

**Letting and Administration
of Works Contracts in
Non-Governmental Organisations**



**Corruption Prevention Department
Independent Commission Against Corruption**

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LETTING AND ADMINISTRATION OF WORKS CONTRACTS IN NON-GOVERNMENTAL ORGANISATIONS

Introduction

From time to time, non-governmental organisations (NGOs) receiving Government subventions or public funds (e.g. the Lotteries Fund) may undertake works projects such as fitting out new accommodation, renovating existing premises or carrying out building maintenance. Given the use of substantial public money and the common corruption problems in the related industries, it is imperative for NGOs to ensure that consultants and contractors are selected in a fair and competitive manner and there is a proper system to monitor progress and standard of work.

This Best Practices Module aims to provide NGOs with a checklist of good practices on the letting and administration of works contracts. (The Lotteries Fund Manual issued by the Social Welfare Department contains regulations on the use of Lotteries Fund grants and other matters like competitive bidding. For example, services exceeding the value of \$500,000 have to be procured through competitive tender while those of a lower value by the appropriate quotation procedures.)

Key Principles

To minimise abuse and corruption risks, NGOs should uphold the following key principles in the appointment of consultants or contractors and in the administration of works contracts:

- **Transparency and impartiality** in the award of consultancy and works contracts.
- **Accountability** to ensure that the decisions made are justified and suitably documented.
- **Good governance** on the part of both the NGO and consultants/contractors to ensure commitment to ethical practices.

Policy and Guidelines

NGOs should promulgate unequivocal policy and guidelines on the following:

- the procedures and criteria for selecting consultants and contractors (very often by ad hoc groups or panels comprising members of the Management Board or staff);
- detailed procedures for monitoring progress and standard of work (e.g. frequency of site visits and documentation requirements);
- the levels of staff authorised to approve contracts, variation of works, extension of time, etc.; and
- avoidance and declaration of conflict of interest.

Selection of Consultants

A consultant is often appointed to administer major works projects on behalf of a NGO, normally assisting in the drawing up of tender/quotation specifications, the selection of contractors and the monitoring of work progress. For high value consultancy contracts, the NGO should form a panel to select a consultant by competitive tender, based on the assessment of both technical and fee proposals with the aid of a marking scheme.

In conducting a selection exercise, NGOs should take into consideration the following:

- specifications like the scope of services required should be drawn up by a panel and approved by the NGO's senior management;
- with reference to the list of consultants maintained by the Architectural Services Department or other Government Departments, a sufficient number of consultants, or in accordance with the guidelines issued by the NGO itself or the respective funding provider (e.g. the Lotteries Fund), should be invited to submit proposals ;

- if individual Board members or staff concerned nominate any consultants for invitation, they should be required to declare conflict of interest and, where necessary, withdraw from the selection process;
- pre-determined selection criteria should be drawn up by a panel and set out broadly in the tender documents; and
- the deliberations and decisions of the selection panel should be documented.

For those works projects where the above practices may not be entirely applicable, NGOs should follow the special requirements stipulated by the Social Welfare Department.

Invitation for Consultancy Proposals

To invite proposals from consultants, NGOs should include in the invitation letter such details as the nature of the project, the scope of services, the budget, the time constraints and the broad selection criteria and, where the project is financed by other sources such as the Lotteries Fund, the terms of the approval and the Fund's requirements. This is to ensure that adequate information is provided to all competing consultants.

Selection of Contractors

The appointed consultant will normally assist in the selection of the works contractor. An NGO should follow procedures and adopt safeguards similar to those for selecting the consultant. Moreover, in addition to the contractors recommended by the consultant and nominated by Board members or staff, it is advisable for NGOs to select a few from the Government's approved lists for consideration. A sufficiently large number of contractors, or in accordance with the guidelines issued by the NGO itself or the respective funding provider (e.g. the Lotteries Fund), should be identified to ensure an adequate number of bids.

Tender Documents

Tender documents should specify the following:

- the specification of works;
- the terms and conditions of contract;
- the requirement to submit tenders in sealed plain envelopes with the project name and reference number clearly marked on the outside; and
- the deadline for submission and a warning that late tenders will not be accepted.

The specification of works must not be drawn up in a manner that will give any particular bidder an unfair advantage to secure the contract.

Procedures for Receiving Bids

NGOs should ensure that there are adequate safeguards against leakage of tender information. The following procedures are recommended:

- Bids should be submitted in duplicate – the original copy for evaluation and the duplicate securely kept by a designated staff member for verification against any unauthorised alteration of tenders/proposals after submission (e.g. alteration of the price offer).
- Bids should be deposited into a tender box with double locks, the keys being held separately by two staff members.
- A tender opening team comprising at least two members should open the bids immediately after the tender closing time and late bids should not be accepted.
- Immediately after opening the bids, a list of tendering consultants/contractors and their price offers should be compiled and signed by members of the tender opening team. The list should be kept together with the duplicate

copies of tenders/proposals.

- Bidding documents should be securely kept before and after evaluation and those related to the unsuccessful bids should be properly destroyed after the retention period as they may contain sensitive commercial information.

Tender / Proposal Evaluation

The following safeguards are recommended to ensure impartial evaluation of bids submitted by consultants or contractors:

- Where price is not the only selection criterion, the evaluation should be based on pre-determined criteria preferably in the form of a marking scheme with a standard marking sheet for individual scoring by each panel member.
- Panel(s) should be established to consider the price and technical proposals (e.g. experience, company size and proposed services).
- In a technical evaluation exercise, price bids should not be opened until technical marking has been completed.
- The justifications for not selecting a lower conforming bid should be properly documented.

