

Rules of Operation of the Review Body on Bid Challenges

Secretariat of the Review Body on Bid Challenges

January 2020

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Rules of Operation of the Review Body on Bid Challenges *(Revised – January 2020)*

Definitions

1. In this document, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Panel” means a panel established under Clauses 20 and 21 of these Rules of Operation.

“prescribed agreement” means any of the following –

- (a) the Agreement on Government Procurement of the World Trade Organization (“GPA”)¹;
- (b) Chapter 12 of the Hong Kong, China – New Zealand Closer Economic Partnership Agreement (“HKC-NZ CEP Agreement”);
- (c) Chapter 9 of the Free Trade Agreement between Hong Kong, China and Chile (“HKC-Chile FTA”); and
- (d) Chapter 13 of the Free Trade Agreement between Hong Kong, China and Australia (“HKC-AU FTA”).

“procuring entity” means a procuring entity of Hong Kong, China specified in the relevant annex or appendix to a prescribed agreement and is subject to the provisions of the respective agreement.

“relevant procurement” means any procurement covered by the respective prescribed agreement and referred to in the relevant annex or appendix in relation to Hong Kong, China of an estimated contract value not less than the relevant thresholds specified in the agreement concerned.

“Review Body” means the Review Body on Bid Challenges established pursuant to the prescribed agreement, the composition of which is specified in Clauses 5 and 6 of these Rules of Operation.

“supplier” means a supplier or a potential supplier (of goods or services) of either –

- (a) a Party to the relevant prescribed agreement, or

¹ This means the revised Agreement on Government Procurement of the World Trade Organization (revised GPA) adopted under the 2012 Protocol Amending the Agreement on Government Procurement (applicable between Hong Kong, China and a Party to the revised GPA) and, pending the revised GPA being entered into force for all Parties to the 1994 Agreement on Government Procurement of the World Trade Organization (1994 GPA), the 1994 GPA (applicable between Hong Kong, China and a Party only to the 1994 GPA).

- (b) an economy which is not a Party to the GPA but intends to provide goods or services of any Party to the GPA

who has or has had an interest in a relevant procurement.

“working day” means any day not being –

- (a) a Saturday;
- (b) a general holiday under the General Holidays Ordinance (Cap. 149); or
- (c) a gale warning day or black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

Moreover, words denoting any one gender shall include all genders and, when referring to either party to a challenge, the third person impersonal pronoun.

The Review Body

2. The Review Body provides a formal, dedicated, impartial and independent mechanism to consider a challenge lodged by a supplier against any alleged breach of the relevant prescribed agreement by a procuring entity in relation to a relevant procurement.
3. The Review Body may only consider challenges in respect of a relevant procurement which is preceded by an invitation to tender or an invitation for applications for prequalification of tenderers issued by the procuring entity after the establishment of the Review Body in the Hong Kong Special Administrative Region.
4. The duties, functions and powers of the Review Body are to:
 - (a) receive from a supplier any challenge made in respect of alleged breach of the relevant prescribed agreement by the procuring entity in respect of the relevant procurement in which the supplier has, or has had, an interest;
 - (b) conduct inquiry only in respect of the challenge made by a supplier in accordance with Clause 4(a) above; and
 - (c) make determination(s) and recommendations in accordance with these Rules of Operation.

Establishment and Composition of the Review Body

5. The Review Body comprises twelve members, viz. one Chairman, two Deputy Chairmen and nine members who are appointed by the Secretary for Commerce and Economic Development.
6. The Chairman, Deputy Chairmen and members are to be selected from a wide spectrum of society. The Chairman and the two Deputy Chairmen shall be legally qualified. One of the Deputy Chairmen will assume the duties of the Chairman when the latter is not available. In case the Chairman and both of the two Deputy Chairmen are not available and there are matters requiring urgent attention of the Review Body, the Secretary for Commerce and Economic Development will appoint a member who is legally qualified as the acting Chairman as deemed appropriate to deal with such matters.
7. The Review Body is serviced by a Secretariat formed within the Trade and Industry Department. The Secretariat is responsible to the Review Body through the Chairman.

Registration and Declaration of Interests by Members of the Review Body

8. All members of the Review Body shall register in writing their personal interests (and those of their spouses, and children under 18), direct or indirect, pecuniary or otherwise, when they are first appointed, and thereafter annually, to the Secretariat. Members should advise the Secretariat of any changes to their registrable interests as soon as such changes have occurred. "Personal interests" will have the same meaning as specified in the "Guidance Notes on Avoidance of Possible and Potential Conflict of Interests" which is at Appendix I providing details of this subject. A registration form of Members' registrable interests is at Appendix II.

Appendix I

Appendix II

Bid Challenge Process

(i) Correspondence

9. All parties to a challenge made to the Review Body shall have access to all proceedings. Any correspondence made by a party to the Review Body (except for information classified as "confidential" which is subject to the procedures specified in Clauses 40 and 41), including the complaint form and the attachments thereto the complainant (please see Clause 10 for the meaning of "complainant") sent to the Review Body, shall be simultaneously copied to the other parties. All correspondence sent to the Review Body shall bear a note stating that such copies have been served.

