

08 MAY 2023

PROCUREMENT STRATEGY AND PERFORMANCE MONITORING

**REGULATORY MEASURES ON ACCOUNT OF UNSATISFACTORY SAFETY PERFORMANCE****REFERENCE****REGULATORY MEASURES ON ACCOUNT OF UNSATISFACTORY SAFETY PERFORMANCE****Scope**

1. The activities / requirements in this Section are all “Mandatory” unless [DCSS-P001](#) otherwise expressed.

**Background**

2. The regulatory measures to be taken by HA on account of unsatisfactory safety performance can be either one or a combination of the following.
3. For tenders:
  - (a) quarantine the concerned tenderer(s)
  - (b) adjustment on the Corporate Scores

Detailed criteria of the abovementioned and respective regulatory actions are outlined in Section 4.1 of the Guide to Registration of Works Contractors and Property Management Services Providers. [Link](#)

4. For on-going projects, measures against a contractor may include:
  - (a) conducting interviews and issue reminder / warning letters by CM, CRC, PRLMB
  - (b) conducting independent safety audits
  - (c) performance assessment report rated as “adverse”
  - (d) express concerns and require contractors to take effective measures to prevent recurrence of similar incidents on HA’s sites
  - (e) removal from Premier League Status or Quality Maintenance Contractors Status (for Building Contractors only)
  - (f) probationary period being extended
  - (g) downgrading from a higher to a lower group of a list
  - (h) downgrading from an upper to a lower band of a list
  - (i) downgrading from confirmed status to probationary status of a list
  - (j) restriction from tendering
  - (k) suspension from tendering
  - (l) removal from the List
5. The Guide to Registration of Works Contractors and Property Management Services Providers (the Guide) issued by HA lays down the guidelines and procedures on administration and monitoring of the performance of works contractors and property management services providers on HA Lists under the Counterparty Management Information System (COMIS). This shall be read in conjunction with the Guide, and Development Bureau (DEVB) Technical Circular (Works) No.4/2022 <sup>Note 1</sup>.

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Note 1 The said circular sets out the policy and procedure when considering regulating action against a contractor (including sub-contractors) on public works lists for occurrence of a serious incident or conviction of site safety (or environmental) offences. The updated documents of the said circular can be downloaded from DEVB’s website:

<https://www.devb.gov.hk/filemanager/technicalcirculars/en/upload/1391/1/C-2022-04-01.pdf>

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**REGULATORY MEASURES ON ACCOUNT OF UNSATISFACTORY SAFETY PERFORMANCE****REFERENCE****Implementation of Suspension from Tendering System on account of Unsatisfactory Site Safety Performance**

6. For effective prevention of fatal accidents, the Housing Authority Building Committee approved the implementation of the suspension from tendering system on account of unsatisfactory site safety performance (BC Paper No. 138/99) in Capital Works New Works Contracts (including demolition, foundation, building and associated building services nominated sub-contracts, civil engineering, geotechnical engineering and soft landscape works). BC 138/99
7. Ensuring site safety is contractors' obligations as well as an important benchmark of their performance. Regulatory measures for suspension of tendering are continuation and updating of DCMBI P20/99, which was enforced in 1999.
8. The mechanism for triggering to CRC and CM's warning further enhances the effectiveness of the existing mechanism, as a proactive measure to safeguard the target of safety performance under the Programme of Activities. The procedures are covered in this section.
9. There are three routes by which failure to meet pre-determined site safety performance standard will lead to suspension from tendering are on account of –
  - (a) Labour Department's Suspension Notice;
  - (b) Development Bureau (DEVB) Panel Hearing verdict; and
  - (c) Housing Authority Safety Auditing System (HASAS) Score.
10. When a contractor is suspended from tendering for a specific period, the contractor is subject to the following –
  - (a) will not be invited to tender for contracts to be tendered out during the specific period;
  - (b) for tenders issued but not yet submitted, the contractor will be asked to stop processing the tenders and return any collected documents immediately; and
  - (c) tenders already returned by the contractor will not be considered / recommended for award during the specific period.

