ENGINEERING & ASSOCIATED
CONSULTANTS SELECTION BOARD

EACSB HANDBOOK

HANDBOOK ON SELECTION,
APPOINTMENT AND ADMINISTRATION
of ENGINEERING and
ASSOCIATED CONSULTANTS

EACSB Secretariat

Revision No.16 (December 2020)

FOREWORD

This Handbook is issued by the Engineering & Associated Consultants Selection Board (EACSB) specifically for use with consultancy agreements which come within the jurisdiction of the Board. It provides guidance on matters relating to the selection and appointment of consultants, their terms and conditions of employment, and their management throughout an agreement.

The current system for the selection and remuneration of engineering and associated consultants provides an element of fee competition in the selection process and aims as far as possible to base the remuneration of consultants on a fixed lump sum fee independent of the cost of the works project. The current system facilitates managing departments to employ the most suitable consultants at fair and reasonable fees; and provides the capable consultants with a level playing field for the bidding of consultancy assignments.

The Handbook will be reviewed and updated where necessary to ensure continuing suitability and effectiveness.

The parts of the Handbook shown in green should only be updated by Works Branch of Development Bureau.

EACSB Secretariat

Revision No. 16 (December 2020)

ISSUE OF HANDBOOK AND REVISIONS

This Handbook is accessible through Internet under the Civil Engineering and Development Department (CEDD) Home Page (under the section "Publications") at http://www.cedd.gov.hk/eng/publications/handbook_circulars/index.htm. The version of the Handbook on the internet is always of the latest version and should be read together with relevant Development Bureau Technical Circulars (Works), Financial Circulars and EACSB Circulars, if any, issued after the last Revision of this Handbook.

Anyone wishing to enquire about downloading of this Handbook may contact the EACSB Secretariat at telephone number 2762 5173.

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1. INTRODUCTION

1.1 Purpose of Handbook

This Handbook is for the use and guidance of officers of departments which employ the services of consultants in the engineering and associated fields for the study and implementation of government projects. Officers using this Handbook are expected to have acquired prior knowledge of the relevant Stores and Procurement Regulations (SPR).

The Handbook is issued by the Engineering & Associated Consultants Selection Board (EACSB) specifically for use with consultancy agreements which come within the jurisdiction of the EACSB. It provides guidance on matters relating to the selection and appointment of consultants, their terms and conditions of employment, and their management (where appropriate) throughout an agreement.

This Handbook has been written so as to be comprehensive with regard to the selection, appointment and administration of consultants. Its first issue of May 1999 took full account of directives and guidance given in relevant Works Branch Technical Circulars and Financial Circulars issued prior to June 1999, and it superseded EACSB Circulars issued prior to June 1999. This Handbook is normally reviewed and updated annually to take account of new Development Bureau (DEVB) Technical Circulars, Financial Circulars and EACSB Circulars. It should be noted that this Handbook does not replace the relevant DEVB Technical Circulars, Financial Circulars and EACSB Circulars. It should also be noted that relevant new DEVB Technical Circulars, Financial Circulars and EACSB Circulars may be issued from time to time prior to the next updating, which may supersede the relevant contents of this Handbook. The managing department should, in conjunction with the use of this Handbook, also refer to all the relevant circulars issued after the latest update of the Handbook. These may be found under "Useful Information/Administrative Handbooks & Manuals/EACSB Handbook and Related Guidelines/Circular Memoranda" at the Works Group Intranet Portal.

Anyone wishing to enquire about information relating to engineering and associated consultants selection given in this Handbook may contact the EACSB Secretary in writing c/o Civil Engineering and Development Department, 16/F Civil Engineering and Development Building, 101 Princess Margaret Road, Ho Man Tin, Kowloon, or at telephone number 2762 5018.

1.2 Need to Employ Consultants

Before a department approaches the EACSB, the need to employ a consultant must first have been established and the necessary financial authority obtained.

There are two main reasons for the employment of consultants, namely :

(a) to supplement existing staffing resources :

(i) to provide extra staff,

(ii) to cope with fluctuating demand for resources, or

(iii) to accelerate time scales, and

(b) to provide a qualitative dimension not currently available :

(i) to provide specialist expertise not available in the department,

(ii) to provide an independent view on a particular project/problem, or

(iii) to facilitate a multi-disciplinary approach.

1.3 Authority to Employ Consultants

Agreement from the Head of Department (HoD) must first be given and policy support from the relevant Director of Bureau or a public officer authorised by him (see SPR 410) must also be obtained, for the employment of consultants for a project.

1.4 Funding for Employment of Consultants

Managing Departments must ensure that all funding requirements for the employment of consultants promulgated by Financial Services and the Treasury Bureau (FSTB) are satisfied (as promulgated under SPR 416 and Financial Circular No. 3/2020). Submissions to the EACSB which do not meet these requirements will be returned to the relevant department for corrective action.

Under no circumstances may an agreement be entered into or extended until funds have been approved for the agreement or for the extension.

1.5 Consultants Selection Board

Unless authority has been specifically delegated to departments and consultants selection boards, the Permanent Secretary for Financial Services and the Treasury (Treasury) (PS(Tsy)) is the approving authority for appointment of consultants for the provision of consultancy services. The Financial Secretary (FS) / Secretary for Financial Services and the Treasury (SFST) appoints the following selection boards to advise on the selection and appointment of consultants for assignments with a value exceeding the quotation limit stipulated in SPR 220(a) (see SPR 425):

(a) The Central Consultants Selection Board (CCSB) advises PS(Tsy) on the selection and appointment of consultants, other than those selected and appointed by the Architectural & Associated Consultants Selection Board, the Engineering & Associated Consultants Selection Board and Departmental Consultants Selection Committees (DCSCs).

(b) The Architectural & Associated Consultants Selection Board (AACSB) approves the selection and appointment of architectural and associated consultants for government projects other than those selected and appointed by DCSCs.

(c) The Engineering & Associated Consultants Selection Board (EACSB) approves the selection and appointment of engineering and associated consultants for government projects other than those selected and appointed by DCSCs. The main client departments for consultancies in this category are the Civil Engineering and Development Department, Drainage Services Department, Electrical & Mechanical Services Department, Environmental Protection Department, Highways Department, Planning Department, Transport Department and Water Supplies Department.

For selection and appointment of engineering and associated consultants, the total value of services as referred to in SPR 205 should include the estimated values or actual values of lump sum fee, notional value for additional Services (or subsequent cost of variations/claims of the consultants), on-cost for Resident Site Staff (RSS), inflations, value of reimbursable items, etc.

1.6 Departmental Consultants Selection Committees (DCSCs)

SPR 426 sets out the functions and formation of DCSCs appointed by the respective Controlling Officers in their departments to approve the selection and appointment of engineering and associated consultants for consultancy assignments up to $10 million.

Engineering and associated consultancy assignments beyond the quotation limit stated in SPR 220(a) and approved / to be considered by DCSC should be regarded as also under the purview of EACSB and comply with the same submission procedures (other than the different approving authority), requirements on use of standard documents, consultant administration procedures, performance assessment procedures and other related requirements. Departments should, unless specified otherwise, follow the relevant consultants selection procedures stipulated in SPR, this handbook, Financial Circulars and DEVB Technical Circulars (Works), as appropriate. Under this situation, any reference to EACSB made in this handbook should in general be regarded as reference to DCSC. In addition, a set of supplementary procedures at **Appendix 1.1** should be followed.

The delegation promulgated in SPR 426 includes the authority to approve the list of consulting firms for inviting consultancy proposals, consultancy briefs, marking schemes for assessing consultancy proposals, pre-contract negotiations, appointment of consultants and cancellation of consultants selection exercise. Notwithstanding this delegation when the financial limit of $10 million is not exceeded, the following special cases still warrant submissions to EACSB for approval, in order to better ensure consistent treatment among departments.

(a) Shortlisting stage (Stage 1) submissions where -

(i) less than three consultants are shortlisted;

(ii) one-stage selection process for special cases as mentioned in the last paragraph of Section 3.1.3.1;

(iii) the total value of reimbursable items exceeds $1.3 million or 20% of the estimated lump sum fee of the Agreement (See Section 4.11.3(a)); or

(iv) a deviation from any of the following standard guidelines in EACSB Handbook/Technical Circular in respect of :

- the marking scheme stipulated in DEVB TCW No. 2/2016;

- the technical/consultancy fee/fee quality weightings recommended in Section 3.8.1; or

- the requirements on payment schedules as stipulated in Section 4.6.1.

(b) Nomination stage (Stage 2) submissions where -

(i) only one conforming consultancy proposal is available for consideration of award;

(ii) rejection of the most advantageous bid recommended under the combined score assessment;

(iii) acceptance of consultancy proposal with total value of services exceeding $10 million;

(iv) acceptance of an alternative technical proposal is recommended (Section 3.1.4 refers);

(v) notional value for additional Services exceeds 10% of Lump Sum Fee (Section 3.11.2 refers); or

(vi) the Stage 1 submission for the Agreement has been approved by EACSB.