If the Review Body sends any correspondence to a party, it shall send a copy of the same to other parties simultaneously unless the said correspondence contains information which has been classified as “confidential” in which case the procedures specified in Clauses 40 and 41 shall apply. To enable the procuring entity to respond to the challenge in a timely manner, the Secretariat shall, as soon as possible upon receipt of a challenge (irrespective of whether it is lodged in the prescribed form), approach the procuring entity to confirm that it has received the same from the complainant and invite it to nominate not more than two officials to whom all correspondence from the Review Body in relation to the subject challenge should be sent.

(ii) *Filing of Challenge*

10. A challenge shall be lodged within 10 working days after a supplier (“the complainant”) knew or reasonably should have known the basis of the challenge. All challenges must be lodged in [the prescribed form](#). If the challenge is not lodged in the prescribed form, the Secretariat shall notify the complainant who shall lodge the challenge again in the prescribed form within the time limit specified by the Secretariat. If the complainant fails to lodge the prescribed form within the specified time limit, the challenge will not be accepted for inquiry and the Secretariat shall inform the complainant accordingly.
11. If the complainant has not yet entered into any form of consultation with the procuring entity concerned to resolve the complaint, it may consult the procuring entity in the first instance before deciding whether to lodge a complaint to the Review Body or in parallel. Nevertheless, the time limit for submission of challenges to the Review Body as stated in Clause 10 above should be adhered to in any event.
12. The Chairman may receive and consider a late challenge (i.e. a challenge which is lodged later than 10 working days after the complainant knew or reasonably should have known the basis of challenge), if he is satisfied that reasonable cause for the delay has been shown. In any event, a challenge shall not be considered if it is filed later than 30 working days after the complainant knew or reasonably should have known the basis of the challenge.
13. If the complainant wishes to request for rapid interim measures (“RIM”) be awarded, he shall clearly state the request with justifications or written representations in the prescribed form.
14. The Secretariat will acknowledge receipt of the challenge lodged in the prescribed form as soon as it is received. If the complainant has not filed sufficient information as required in the prescribed form, the Secretariat shall, in consultation with the Chairman if necessary, notify the

complainant of the deficiencies to be corrected and the required information must be submitted by the complainant within 10 working days from the date of issuance of the notification by the Secretariat. A “Notification of Acceptance of Bid Challenge” (“Notification of Acceptance”) shall be issued to the complainant by the Secretariat once the prescribed form is confirmed to have been completed and all the required information has been received. If the complainant fails to submit the required information within the specified time limit, the challenge will not be accepted for inquiry and the Secretariat shall inform the complainant accordingly.

15. After the Notification of Acceptance has been issued, any change to the basis of the challenge raised by the complainant shall not be considered unless the change is raised before the Chairman decides whether a prima facie case has been established and the Chairman is satisfied that the new basis is raised within 10 working days after the complainant knew or reasonably should have known such new basis. Whenever a new basis is accepted by the Chairman, the Secretariat shall issue an updated Notification of Acceptance to the complainant superseding any such notification(s) issued previously pursuant to Clause 14 and/or this Clause.
16. If the procuring entity wishes to provide factual information pertaining to the relevant procurement to facilitate the Chairman’s consideration of the challenge, such information shall be sent to the Secretariat within 10 working days from the date of issuance of the latest Notification of Acceptance. If the complainant has any comments on the information provided by the procuring entity, these must be sent to the Secretariat by the complainant within 7 working days from the date of the procuring entity’s submission to the Chairman.
17. The Chairman shall decide, within 24 working days from the date of issuance of the latest Notification of Acceptance, whether a prima facie case has been established and accepted for inquiry, and if so, a Panel is to be appointed to consider the challenge. In making the decision, the Chairman shall, inter alia, take into consideration the following conditions –
 - (a) the challenge is made in respect of a procurement covered by the relevant prescribed agreement;
 - (b) the complainant meets the definition of “supplier” as stipulated in Clause 1;
 - (c) the information provided by the complainant and the procuring entity discloses a reasonable indication that the procurement has not complied with the provisions of the relevant prescribed agreement;

- (d) the challenge is filed within the prescribed time limit; and
- (e) the complainant has filed sufficient information as required in the prescribed form.

Where the Chairman considers there is reasonable indication that the challenge is made in respect of a procurement covered by the relevant prescribed agreement but no determination can be made, the Chairman may refer the issue under condition (a) above to the Panel so appointed for a determination provided that a prima facie case is established by taking into consideration, inter alia, conditions (b) to (e) above.

