For admission, confirmation and promotion	For retention
<b>Criterion 1 : Safety</b>		
1.1 Qualified personnel	✓	✓
1.2 Performance in compliance with safety legislations	✓	✗ <sup>1</sup>
<b>Criterion 2: Experience</b>	✓	✗
<b>Criterion 3: Management – Top Management</b>		
3.1 Minimum number and qualifications	✓	✓
3.2 Continuous Capability Building	✗	✓
<b>Criterion 4: Staff Employment – Technical Staff</b>		
4.1 Minimum number and qualifications	✓	✓
4.2 Continuous Capability Building	✗	✓
<b>Criterion 5: Financial Capability</b>	✓	✓
<b>Criterion 6: Integrity</b>		
6.1 Integrity Management Policy	✓	✓
6.2 Integrity Training	✗	✓
<b>Other Criteria: Business Registration Certificate, Statutory Registration and ISO 9001 Certification</b>	✓	✓

<sup>1</sup> The policy and procedure for imposition of regulating action against contractors on the List for occurrence of a serious incident or conviction for site safety offences are set out in DEVB TC(W) No. 4/2022 and handled under that Technical Circular separately.



## Remarks

**1.2 Performance in compliance with safety legislations#**

- The applicant shall not be convicted of 5 or more site safety offences counted by the date of commission and not by the date of conviction, each arising out of separate incidents in any 6-month period in the past 12 months counting from the submission of the application. For example, if an applicant submitted its application on 1 January 2021, the applicant shall not be convicted of 5 or more site safety offences in each of the rolling 6-month period below:

Rolling 6-month Period	1 Jan 20 to 30 Jun 20	1 Feb 20 to 31 Jul 20	1 Mar 20 to 31 Aug 20	1 Apr 20 to 30 Sep 20	1 May 20 to 31 Oct 20	1 Jun 20 to 30 Nov 20	1 Jul 20 to 31 Dec 20
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- A site safety offence means a conviction for any offence set out in the ordinances and their subsidiary legislations stipulated in paragraph 8(h) of DEVB TC(W) No. 4/2022 or subsequent updates. For overseas applicants who do not have site experience in the HKSAR, a site safety offence means a conviction for any offence set out in the relevant occupational health and safety acts, regulations and their subsidiary legislations in its place of incorporation or place of major business. The overseas applicants shall provide details of such site safety offence to DEVB and Managing Department(s) for assessment.
- The applicant shall declare his compliance with this assessment sub-criteria in the application form, and shall provide supporting documents upon request. In the event that an applicant's number of convictions exceeds the above limit, the applicant shall be regarded as having satisfied this requirement if the applicant already holds a certificate of compliance with ISO 45001 (or equivalent) and has completed a safety audit by external safety auditor recognised by DEVB to demonstrate its capability to deliver a relevant contract with satisfactory safety performance after the last conviction and within one year from its application.

**Criterion 2: Company Experience#**

- 2.1 Both relevant Government and non-Government contracts will be counted for assessing contract experience requirements for admission on probation (direct entry or by promotion) and confirmation. "Government contract" in this Appendix refers to "HKSAR Government public works contract". For the purpose of assessing contract experience requirements for confirmation and promotion, if the following conditions are satisfied, Managing Department may, but is not bound to, take a non-Government contract as if it were a Government contract:
- the majority of its works (i.e. more than 50% of work value) under that non-Government contract are construction works entrusted by the Government;
  - the provisions in that non-Government contract follow the requirements and standards of works in relevant category of Government works contracts; and
  - the procurement and contract administration of the party to whom the Government construction works are entrusted, follows the standard procedures of Government's public works contracts;
- provided that contractor could adduce evidence to the Managing Department that the above conditions (a) to (c) could be satisfied. To facilitate assessment, the Managing Department may seek confirmation on the authenticity of the proof provided by the contractor and seek further references on the requirements of the contract concerned and the contractor's technical and management capabilities from the relevant parties, including the bureau/department which has entrusted the works to other party.
- 2.2 Group A limit and Group B limit mean the Group Tender Limits for Group A and Group B respectively. Probationary limit of Group C means the total value of Group C contracts in any one category for which a probationary Group C contractor is eligible to be awarded. The applicable tender limits for Group A, Group B and Group C (Probationary) in this Appendix should be as follows:

