

Handling Outsourced Property Management Services

Best Practice Guide

Code No.: **G15/2023**



PROPERTY MANAGEMENT SERVICES AUTHORITY

Best Practice Guide on Handling Outsourced

Property Management Services

Guide No.: G15/2023

Effective Date : 28 April 2023

Preamble

For the purpose of enabling licensees¹ to comply more effectively and professionally with the guidelines set out in the Code of Conduct² entitled “Handling Outsourced Property Management Services” (Code No.: C15/2023) (“Code”) issued by the Property Management Services Authority (“PMSA”) on 28th April 2023, the PMSA provides relevant guidelines in this Best Practice Guide (“Guide”) pursuant to section 44³ of the Property Management Services Ordinance (Cap. 626) (“PMSO”). While licensees are encouraged to use their best endeavours to follow the Guide, failure to comply with the Guide will, however, not be regarded as a disciplinary offence referred to in section 4 of the PMSO.

Background

When providing property management services (“PMSs”) to properties, a licensed property management company (“PMC”) may outsource any or all of its PMSs to other subcontractors or service providers (hereinafter collectively referred to as “service contractors”). A licensed PMC and its service contractors work as key partners. To ensure effective provision of PMSs, they should maintain a good working relationship. The PMSA has thus formulated the Code to provide practical guidance to licensed PMCs on outsourcing PMSs, and the Guide aims to enable licensees to comply more effectively and professionally with the guidelines set out in the Code.

¹ The term “licensee” means the holder of the following licence: a PMC licence; a PMP (Tier 1) licence; a PMP (Tier 2) licence; a provisional PMP (Tier 1) licence; or a provisional PMP (Tier 2) licence.

² With regard to the Code of Conduct containing practical guidance issued by the PMSA under section 5 of the PMSO for the purpose of section 4 of the PMSO (disciplinary offences), although a licensee does not incur a legal liability only because the licensee has contravened a provision of the Code of Conduct, the Code of Conduct is admissible in evidence in disciplinary hearings, and proof that a licensee contravened or did not contravene the relevant provision of the Code of Conduct may be relied on as tending to establish or negate a matter that is in issue in the hearings.

³ Section 44 of the PMSO provides: “The Authority may do anything it considers appropriate for it to do for, or in relation to, the performance of its functions”.

Selection of service contractors

Code: A(1) A licensed PMC has to, for the property in respect of which PMSs are provided by it, formulate a mechanism for selection of service contractors (if there is no owners' organisation⁴); or agree with the owners' organisation (if any) on such mechanism⁵ as guidelines for outsourcing PMSs.

Guide:

- a(1) When formulating a mechanism for selection of service contractors, apart from complying with the relevant regulations⁶ and codes⁷, a licensed PMC should also consider the relevant guidelines⁸ (for example, it should set out in advance the criteria for selecting contractors, including the scale of the contractor, its professional expertise, relevant experience and reputation, etc.).

Preparing tender documents and making contract with service contractors

Code: B(1) If there is no owners' organisation, the licensed PMC has to, for the property in respect of which PMSs are provided by it, prepare by itself clear tender documents for the partially or wholly outsourced PMSs; and when making contracts with the concerned service contractors, stipulate clearly the contract requirements.

⁴ The term "owners' organisation" has the same meaning as defined by section 2 of the PMSO i.e. "in relation to a property, means an organisation (whether or not formed under the Building Management Ordinance (Cap. 344) (BMO) or a deed of mutual covenant) that is authorised to act on behalf of all the owners of the property".

⁵ The mechanism should not affect the work of a licensed PMC as the manager to carry out its duties pursuant to the BMO or the deed of mutual covenant of the respective property. The term "manager" has the same meaning as that defined by section 34D of the BMO.

⁶ Including the BMO.

⁷ Including the "BMO (Cap.344): Code of Practice on Procurement of Supplies, Goods and Services" ("Code of Practice") issued by the Home Affairs Department in accordance with the BMO ([https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20\(eng\)\(full\).pdf](https://www.buildingmgt.gov.hk/file_manager/en/documents/code_of_practice/221805064_HAD%20(eng)(full).pdf)) and the "Carrying out Procurement for Clients and Prevention of Bid-rigging" Code of Conduct (Code No. C11/2022) issued by the PMSA (<https://www.pmsa.org.hk/en/regulatory/codes-of-conduct>).

⁸ For example, the guidelines in the "Best Practice Checklist on Contracting out Cleaning and Security Contracts" published by the Independent Commission Against Corruption (ICAC) (https://cpas.icac.hk/UploadImages/InfoFile/cate_43/2016/3fc968ac-540d-456d-808c-585b077063f3.pdf) and Chapters 5 – 7 of the "Building Management Toolkit" issued by the ICAC, the Home Affairs Department, the Hong Kong Housing Society, jointly with the Law Society of Hong Kong, the Hong Kong Institute of Surveyors, the Hong Kong Institute of Housing, the Housing Managers Registration Board, the Chartered Institute of Housing Asian Pacific Branch, and the Hong Kong Association of Property Management Companies. (https://cpas.icac.hk/UploadImages/InfoFile/cate_43/2019/280eaeaa-d72a-4b9c-be2f-37fb305c86ec.pdf)

B(2) If there is an owners' organisation, the licensed PMC has to remind the owners' organisation the relevant requirements of the Code (whether the concerned contract with the service contractor is made and signed by the owners' organisation or the licensed PMC).