18. The Chairman, on the basis of the information provided in the prescribed form, and any information provided by the procuring entity and comments received from the complainant under Clause 16, may come to the view that the challenge shall not be accepted for inquiry, or that further information from the complainant and/or the procuring entity shall be requested in order to decide whether the challenge shall be accepted for inquiry. If further information is requested, the party concerned must provide the requested information within the time limit specified by the Chairman. The Chairman may, having regard to any reasonable cause shown as well as the need to provide a timely review procedure in particular if the complainant has requested that RIM be awarded, extend any time frames stipulated in Clauses 14 to 17. In no circumstances the Chairman shall decide whether a prima facie case has been established beyond 40 working days from the date of issuance of the latest Notification of Acceptance.
19. Notwithstanding Clause 17, where the alleged breach (allegation) does not have a direct bearing on the result of the procurement being challenged (for example, complaints of incomplete information in the notice on the award of contract, failure to provide explanation of procurement practices and procedures, etc), the Chairman may decide not to make a ruling on whether a prima facie case is established. If so, he shall invite the procuring entity to make representations regarding the allegation and the possible corrective measures. If the Chairman is satisfied that the allegation is valid, he may directly recommend the procuring entity to take necessary corrective measures. The Secretariat shall inform the complainant and procuring entity of the Chairman's decision, and that the challenge shall not proceed to the Panel stage.

(iii) *Establishment of Panel*

20. If the Chairman considers that a challenge should be accepted for inquiry, he shall appoint a panel to conduct an inquiry. The Secretariat shall inform the parties concerned in writing of the decision and the establishment of a Panel together with details of the challenge as soon as

possible but not later than 3 working days after receipt of the Chairman's decision.

21. Each Panel shall comprise the Chairman or either one of the Deputy Chairmen² as the head, and two members to be appointed by the Chairman. In deciding whether or not a Review Body member who is from the same sector or trade of the complainant shall be appointed as a Panel member, consideration should be given to whether this may give rise to any potential/perceived conflict of interests. The Panel may perform all of the Review Body's duties and functions and may exercise all of its powers including the power to extend the deadlines laid down in these Rules of Operation when necessary taking account of the facts of the challenge.
22. The chairman and members of the Panel shall each have one vote on a question before it and a decision shall be taken by simple majority. However, if each member of the Panel has a different view on the question, the chairman of the Panel may make a ruling which he considers to be the appropriate one in the circumstances.
23. If challenges have been lodged by different complainants and it appears to the Panel that –
 - (a) the challenges arise out of the same procurement; or
 - (b) it is in the interest of justice to do so,the Panel may decide to hear the challenges together or one after the other.
24. If at any stage of the proceedings, the Panel considers that the joint hearing of the challenges may prejudice the procuring entity or the complainant (as the case may be), it may decide that the challenges of all or any of the parties shall be inquired into, heard and determined separately.
25. If the term of appointment of the Chairman or either one of the Deputy Chairmen presiding at a Panel, or that of a member selected for a Panel, expires during the proceedings of the Panel, the Chairman, Deputy Chairman or the member concerned shall continue to exercise his functions in that particular Panel until the proceedings of the challenge are completed.

² If a Panel is established with a Deputy Chairman or any other member as acting Chairman, the Deputy Chairman or the member will continue to serve as head of the Panel until the case is over.

(iv) *Recommendation of RIM*

26. The procuring entity concerned may make representations in writing to the Panel regarding the complainant's request for RIM within 5 working days from the date of issuance of the notification on the establishment of the Panel and details of the complainant's request for RIM.
27. The Panel may, within 15 working days from the date of issuance of the notification on the establishment of the Panel, recommend any appropriate RIM to rectify any breach of the relevant prescribed agreement or to preserve commercial opportunities. The Panel shall take into account the request and justifications/written representations from the complainant for RIM and representations, if any, made by the procuring entity in writing under Clause 26. The Panel may also, on its own initiative, consider that RIM should be implemented by the procuring entity. The Panel shall inform the complainant and the procuring entity as soon as practicable of its decision on the recommendation of RIM.
28. Within 7 working days from the date of issuance of the notification on the recommended RIM, the procuring entity shall advise the Panel whether it will implement fully the recommended RIM, and if not, the reasons for not doing so, such as potential damage to the commercial interests of the procuring entity, any other overriding adverse consequences arising from implementing the recommendation, or any public interest grounds.

(v) *Panel Review and Hearing*

29. If the procuring entity wishes to submit a written response to the challenge lodged by the complainant, it must do so within 30 working days from the date of issuance of the notification on the establishment of the Panel.
30. When the Panel conducts an inquiry into a challenge, it shall consider the facts of the challenge, including all the written representations received, and determine whether the procuring entity has, when conducting the procurement, failed to comply with the requirements set out in the relevant prescribed agreement as alleged by the complainant. The onus of proving the breach of the relevant prescribed agreement shall be on the complainant.
31. The hearing of a challenge will be convened upon the request of the complainant or the procuring entity; or if the Panel considers it necessary to hold a hearing based on the facts of the challenge. The Panel may, on its own initiative or at the request of a party to the proceedings, decide to stay or adjourn the review process if there is a related judicial proceeding or quasi-judicial proceeding with respect to the same challenge. Any such period of stay or adjournment shall be excluded in reckoning any period of time prescribed by these Rules of Operation for taking any

Appendix III

action. Detailed procedures and practices for conducting hearings are at Appendix III.