(c) Other submissions where

(i) an initial list of less than 10 consultants is adopted for one-stage consultants selection (Section 3.1.3.1 refers) (For cases in which there is no appropriate Service Category of consultants under the List);

(ii) direct selection of consultants for fee negotiation or for their subsequent appointment is involved (Sections 3.1.5 and 3.15 refer);

(iii) the delegated authority of DCSC to approve variations as stipulated in the SPR will be exceeded or the variations are outside the approved scope of the consultancy assignment (Section 3.17 refers); or

(iv) approval is sought for invitation of tenders or report on tenders on reimbursable item of value exceeding $5 million (Section 4.11.3 and Appendix 4.9 refer).

For the above special cases, departments should make a self-explanatory submission to EACSB. If there are submissions previously approved by DCSCs for the same agreement, requirements of submissions in Section 3.12(h) should be followed.

Under other special cases where there will be general implications to other consultancies, or where the existing rules/guidelines do not apply, departments may, upon DCSC's advice, seek EACSB's approval. The reasons for seeking such approval and DCSC's advice should be detailed in the submission to EACSB.

1.7 Consultancy Assignments with Fees Not Exceeding the Quotation Limit

For the procurement of engineering and associated consultancy services not exceeding the quotation limit set out in SPR 220(a), approval of the DCSC is not required.

The procedures laid down in Chapter II of SPR and the relevant DEVB Technical Circulars (Works) (in particular the relevant requirements stipulated in the Guidelines attached to DEVB TCW No. 5/2018 and its subsequent updates (if any) (hereinafter referred as "the Guidelines") should be followed. Alternatively, if Controlling Officers prefer, consultants selection procedures in Chapter IV of SPR could be followed but the approval of DCSC will be required in this case.

In addition, the various requirements as stipulated in DEVB's memorandum ref. (02VPB-01-14) in DEVB(PS) 106/43 dated 12 January 2017 shall be observed and complied with (in particular the requirements to report to AACSB/EACSB on any incident/event of serious default or non-performance of a consultant).

1.8 Information Systems

The following information systems are available for facilitating the selection, appointment and management of consultants under the purview of EACSB:

(a) Consultants' Performance Information System (CNPIS)

It is a centralized repository of information of consultancy agreements and consultants' performance with functions. Such information is useful for management of consultants' performance and tender evaluation for consultancy assignments for public works projects.

(b) Public Works Consultants Resources Allocation Register (to be subsumed in CNPIS)

It is a centralized repository of information of consultants in the List of Consultants under the purview of EACSB and their manpower input proposed for consultancies under tendering and allocated/to be allocated for on-going consultancies. Such information is useful for management of the List of Consultants and checking of manpower resource allocation of consultants at both tendering stage and agreement execution stage.

(c) Public Works Projects Location Plan Register

It is a centralized repository of location plans for public/private works projects with textual and spatial information which can be used for visualizing project boundaries of on-going public/private works projects.

2. ENGINEERING AND ASSOCIATED CONSULTANTS SELECTION BOARD

2.1 Composition of EACSB

The Chairman and Members are appointed by FS / SFST. The up-to-date information on the membership and terms of reference (as in Section 2.2 below) of the EACSB is published in the current issue of the Civil and Miscellaneous Lists of the Government of the Hong Kong Special Administrative Region.

Chairman : Director of Civil Engineering and Development

Members : (a) A representative of the Secretary for Financial Services and the Treasury (at Deputy Secretary or Principal Assistant Secretary level)

(b) A representative of the Secretary for Development (at Deputy Secretary or Principal Assistant Secretary level)

Secretary : Senior Engineer/EACSB, Civil Engineering and Development Department

In attendance : A representative (at D2 rank or above) of the Department concerned for a particular submission.

2.2 Terms of Reference of EACSB

The terms of reference of the EACSB are :

(a) to approve the selection and appointment of engineering and associated consultants for government projects other than those selected and appointed by DCSCs;

(b) to advise the Secretary for Development (SDEV) on selection procedures, conditions of employment and remuneration of engineering and associated consultants and to recommend changes as necessary;

(c) to promulgate guidelines on selection and appointment procedures approved by the EACSB; and

(d) to review the performance of engineering and associated consultants.

It should be noted that, the EACSB's jurisdiction covers consultancies in the following fields:

civil engineering, geotechnical engineering, structural engineering (excluding Architectural Services Department), mechanical engineering, electrical engineering and electronics, development, planning, transportation, water resources, environmental planning and engineering, and chemical engineering.

2.3 EACSB Administrative Structure

The EACSB's authority is derived from FS / SFST as set out in the SPR. Policy relating to the selection, appointment, remuneration and administration of engineering and associated consultants lies with the SDEV. Established policy on the selection, appointment and remuneration is implemented through the EACSB.

The administrative structure within which the EACSB operates as promulgated originally under WBTC No. 16/91 has generally been subsumed hereunder and archived. In addition to the EACSB itself, there are two other related Standing Committees involved in related policy development, namely:

(a) Consulting Engineers' Committee (CEC); and

(b) Consultancy Agreements Committee (CAC).

2.4 Consulting Engineers' Committee

The Consulting Engineers' Committee (CEC), which is chaired by the Permanent Secretary for Development (Works), provides a means for regular liaison between the Government and the Association of Consulting Engineers of Hong Kong (ACEHK) on matters relating to the employment of engineering and associated consultants.

2.5 Consultancy Agreements Committee

Formerly known as the Engineering Consultancy Agreements Committee (ECAC), the Committee is originally established as an in-house standing committee with the main task of keeping under review the related consultancy agreement documents including the forms of agreement, conditions of employment and schedules of fees, etc.

At its meeting held on 9 October 2003, the then ECAC agreed to be renamed as the Consultancy Agreements Committee (CAC). Chaired by the Deputy Secretary for Development (Works)3, the CAC is a government committee which deals with matters relating to the appointment and administration of engineering and associated consultants.

2.6 Management Regime of EACSB

The management regime of EACSB as promulgated under the Guidelines has been subsumed hereunder. To assist EACSB, there are two in-house standing committees involved in managing performance of engineering and associated consultants and taking regulating actions against poor performers, namely:

(a) Inter-Departmental Consultants Review Committee (ICRC); and

(b) Departmental Consultants Review Committee (DCRC).

2.7 Inter-Departmental Consultants Review Committee (ICRC)

An Inter-Departmental Consultants Review Committee has been established to assist EACSB in managing performance of engineering and associated consultants and taking regulating actions against poor performers.

2.7.1 Composition of ICRC

The composition of ICRC is as follows:

Chairperson	:	DWS, DHy, D of DS [on an annual rotational basis]
Secretary	:	SE/EACSB
Members	:	All Chairpersons of DCRC of list management departments and DS(W)3, DEVB (or their delegates at D2 rank or above)

2.7.2 Terms of Reference of ICRC

The terms of reference of ICRC are:

(a) To approve recommendations from DCRC for taking regulating action, including suspension from bidding and lifting of any suspension imposed, against consultants receiving two or more consecutive adverse Interim Reports or being assessed as technically incompetent as mentioned in paragraph 21 in Annex I to DEVB TC(W) No. 3/2016;

(b) To endorse recommendations from DCRC for taking regulating action other than (a) above and the suspension in accordance with Sections 1.6, 1.7 and 1.11 of **Appendix 2.1**, before submission by DCRC to EACSB for approval; and

(c) To provide guidance on various operational issues relating to management of the List of Consultants of EACSB including revision to admission criteria, grouping structures, tendering limit, etc. overseen by DCRC except processing applications from consultants, e.g. application for inclusion, change of company name, etc.

2.7.3 Meeting of ICRC

ICRC meetings shall be arranged if the matter arisen cannot be handled by circulation of documents.

2.8 Departmental Consultants Review Committee (DCRC)

User departments procuring consultancy agreements shall set up a DCRC to manage consultants' performance reports. In addition to the management of performance,

DCRCs of list management departments are also responsible for all matters related to the management of the List of Consultants of EACSB.

2.8.1 Composition of DCRC

The composition of DCRC is as follows:

Chairperson	:	D2 officer or above level
Secretary	:	senior professional rank or above
Members	:	at least a D1 officer and one other officer of at least professional rank

2.8.2 Terms of Reference of DCRC

The terms of reference of DCRC are:

(a) To monitor the performance of consultants providing consultancy services to the department;

(b) To review, endorse, and amend, if necessary, the consultants' performance reports;

(c) To make recommendations to the ICRC for taking regulating action, including suspension from bidding and lifting of any suspension imposed, against consultants who receive two or more consecutive adverse Interim Reports or are assessed as technically incompetent as mentioned in paragraph 21 in Annex I to DEVB TC(W) No. 3/2016, and to keep the relevant log(s) updated of regulating actions in the Consultants' Performance Information System (CNPIS);

(d) To consider circumstances in Sections 1.6, 1.7 and 1.11 of **Appendix 2.1** and to seek the approval of EACSB for imposing suspension and to keep the relevant log(s) updated of regulating actions in the CNPIS;

(e) To consider circumstances other than (c) and (d) above and obtain endorsement from ICRC before seeking the approval of EACSB for taking regulating actions and to keep the relevant log(s) updated of regulating actions in the CNPIS; and

(f) To process applications from consultants associated with the administration of the List of Consultants of EACSB, conduct re-grouping exercise under the guidance of ICRC including reviewing tendering limit, etc. prior to biennial renewal exercise, and review admission criteria when required by ICRC. *[For list management departments only]*

2.9 EACSB Information

Information on engineering and associated consultants is compiled and kept by the EACSB Secretariat. The following central records, being classified as Restricted (Contract), are maintained:

(a) **Record of consultants in the List of Consultants of EACSB** (the List) which contains the names, addresses and other details necessary for admission, renewal, etc. is maintained by the Secretary of EACSB. Other than those restricted information, an up-to-date list of the various Service Categories of consultants is maintained by the Secretary of EACSB (Service Categories) and can be accessed via the internet website of the Civil Engineering and Development Department (http://www.cedd.gov.hk).