Applicable to contracts for which tenders were invited	Group A	Group B	Group C (Probationary)
On or after 1 March 2021	\$150 million	\$400 million	\$1,500 million
Before 1 March 2021 but on or after 15 February 2017	\$100 million	\$300 million	\$700 million
before 15 February 2017	\$75 million	\$185 million	\$400 million

Rolling 6-month Period	1 Jan 20 to 30 Jun 20	1 Feb 20 to 31 Jul 20	1 Mar 20 to 31 Aug 20	1 Apr 20 to 30 Sep 20	1 May 20 to 31 Oct 20	1 Jun 20 to 30 Nov 20	1 Jul 20 to 31 Dec 20
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- A site safety offence means a conviction for any offence set out in the ordinances and their subsidiary legislations stipulated in paragraph 8(h) of DEVB TC(W) No. 4/2022 or subsequent updates. For overseas applicants who do not have site experience in the HKSAR, a site safety offence means a conviction for any offence set out in the relevant occupational health and safety acts, regulations and their subsidiary legislations in its place of incorporation or place of major business. The overseas applicants shall provide details of such site safety offence to the Development Bureau and Managing Department(s) for assessment.
- The applicant shall declare his compliance with this assessment sub-criteria in the application form, and shall provide supporting documents upon request. In the event that an applicant's no. of convictions exceeds the above limit, the applicant shall be regarded as having satisfied with this requirement if the applicant already holds a certificate of compliance with ISO 45001 (or equivalent) and has completed a safety audit by external safety auditor recognized by the Development Bureau to demonstrate its capability to deliver a relevant contract with satisfactory safety performance after the last conviction and within one year from its application.

## **V. Integrity**

- The applicant shall maintain an integrity management policy covering at least the contents set out in the Sample Integrity Management Policy at **Annex 3 to Appendix 2A**.
- In respect of integrity training, please refer to the continuous capability building requirements in Items II and III above.

## **VI. Specific Technical Requirements**

- The applicant shall possess or set up in Hong Kong a place of business as defined in Section 2 of the Business Registration Ordinance and submit a copy of his business registration certificate in his application for admission (direct entry or by promotion) and confirmation to the Specialist List. The contractor shall also maintain his business registration certification for retention.
  - Other specific technical requirements such as statutory registration and certification, plant and equipment, office / workshop facilities, etc. for each category are stipulated in the respective pages in this Appendix.
- (2) Unless otherwise specified, the revised admission, confirmation, promotion and retention requirements in this Appendix shall take effect from **1 March 2021**. When contractors submit applications for admission, confirmation or promotion based solely on the experience of contracts (or the related main contract for the case of which experience of subcontracts is allowed) for which tenders were invited before **1 March 2021**, the minimum contract value in the Contractor Management Handbook Revision B-15 shall be adopted for assessing such applications. For the avoidance of doubt, the respective applicable group limits to determine the minimum contract values referred to in the contract experience requirement for the relevant categories and groups are as follows:

## Appendix 8 Procedures for Checking Status of Contractors in Relation to Suspension

### General

1. The suspension history of contractors on the List / Specialist List are kept in the Contractor Management Information System (“CMIS”) maintained by DEVB. To obtain such suspension history, departments can acquire a standard report, namely “Suspension History of Approved Contractors/Suppliers for Public Works” (“**suspension report**”), from the CMIS by selecting the name of the contractor and period concerned for tender assessment purpose.

### Timing for Checking Status of Contractors in Relation to Suspension

2. According to Sub-section 7.6, department responsible for the tender exercise should check the status of contractors in relation to suspension at different junctures of time. Departments should follow the schedule in **Table 8.1** below to acquire the suspension report of the concerned tenderers from the CMIS for checking purpose.