(vi) *Findings and Recommendations*

32. The Panel shall determine the validity of a challenge within 90 working days from the date of issuance of the latest Notification of Acceptance. The Panel may, when necessary based on the facts of the challenge and the time the Chairman has spent in deciding that a prima facie case has been established, extend the time for arriving at a determination and/or recommendation, but in no circumstances shall the inquiry process last beyond 180 working days from the date of issuance of the latest Notification of Acceptance. The Panel shall make a written report of its opinions or recommendations on the challenge, together with a statement describing the basis of its opinions or recommendations. It will also, where applicable, state in the written report the provision(s) of the relevant prescribed agreement that the procuring entity is found to have breached.
33. Where the Panel determines that a challenge is valid, viz. the Panel determines that there has been a breach of the relevant prescribed agreement, it may recommend such remedy as it considers appropriate. The compensation to be recommended by the Panel will be limited to the following:
 - (a) for challenges arising from the GPA, either the costs for the preparation of the tender or the costs for the challenge, or both;
 - (b) for challenges arising from Chapter 12 of the HKC-NZ CEP Agreement, the costs for tender preparation reasonably incurred by the complainant for the purpose of the procurement;
 - (c) for challenges arising from Chapter 9 of the HKC-Chile FTA, the costs for tender preparation reasonably incurred by the complainant for the purpose of the procurement, or the costs relating to the complaint, or both; or
 - (d) for challenges arising from Chapter 13 of the HKC-AU FTA, either the costs for the preparation of the tender or the costs for the challenge, or both.
34. The procuring entity shall use reasonable endeavours to implement the recommendations and advise the Panel in writing within 30 working days from the date of issuance of the Secretariat's notification regarding the measures it intends to take or the reasons for not taking such measures.
35. If the procuring entity considers that it is unable, notwithstanding the use of such reasonable endeavours, to implement any recommendations made

by the Panel, it shall advise the Panel of the reasons for not so doing in writing pursuant to Clause 34 above, which may include, without limitation, potential damage to the commercial interests of the procuring entity, any other overriding adverse consequences arising from implementing the recommendations, or any public interest grounds.

36. The Panel may, within 30 working days from the date of receipt of the procuring entity's notification in Clause 35 above, make further recommendations regarding compensation for the loss or damages suffered by the complainant (which will be limited to items specified in Clause 33 above). The procuring entity shall use reasonable endeavours to comply with any such further recommendations and inform the Panel in writing, within 14 working days from the date of issuance of the further recommendations, the reasons for not implementing fully the recommendations if it so intends, such as potential damage to the commercial interests of the procuring entity, any other overriding adverse consequences arising from implementing the recommendations, or any public interest grounds.

(vii) Withdrawal of Challenge

37. A complainant may withdraw a challenge at any time after it is lodged by notifying the Secretariat in writing. Upon receipt of the notification, the Review Body shall take no further action with respect to the challenge.

(viii) Additional Information

38. The Chairman or the Panel may at any time upon receipt of a challenge, request any information relevant to the issues to be determined in the challenge including confidential information (please see Clauses 40 and 41 for the meaning of "confidential information") in the possession, custody or power of the parties concerned for the purpose of facilitating the inquiry into or determination on the challenge. The parties concerned shall provide such information within the time limit stipulated by the Chairman or the Panel.
39. The parties concerned may refuse to disclose information if the disclosure of such information would impede law enforcement or otherwise be contrary to the public interests or would prejudice the legitimate commercial interests of particular persons or enterprises, public or private, including the protection of intellectual property, or might prejudice fair competition between suppliers, or would be in breach of legal professional privilege or confidentiality between the party concerned and a third party (where the party concerned is unable to obtain the consent of the third party to disclose such information). The party who refuses to disclose such information shall state the reasons in writing to the Chairman or the Panel.

(ix) *Confidential Information*

40. When submitting information to the Review Body, a party may request the Review Body to classify certain information as confidential information which should be made available only to the Chairman or the Panel (as the case may be). Under such circumstances, the party must provide the Chairman or the Panel with –

- (a) a statement identifying the information that the party wishes to keep confidential, together with an explanation as to why such information should be classified as confidential;
- (b) a non-confidential description of the confidential information, which should contain sufficient details to convey a reasonable understanding of the substance of the confidential information;
- (c) one set of documents containing the confidential information and marked “confidential”; and
- (d) one set of documents from which the confidential information has been deleted.

The party shall copy to other parties concerned a set of documents on (b) and (d) above. All confidential information provided to the Review Body will be used for the sole deliberation of the Chairman or the Panel and will be kept strictly confidential.