(b) **Record of Approved Consultancy Agreements**, which lists all active agreements approved by the EACSB or DCSCs, is used by the EACSB and DCSCs for reference.

2.10 Administrative Rules for the List of Consultants under the Purview of EACSB

EACSB maintains the List for undertaking engineering and associated consultancy services. The rules for administration of the List are set out in the Guidelines and the relevant content of which has been subsumed at **Appendix 2.1**.

3. PROCEDURES FOR SELECTION AND ENGAGEMENT OF CONSULTANTS

3.1 Outline of the System

3.1.1 Fee Competition Element

As originally promulgated under WBTCs Nos. 16/95, 16/95A and ETWB TCW No. 16/95B the relevant content of which has now been subsumed in this Handbook, the Government's current system for the selection and remuneration of engineering and associated consultants provides for an element of fee competition in the selection process and aims, as far as possible, to base the remuneration of consultants on a fixed lump sum fee independent of the cost of the works.

3.1.2 Selection

The selection of consultants for all consultancies, including Feasibility Study, Investigation, Design and Construction (D & C), is determined on the basis of assessment of technical merit combined with proposed consultancy fees. Consulting firms are required to submit, in separate sealed envelopes, both a Technical Proposal and a Fee Proposal.

The Fee Proposals are opened for assessment after assessment of Technical Proposals using a pre-determined marking scheme. On the basis of a pre-determined system of evaluation and weighting, the Fee Proposals are then combined with the technical assessment to determine which consultant should be awarded the consultancy.

As originally promulgated under ETWB TCW No. 16/95B in the situation where the scope of design and construction services for a D & C project cannot be adequately defined until the Investigation stage has been carried out, the project should be split into two separate consultancies - one for investigation services and the other for design and construction services. Submissions for the D & C consultancy should be invited only after the scope of design and construction services has been adequately defined in the Investigation consultancy to enable consultants to submit competitive lump sum Fee Proposals.

In the situation where the full scope of investigation, design and construction (IDC) services can be adequately defined at the start for the purposes of inviting competitive lump sum Fee Proposals, the use of single IDC consultancies is encouraged to expedite project delivery. In these cases, the Controlling Officer should be satisfied that the risks of major scope changes following the Investigation stage are low, and that it is appropriate to invite bids on lump sum basis. Such Controlling Officer's satisfaction with the use of IDC arrangement should be clearly indicated in the EACSB submission, under the heading "Background/Argument" (see Section 3.3.1).

3.1.3 Stages of Selection

Selection of a consultant for a consultancy can either be through a one-stage or a two stage process.

3.1.3.1 One-stage Selection

To streamline the procurement procedures, as promulgated in June 2013 under Financial Circular No. 4/2013, Expression of Interest (EOI) is not a mandatory requirement. Under this one-stage selection, each consulting firm should be asked to declare in their submissions any involvement or interest as described in Section 3.5.4. The Assessment Panel may agree to invite technical and fee proposals directly from an initial list of consulting firms for suitable assignments, if it is considered in the best interest of the Government having regard to:-

(i) the factors as mentioned in SPR 440(b); and

(ii) resource implications to the consultants for preparing technical proposals for complex consultancies and to the departments themselves in assessing more technical proposals when EOI is not adopted.

For assignments for projects with estimated value exceeding $1,000 million and adopting a 72%/18%/10% technical/consultancy fee/fee quality weighting, the Assessment Panel should obtain HoD's approval to adopt one-stage consultant selection process and the HoD should personally be satisfied that the one-stage selection process is suitable for the consultancy concerned.

Drawing reference to experience gained through simplified one stage consultants selection process since 2008 (DEVB's memos of reference (01QKC-01-9) in DEVB(PS) 106/43 dated 8 April 2008 and (021QS-01-6) in DEVB(PS) 106/43 dated 13 July 2009) and considering the inflation in the intervening period, the following assignments are generally suitable for adoption of the one-stage selection subject to the considerations given in the first paragraph in Section 3.1.3.1:-

(a) Assignments of values (lump sum fee or time charge ceiling) not exceeding $5 million and adopting a 63%/27%/10% technical/consultancy fee/fee quality weighting or lower; and

(b) Assignments of values not exceeding $9 million of the following specific types of consultancies where considerable number of consulting firms with long history of relevant and proven experience in similar consultancy assignments are available and adopting a 63%/27%/10% technical/ consultancy fee/fee quality weighting or lower :

(i) Landslip prevention and mitigation(LPMit) projects;

(ii) Road reconstruction and minor improvement projects;

(iii) Waterworks projects; and

(iv) Drainage and sewerage improvement projects.

In general, one-stage selection should not be applied to those consultancies adopting small consultancy procurement procedures, because of the lack of certainty to have adequate number of qualified consultants to submit Technical and Fee Proposals.

The reference procedures for the one-stage consultant selection process are given at **Appendix 3.10**.

There are special cases of one-stage selection. In cases where there is a very narrow field of potential consultants or a genuine need to shorten the consultants selection process, there might be justification for inviting Technical and Fee Proposals from normally four consultants, instead of a initial list of consultants. Normally, under these circumstances, Technical and Fee Proposals will be invited by letters rather than both by letters and through the internet (subject to approval of EACSB as referred to in Item (a)(ii) of Section 1.6). Also, if there is sufficient justification, the EACSB may agree to negotiation of the D & C consultancy exclusively with the Investigation stage consultant.

3.1.3.2 Two-stage Selection

A two-stage selection comprises the selection of consultants for submission of EOI (see Section 3.5) and shortlisting (see Section 3.6).

3.1.4 Alternative Technical Proposal

On occasion, the managing department may receive from a shortlisted consultant an alternative Technical Proposal in addition to a conforming Technical Proposal. In such a case, if, in the opinion of the managing department, acceptance of the alternative Technical Proposal, even taking the corresponding fee into account, will clearly be advantageous to Government, then the managing department may make a fully-justified case to the EACSB to recommend adoption of the alternative Technical Proposal and appointment of the consultant. Such a recommendation should only be made on condition that the consultant has submitted, in addition to the alternative Technical Proposal, Technical and Fee Proposals in conformity with the requirements of the Brief and standard Fee Proforma, and that the Fee Proposal for the alternative Technical Proposal is also in conformity with the standard Fee Proforma. Negotiation of the fee is not permitted.

3.1.5 Direct Selection

The EACSB may, in very exceptional circumstances, agree to the direct selection of a consultant for a consultancy. In such event, all fee packages should be negotiated as far as possible as a lump sum fee not expressed in terms of the final costs of the works. Circumstances warranting direct selection of a single consultant are set out in Section 3.15.

3.1.6 Agreements Based on Time-charges

If it is not feasible to invite competitive lump sum Fee Proposals for a consultancy, the EACSB may agree to inviting competitive Fee Proposals based on time-charges.

3.1.7 Exceptional Procedures

Justification for adoption of any of the exceptional procedures mentioned in Sections 3.1.3.1, 3.1.4 to 3.1.6 above must be fully documented in the submission to the EACSB.

3.2 Types of Submission to the EACSB

The most common types of submission to the EACSB are for :

(a) shortlisting stage - recommendation of a Shortlist of suitable consultants (Stage 1 submission); followed by

(b) nomination stage - recommendation of a preferred consultant (Stage 2 submission); or

(c) recommendation of the direct selection of a consultant for fee negotiation; followed by

(d) recommendation of the appointment of a directly-selected consultant (nomination stage);

(e) request for approval for variations to consultancy agreements/additional Services; and

(f) request for approval for cancelling the consultant selection exercise (see SPR 470)

If the managing department have any other issues that require the EACSB's consideration, they should submit a self-contained EACSB paper with all relevant details following the general format outlined in Section 3.3.1 and Appendices 3.2, 3.2A or 3.8 as appropriate. The managing department should not simply copy documents to the EACSB or its Secretariat and assume the EACSB would consider any relevant issue automatically.