Guide:

b(1) The tender document / contract should as far as practicable include and stipulate clearly the following:

- (i) scope of work (e.g. areas and facilities in the property covered by the service, and service requirement (e.g. type of cleansing work and type of waste required for disposal, frequency of cleansing, time requirement in respect of security staff on duty, patrol frequency, handling complaints and working hours, etc.));
- (ii) based on the actual circumstances of the property (e.g. the scale of the property and number of units, etc.), appropriate requirement relating to and commensurate with manpower and equipment regarding the scope of work (e.g. number of staff in various ranks, experience, qualifications and working hours; staff salary to be paid by the service contractor, uniform provision (if applicable) and equipment needed for work to be provided (e.g. cleaning tools, protective gear or electronic guard monitoring systems) (if applicable);
- (iii) requirement on report submission (e.g. daily report regarding work record of staff required to be kept and submitted in accordance with the requirement);
- (iv) arrangement on changing, increasing or reducing services (e.g. a licensed PMC may, based on the actual circumstances and needs, increase or reduce work items or manpower, and the relevant fee arrangement and terms should be stipulated in the contract);
- (v) arrangement on handling situation where the service contractor breaches the contract terms and/or fails to arrange for adequate staff to carry out duties or the service provided is inadequate (if applicable) (for example, please refer to the follow-up action in paragraph d(1) of the Guide);
- (vi) requirement that the service contractor shall in accordance with the

licensed PMC's request make a declaration of probity (including prohibition of offering, solicitation or acceptance of any illegal advantages; declaration of any conflict of interest (actual or potential), etc.) (see sample declaration at **Annex 1**);

- (vii) contract payment arrangement and documents of proof to be submitted when applying for payment according to the contract terms (e.g. adoption of monthly payment arrangement, submission of staff attendance records);
- (viii) expiry of contract and mechanism for early termination of contract (including the terms stipulating termination arising from breach of contract) and/or contract renewal (if applicable); and
- (ix) requirement for procurement of valid insurance.

b(2) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs b(1)(i)-(ix) of the-Guide.

Monitoring service contractors

Code: C(1) A licensed PMC has to, for the property in respect of which PMSs are provided by it, when outsourcing any or all of such PMSs to service contractors, monitor the services provided by such service contractors.

C(2) If the PMSs in paragraph C(1) of the-Code are outsourced by the owners' organisation, the licensed PMC has to remind the owners' organisation about the requirement of the Code.

Guide:

c(1) A licensed PMC should:

- (i) arrange for suitable staff to be responsible for coordinating, supervising and monitoring the services provided by the service contractors;
- (ii) communicate with the service contractors and conduct regular meetings to review their services, examine their work difficulties and

- provide assistance;
- (iii) check randomly and timely the attendance record of the staff of the service contractors, or the relevant work log (e.g. cleansing log or security patrol log);
 - (iv) perform spot check timely to ensure that the service contractors abide by the contract terms and arrange for sufficient staff to provide respective services at the property concerned;
 - (v) record instantaneously and take photo (if applicable) for record if it is found that the service contractor has breached the contract terms (e.g. failed to arrange for sufficient staff to work on-site, failed to clear waste material, failed to have security guard on duty, etc.) and so far as reasonably practicable, require the service contractor to sign and confirm the matter;
 - (vi) deal with breach of contract by the service contractor in accordance with the requirement stipulated in the contract if spot check or other information reveal such issues (e.g. complaints received from clients⁹, residents or tenants); and
 - (vii) ensure, in accordance with the Occupational Safety and Health Ordinance (Cap. 509), that the workplace is in a condition that is, so far as reasonably practicable, safe and without risks to health.
- c(2) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs c(1)(i)-(vii) of the Guide.

Appropriate follow-up work

Code: D(1) A licensed PMC has to take appropriate action against service contractors which have breached the contract terms.

⁹ The term "client" has the same meaning as defined in section 16 of the PMSO, i.e. "in relation to a property for which a licensed PMC provides property management services, means— (a) the owners' organization of the property; and (b) the owners of the property who pay or are liable to pay the management expenses in respect of the services". According to such a definition, a tenant is not a client.

D(2) If a licensed PMC has to terminate prematurely the contract entered into with the service contractor, the matter has to be dealt with in accordance with the relevant contract terms.

D(3) If the service contract is entered into by the owners' organisation, the licensed PMC has to remind the owners' organisation about the requirement set out in paragraphs D(1) and D(2) of the Code.