41. Where information given or elicited in the course of any proceedings before the Panel is, in the opinion of the Panel, by its nature confidential, the information shall not knowingly be disclosed by any member, the Secretariat or any person attending the hearing. The Panel may hear the views of the parties involved in the proceedings before deciding whether the information shall be classified as confidential.

(x) *Release of the Panel’s Report*

42. The Panel’s report shall be made available to the complainant and the procuring entity concerned. Information classified as confidential will be excised from the report. The Panel’s decisions will be made available to the public on request.

(xi) *Languages*

43. The proceedings of the Review Body may be conducted in Chinese or English, or both as the Panel deems fit. Interpretation services shall be provided by the Secretariat as necessary.

(xii) *Others*

44. The Trade and Industry Department may from time to time devise detailed rules and procedures consistent with the rules contained in this document relating to the operation of the Review Body, and to extend the applicability of these Rules of Operation to other agreements to which Hong Kong, China is a party as may be warranted.
45. Members of the Review Body, including the Chairman and the Deputy Chairmen are not liable in law for any act done or omitted to be done by them in relation to the exercise or performance or the purported exercise or performance of the Review Body's duties, functions and powers unless it is proved that the act was done or omitted to be done dishonestly or in bad faith.
46. The Chairman, and the Panel after it has been formed, shall have the right to interpret these Rules of Operation in cases of conflict or ambiguity and such interpretation shall be binding on the parties concerned.

**Guidance Notes on
Avoidance of Possible and Potential Conflict of Interests**

In order to maintain the impartiality and reputation of the Review Body on Bid Challenges (the Review Body) and its individual members including the Chairman and Deputy Chairmen (hereafter the members), it is considered necessary for members to disclose their interests, either personal, family, or business; direct or indirect; pecuniary or otherwise, when there is a real or potential conflict with those in relation to a matter placed before the consideration of the Review Body. The basic principle to be observed is that members' advice should be and be seen to be unbiased and impartial and it is the responsibility of each member to judge and decide if the situation warrants a declaration.

General Guidelines

2. It is not practical to set hard and fast rules to determine what should be declared because each individual case is different and it is difficult to cater for unusual and unforeseen circumstances. However, the following are some general cases which can assist members to identify potential conflict of interests:

- (a) Pecuniary interests such as directorships or partnerships in companies, substantial shareholdings (e.g. 1% or more of the issued share capital) and remunerated employments, offices, trades, professions or vocations, in a matter under consideration by the Panel of the Review Body, interests held by a member or his spouse, children under 18 or any close relative, should be declared. Members are themselves the best judge of who, in the particular circumstances, is a close relative.
- (b) A directorship, partnership, advisory or client relationship, employment or other significant connection with a company, firm, club, association, union or other organisation which is connected with, or the subject of, a matter under consideration by the Review Body, should be declared.
- (c) A member who, as a professional adviser, has personally or as a member of a company, has advised or represented or has frequent dealings with any person or body connected with a matter under consideration by the Review Body, should make a declaration.
- (d) A member who is from the same sector or trade of the complainant and hence his access to information pertaining to the challenge (such as pricing strategy) may lead an objective observer to believe that any entity specified in paragraph 4 below to which he has a

direct or indirect interest would have an advantage if such entity bids for similar contracts in future should make a declaration.

- (e) Friendships which is so close as to warrant declaration in order to avoid the situation where an objective observer may perceive a member's advice to have been influenced by the closeness of the association should be declared.
- (f) Any interest likely to lead an objective observer to believe that the member's decision might have been motivated by personal interest rather than by a duty to act impartially should be declared.

Registration of Interests

3. The overall purpose of registration is to seek to strike a balance between the information to be disclosed so as to maintain the credibility of the Review Body and the proper degree of privacy of the members. Members should register in writing their interests (pecuniary or otherwise) when they are first appointed, and thereafter annually, to the Secretariat, and should advise the Secretariat about any changes to their registrable interests as soon as such changes have occurred. The registration should be made on a standard form (Appendix II).

4. The registrable interests include the following interests (pecuniary or otherwise) of members, and their spouses and children under the age of 18:

- (a) directorships or partnerships in companies;
- (b) substantial shareholdings (1% or more of the issued share capital);
and
- (c) remunerated employments, offices, trades, professions or vocations.

5. Members should register their interests and those of their spouses and children under the age of 18 to the best of their knowledge. Where applicable, members should also give a brief description of the lines of business of companies or entities in which they are involved.

Declaration of Interests at or before the Hearing

6. If a member has any direct or personal interest (pecuniary or otherwise) in any matter under consideration by the Panel, he should make known to the Secretariat before the hearing or meeting, notwithstanding that the interest has been registered.

(a) Substantial direct interest

Where a member has a substantial direct interest, whether pecuniary or otherwise, he should declare this and withdraw from the hearing or meeting prior to the discussion; but, at the invitation of the Chairman of the Panel, he may make a statement on the subject matter prior to his withdrawal if he has an important and unbiased contribution to make.