3.3 Details of Submissions

3.3.1 General Format of Submissions to the EACSB

All submissions should be made by the HoD, or an officer of D2 rank or above on behalf of the HoD. All submissions should be addressed to Chairman, EACSB (through Secretary, EACSB), copied to DS(Tsy)3, FSTB and DS(W)3, DEVB and should include all relevant information which should be self-contained in each submission under the following headings :

(a) Consultancy Agreement No. and Title;

(b) Authority to Employ Consultants (provide details of Public Works Programme (PWP) Item No. & title, together with estimated fee, estimated manpower input and source and confirmation of approved funding);

(c) Approval Requested;

(d) Previous Submissions to the EACSB / DCSC (if applicable) (in tabulated form) regardless of whether approval was given as requested;

(e) Background/Argument (provide full justification for the recommendations and the adoption of exceptional procedures, if any); and

(f) Attachments, e.g. Brief; any non-standard Special Conditions of Employment (SCE); Schedule of Fees; Fee Proforma; details of the Assessment Panel, marking scheme and score summary; a breakdown of fees, etc.

The managing department should ensure that all standard documents such as Brief, Schedule of Fees, Fee Proforma and marking scheme etc., conform to the standard requirements of relevant circulars and the EACSB Handbook. The EACSB will only examine in principle the documents appended to the submission and advise the managing department to address any obvious shortcomings. If the managing department considers it necessary to deviate from the standard requirements of the Handbook or relevant circular promulgated by government bureaux / departments, consent from Development Bureau and legal advice from LAD(W) should be obtained as appropriate. Such deviation and/or use of non-standard requirements should be highlighted under "Background/Argument" in the submission, together with full justification for the EACSB's attention. Details should be provided in the attachments.

Submissions which do not conform to the above should be returned to the managing department for corrective action and subsequent re-submission.

EACSB submissions should be precise and concise. Only documents that require the EACSB's attention according to the EACSB Handbook should be included. Documents such as repetitive information; correspondence between the managing department and consultants; revised draft brief; individual Assessment Panel members' score sheets; General Conditions of Employment (GCE) etc., should not be attached. Appendices to the Draft Brief, except general layout plan(s), should not be included.

EACSB submissions should be printed on double sides as far as practicable.

Internal checklists for preparing EACSB submissions are given at **Appendix 3.19** for reference. The checklists are not exhaustive. Project officers should ensure that their submissions should comply with the latest requirements in the EACSB Handbook, SPR and relevant circulars.

3.3.2 EACSB Meetings and Deadline for Submissions

Normally, the EACSB meets on a Friday morning, twice each month, unless notified by the Secretary, EACSB to the contrary. The Secretary, EACSB will notify departments the schedule of EACSB meetings once a year, and will arrange to upload the schedule to the DEVB Works Group Intranet Portal (under "Useful Information/Administrative Handbooks & Manuals/EACSB Handbook and Relevant Guidelines/Circular Memoranda").

The deadline for receipt of submissions by the Secretary, EACSB is 17:00 hours, one week prior to the particular meeting unless otherwise notified by the Secretary, EACSB. Copies to DS(W)3, DEVB and DS(Tsy)3, FSTB should also reach the copy addressees by the same deadline. Late submission will not be accepted. In exceptional circumstances, late submissions may be considered at the Chairman's discretion. The late submission must be accompanied with a written justification requested by the HoD in such circumstances for urgent consideration by the Chairman.

3.3.3 Submissions for EACSB's Consideration by Circulation

Exceptionally, papers for urgent consideration, or which cover minor matters in relation to consultancy agreements, may be considered by circulation.

As stipulated in the then S for W's memorandum ref. (46) in WB(PS) 106/44 dated 24 April 2002, in order to expedite the approving process, the provision of consideration by circulation is extended to Stage 2 submissions (i.e. request for approval of a recommended consultant).

It must be indicated that the paper is for the EACSB's consideration by circulation, must be copied to DS(Tsy)3, FSTB and DS(W)3, DEVB, and must include reasons why consideration is required ahead of the normal EACSB meeting.

Papers will be considered "by circulation" at the EACSB's discretion and only if adequate justification for urgent consideration is included.

3.4 Pre-submission Procedures

3.4.1 Preliminary Steps

Before the EACSB is approached for the approval of a proposal, the managing department must have :

(a) identified the need and obtained policy support from the relevant Director of Bureau or a public officer authorised by him for the employment of consultants, and observed the parallel tendering requirements as stipulated in the Financial Circular No. 3/2020;

(b) defined the scope of the project, including order of cost, estimate of time for completing the consultancy Agreement, estimate of fees with due reference to the prevailing market prices and any other relevant information, and estimate of manpower input required;

(c) prepared a preliminary draft Brief;

(d) convened an Assessment Panel;

(e) identified, according to the decision of the Assessment Panel, the appropriate Service Category/Groups of consultants to be invited for bidding (or an initial longlist of consultants with the necessary expertise if there is no appropriate Service Category of consultants under the List); and

(f) obtained a consultancy Agreement number from the EACSB Secretariat.

3.4.2 Allocation of Agreement Number

After obtaining approval and policy support to employ consultants and prior to proceeding with the consultants selection process, the managing department should approach the EACSB Secretariat for the allocation of an Agreement number. This may be done by phoning up Engineer/EACSB at 2762 5173 and providing a copy of such approval and policy support to employ consultants in the first instance, and confirmed in writing by the managing department.

DEVB TCW No. 3/2016, Annex I, paragraph 17, stipulates that regarding the taking of regulating actions, consultancies are to be categorised such that the suspension of consultants from bidding due to adverse performance will generally be confined to the category concerned. Details of the categories are as follows :

Category	
CE	Civil infrastructure and development
DS	Drainage and sewerage
EM	Electrical and mechanical
EP	Environmental

GE	Geotechnical and slope
HY	Roads and associated structures
TP	Town planning
TT	Traffic and transport
WS	Waterworks
SP	Specialists

The category should be indicated in bracket in the agreement number. For example, the agreement number should read CE 93/2001 (HY) if the category of the agreement is "Roads and associated structures". The managing department should indicate the category when obtaining the agreement number.

The Agreement title should be concise and accurately reflect the nature of Services and type of Agreement, conforming to the following format :

[Brief title] – [type of Agreement]
e.g. Penny's Bay Reclamation – Design and Construction

The type of Agreement should follow the standard description (see Section 4.1), i.e. "Feasibility Study", "Investigation" or "Design and Construction".

3.4.3 Assessment Panel

An Assessment Panel, normally comprising three to five marking members, depending on the size and nature of the project, should be established to select and assess consultants. The Assessment Panel should be chaired by an officer ranked preferably at D2, but not lower than D1, and comprise members of not lower than a senior professional level from appropriate government departments. Non-marking officers, if any, except the Chairperson and/or the Secretary, should not participate in Assessment Panel meetings. Details on the functions, setting up and operation of the Assessment Panel are given at **Appendix 3.6**.

3.4.4 Avoidance of Conflicts with Private Interest

SPR 186 states that departments must state in each tender report whether or not the officers involved in preparing tender documentation (including tender specifications and marking schemes), assessing tenders and conducting negotiations have declared their interest and, where conflicts of interest (actual, potential or perceived) have been identified, what remedial action has been taken. To meet the requirements under SPR 186, managing departments are required to state, where appropriate, in each EACSB submission, including the shortlisting stage submission (Stage 1), the nomination stage submission (Stage 2) and the first submission to EACSB before invitation of technical and fee proposals (for one-stage consultant selection), whether (i) all officers involved in preparing consultancy documentation (including consultancy briefs and marking schemes), and assessment for the shortlisting exercise; and (ii) members of Assessment Panel, have declared their interest in accordance with SPR 186 and in the case where conflict of interest (actual, potential or perceived) has been identified, indicate the

remedial action taken. Such statements should be highlighted under the heading "Background/Argument" of the submission.

3.5 Selection of Consultants for Submission of Expression of Interest

3.5.1 Consultancies under Listed Service Categories

The Assessment Panel shall take into account the nature and the pre-tender estimate of the consultancy, and decide in accordance with Section 2 of **Appendix 2.1** the appropriate Service Category/Group(s) of consultants to be invited to submit EOI for the assignment. Invitation for EOI or direct invitation for Technical and Fee (T&F) Proposals (if EOI submission is not required) shall be sent to all the listed consultants in the appropriate Service Category/Group(s), other than those under suspension, and posted on the internet website of the procuring department(s).

For one-stage selection process (Section 3.1.3.1 refers) where EOI submission is not required, Section 2 of **Appendix 2.1** shall also apply in selecting consultants for submission of T&F Proposals.

Unless otherwise agreed with DEVB beforehand, the procuring departments shall seek comments from DEVB on the packaging of the consultancies which are to be procured by following the EACSB procurement procedures before issuing invitation for EOI submission or direct invitation for T&F Proposal (if EOI submission is not required).

3.5.1.1 Extension of Invitation to Other Groups

If the number of listed consultants identified in accordance with Section 2 of **Appendix 2.1** is less than five, consultants from either the next higher or the next lower Group, as Assessment Panel having taken the nature and scale of the assignment concerned into account considers appropriate, shall also be invited to submit EOI for the assignment.