Detailed criteria of each of the aforementioned three routes are given below.

**Suspension from Tendering on account of Labour Department's Suspension Notice**

11. For all Capital Works New Works Contracts, the flowchart showing the respective procedures is shown in [DCMP-F7114](#).
12. Labour Department (LD) conducts regular inspections on construction sites to check that site safety provisions and operations are in compliance with site safety regulations. Should there be any serious site safety contravention, the Commissioner for Labour is authorised under the Occupational Safety and Health Ordinance to suspend construction activities by issuing Suspension Notice to the contractors concerned. Such "Suspension Notice" will not be revoked until the contractor has [DCMP-F796](#) [DCMP-F7130](#)

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- made satisfactory rectification. CM shall issue a warning letter to the geotechnical engineering term contractor concerned ([DCMP-F7130](#)) / other contractor concerned ([DCMP-F796](#)) and shall also require a submission of a written representation from the contractor when the suspension notice is not revoked by Labour Department within 14 days.
13. If a Suspension Notice imposed on a HA site fails to be revoked within 14 days, the Procurement Review and List Management Board (PRLMB), or the respective Contractors Review Committee (CRC), corresponding to the contract category, will examine the context of the suspension.
  14. If the PRLMB or respective CRC is satisfied with the findings that the contractor has taken effective measures to rectify the site safety contravention concerned and that the continual enforcement of the Suspension Notice for more than 14 days is not related to contractor's responsibility and is also beyond the contractor's reasonable mitigation effort, the PRLMB will not consider or the CRC shall not recommend suspension from tendering.
  15. However, if the contractor fails to identify the root cause of the site safety irregularities leading to the suspension and cannot demonstrate that they have taken effective remedial actions or the findings reveal that the enforcement of a Suspension Notice for more than 14 days is primarily due to their responsibility, the CRC shall then rate the contractor's performance on site safety as adverse and recommend suspension from tendering for at least three months to the Chairperson of the PRLMB for endorsement. In the circumstances that the PRLMB is convened to examine the Suspension Notice, the Chairperson of PRLMB may, on the advice of PRLMB Members, endorse same level of regulatory action.

**Suspension from Tendering on account of Development Bureau Panel Hearing Verdict**

16. For all Capital Works New Works Contracts, the flowchart showing the respective procedures is shown in [DCMP-F7115](#). **For any safety/serious incident that aroused HA's concerns, CRC/PRLMB interview will be triggered and PRLMB may take timely regulatory actions, as appropriate, based on the information available at the time of interview.**
17. DEVB may take regulating actions against a Public Works listed contractor or specialist contractor who has been convicted of site safety related offences or who has incurred serious incidents on a construction site. **In case a contractor is already under on-going suspension(s) under a particular category or categories imposed by DEVB, any regulating action of further suspension(s) in such category or categories will normally take effect immediately after the lifting of those on-going suspensions unless DEVB decides otherwise. The manner to impose regulating action of further suspension(s) in such category or categories will be recommended by the Panel of Enquiry.** The relevant procedures for convening the Panel of Enquiry are set out under DEVB Technical Circular (Works) no. **4/2022**.