(b) Less direct or substantial interest

Where the interests are less direct or substantial, these should be declared but, unless for special reasons he is asked to withdraw, he should be allowed to participate in the discussion but should refrain from the determination on the subject matter. He should however carefully consider whether or not to abstain from giving advice to the Panel.

(c) Indirect or remote interest

Where a member has only an indirect or remote interest which is unlikely to give him any personal benefit and which a reasonable man would not consider as likely to influence his views and judgment, he should be free to participate in the discussion and determination on the subject matter. Nonetheless, he should make the interest known to the Panel.

7. In case of doubt, the member should discuss his position with and seek a ruling from the Chairman of the Panel (or the Secretary for Commerce and Economic Development for the case of the Chairman of the Panel) *as soon as he becomes aware of it*. If it is decided that a substantial direct conflict is involved, the Secretariat would withhold the issue of relevant papers and documents to the concerned member or request the member to return the papers or other information relating to the matter under discussion which he may have received.

8. All cases of declaration of interests shall be recorded in the record of hearing or meeting.

Register of Members' Interests of the Review Body on Bid Challenges

(Name: _____) requests that interests as set out in the attached forms (total pages: _____) should be included in the Register of Members' Interests. The information provided in this register is to the best of my knowledge:

Signed:

Date:

Registrable Interests	Interests to be declared by the following parties:		
	Member	Spouse	Children under 18
<p>PROPRIETORSHIPS, PARTNERSHIPS AND DIRECTORSHIPS IN COMPANIES</p> <p>Please provide in the columns to the right details of any remunerated directorship in any public or private company.</p> <p>Notes:</p> <p>(a) Remunerated directorships include all directorships for which a fee, honorarium, allowance or other material benefit is payable.</p> <p>(b) You should give the name of the company, and briefly state the nature of the business of the company in each case.</p> <p>(c) Remunerated directorships of both local and overseas companies are registrable.</p> <p>(d) Remunerated directorships through corporate directors are also registrable.</p> <p>(e) Where you or your spouse are a remunerated director of a company, all subsidiary or associated directorships which you or your spouse hold within the same group, whether remunerated or not, should also be registered.</p> <p>(f) There is no need to register the amount of remuneration received.</p>			

Use additional form(s) if necessary

Member's name:

Registrable Interests	Interests to be declared by the following parties:		
	Member	Spouse	Children under 18
<p>REMUNERATED EMPLOYMENTS, OFFICES, TRADES, PROFESSIONS OR VOCATIONS</p> <p>Please provide in the columns to the right details of any employment, office, trade, profession, or vocation from which remuneration or pecuniary interest is obtained.</p> <p>Notes:</p> <p>(a) An employment, office, trade, profession or vocation is “remunerated” where a salary, honorarium, allowance or other material benefit is payable.</p> <p>(b) “Remunerated offices” should include all “remunerated” public offices.</p> <p>(c) Indicate the nature of the employment, office, trade, or profession. Where a firm is named, please briefly indicate the nature of the firm’s business if practicable.</p> <p>(d) For paid posts as consultants or advisers, indicate the nature of the consultancy, e.g. “traffic consultant”, “legal adviser”, etc.</p> <p>(e) There is no need to register the amount of remuneration received.</p>			

Use additional form(s) if necessary

Member's name:

Registrable Interests	Interests to be declared by the following parties:		
	Member	Spouse	Children under 18
<p>SUBSTANTIAL SHAREHOLDINGS</p> <p>Please provide in the columns to the right details of any shareholding in any public or private company of a nominal value of 1% or more of the issued share capital of the company.</p> <p>Notes:</p> <p>(a) "Shareholding" is defined as personal shareholding and does not include shareholdings held in the capacity of a nominee shareholder.</p> <p>(b) There is no need to register the size or value of the shareholdings.</p>			

Use additional form(s) if necessary

Member's name:

Registrable Interests	Interests to be declared by the following parties:		
	Member	Spouse	Children under 18
OTHER DECLARABLE INTERESTS THAT MAY HAVE RELEVANCE TO THE WORK OF THE REVIEW BODY			

Use additional form(s) if necessary

Procedures and Practices for Conducting Bid Challenge Hearing

Introduction

This Appendix incorporates the procedures and practices adopted by the Panel of the Review Body on Bid Challenges (the Panel) so that consistency can be maintained. This Appendix should be read in conjunction with the “Rules of Operation of the Review Body on Bid Challenges” (the Rules).

Circumstances of Conducting Hearing

2. Hearing of a challenge may be convened upon the request of the complainant or the procuring entity; or if the Panel considers it necessary to hold a hearing based on the facts of the challenge. In the former case, the party concerned shall request the Panel in writing not later than 7 working days from the date of issuance of the notification by the Secretariat of the establishment of the Panel. It shall also be stated in the written request whether the hearing should be conducted in private or public. A hearing shall be conducted in public only if there is a consensus amongst the parties concerned.