If the Assessment Panel considers, based on available information (e.g. relevant tendering experience for consultancies of similar scale and nature), the number of EOI submissions to be received may be less than five, the Assessment Panel may consider conducting a sounding-out exercise to ascertain the number of EOI submissions likely to be received. If the estimated number of EOI submissions to be received is less than five based on the outcome of the sounding-out exercise, the Assessment Panel may consider inviting consultants in either the next higher or the next lower Group, as Assessment Panel considers appropriate, to submit EOI for the assignment. If the Assessment Panel considers inviting consultants in the next higher Group to submit EOI for the assignment, the same extension shall apply to the engagement of sub-consultants (i.e. the consultants in the next higher Group shall also be eligible to be engaged as sub-consultants for the assignment).

The sounding-out exercise shall be conducted in writing. Information including consultancy agreement number, agreement title, tentative EOI invitation date and brief scope of the consultancy shall be issued to the consultants in the appropriate Service Category and Group(s) selected in accordance with Section 2 of **Appendix 2.1**. The

consultants shall be requested to reply in writing on a non-committal basis within a reasonable period, usually not less than one week and not more than two weeks, by indicating their interest in submitting EOI for the assignment. A sample letter for sounding out exercise is attached at **Appendix 3.20A** for reference.

There are occasions in which the consultant selection exercises are cancelled as insufficient number of EOI submissions are received. Under such circumstance, if the Assessment Panel considers that the response of the consultants may not be improved by reviewing the project requirements of the assignment, the Assessment Panel may consider also inviting the consultants in either the next higher or the next lower Group to submit EOI for the assignment concerned next time. For the avoidance of doubt, the prior approval of the Head of Department as stated in Section 2.3 of **Appendix 2.1** is not required.

3.5.2 Consultancies not under Listed Service Categories

If there is no appropriate Service Category of consultants under the List of Consultants maintained by EACSB to suit a particular engineering and associated assignment, the invitation for EOI of that particular assignment shall be opened to all consultants in the industry.

The Assessment Panel shall select suitable consultants from all reasonably available sources to form the Longlist based on the agreed selection criteria. The Longlist shall normally include 15-20 consultants depending on the nature of the services involved.

Unless otherwise agreed with DEVB beforehand, the procuring departments shall seek comments from DEVB on the packaging of the consultancies which are to be procured by following the EACSB procurement procedures before issuing invitation for EOI submission or direct invitation for T&F Proposal (if EOI submission is not required).

For consultancies not under listed Service Categories and with estimated lump sum fee not exceeding $5M, the relevant bidding restrictions as described in Section 2 of **Appendix 2.1** will be applied. Consultants are required to submit declarations as described in Section 2.1(a) of **Appendix 2.1** that the total number of their works-related professional staff are not more than 15 with their EOI submission and T&F Proposal (if EOI submission is not required).

Invitation for EOI submission or direct invitation for T&F Proposals (if EOI submission is not required) shall be sent to the longlisted consultants and posted on the internet website of the procuring department.

3.5.3 Selection Criteria

The Assessment Panel shall determine the shortlisting criteria. In shortlisting consultants at EOI stage, departments should refer to the selection criteria as set out at Appendix A of DEVB TCW No. 2/2016 (summarised below) as a guide :

(a)	Appreciation of the key requirements and constraints / risks	5-10%
(b)	Approach and strategy to meet the requirements of the assignment (departments may include sub-criteria where appropriate, to cover the consultants' approach and strategy on innovation, creativity, mechanisation, prefabrication, other productivity enhancements, cost reduction, expenditure leveling, etc.)	20-40%
(c)	Previous relevant experience both in Hong Kong and elsewhere	5-10%
(d)	Knowledge, experience and capability of key staff	35-45%
(e)	Past performance of the consultant	10-20%
(f)	Past performance of sub-consultants	0-10%

Other than criterion (b), the above criteria should not be sub-divided. Each panel member should grade each criterion, except past performance (which should normally be marked using the Consultant's Past Performance Ratings in accordance with DEVB TCW No. 3/2016), for the marking of the EOI submission as either "Very Good", "Good", "Fair" or "Poor". The marks that should correspond to these grades are: 100%, 80%, 60% and 30%, respectively. Criterion (a) should be assessed based on the Consultant's appreciation of key requirements and constraints/risks additional to those set out in the brief. If no additional appreciation is included, a "fair" grading at most should be given. For criterion (b), the Consultants' detailed proposals are not expected and should not be assessed in the shortlisting stage but the consultants are encouraged to indicate their broad approach and strategy, particularly on innovative ideas, productivity enhancements, cost savings which may demonstrate their edge in undertaking the assignment. The Assessment Panel shall grade criteria (c) and (d) by following the "Full Marks" approach as described in **Appendix 3.20B**.

The Assessment Panel should include a separate agenda item to discuss widely differed marks (marks differing by two grades or more). Such discussion on why marks have been so different and conclusions of the discussion (e.g. whether or not marks have been adjusted following the discussion and the reasons for any mark adjustment; why diverged views/marks have been considered acceptable) should be properly recorded in the minutes indicating clearly the marking members concerned. In circumstances where a certain criterion has been assessed by members as "Poor" or giving negative comments, the Panel's conclusion/view as to why the consultant is still considered capable of undertaking the assignment despite such rather negative assessment result should be clearly addressed and recorded in the minutes.

In order to render widely differed marks to be easily and readily spotted, the marking on criteria (a) to (c) above should be presented as either "VG", "G", "F" or "P" as the case may be instead of the actual marks for each criterion, in the summary of assessment of EOI. A standard form to present the summary is given at **Appendix 3.14**.

A unified approach for rounding marks on assessment of EOI and Technical Proposal, as promulgated in SDEV's memorandum ref.( ) in DEVB(W)546/84/01 dated 27 January 2010, should be adopted. Under the unified approach, there should be "no rounding" of figures throughout the marking process. For the avoidance of doubt, "no rounding" means the whole number including all digits to the right of a decimal separator should be employed for calculation purposes. The level of precision recommended is eight decimal places. Managing departments may choose to adopt a different precision level if so justified. As regards presentation in hard copy form (e.g. marking sheet), all figures should normally be "shown" in two decimal places according to the following rule : "round" up the third decimal place if it equals to or exceeds 5 and "round" down if it is below 5. Procuring departments should choose to adopt more decimal places if so justified, e.g. in comparing the final scores. For instance, the final scores of two bidders of 88.88440000 and 88.88450000 should be shown as 88.884 and 88.885 respectively.

If the assessment panel determined that past performance of sub-consultants should be assessed in both the EOI and T&F stages, the decision shall be made prior to the invitation of EOI proposals, and the consultants shall be so informed in the invitation of EOI. The assessment panel shall also, before the invitation of EOI proposals, determine the marks allocated to the "past performance of the consultant" and "past performance of sub-consultants" for the assessment on EOI submissions and Technical Proposals.

If past performance of sub-consultants is to be assessed in Technical Proposals, some bidders may be tempted to propose sub-consultants with high PPR to increase their chance of winning the consultancy but without the real intention of keeping these sub-consultants throughout the job. The assessment panel should therefore be careful in allocating marks for the "past performance of sub-consultants" criterion to ensure that such marks are not unduly high. The procuring department shall also ensure that the sub-consultants' input is consistent with the consultants' manpower proposals made during the T&F stage. Irregularities should be reflected in the consultants' performance reports.

The Assessment Panel shall grade the "Previous relevant experience" and "Knowledge, experience and capability of key staff" of EOI submission by following the "Full Marks" approach as described in **Appendix 3.20B**. The terms "Core Personnel" shall mean:

Core Personnel: staff includes the project manager, partner in charge, project/study director, team leaders of relevant disciplines or specialist. While the procuring departments shall specify the minimum number of Core Personnel and their respective designations in the invitation documents for the purpose of tender assessment using the "Full Marks" approach, the consultants may propose in their EOI submissions additional Core Personnel for the assignment. For the avoidance of doubt, if the number of core personnel proposed by the consultants for a particular designation is more than that specified in the invitation documents, the average of the mark attained by the core personnel for such particular designation would be adopted in tender assessment under the "Full Marks" approach.

3.5.4 Invitation for Expression of Interest

Subject to the agreement of the Assessment Panel, the managing department should send an invitation letter (a sample is given at **Appendix 3.1**) to the selected consultants requesting them to express an interest in being considered for the consultancy. The sample template for shortlisting criteria is shown in **Appendix 3.1A**. The invitation should include a description of the consultancy, the draft Brief, the draft Schedule of Fees, other information sufficient for the consultants to prepare their submissions, the deadline for submission and the requirements of submission. Consultants should be requested to limit their replies to a maximum of six A4 pages. No attachments whatsoever should be included, except for the curriculum vitae of the key staff likely to be employed on the consultancy and the organization chart of the study/project team. Late submissions or submissions containing pricing information shall not be considered. For exceedance of the specified number of pages of EOI submission and attachments or inclusion of attachments other than curriculum vitae and organization chart, all the exceeded pages shall be discarded prior to the assessment. As regards non-compliance with the specified format, such as the page size, font size, or double-sided printing, 1 mark shall be deducted from the overall score in the assessment. Each consultant shall also be asked to declare any involvement or interest if it is considered by itself to be in actual, apparent, potential or perceived conflict with the duties to be performed upon its appointment for the consultancy. Any involvement or interest declared should be carefully considered but should not automatically bar the consultant from being further considered in the selection process. The managing department should seek confirmation from the consultants on the invitation list who are limited liability companies that majority of the voting power in meetings of the company is held by directors who are consulting engineers (or equivalent professionals of associated professions) (see Section 7.2).