DEVB  
Technical  
Circular  
(Works) no.  
4/2022

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18. If the site safety related offences or serious incidents concerned occurred within a HA New Works construction site and the concerned contractor is a Public Works listed contractor or specialist contractor, and DEVB Panel of Enquiry is triggered and regulating action will be triggered. S&H Unit will prepare briefing notes on incidents to be discussed at DEVB Panel of Enquiry ([DCMP-F798](#)).
19. For the regulating actions that DEVB decides to impose on the subject contractor, **the Procurement and Technical Secretary Section (PTSS) shall review the duration and considerations by the Panel of Enquiry. If regulatory action has not yet been considered/imposed by HA or if there is any consideration by the Panel of Enquiry which had not been taken into account by the PRLMB previously for the same incident, the PTSS shall bring the matter forward to the PRLMB for consideration of appropriate regulatory actions. The Chairperson of the PRLMB shall consider to endorse automatic suspension from tendering against the subject contractor** for the corresponding category of listing under HA New Works, parallel (in terms of duration of suspension from tendering) to DEVB Panel's verdict to suspend the concerned contractor from tendering for public works, and designate the date of commencing such disciplinary suspension from tendering, which should be on or shortly after the receipt of the notice from DEVB.
20. In the circumstances that a HA listed contractor, being convicted of site safety related offences or having a serious incident on HA New Works site, is not on DEVB's Lists of Approved Contractors or Specialist Contractors for Public Works, DEVB Panel of Enquiry and regulatory system will not be triggered. The department will convene Housing Department Panel of Enquiry modeling on the operating procedures of the DEVB Panel of Enquiry. The membership of the Housing Department Panel of Enquiry is shown at ([DCMP-F7116](#)). An Information Paper will be provided by the project team for Panel of Enquiry of HA ([DCMP-F7117](#)).

**Suspension from tendering on account of failure in HASAS Score**

21. For Capital Works New Works Building (including Building Services Nominated Sub-contracts) and Engineering Contracts, the flowchart showing the respective procedures is shown in [DCMP-F7118](#).
22. Under HASAS, 70% safety audit percentage score is set as the Passing Mark for site safety performance. If a contractor or a lift and escalator nominated sub-contractor fails to score 70% on either of the two verified summary sub scores viz Part (a) Safety Management System or Part (b) Safety Audit Checklist, or a building services nominated subcontractor (electrical, fire services and water pump, and air conditioning and ventilation) fails to score 70% in verified total safety audit percentage score <sup>Note 2</sup>, the audit result is reckoned as failed. Any such failure shall be reported to the CRC for consideration and the CM in charge shall issue a warning letter ([DCMP-F797](#)) to the contractor / building services nominated subcontractor.

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Note 2 For building services nominated sub-contracts including electrical, fire services and water pump, and air conditioning and ventilation installations, failure will only be applicable for those audits with more than 7 assessable items.

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23. If there are two consecutive failed audit results in any one project in a rolling six-month period, the CRC shall rate the performance of the contractor / building services nominated sub-contractor as adverse and recommend to the Chairperson of the PRLMB for suspension for tendering for three months. The Chairperson of the PRLMB shall designate the date of commencing such suspension from tendering, which should be on the date of endorsement of regulatory action.

**Actions against Contractors / Tenderers due to Serious Incident Occurrence**

(For all Capital Works New Works Contracts)

24. In addition to the above three routes, when a HA listed contractor incurs a serious incident <sup>Note 3</sup> at any new works construction site, irrespective whether this is a HA site or non-HA site, the CRC / PRLMB may take the following timely actions on risk management grounds – TC 50/2012
- (a) Conduct an interview with the Contractor to express HA's concerns and require tightening up of site safety management, and consider further actions; and
  - (b) Quarantine a tenderer tendering for HA's contracts for critical examination (paper no. TC 50/2012), with regard to concurrent procurement process, if any.

**Alert and Warning Trigger on account of Unsatisfactory Accident Rate**

25. For all New Works Building Contracts, the flowchart showing the respective procedures is shown in [DCMP-F7119](#). DCMP-F7119
26. The workflow for alert and warning trigger on account of accident rate consists of the following –
- 1) Annualized accumulative project accident rates (AR) are compiled for New Works building contracts <sup>Note 4</sup> on a rolling basis.

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Note 3 Serious incident means an incident involving either one or a combination of the following (with reference to DEVB TC(W) no. [4/2022](#)):

- (i) loss of life at a construction site;
- (ii) serious bodily injury at a construction site:
  - resulting in a loss or amputation of a limb; or
  - which has caused or is likely to cause permanent total disablement to the injured;
- (iii) dangerous occurrence or incident at a construction site leading to or resulting in **injuries that are considered serious** (but not up to the extent as described in (ii) above), or damage to works or property on or adjacent to the construction site that posed a potential threat to public safety **as identified by DEVB, Labour Department or Marine Department.**

Note 4 Accident rate on contract basis is compiled by Safety & Health Unit based on the receipt of Supplementary Information Sheets from Labour Department and the average daily number of workers on site from GF527 plus number of site management staff collated by CTO site staff. The formula for annualized accumulative accident rate is given in [DCMP-F7119](#). In the long run, keep in view to include accident captured from HA Accident / Incident Reports ([DCMP-F787](#)).