Guide:

- d(1) A licensed PMC may take follow-up actions including issuing reminder, giving advice, verbal/written warning, deduction of payment, termination of contract, etc., against service contractors which have breached the contract terms.
- d(2) Should the contract with the service contractor be terminated prematurely, the licensed PMC should terminate the contract in writing and so far as reasonably practicable, provide the service contractor with, in written form, the reasons for early termination.
- d(3) Should the contract with the service contractor be terminated prematurely or when replacing a service contractor, the licensed PMC should take all practicable measures to handle the matter so as to avoid affecting the PMSs provided to clients.
- d(4) The licensed PMC should report to the owners' organisation (if any) timely on the service contractor's breach of contract terms, the follow-up action taken and the reason for taking such action.
- d(5) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs d(1) – d(3) of the Guide.

Maintaining good working relationship with service contractors

Code: E(1) A licensed PMC has to maintain close communication and good working relationship with the service contractors, and ensure the service contractors provide the service required to clients through effective contract management and monitoring.

E(2) If the service contract is entered into by the owners' organisation, the licensed PMC has to remind the owners' organisation the requirement set out in paragraph E(1) of the Code.

Guide:

e(1) A licensed PMC should:

- (i) maintain communication with the service contractors so as to help allay concerns early and seek compromise on disputes to resolve issues arisen;
- (ii) provide to the service contractors appropriate information and documents such that they can effectively comply with the contract terms to provide relevant PMSs; and
- (iii) avoid charging the service contractors with unreasonable administrative fees which may otherwise adversely affect their willingness to bid for tender to provide the PMSs¹⁰.

e(2) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs e(1)(i)-(iii) of the Guide.

Handling payments to service contractors

Code: F(1) A licensed PMC has to settle payment with the service contractors for the service provided in accordance with the contract terms.

F(2) If the service contract is entered into by the owners' organisation, the licensed PMC has to remind the owners' organisation about the requirement set out in paragraph F(1) of the Code.

Guide:

f(1) A licensed PMC should:

- (i) request service contractors applying for payment to submit relevant invoices and documents of proof (e.g. attendance and work record of the relevant staff);
- (ii) explain in written form the reason for deducting payment and the

¹⁰ Please refer to Section 4.6.4 of the "Building Management Toolkit" for details (https://cpas.icac.hk/UploadImages/InfoFile/cate_43/2019/280eaeaa-d72a-4b9c-be2f-37fb305c86ec.pdf).

- method of calculation, if there is a need to deduct payment in accordance with the service contract; and
- (iii) make payment to the service contractors in accordance with the contract terms after acceptance of completion and delivery of services as stipulated in the service contract.
- f(2) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs f(1)(i)-(iii) of the Guide.

Keeping record

- Code:** G(1) A licensed PMC has to keep all contracts entered into with service contractors as well as the relevant documents for not less than six years¹¹.
- G(2) If the service contract is entered into by the owners' organisation, the licensed PMC has to remind the owners' organisation the requirement set out in paragraph G(1) of the Code.

Guide:

- g(1) A licensed PMC should:
- (i) ensure that the record contain the name, position and signature of the recording staff and the recording date so that checking when required can be made and follow-up action to be carried out; and
- (ii) keep the record, document (including the tender document) and information in an appropriate place.
- g(2) If the service contract is entered into by the owners' organisation, the licensed PMC should remind the owners' organisation the matters addressed in paragraphs g(1)(i)-(ii) of the Guide.

- End -

If there is any inconsistency between the Chinese version and the English version of this Guide, the Chinese version shall prevail.

¹¹ This guideline is made with reference to Section 20A(4) of the BMO.

Declaration of Probity by Service Contractor

To: Owners' organisation / Licensed PMC

Contract No.:.....

Contract Title:.....

Our company confirms that the following terms have been complied with and shall ensure that the company directors, staff and agents will comply with the following terms:

- a) Unless with the written approval of the owners' organisation (OO) / licensed PMC, the offering, solicitation or acceptance of any advantage defined in the Prevention of Bribery Ordinance (Cap. 201) by the directors, staff and agents involved in this contract regarding the OO's / licensed PMC's business or affairs shall be strictly prohibited;
- b) Require that the directors, staff and agents involved in this contract's matters to declare to the management of their affiliated organisation in written form any conflict of interest, actual or potential, between their personal / financial interests and their duties in executing this contract. If such conflict of interest has been declared, our company will adopt necessary and reasonable measures to mitigate or eliminate the declared conflict of interest;
- c) Directors and employees (including our company's agents) involved in this contract's matters shall be prohibited from undertaking beyond the scope of this contract, any work (remunerated or not) which causes or may cause conflict of interest between their personal / financial interests and their duties in executing this contract; and
- d) All necessary measures will be taken to ensure that any confidential / privileged information or data transferred to our company from the OO or its representative will not be inappropriately disclosed in any way.

(Signature and chop of service contractor)

(Name of service contractor)

(Name of signatory)

(Position of signatory)

(Date)



Related Code of Conduct

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