To provide consultants with the opportunity to form Joint Ventures, the invitation letter should also include the names of all firms that are being approached.

As stipulated in the then SETW's memorandum ref. (00ZD3-03-1) in ETWB(PS) 106/43 dated 30 March 2006, consultants having linkages to each other, e.g. being subsidiaries, parent or sister companies are not allowed to bid on the same agreement. Only one firm of such consultants should be invited under an agreement. Consultants invited to submit EOIs are required to declare any linkage with other consultants on the invitation list. The same rule should apply to all consultants irrespective of the background of their organisations, e.g. traditional consulting firms, academic institutions, etc., and this should be made clear in the letter inviting EOIs (see **Appendix 3.1**). However, the "no linkage" rule does not apply to "linked" consulting firms (including academic institutions) who bid as sub-consultants only for an agreement.

To facilitate consultants' better understanding of the history/status of the project and hence provide better submissions, copies of relevant study reports should be made available to all potential bidders. For environmental friendliness, electronic copies should be preferred.

3.5.5 Pairing of Consultants Selection Exercises

When two consultancy agreements are of similar project nature, scale and programme, project offices may propose to incorporate additional special requirements for pairing of two consultant selection exercises and stipulate the criteria to determine the winners of the paired consultancy agreements in the invitation letters for EOI submissions and T&F Proposals. The purposes of adopting the pairing arrangement are to :

(i) further promote participation and competition of more consultant firms in similar consultancy agreements;

(ii) enable the Government to tap a wider collection of expertise available in the market; and

(iii) enhance the resilience of the supply chain for providing specialised consultancy services to the Government.

To align the provisions to be incorporated into the invitation letters for EOI submissions and T&F Proposals, sample provisions are given at **Appendix 3.21** for reference.

For consultancy agreements with estimated lump sum fees not exceeding $15 million, approval to incorporate special requirements for pairing of consultant selection exercise shall be obtained from the HoD prior to invitation of EOI submissions for two-stage selection process or invitation of T&F Proposals for one-stage selection process. For consultancy agreements with estimated lump sum fees exceeding $15 million, approval shall be obtained from the EACSB. The following conditions shall be met in adopting the pairing arrangement :

(i) The paired consultancy agreements are of similar project nature, scale and programme;

(ii) The assessments of EOI submissions and T&F Proposals for the paired consultancy agreements should be conducted within a similar timeframe as far as possible and the Fee Proposals for the paired consultancy agreements should only be opened until the technical assessments of both agreements have been completed; and

(iii) For two-stage selection process, the Assessment Panel should review to recommend a Shortlist of normally five (rather than normally four) suitable consultants, based on the outcome of the assessment of EOI submissions so as to further promote competition in the paired consultant selection exercises.

3.5.6 Checking of Listing Status During Consultants Selection Process

The consultants taking part in consultant selection exercises shall maintain their listing status throughout the process. However, the listing status of consultants in the List of

Consultants of EACSB (the List) may be changed for various reasons such as upgrading to higher Group as a result of re-grouping exercise, inclusion of a new firm on the List, suspending from bidding due to poor performance, downgrading to lower Group due to insufficient qualified professional staff, etc., which may in turn affect their eligibility for the consultant selection exercises and award of consultancy. Hence, the procuring department shall conduct checking on the consultants' eligibility throughout the consultant selection process prior to award of the consultancy.

In order to avoid confusions that may arise when changes of listing status of firms occur during the consultant selection process, the operational procedures to deal with changes in the eligibility of a consultant to bid for a consultancy under several scenarios as set out in **Appendix 3.20C** shall be followed.

3.5.7 Correction Rules

In occasions where errors are identified in the EOI submissions and/or the T&F Proposals, procuring departments shall follow the relevant correction rules in the invitation documents to handle the errors where appropriate. In the event that no written correction rule is applicable, procuring departments shall observe the relevant requirements in SPR 365 in seeking clarifications from consultants and handling the errors.

3.6 Shortlisting of consultants

3.6.1 Forming of the Shortlist

From the EOIs received, a recommended Shortlist of normally four suitable consultants should then be prepared based on the outcome of the assessment carried out by the Assessment Panel.

3.6.2 Stage 1 EACSB Submission (Shortlisting Stage)

The EACSB Submission should include :

(a) background and scope of project, project estimate, fee estimate, manpower input estimate, estimate of any reimbursable items, details and confirmation of approved funding, breakdown of estimate of consultant's fee as enclosed in the approved funding paper;

(b) brief report on the complexity of the assignment with supporting reasons and the selection of consultants from the appropriate Service Category/Group(s) as determined by the Assessment Panel and the response to the invitation of EOI;

(c) an assessment of firms, including the shortlisting criteria used and marking scheme, as given at **Appendix 3.14** (also note the unified approach for rounding marks given in Section 3.5.3) and minutes of the Assessment Panel meeting(s);

(d) recommendation of a Shortlist of consultants and the list of proposed

sub-consultants;

(e) a table showing the eligibility of the proposed consultants and sub-consultants;

(f) reasons for selecting the Shortlist of firms, taking into account any involvement or interest declared and considerations of the Assessment Panel as to the suitability of any of the firms despite individual negative comments/ratings or relatively low gradings as the case may be;

(g) reasons for rejecting those consultants that are not considered suitable for the Shortlist;

(h) statements to the effect that the issue of SPR 186 has been fully addressed;

(i) proposed non-standard SCE or other requirements, if any, with policy and legal clearance as appropriate;

(j) a draft Brief;

(k) a draft Schedule of Fees, including payment schedule;

(l) marking scheme for Technical Proposals;

(m) proforma for the presentation of Fee Proposals;

(n) proposed technical/consultancy fee/fee quality weighting;

(o) proposed Notional Value for additional Services (covering contingency and designated Services of unknown quantity e.g. site investigation supervision);

(p) proposed Notional number of man-hours for additional Services for each of the posts to be used for assessment of the adjusted Notional Value for additional Services based on all-inclusive charge rates;

(q) proposed Notional number of man-months of RSS, where appropriate, to be used for assessment of RSS on-cost charges;

(r) proposed weightings of staff composition; and

(s) name(s), post(s) and contact telephone and fax numbers of the officer(s) who will attend the EACSB meeting when so directed by the Chairman.

A sample submission is given at **Appendix 3.2**.

After the EACSB's approval of a Shortlist, the unsuccessful consultants should be notified promptly, and the shortlisted consultants should be invited to submit both Technical Proposals and Fee Proposals.

3.6.3 Validity Period of the Shortlist of Consultants

The approved Shortlist of consultants shall normally remain valid for one year from the date of Stage 1 approval by EACSB (or DCSC). If Stage 2 submission is not received by the Board (or the Committee) within the aforesaid validity period, the Shortlist of consultants will become invalid and a new Expression of Interest exercise will be required unless justification(s) for extending the validity period is/are provided and approved by EACSB (or DCSC).

3.7 Marking Scheme for Technical Proposals

In accordance with Appendix B of DEVB TCW No. 2/2016 and the subsequent amendments including Appendix 3.3(F) of the Guidelines, **Appendix 3.4B** stipulates the guidelines on preparation of technical proposals and marking schemes.

The marking scheme for Technical Proposals should be subject to approval by the EACSB prior to inviting submissions. The consultants should be informed of the marks allocated to each of the main sections and sub-sections of the Technical Proposal.

The consultants should demonstrate in the Technical Proposal the will to achieve total project cost-effectiveness, and that he has the skills, resources and proven experience to do so. Accordingly, a mark must be assigned to "cost-effectiveness" wherever possible. It should be noted, however, that "cost-effectiveness" relates to a consultant's ability to propose cost-effective solutions and is in no way related to the consultant's fee proposal. There may be some consultancies for which "cost-effectiveness" is not meaningful. In such cases, the managing department should not allocate a mark for "cost-effectiveness". The Assessment Panel's deliberation in this regard should be recorded in the minutes, and accordingly presented in the submission.

In addition, to promote new design concepts and innovative ideas, the consultants should include in the Technical Proposal its proposed approach and strategy in this regard. The managing departments should allocate marks following the guidelines set out in Appendix B of DEVB TCW No. 2/2016.

As stipulated in DEVB TCW No. 2/2016, the marking scheme should include a criterion on "adequacy of professional and technical manpower input", which is a mandatory sub-section under the section of "Staffing" in the marking scheme and carrying 7% - 12% of the overall marks. The consultants will be required to submit in the Technical Proposals their manpower input under six categories of staff, viz. partners/directors, chief professional, senior professional, professional, assistant professional and technical staff. The minimum academic/professional qualifications and experience requirements corresponding to each staff category are stipulated in Appendix C to DEVB TCW No. 2/2016 (as amended by SDEV's memorandum ref. DEVB(PS) 106/43 dated 17 April 2019).