Notification to the Panel

3. The Chairman of a Panel (hereafter referred to as “the Chairman”) shall fix a date for a hearing. The Secretariat should then notify the Panel in writing of the date, time and place of hearing and furnish a copy of each of the following documents to the Panel at least 7 working days before the date of the hearing –

- (a) name of the complainant(s) and the procuring entity concerned;
- (b) name of members of the Panel serving at the hearing;
- (c) a written summary of facts together with the relevant documents for the case to be heard by the Panel; and
- (d) a set of the Rules (if not yet been given before) which also contains the Proceedings of Bid Challenge Hearing (Annex).

Annex

4. Members will also be alerted in the notification letter that if they have a direct personal or pecuniary interest in any matter and are present at the hearing or Panel meeting at which the matter is the subject of consideration, they must, at the hearing or Panel meeting and as soon as possible after its commencement or as soon as they discover that they could have a conflict of interests in the course of discussion, disclose the nature of that interest and withdraw from the hearing or Panel meeting. A set of “Guidance Notes on

Avoidance of Possible and Potential Conflict of Interests” (Appendix I) will be sent to the members together with the notification letter. If the quorum cannot be met after withdrawal of the member, the hearing or Panel meeting will be adjourned unless a replacement member can be identified immediately.

Notification to the Complainant and the Procuring Entity Concerned

5. The Secretariat will notify the complainant and the procuring entity concerned in writing of the date, time and place of hearing and furnish a copy of each of the documents as listed in paras. 3(b) to (d) above to them at least 7 working days before the date of hearing.

6. The Secretariat shall request the complainant and the procuring entity concerned to confirm the following in writing, not less than 5 working days before the date of hearing –

- (a) the language/Chinese dialect they intend to use at the hearing;
- (b) whether the two parties are appearing in person or will be represented at the hearing. If any party is to be represented, that party shall submit an authorisation letter specifying the name and personal particulars of the person representing him (see rules governing representations at paras. 13 to 14); and
- (c) whether the parties intend to call any witnesses¹ to attend the hearing. If so, the party(ies) concerned shall also provide the name(s) and personal particulars of the witness(es) to the Secretariat.

7. Upon receipt of the confirmation from the parties concerned on the matters listed at para. 6 above, the Secretariat will proceed with the necessary logistical arrangements for the hearing accordingly.

Change of Date of Hearing and Adjournment of Hearing

8. If the quorum of the Panel consisting of the Chairman and two members is not present within **30 minutes** after the time appointed for the hearing, the meeting shall stand adjourned and another date shall be fixed for the hearing.

9. The complainant and the procuring entity concerned would be advised to register at the reception counter 15 minutes before the hearing. If either party fails to appear or is not represented at the hearing within **30 minutes** after the time appointed for the hearing, the Panel may proceed to hear and

¹ The Panel may, by notice under the signature of the Chairman, call for witnesses to attend the hearing.

determine the challenge in the absence of the party concerned if it is satisfied that due notice has been given prior to the hearing according to the Rules, or adjourn the hearing on its own motion. In any case, a notice of the Panel's decision on whether to hear and determine the challenge as scheduled will be given to the parties concerned on the same day.

10. If for any reason (such as on grounds of conflict of interests, ill-health and/or other emergencies), any Panel member, including the Chairman, is unable to serve/continue to serve at a hearing, the Trade and Industry Department may appoint a replacement member/Chairman where appropriate to continue with the hearing, or a new Panel to hear the challenge afresh.

11. The hearing shall continue to be conducted when Tropical Cyclone Warning Signal No. 1 or No. 3 or the "Amber" or "Red" Rainstorm Warning is in force.

12. The hearing shall, unless announcements have been made by the Secretariat in consultation with the Chairman, be postponed if:

- (a) Tropical Cyclone Warning Signal No. 8 or above or the "Black" Rainstorm Warning is in force; or
- (b) Pre-No. 8 Special Announcement for tropical cyclone warning has been made,

two hours before the appointed time of the hearing. If Tropical Cyclone Warning Signal No. 8 or above or the "Black" Rainstorm Warning is issued, or Pre-No. 8 Special Announcement for tropical cyclone warning is made by Government while the hearing is in progress, the Chairman shall decide in consultation with parties attending the hearing whether to adjourn or continue with the hearing.

Representations at the Hearing

13. Both the complainant and the procuring entity concerned may request that they are to be represented at the hearing by or appearing together with their authorised representatives. An authorised representative may be a counsel or an agent.

14. The complainant and the procuring entity concerned should confirm with the Secretariat in writing not less than 5 working days before the date of hearing, as to whether they are appearing in person or will be represented at the hearing. In the latter case, they should submit an authorisation letter according to para. 6(b) above. If subsequently the complainant and/or the procuring entity concerned wishes to request that an additional or different representative(s) be present at the hearing, the party(ies) concerned shall provide explanations, together with the particulars of the new representative(s), to the Secretariat at least 3 working days before the date of hearing.