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- 2) Alert and warning trigger on account of accident rate will be implemented through operations of CRC to bring timely alert.

27. **CM's Alert**[DCMP-F795](#)

Contract Manager (CM) in charge of any New Works building contract triggered by "accident rate alert" ( $8 < AR \leq 12$ ) <sup>Note 5</sup> will issue a one-off alert letter ([DCMP-F795](#)) to the concerned contractor and request for submission of "safety improvement proposal" to step up site management and monitoring in order to curb further accident occurrence, for review by the Site Safety Committee and during the quarterly safety audit. CM may not issue any further alert letter to the contractor for accident rate ( $8 < AR \leq 12$ ) in subsequent quarters.

28. **Triggering "Watch List Alert" by CRC**[DCMP-F795](#)

Should the annualized accumulative project accident rate exceed 12 but not exceeding 15 accidents per 1,000 workers, this will trigger "Watch List Alert" by CRC, CM will issue a one-off alert letter ([DCMP-F795](#)) to the concerned contractor and CRC will issue a one-off alert letter ([DCMP-F7120](#)) to the concerned contractor on contract basis.

[DCMP-F7120](#)29. **Upon triggering "Watch List Alert" by CRC**[DCMP-F795](#)

- (a) AR in next consecutive quarter has not worsened with reference to "Watch List Alert", no further action. [DCMP-F7121](#)
- (b) For  $AR > 15$  <sup>Note 6</sup> in next consecutive quarter, CM will issue a one-off alert letter ([DCMP-F795](#)) to the concerned contractor and CRC will issue a warning letter ([DCMP-F7121](#)) to the concerned contractor on contract basis. CM and CRC may not issue any further alert letter or warning letter to the contractor for accident rate ( $AR > 15$ ) in the subsequent quarters.
- (c) AR in next consecutive quarter has worsened with reference to "Watch List Alert" though  $AR \leq 15$ , CRC will review as to whether a warning letter is to be issued to the concerned contractor on contract basis.
- (d) For continuously high annualized accumulative project accident rate, CRC will consider the case and decide for further action, if necessary.

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Note 5 Annualized accumulative project accident rate is expressed in terms of accident number per 1000 workers.

Note 6 Consideration should be given as to whether high AR is due to extraordinarily low number of workers on site. Where AR trigger is coupled with worker number less than 80, the triggered case will be examined against other performance indicators such as PASS safety scores, HASAS scores, SSIP scores and safety convictions etc.

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30. While the accident rate triggers <sup>Note 7</sup> provide an automatic mechanism for system alert and warning, CM should bear in mind the following –
- (a) The system trigger does not bar the CM from issuing any required alert to and/or taking follow up actions with a contractor for any site safety concerns during the course of construction (any time) or for other types of contracts (such as foundation or demolition) as deemed appropriate should it be warranted by the circumstances <sup>Note 8</sup>. The CM may trigger discussion of the safety performance of a contract through submission of Site Safety Quarterly Performance Report ([DCMP-F713](#)).
  - (b) For contractor(s) with poor site safety record, the CM, CRC or PRLMB may elect to interview the senior management of the contractor(s) and /or carry out site inspections to tighten control and monitoring of the contractor(s)' safety performance and measures.