3.8 Invitation for Technical and Fee Proposals

3.8.1 Procedures relating to Invitation for Technical and Fee Proposals

Prior to the invitation of Technical and Fee Proposals, the managing department should :

(i) establish the categories of staff for the Services and additional Services (with additional categories, and/or further breakdown into different ranks and disciplines if necessary), and minimum qualifications, experience and other requirements for each category of staff (sample at the **Appendix 3.13A**);

(ii) estimate the manpower input (having regard to the shortlist of consultants when a two-stage consultant selection is adopted) and lump sum fee for the assignment;

(iii) determine the specified weightings to be used for the Weighted Technical Score and the Weighted Consultancy Fee Score which together shall total 90%. The maximum Fee Quality Score is 10% thus making up a maximum Combined Score of 100%;

(iv) determine the weighting of staff composition for assessing the manpower proposals from consultants;

(v) for the purpose of considering consultants' fees for additional Services,

(a) determine the "notional man-hours for additional Services" for each category of staff;

(b) estimate the all-inclusive time charge rates for each category of staff by making reference to the similar rates proposed by Consultants in recent consultancies and other relevant information; and

(c) calculate, based on (v)(a) and (b) above, a notional value for additional Services by adding the totals of the multiplication of the notional man-hours for additional Services and estimated all-inclusive time charge rates for all categories of staff; and

if applicable, estimate the notional resident site staff (RSS).

Manpower Input Estimate

The managing department should establish the staff categories, and estimate the manpower input and lump sum fee having regard to the scope and nature of assignment, project conditions, service requirements as well as the applicable rates of similar consultancies and prevailing market rates where appropriate.

A proper manpower input estimate by managing department is important to the assessment. For the procurement of consultancy services using a two-stage approach, an opportunity exists before invitation of Technical and Fee Proposals for the managing department to determine this estimate with regard to the shortlisted consultants' and their proposed staff's general level of project experience/acquaintance. This can avoid any over/under-estimation of the required manpower input for better assessment of the shortlisted consultants' Technical and Fee Proposals. Otherwise, the managing department's manpower input estimate, which can be speculated from the "notional man-hours for additional Services", may drive the shortlisted consultants to artificially adjust their proposed manpower input in the Technical and Fee Proposals in order to secure a higher winning chance.

Weighting of Staff Composition

For assessing the relative significance of the experience of staff in a manpower proposal, the managing department should determine specific weightings of staff composition taking into account the nature, complexity and other circumstances of the assignment. It is assumed that the relative significance of the staff categories toward satisfactory performance of the assignment is in the ratio of 4:2:1 (which may be substituted by another suitable ratio as may be determined by the Assessment Panel) with respect to the categories of three staff group (viz. "P/D and CP", "SP and P", and "AP and T").

Technical / Consultancy Fee / Fee Quality Weighting

The following table should be taken as a reference in determining the specified weightings to be used for the Technical Score and the Consultancy Fee Score which together shall total 90%. The maximum Fee Quality Score is 10% thus making up a maximum Combined Score of 100%.

Weightings for Different Complexity of Projects for Technical Score/Consultancy Fee Score (%)	
Normal	Complex
63/27	72/18

The complexity of each assignment will be determined by the Assessment Panel, or procuring department if Assessment Panel is not formed, following the prescribed criteria laid down by the list management departments of the respective Service Categories. Details of the classification of assignment complexity for the nine Service Categories are listed at **Appendix 2.2D**.

The choice of weighting for a particular project should be made by the Assessment Panel and should be subject to the approval of the EACSB prior to inviting submissions.

Endorsement by the Assessment Panel

The justifications for adopting the weighting of technical/consultancy fee/fee quality and weighting of staff composition should be recorded in the minutes of the Assessment Panel meeting. These adopted figures, together with the marking scheme, should be included in the submission to EACSB for approval prior to invitation of Technical and Fee Proposals. However, the weighting of staff categories should not be disclosed to bidders.

3.8.2 Invitation for Submission of Technical and Fee Proposals

Subject to the validity period of the approved Shortlist (see Section 3.6.3), the shortlisted consultants should be invited to submit a Technical Proposal to the managing department and separately a Fee Proposal to the Chairman, EACSB. The managing department should ensure that all the shortlisted consultants have received the invitation letter by acknowledging receipt. The deadline for submission of Technical and Fee Proposals shall be before 12:00 noon on the date specified. Late submission should not be considered.

3.8.3 Invitation Letter of Technical and Fee Proposals

The invitation letter should include a copy of the draft Brief, together with any additional relevant background information, and should give a deadline for submission of Technical and Fee Proposals. The invitation should also include an outline of the marking scheme for Technical Proposals, a proforma for the presentation of Fee Proposals, the technical/consultancy fee/fee quality weighting, the Notional number of man-hours for additional Services for each of the posts to be used for assessment of the time-charge rates, and where appropriate the Notional number of man-months of RSS to be used for assessment of RSS on-cost charges. The invitation letter should be accompanied with a soft copy of manning schedule template as attached in **Appendix 3.20D** for the bidders to complete and return with the Technical and Fee Proposals. The manning schedule shall be submitted in both hard copy and soft copy, and the soft copy shall be digitally signed by the consultant. In case there is discrepancy in the manning schedule between the soft copy and the hard copy, the soft copy shall prevail. At the time of sending out the invitation letter, a copy of the first two pages of the Fee Proposal proforma (see Section 3.11.1), together with the names of all the participating consultants (including also sub-consultants), should be sent to the Chairman, EACSB through the Secretary, EACSB to notify the Chairman of the submission deadline for the Fee Proposals.

The invitation letter should include guidelines on the preparation of Technical Proposals (DEVB TCW Nos. 2/2016 and 5/2018). It should seek to standardise the format of the Technical Proposals to suit the requirements of the particular consultancy and to restrain the consultants from preparing unnecessary expensive or glossy submissions. In particular, the maximum length of the Technical Proposal should be commensurate with the complexity of the consultancy and should normally be not more than 30 A4 pages. To facilitate consultants' better understanding of the history/status of the project and hence provide better submissions, copies of relevant

study reports should be made available to all potential bidders. For environmental friendliness, electronic copies should be preferred.

In order to mitigate against any conflicts of interest, the managing department should prepare a list of all the consultants and sub-consultants involved in making submissions for the consultancy, and should include the list with the letter inviting the submission of Technical and Fee Proposals. The provisions in Section 3.8.4 should be observed for any change in this list. The managing department should specify in the invitation letter a deadline (say at least five working days before the deadline for submission of the Technical and Fee Proposals) for the shortlisted consultants to give notification of any change in their sub-consultants. The invitation letter must state clearly the consequences that late notification of the proposed change may result in the consultant being disqualified because it may deprive the Assessment Panel of a proper chance to review how the change will affect the shortlist status of the firm.

The Assessment Panel should assess whether any late notification by a shortlisted consultant will result in disqualification of its T&F Proposals on a case-by-case basis. For example, there may be extenuating circumstances in which the proposed change of sub-consultant(s) is unavoidable and beyond the control of the consultant concerned. The managing department should seek approval from the EACSB as soon as possible (preferably not later than the submission deadline for the T&F Proposals or the commencement of assessment of Technical Proposals, depending on the date the late notification is received) on the Assessment Panel's recommendation on whether the shortlisted consultant concerned should be disqualified or not as a result of the late notification. Decisions to disqualify or not to disqualify the consultant should be fully justified. In case of other change(s) to the approved shortlist of consultants, the managing department should also seek approval from the EACSB (see Section 3.8.4).

Where appropriate and practicable, all shortlisted consultants should be provided as soon as possible an updated list of shortlisted consultants and their sub-consultants (with the change(s) accepted) before the submission deadline for the T&F Proposals. The Government reserves its right to notify any consultant of the disqualification of the latter's T&F Proposals after the completion of the consultant selection exercise where appropriate.

Under SPR 530(c), any documents of unsuccessful consulting firms may be destroyed three months after the date the relevant contract has been executed. To avoid misunderstanding and any possible complaints, the above arrangement should be spelt out clearly in the invitation letter to consultants.

The invitation letter should make it clear that shortlisted consultants of which the Technical and Fee Proposals have been completely assessed in the combined score assessment will be informed of the total marks awarded to, and the fee proposed by, each consultant making a submission. The letter should also make clear the requirements of disclosure of fees payable to the consultants as set out in the SCE.

The invitation letter should specify a validity period for Technical and Fee Proposals, as required under the then SETW's memorandum ref.(010Q6-03-2) in ETWB(PS)

106/43 dated 25 April 2006. In this regard, the following related guidelines should also be observed:

(a) The managing department should ensure that the consultants have provided the required confirmation as specified in the invitation letter for Technical and Fee Proposals at **Appendix 3.4** in their submissions.

(b) After the expiration of the validity period, a proposal cannot be accepted without the written consent of the consultant to extend the validity period.

