

Applications for Review of the Debarment Period under the Review Mechanism

Under the prevailing procurement arrangement for government service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled workers⁽¹⁾, there is a mandatory requirement for assessment of tenderers' past performance in terms of convictions under the following Ordinances:

- (a) the Employment Ordinance (Cap. 57) and the Employees' Compensation Ordinance (Cap. 282), convictions of which individually carry a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance (Cap. 221);
- (b) section 17I(1) of the Immigration Ordinance (Cap. 115);
- (c) section 89 of the Criminal Procedure Ordinance (Cap. 221) and section 41 of the Immigration Ordinance (Cap. 115);
- (d) section 38A(4) of the Immigration Ordinance (Cap. 115); and
- (e) sections 7, 7A and 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

2. If a contractor has obtained any conviction on or after 1 May 2006 under the relevant sections of the above Ordinances, its quotations/tender offers shall not be considered for a fixed period of five years from the date of conviction (hereinafter referred to as "debarment period"). Convictions will be counted irrespective of whether they are obtained in respect of a government or private contract and irrespective of the type of services offered under the contract. Convictions will be counted by the number of summonses convicted. Convictions under appeal or review will still be counted for the purpose of tender/quotation evaluation.

⁽¹⁾ Non-skilled workers are those performing the functions comparable to the duties of Government Model Scale 1 Grade Staff. Currently, Model Scale 1 Grades include Car Park Attendant II, Explosives Depot Attendant, Ganger, Gardener, Property Attendant, Supplies Attendant, Ward Attendant, Workman I & II, and Workshop Attendant.

3. The Administration has recently completed a review of the above arrangement. While upholding the five-year debarment period as the maximum penalty by default, we have, with effect from 24 June 2010, introduced a review mechanism under the Central Tender Board to consider applications from convicted contractors for a review of the applicability of the five-year debarment period having regard to the circumstances of individual cases (hereinafter referred to as “review mechanism”). Under the modified arrangement, contractors convicted under the relevant sections of the Ordinances set out in paragraph 1 above on or after 24 June 2010 would continue to be subject to the five-year debarment period until and unless their applications for shortening the debarment period have been accepted by Central Tender Board. The review mechanism will also be extended to those convictions obtained prior to 24 June 2010 if the concerned contractors submit written applications to the Central Tender Board requesting that their cases be considered under the review mechanism.

4. Convicted contractors who want their cases to be considered under the review mechanism may submit their applications in writing to the Central Tender Board (Attn: the Secretary) at the Tender Division, Treasury Branch of the Financial Services and the Treasury Bureau, 24/F, Central Government Offices, 2 Tim Mei Avenue, Tamar, Hong Kong (Fax No.: 2869 4519). An application should be signed by an authorized signatory of the applicant and stamped with a company chop (if applicable), and includes but not limited to the following information –

- (1) name of the applicant in Chinese and English;
- (2) Business Registration Number of the applicant;
- (3) name of the authorized signatory of the applicant in Chinese and English;
- (4) contact information (correspondence address, telephone number, fax number, etc.);
- (5) grounds of the review;
- (6) date and location of offence(s), Ordinance(s) and section(s) breached, date and number of conviction(s) under review, as well as amount of fines of each and every such conviction;

- (7) number of employees to whom the offence(s) in the conviction(s) under review is/are committed and the total number of employees employed by the applicant at the time of offence(s);
- (8) status and result of the appeal (if the applicant has filed an appeal against the conviction(s) or the sentence);
- (9) name of procuring bureau/department together with contract number and nature of contract (e.g. cleansing, security and gardening services) (if the conviction(s) is/are in respect of a government contract);
- (10) details of convictions (if any) related to the relevant provisions of the Ordinances set out in paragraph 1 in the past five years preceding the date of the conviction under review;
- (11) the duly completed [consent form](#) for disclosure of information; and
- (12) other supporting or relevant documents/information, e.g. transcript of the trial concerned.

5. Upon receipt of an application for review, the Secretariat of the Central Tender Board will acknowledge receipt and request additional information/clarification from the applicant, as may be required. If the applicant does not respond to the request for additional information/clarification or submit a duly completed [consent form](#) for disclosure of information within a specified period of time, the Central Tender Board may not consider the application further or may consider it as is.

6. Based on the application made by the contractors and other relevant information, the Secretariat of the Central Tender Board will make an initial recommendation for consideration by the Central Tender Board.

7. After obtaining the Central Tender Board's agreement to the initial recommendation, the Secretariat of the Central Tender Board will invite the applicant to make written representations within a specified period in response to the recommendation as well as information that is relevant to the formulation of the recommendation. Upon receipt of the representations from the applicant or after the specified deadline, the Secretariat of the Central Tender Board will submit the case to the Central Tender Board for making a final decision on the period of debarment.

8. After the review has been completed, the Secretariat of the Central Tender Board will arrange to inform the applicant of the Central Tender Board's decision. The five-year debarment period shall stand until and unless it is reduced or revised by the Central Tender Board. The Central Tender Board reserves the right not to review convicted cases which are the subject of review/appeal before court. The revised debarment period as determined by the Central Tender Board will not be applicable to quotations/tenders closed on or before the date of Central Tender Board's ruling.

9. If a contractor obtains a new conviction subsequent to the Central Tender Board's decision to reduce its debarment period for a previous conviction, that revised debarment period will become invalid on the date of the new conviction. The contractor will be debarred for a period of five years from the date of its latest conviction. If the contractor wishes to apply for a reduction of the debarment period in respect of its latest conviction, it has to submit a fresh application to Central Tender Board.