Hearing in Public

15. With the consent of all parties concerned, the Panel may conduct a hearing in public. The Secretariat shall issue a public notice giving details of the hearing on the website of the Trade and Industry Department at least 7 working days before the date of hearing.

16. Applications for admittance as observers to the hearing may be made by advance booking or on the spot by any member of the public on a first-come-first-serve basis. A limit will be set by the Secretariat on the number of observers taking into account the capacity of the venue.

Maintenance of Order

17. The Chairman may require any person to leave if that person wilfully disrupts or obstructs the proceedings of the hearing or otherwise misbehaves during a hearing, or if he does not comply with the hearing procedures.

Proceedings of Hearing

18. The Panel shall follow the proceedings detailed at Annex for conducting the hearing. The hearing is not a court of law and its proceedings should not be conducted with undue formality.

19. Circumstances leading to the adjournment of hearing are set out at paras. 8 to 12 above.

Record of Proceedings and the Report of the Panel

20. The proceedings will be recorded. Simultaneous interpretation service will be provided if required.

Proceedings of Bid Challenge Hearing

1. Note for Panel

A member who has an interest in the case under consideration but who has not yet registered his interest shall declare it before the hearing or as soon as he discovers that he could have a conflict of interests in the course of discussion. Members are required to observe the rules governing the declaration and registration of interests (pecuniary or otherwise) as set out in the “Guidance Notes on Avoidance of Possible and Potential Conflict of Interests” at Appendix I to the “Rules of Operation of the Review Body on Bid Challenges”.

2. Commencement of Proceedings

- (a) Before the commencement of the hearing, the Chairman of the Panel (hereafter referred to as “the Chairman”) shall invite the complainant and the procuring entity and their representatives (if any) into the hearing.
- (b) The Chairman declares commencement of the hearing by stating –
 - (i) the purpose of the hearing;
 - (ii) a brief description of the challenge; and
 - (iii) the method(s) of recording the proceedings of hearing.

3. Introduction of all the Parties present at the Hearing

The Chairman will introduce members of the Panel, the complainant and the procuring entity and/or their representatives and other working staff at the hearing as appropriate.

4. Hearing in Progress

The Chairman shall conduct the proceedings of the hearing as detailed below –

Presentation by the Complainant

- (a) the complainant or his representative(s) to present the case.
- (b) the complainant and/or his representative(s) to call his witnesses one by one and produce documentary evidence (if any) and examine the witnesses separately.
- (c) the procuring entity and/or his representative(s) to cross-examine the witness.
- (d) the complainant and/or his representative(s) to re-examine the witness (if necessary).
- (e) the Panel may question the witness(es) at any point of time during the presence of the witness at the hearing.
- (f) to repeat steps (b) to (e) if there are more than one witness.
- (g) the procuring entity and/or his representative(s) to put questions to the complainant and/or his representative(s).
- (h) the Panel to put questions to the complainant and/or his representative(s).

Steps (b) to (f) are applicable only if the complainant has witness(es) to call

Presentation by the Procuring Entity

- (i) the procuring entity or his representative(s) to present the case.
- (j) the procuring entity and/or his representative(s) to call his witnesses one by one and produce documentary evidence (if any) and examine the witnesses separately.
- (k) the complainant and/or his representative(s) to cross-examine the witness.
- (l) the procuring entity and/or his representative(s) to re-examine the witness (if necessary).
- (m) the Panel may question the witness(es) at any point of time during the presence of the witness at the hearing.
- (n) to repeat steps (j) to (m) if there are more than one witness.
- (o) the complainant and/or his representative(s) to put questions to the procuring entity and/or his representative(s).
- (p) the Panel to put questions to the procuring entity and/or his representative(s).

Steps (j) to (n) are applicable only if the procuring entity has witness(es) to call.

Conclusion

- (q) the complainant or his representative(s) to conclude his case.
- (r) the procuring entity or his representative(s) to conclude his case.

5. Close of Proceedings

The Chairman declares the close of hearing and invites the parties concerned and/or other persons attending the hearing to leave the venue.

6. Hearing in the Absence of the Complainant or the Procuring Entity and/or their Representatives

If hearing of a challenge is conducted in the absence of the complainant/the procuring entity and/or their representatives, the Chairman shall basically follow the proceedings as set out in paras. 1 to 4 above except that –

- (a) there is no need to introduce the complainant/the procuring entity and/or their representatives as appropriate;
- (b) the relevant steps as detailed in para. 4 above may be omitted.

7. Formation of Panel's Opinion

After the hearing has closed, the members of the Panel shall deliberate the challenge and the Panel will in due course make its recommendations on the basis of the consensus opinions or the majority views. In the case where consensus opinions or majority views cannot be reached, the Chairman shall make a ruling. In all cases, all opinions and views expressed shall be recorded.
