



Building Management Ordinance (Cap.344) (BMO)

Requirements under the Codes of Practice (CoPs)

July 2022

BMO, CoPs and Administrative Guidelines

BMO

- Statutory requirements, mandatory

CoPs

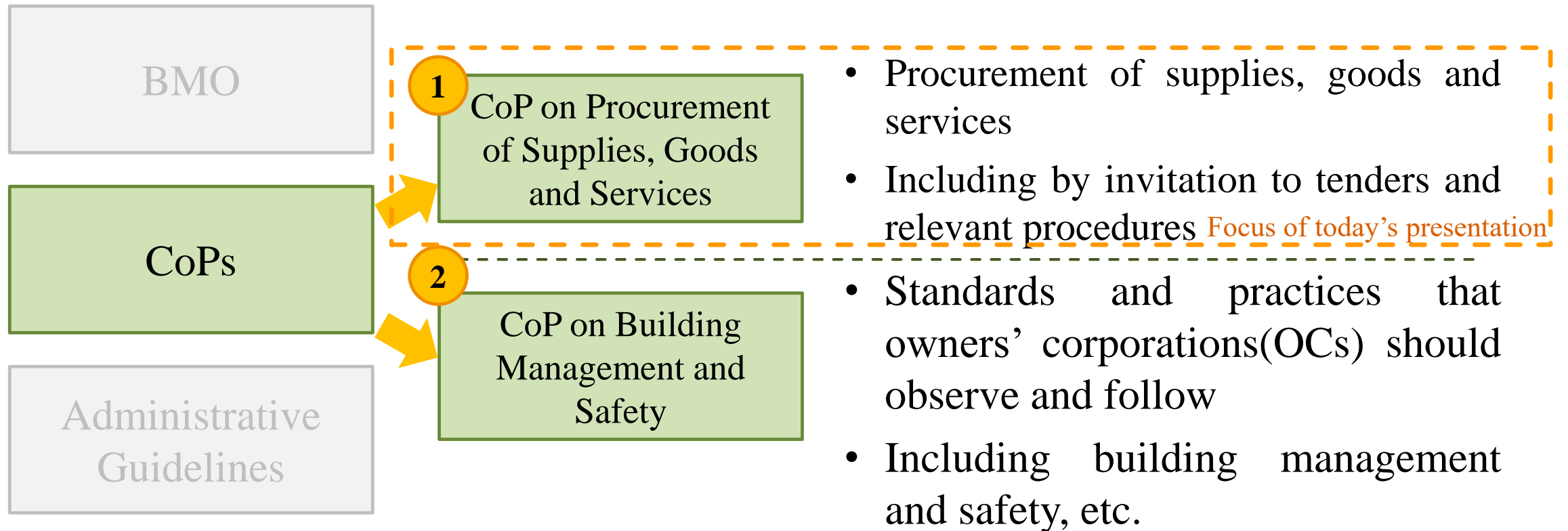
- Issued by the Secretary for Home and Youth Affairs as the Authority under s.44 of the BMO
- To give guidance and direction

Focus of today's presentation

Administrative
Guidelines

- As best practices; all relevant parties are recommended to follow

CoPs



CoP on Procurement of Supplies, Goods and Services

Comprised of seven parts based on the procurement process

- A Code of conduct
- B Preparation of invitation to tender
- C Number of tenders to be invited
- D Collection and opening of tenders
- E Consideration and decision on acceptance of tenders
- F Keeping and inspection of documents relating to the tender process
- G Timing of signing contracts

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Code of conduct – major requirements

**Agent/
employee of
an OC**

- Prohibited from soliciting/accepting any advantage arising from the performance of his duties
- Declare in writing any actual/potential conflict of interest arising from the performance of his duties in accordance with guidelines issued by ICAC
- Declarations be recorded in the minutes of relevant management committee (MC) meetings or as part of the tender documents and be kept for at least six years
[New requirement]

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Code of conduct – major requirements

**Agent/
employee of
an OC**

- Declare in writing whether he has any actual, potential or perceived conflict of interest **at the start of preparation or deliberation of tender documents** or as soon as he becomes aware of a potential conflict *[New requirement]*
- Avoid putting himself in a position of obligation towards any of the prospective tenderers or tenderers *[New requirement]*