**Table 8.1 – Acquisition of suspension report from CMIS for tender assessment purpose**

Checking Stage	Timing for acquiring suspension report	Date / Period to be checked	Tenderers to be checked
1	On the tender closing date	On the tender closing date	All tenderers <sup>(i)</sup>
2	On the date when <b>tender report</b> is completed and signed for submission to the relevant tender board / authority (“ <b>tender report date</b> ”)	from the tender closing date to the tender report date (both dates inclusive)	All conforming tenderers <sup>(i)</sup>
3	On the contract award date <sup>(ii)</sup>	from the tender report date to the contract award date (both dates inclusive)	The tenderer <sup>(i)</sup> accepted by the relevant tender board / authority for award of the contract

#### Notes:

- (i) The status of tenderers who are contractors on the List / Specialist List should be checked. If the tenderer is an unincorporated or incorporated joint venture, the status of any participant of the unincorporated joint venture or any shareholder of the incorporated joint venture, who is contractor on the List / Specialist List, should be checked.
- (ii) DEVB uploads suspension record of contractors for a particular day, if applicable, to the CMIS **before or at 5:00 pm** on that day. On the contract award date, departments should acquire the suspension report of the contractor concerned from the CMIS **after 5:00 pm** to ensure that the suspension report retrieved contains the most up-to-date suspension information for that day.

3. For tenders adopting prequalification, departments should conduct two additional checking stages before the checking stages in **Table 8.1**. Details of these two additional checking stages are shown in **Table 8.2** below. Also, the “Date/Period to be checked” for Checking Stage 1 in **Table 8.1** shall be revised to “from the recommended list submission date to the tender closing date (both dates inclusive)” instead.

**Table 8.2 –Acquisition of suspension report for prequalification assessment purpose**

<b>Checking Stage</b>	<b>Timing for acquiring suspension report</b>	<b>Date / Period to be checked</b>	<b>Contractors to be checked</b>
1A	On the date set for close of prequalification (“ <b>prequalification closing date</b> ”)	On the prequalification closing date	All applicants <sup>(i)</sup>
1B	On the date of submitting the recommended list of prequalified contractors to relevant tender board (“ <b>recommended list submission date</b> ”)	from the prequalification closing date to the recommended list submission date (both dates inclusive)	All applicants satisfying the screening criteria and passing the marking stage of the prequalification exercise <sup>(i)</sup>

Note:

- (i) The status of applicants / prequalified contractors who are contractors on the List / Specialist List should be checked. If the applicant / prequalified contractor is an unincorporated or incorporated joint venture, the status of any participant of the unincorporated joint venture or shareholder of the incorporated joint venture, who is contractor on the List / Specialist List, should be checked.

**Procedures for acquisition of the suspension report from CMIS**

4. Currently, project officer responsible for tender assessment can access information of contractors, including its suspension record, from the CMIS by making a request to and obtaining the relevant approval from the respective departmental CMIS’s administrators. As at November 2022, project officers are only allowed to download the suspension report for the relevant contractors from CMIS for a period with end-date up to the tender closing date (and/or the prequalification closing date for tenders adopting prequalification) for the tender or prequalification exercise.
5. System enhancement will be implemented on the CMIS such that the project officers in future will be allowed to download the suspension report for the relevant contractors at any time within six months from the tender closing date, after obtaining approval from the departmental CMIS’s administrators.

6. In the event that the project officer is required to download the suspension report after the six-month period stated in paragraph 5 above, the project officer should make an extension request before the expiry of the six-month period via the CMIS for the approval of the departmental CMIS's administrators. Upon the approval by the departmental CMIS's administrator, the project officer can download the suspension report within a further three-month period after each successful extension request.
  
7. In the interim period before enhancement of the CMIS mentioned in paragraph 5 above is completed, departmental CMIS's administrators, who have the right in downloading the suspension report for particular period and particular contractor when necessary, are required to assist the project officers in downloading the suspension reports at appropriate junctures of time during tender assessment and at contract award. Departments may set internal procedures for project officers to acquire the suspension reports via the departmental CMIS's administrators for tender / prequalification exercises during this interim period.