**Alert and Warning Trigger on account of Failure in Surprise Safety Inspection Programme (SSIP)**

31. For Capital Works New Works Building and Engineering Contracts, the Flowchart showing the respective procedures is shown in [DCMP-F7123](#).
32. Under SSIP, 70% verified score of SSIP is set as the Passing Mark for site safety performance. If a contractor fails in any one verified activity score of SSIP in a quarter, the CM will issue an alert letter to the concerned contractor ([DCMP-F7124](#)). Any failure in the verified total score of SSIP or failure in two or more verified activity scores in one quarter or failure in any one verified activity score in two or more consecutive quarters shall be reported to the respective CRC for review of the concerned contractor's safety performance and the CM in charge shall issue a warning letter to the contractor ([DCMP-F7125](#)).
33. To reinforce the principle of "Safety First" as an integral part of quality construction and to arouse contractor's safety concern, it is necessary to enhance the triggering system on account of their failure in SSIP result. CRC's review and CM's warning will be triggered not only in case of failure in the verified total score of SSIP but also in two new scenarios of failure in two or more verified activity scores in one quarter or failure in any one verified activity score in two or more consecutive quarters.

**Alert and Warning Trigger on account of Failure in Critical Pass of Housing Authority Safety Auditing System (HASAS) Score**

34. For Capital Works New Works Building and Engineering Contracts, the Flowchart showing the respective procedures is shown in [DCMP-F7127](#).

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Note 7 Essentially for application to building contracts with at least a year span of construction period, to balance off possible extremities due to low worker numbers employed on site or pro-rata effect on annualizing accident rate due to short contract duration etc. AR for engineering contracts are also compiled by Safety & Health Unit for CRC/E on a quarterly basis.

Note 8 Other circumstances may include serious shortfall in site safety management or "near-miss" incident due to unsatisfactory safety performance of a contractor, etc.

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- 35. Contractors and building services nominated sub-contractors have been subject to the quarterly safety audits conducted by independent accredited safety auditors under the management of Occupational Safety & Health Council since 1 July 2006 and the audit scores provide an objective indicator of their safety performance.
- 36. To strengthen the site safety standard, the triggering system on account of contractor’s audit performance is enhanced by first initiating CM’s alert in case of failure in one Critical Pass item in one quarter, and secondly adding one more scenario of triggering CM’s warning and CRC’s review in case of failure in any two or more Critical Pass items in one quarter or failure in any one Critical Pass item of two or more consecutive quarters.
- 37. Under HASAS, 70% verified Safety Audit percentage score is set as the passing mark for Critical Pass <sup>Note 9</sup>. Failure to meet Critical Pass in any one of the key elements of Part A or high-risk subsections of Part B on contract basis in a quarter will trigger alert to the respective CM. Site Representatives shall take follow up actions by using the templates for Site Direction ([DASM-F5201](#)) or Site Memo ([DEI-F16](#)) to the concerned contractor. Project Architect / Engineer shall issue alert letter ([DCMP-F793](#)) to the concerned contractor. The CM shall issue warning letters to the concerned contractor in case of inaction of the contractor in rectification of failed Critical Pass ([DCMP-F794](#)).
- 38. On contract basis, failure in two or more items of Critical Pass in a quarter or failure in any one item of Critical Pass of two or more consecutive quarters <sup>Note 10</sup> will trigger alert to the respective CRC for review of the concerned contractor’s safety performance and the CM in charge shall issue a warning letter to the contractor ([DCMP-F7129](#)).

**Reference**

- 39. Information about previous regulatory measures on account of unsatisfactory site safety performance and the current safety requirements on listed contractors can be obtained from the following documents –

Guide to Registration of Works Contractors and Property Management Services Providers: [Link](#)

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Note 9 Critical Pass in HASAS  
 Part A : Key Elements: - Section 7 Job Hazard Analysis  
 Part B : High-risk Subsections  
 14.1.3 Working at Height; 14.1.4 Housekeeping; 14.1.5 Protection against Falling Objects; 14.3.2 Electrical Supply System; 14.2.3 Lifting Operations / 14.4.1 Tower Crane / 14.4.2 Mobile Crane

Note 10 “Consecutive Critical Pass failure” means failure in any Critical Pass in safety audit on a contract in a quarter and failure in any Critical Pass in the immediately following consecutive quarter, and such Critical Pass failure may or may not even be the same.