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Code of conduct – major requirements

**Deed of
Mutual
Covenant
(DMC)
Manager
or
Property
Management
Company
(PMC)**

- To disclose in writing to the MC –
 - any personal, business or pecuniary interest/relationship that he may have with any MC member, consultants or professional service providers for the OC ; or
 - any personal, business or pecuniary interest/relationship in any of the tenders to be considered by the MC/OC
[New requirement]

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Code of conduct – major requirements

DMC
Manager
or
PMC

- Those who have indicated a personal, business or pecuniary interest in the tender shall refrain from participating in any **tender assessment/negotiation** *[New requirement]*
- Declaration be recorded in the **minutes of relevant MC meetings** or as **part of the tender documents** and should be kept for at least six years *[New requirement]*

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Code of conduct – major requirements

MC Member

- Shall not solicit or accept any advantage from any supplier/contractor in relation to the tender
- Shall disclose in writing to the MC –
 - any personal, business or pecuniary interest that he may have with the DMC Manager, PMC, consultants or professional service providers for the OC; or
 - any personal, business or pecuniary interest in any of the tenders to be considered by the MC/OC *[New requirement]*

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Code of conduct – major requirements

MC Member

- Those who have indicated a personal, business or pecuniary interest in the tender shall withdraw from the meeting during the discussion concerned and abstain from voting on the selection of such tender at an MC meeting
- Any declaration should be recorded in the minutes of relevant MC meetings or as part of the tender documents and should be kept for at least six years *[New requirement]*

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Preparation of invitation to tender – major requirements

- Shall not split a contract of procurement from a contract which should have been made for the procurement of greater value for the sole purpose of avoiding the compliance of requirements in section 20A of the BMO
- A copy of invitation to tender shall be displayed in prominent place in the building
- If tendering exercises involve **mandatory works** as stipulated in relevant statutory notices/orders/directions, such information **should be made available** to the owners before the invitation to tender is prepared and before the resolution concerned is put to vote *[New requirement]*

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Preparation of invitation to tender – major requirements

- Advised to adopt open tendering as far as practicable, having regard to the nature of the procurement *[New requirement]*
- Advised to build in probity and anti-collusion clauses in the related tender documents *[New requirement]*

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Probity and anti-collusion clauses

Probity clauses

- Prevention of bribery
 - E.g. prohibit soliciting/accepting commission or free service from suppliers and service providers
- Declaration of interest
- Handling of confidential information
 - shall not use/divulge any information provided by OC in contract/ subsequent correspondence/ documentation

Anti-collusion clauses

- Before notification of the outcome of the tender exercise, the tenderer shall not
 - divulge to any person other than the OC the amount of any tender
 - adjust the amount of any tender by arrangement with any other person
 - make any arrangement whereby the decision to submit tender is affected
 - collude with any other person in the tendering process

Please refer to the Building Management Toolkit published by ICAC for details

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Number of tenders to be invited – major requirements

- Where tender is required pursuant to section 20A of or paragraph 5 of Schedule 7 to the BMO, the minimum no. of tenders to be invited –
 - three in the case of a contract for procurement of supplies, goods or services the value of which $> \$10,000$ but $\leq \$200,000$; or
 - five in the case of a contract for procurement of supplies, goods or services the value of which $> \$200,000$
- Where the no. of valid tenders obtained is fewer than the no. of tenders stipulated above, the MC shall pass a resolution to accept/reject the tender exercise

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Collection and opening of tenders – major requirements

- General requirements of procurement
 - A tender shall be in writing and be sealed
 - Be deposited in a strong box marked “Tender-Box (投標箱)” provided for the above purpose only
 - “Tender-Box” should be double locked and the two keys are to be separately kept by the MC chairman, secretary or treasurer
 - All tenders shall be opened at the same time in the presence of at least three members of the MC who shall countersign and date each of the tenders

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Collection and opening of tenders – major requirements

- Where it is impracticable or difficult to comply with the above requirements
 - By a resolution passed at a general meeting of the OC, the OC may accept tenders handed in or sent by post to the OC's registered office or to a **specific venue as resolved at a general meeting** *[New requirement]*
 - The tenders shall be properly acknowledged and kept safely

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Collection and opening of tenders – major requirements