NGOs should follow the requirements of the Social Welfare Department for minor works contracts where the above practices may not be entirely applicable.

Terms and Conditions

Before award of contract, it is good practice for NGOs to ensure that the following terms and conditions are included in the contract agreement or appointment letter:

- The job specifications and standards required in details.

- The provisions for variation of works, extension of time and liquidated damages.
- A probity clause prohibiting the consultant, the contractor and their employees to offer or accept any advantage (as defined in the Prevention of Bribery Ordinance, Cap. 201) related to the services or works performed while under the NGO's employment. The consultant should also be required to declare any conflict of interest.
- If the consultant, the contractor or their employees have committed any bribery offences in connection with the services or works performed under the contract, the NGO may terminate the contract and hold the party concerned liable for any loss or damages the NGO may have to sustain.

Contract Administration

Those NGOs which rely heavily on the expertise of the consultant appointed to administer works contracts (e.g. supervising the work progress and the contractors' performance) should be vigilant about matters like sub-standard works, over-claims of payment, works variation and extension of time which are common malpractice found in construction projects. For projects managed in-house by NGO staff (e.g. minor and non-specialised projects), it is necessary to ensure that the staff responsible for works supervision will not condone the contractors' malpractice.

To enhance checks and balances, it is advisable for a panel to be formed to monitor project progress. The authority and responsibilities of the panel (or the staff assigned to monitor work progress) should be pre-determined. The major areas of concern in contract administration and the essential control measures are summarised in the ensuing paragraphs.

Work

- The panel should call for progress/performance reports from the consultant or the contractor at specified

Supervision

intervals and submit these reports to the Management Board for information.

- The consultant should be required to report to the panel and the Management Board any possible delay in work or any sub-standard works.
- The panel should make periodic site visits to check progress and such visits should be recorded.
- Instructions (e.g. any rectification works required) given to the consultant or contractor should be recorded in writing.

Processing of Payments

- Payments to the contractor and the consultant should be made by instalments either based on the percentage of work actually completed (e.g. as certified by the consultant) or in accordance with the guidelines in the Lotteries Fund Manual.
- Invoices submitted by the consultant/contractor should be checked, endorsed and counter-checked by staff of the appropriate rank.
- The processing of payment requests should be completed within the time limit specified in the contract.
- Accurate and up-to-date records of payments should be kept.

Variation Orders

Variation of works, whether initiated by the NGO, the consultant, or the contractor, may create unnecessary or excessive works and substantially raise the cost of the originally approved project, thus increasing the payment due to the contractor. Such discretion to initiate or approve variation orders is prone to abuse. NGOs should ensure that all variation of works are fully justified, and the following are safeguards commonly used:

- The financial implications of a proposed variation order should be ascertained beforehand to prevent cost overrun.
- Consultants should only be allowed to approve works variation requests below a prescribed financial limit; requests above the prescribed limit should be approved by a panel or a senior NGO staff member, depending on the amount involved.
- Justifications for the issue of any variation orders should be recorded in writing.
- A summary of such orders should be passed to the Management Board for information.

***Extension of
Time and
Liquidated
Damages***

The granting of extension of time of the project or waiver of liquidated damages (e.g. claims for any delay in completion of works due to unforeseen circumstances) has financial implications on the consultant or contractor. Hence, any discretion to grant extension of time or waiver of liquidated damages may create opportunities for abuse. Notwithstanding the justifications put forth by consultants, the NGO should be wary of the corruption risk in such matters. (For details, NGOs may refer to the Best Practice Module on “Claims Processing” issued by the Corruption Prevention Department, ICAC.)

***Conflict of
Interest***

A conflict of interest is a situation in which the interest of the NGO competes with or is in conflict with the financial or personal interests of a member of the Management Board or staff, and those of his relatives or close personal friends.

Board members and staff should be required to avoid any actual or perceived conflict of interest and to make a declaration of such conflicts. The following are the essentials of an effective declaration of interest system:

- NGOs should draw up rules on conflict of interest to be re-circulated at annual intervals to members of the Management Board or staff.
- Any members of the Management Board or staff involved in the conduct of quotation/tender exercises (e.g. shortlisting of consultants/contractors for invitation to bid, tender opening, evaluation, etc.) or the monitoring of work progress should be required to declare any conflict of interest.
- Declarations of conflict of interest should be made in writing, preferably on a standard proforma.
- A member of the Management Board or staff who has declared a conflict of interest should refrain from handling the matter or there should be sufficient monitoring by the Board or senior staff to ensure impartiality.
- Guidelines on conflict of interest should include examples of work situations to assist NGO Management Board members and staff in making declarations or in taking steps to avoid such conflicts. Examples of conflict of interest situations include:
 - A Board/staff member takes part in the selection of a consultant or a contractor, and one of the bidders is his family member, relative or close personal friend.
 - A Board/staff member has a financial interest in the business of any bidder.
 - A Board/staff member involved in the NGO's works project accepts frequent or lavish entertainment or expensive gifts from the consultants or contractors.

Ethical Guidelines

NGOs should consider issuing ethical guidelines in the form of a Code of Conduct for members of the Management Board and the staff. It should set out the NGO's rules on acceptance of advantages and entertainment, conflict of

interest and other ethical issues.

Other References

For additional information on the subject, NGOs may wish to refer to the following Best Practice Modules issued by the Corruption Prevention Department, ICAC:

- Construction Industry Best Practice Principles;
 - Claims Processing; and
 - Post-Tender Negotiation.
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Enquiries

NGOs requiring further assistance in the letting and administration of works contracts may call the Advisory Services Group of ICAC at hotline telephone no. 2526 6363. We pledge to respond to your request within two working days and provide you with tailor-made advice under conditions of the strictest confidence.



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