Conducted under any Rehabilitation Schemes operated by the Urban Renewal Authority



- Comply with all relevant rules, guidelines and/or requirements relating to the conduct of the tender exercise adopted in such service/scheme instead *[New requirement]*

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Consideration and decision on acceptance of tenders – major requirements

- For procurement of supplies, goods and services whose value does not exceed 20% of the annual budget, all tenders received shall be submitted to the MC for decision on acceptance at a meeting of the MC
- Where there are more than two alternatives and no option receives majority votes in the first round of voting–
 - Progressive elimination– eliminate the option with the least number of votes at each round of voting
 - Short-listing– short-list the two options with the greatest number of votes after the first round of voting
 - Confirmation– a second round of voting could be carried out to confirm the option with the greatest number of votes in the first round
- Advised to notify all tenderers, property owners and occupants in writing of the tender result after approving the award of consultancy agreement/works contract *[New requirement]*

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Keeping/inspection of tender – major requirements

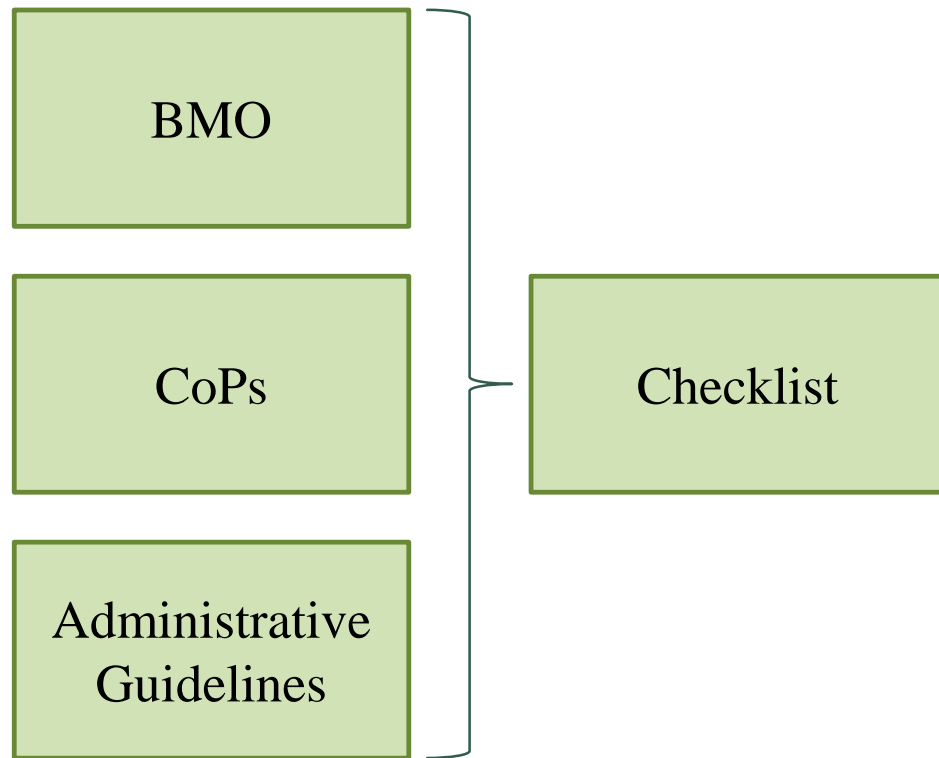
- The MC shall permit the Authority, the tenants' representative, an owner, a registered mortgagee or any other person authorised in writing by an owner or a registered mortgagee to inspect all relevant tender documents
- Supply copies of the relevant documents on payment of a reasonable charge
- The documents above shall contain sufficient information to enable the person doing inspection to calculate the financial liability of the OC

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Timing of signing contract – major requirements

- For tenders whose value exceeds 20% of the annual budget of the OC, the OC concerned should consider, having regard to the circumstances of the case, signing the contract with suppliers/contractors **at least one month** after the passing of the relevant resolution at a general meeting of the OC *[New requirement]*

Checklist on Procedural Propriety (Checklist)



- To merge the requirements under the BMO, CoPs and the Best Practices in the Administrative Guidelines
- Explanation be given for any deviation from the requirements in the Checklist to ensure transparency and accountability
- MC Chairman and Property Managers are recommended to adopt the Checklist



Thank you!