(c) If such an extension is anticipated before the deadline for submission of Technical and Fee Proposals, a notification letter should be issued to the consultants.

(d) If such an extension is required after the deadline for submission of Technical and Fee Proposals but before acceptance by the EACSB (i.e. approval of the nomination stage submission), a letter enclosing a standard confirmation letter for reply (see Appendices 1 and 2 of the then SETW's memorandum above) should be written to the shortlisted consultants asking for their agreement to extend the validity period without changing their original Technical and Fee Proposals. The action should then be justified and recorded, and highlighted in the nomination stage submission, under the heading "Background/Argument".

(e) If such an extension is required after acceptance by the EACSB (i.e. approval of the nomination stage submission), the letter should be written to the shortlisted consultants asking for their agreement to extend the validity period without changing their original Technical and Fee Proposals. If the successful consultant agrees to the extension unconditionally, there is no need to inform the EACSB. If not, it will be necessary to re-submit the case to the EACSB, recommending another suitable consultant who has confirmed agreement to extending the validity period. It should be noted that a consultant's refusal to extend will render his Technical and Fee Proposals ineligible for acceptance after expiry of the original validity period. Also, a consultant's agreement to extend subject to conditions will be considered as a qualified bid and will be rejected.

(f) The consultants should be reminded that the letter seeking their agreement to an extension of the validity period does not signify either an acceptance or a rejection of their proposals, all proposals are still under consideration and Government does not bind itself to accepting any proposal.

A sample letter is given at **Appendix 3.4**.

3.8.4 Changes in Circumstances

If, after the EACSB's approval of the Shortlist of consultants, there are changes in circumstances that may have affected the original shortlisting results, for instance change of sub-consultants by any shortlisted consultants, then the Assessment Panel should conduct a review to examine whether the consultant should be excluded from the approved Shortlist. The managing department should revert to the EACSB if the outcome of the Assessment Panel's review recommends change in the approved Shortlist of consultants. Where appropriate, the managing department should issue an

updated list of consultants and sub-consultants to the relevant shortlisted consultants after the matter has been finalised.

3.9 Pre-submission Meeting with Shortlisted Consultants

A single formal pre-submission meeting with all shortlisted consultants should be held to resolve queries and to ensure that the consultants are fully aware of the requirements of the project, and of the requirements for the Technical Proposal and Fee Proposal. The consultants should be invited to comment on all documents relating to the submissions, such as the payment schedule, marking scheme, technical/consultancy/fee quality weighting, Brief and Conditions of Employment etc. Minutes of the pre-submission meetings should be prepared to record down the matters discussed and sent to all shortlisted consultants. Other meetings with individual consultants, if requested by them, are permitted, provided that all shortlisted consultants are informed of any matters of general applicability arising from the meetings, except those matters related to the confidentiality of individual consultants.

Departments should ensure that the consultants are given adequate time prior to the pre-submission meeting to study all the consultancy documents and to formulate any queries they may have.

The Brief and the payment schedule should not be finalized until after the pre-submission meeting, so that they can take the consultants' comments and queries into account. Once the Brief and the payment schedule are finalized, a copy should be sent to the consultants, together with any documents amended as a result of queries at the pre-submission meeting.

Subject to Section 4.6, minor refinement to the payment schedules may be considered.

3.10 Submission and Assessment of Technical Proposals

The Technical Proposals should contain details of the total manpower input under categories of staff (e.g. partners/directors, chief professional, senior professional, professional, assistant professional and technical staff, etc.) specified in the invitation letter in terms of man-weeks. In addition, it should include a Manning Schedule, submitted in both hard copy and soft copy using the template provided in the invitation letter (see Section 3.8.3), to show the grouping of key staff under different categories and time inputs of key staff such as Study Directors/Managers and Team Leaders of relevant disciplines. In providing the Manning Schedule, the consultants must not give any information in the Technical Proposals on charge rates or fees.

The Technical Proposals shall be received by the managing department and assessed by the Assessment Panel. Except as specified otherwise, each Technical Proposal should be marked according to the quality of its own against the required standard and selection criteria pre-determined by the managing department and agreed by the Assessment Panel, not according to a relative comparison with other Technical Proposals.

The Assessment Panel shall grade the "Consultant's Experience", "Response to the Brief" and "Staffing" of Technical Proposal by following the "Full Marks" approach as described in **Appendix 3.20B**. The terms "Core Personnel" and "Key Staff" shall mean:

Core Personnel: staff includes the project manager, partner in charge, project/study director, team leaders of relevant disciplines or specialist. While the procuring departments shall specify the minimum number of Core Personnel and their respective designations in the invitation documents for the purpose of tender assessment using the "Full Marks" approach, the consultants may propose in their Technical Proposals additional Core Personnel for the assignment. For the avoidance of doubt, if the number of core personnel proposed by the consultants for a particular designation is more than that specified in the invitation documents, the average of the marks attained by the core personnel for such particular designation would be adopted in tender assessment under the "Full Marks" approach.

Key Staff: staff named in the manning schedule of the Technical Proposal, including Core Personnel

To facilitate the implementation of the manpower resources checking system as mentioned in Section 3.10.1, the conversion factor from man-hour to man-week shall be fixed at 40 man-hour per man-week and used for the purposes including but not limited to the following:

(i) checking of compliance with the Specified Percentage Range requirements; and

(ii) checking of overloading situation.

In assessing the "adequacy of professional and technical manpower input" attribute, the Assessment Panel shall calculate the weighted total manpower input of PTE using the ratio of 4:2:1 or another appropriate ratio as determined by the Assessment Panel, usually in the unit of man-weeks. If non-staff charges are expected to be included in the lump sum fee, the managing department should itemize them in the fee proposal proforma and exclude them from the manpower input estimation. The managing department should clarify with the bidders for any anticipated non-staff charges in the pre-submission meeting as far as possible. Similarly, for each technical proposal (non-conforming bid(s) excluded), the Assessment Panel shall calculate its weighted total manpower input using the ratio of 4:2:1 or another appropriate ratio as determined by the Assessment Panel. The Assessment Panel shall then determine the median weighted total manpower input which is equal to the median of the weighted total manpower inputs of all conforming bids and the PTE.

The marking of the "adequacy of professional and technical manpower input" attribute for each technical proposal shall be determined as follows:

Weighted Total Manpower Input of the Proposal as compared to the Median Weighted Total Manpower Input	**Proportion of full mark to be given**
≥ 1.0	1.0
> 0.6 and < 1.0	On sliding scale between 0.6 to 1.0
≤ 0.6	0.3

There may be situations where the consultants' proposed staff claimed to be in a particular staff category do not meet the minimum academic/professional qualifications and/or minimum experience requirements. If found, the managing department should state the identified discrepancy and seek clarifications from the consultant of factual information in writing but should normally not allow the staff and/or the staff category to be changed to avoid the consultant having the opportunity to improve his submission unless LAD(W)'s advice has been sought for special circumstances. When informing the consultant of the identified discrepancy, the managing department should always include the following:

> *"In your reply, you are only allowed to provide factual information about the staff and their qualifications and experience and are not allowed to change the proposed staff or change the staff from one staff category to another staff category.*
>
> *For the avoidance of doubt, in the performance of the assignment, if awarded to you, you are bound to provide the manpower input of the staff in the relevant staff categories as included in your proposal except that if there are any proposed staff not meeting the requirements of minimum academic/professional qualifications and/or minimum experience, you are deemed to agree to replace those staff at your cost with other staff not lower than the qualifications and experience of the proposed staff and meeting the requirements of the minimum qualifications and experience. The replacement shall be subject to the approval procedures as if there is a change of core personnel under the assignment."*

Where the information, together with clarifications from the consultants (if any), reveals non-compliance with the minimum academic/professional qualifications and/or minimum experience for one or more than one staff member, the mark to be given for the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the following as a guide:

Degree of non-compliance in the opinion of the Assessment Panel	Mark shall be multiplied by (exact multiplier to be decided by the Panel)
Minor	0.95 to 0.9
Medium	0.9 to 0.8
Serious	Below 0.8

The adjustment shall not prevent the Assessment Panel from taking into account the discrepancy information in marking other aspects of the technical proposal. A sample

template for defining degree of non-compliance with minimum academic/professional qualifications and /or minimum experience is shown in **Appendix 3.16**.

The manpower input of a consultant is normally, prima facie, unacceptably low if the proportion of full mark given for the "adequacy of professional and technical manpower input" attribute is less than 0.6. A bid with the "Adequacy of professional and technical manpower input" attribute graded "Poor" should not be automatically taken as a bid with unacceptably low manpower input. The Assessment Panel should examine closely the tender and exercise their judgement to assess whether it should be considered further and the concerned Fee Proposal should be opened. The examination includes the consultant's staff organisation and composition with regard to the manpower input of each staff category. A lower manpower input is possible when, for instance, a multi-disciplinary consultant undertaking the whole or majority of the Services of a multi-disciplinary consultancy would minimise interfaces; a very effective/efficient organization proposed would enhance interfacing and communication amongst consultants and sub-consultants; staff with proven experience on the Services being procured or staff acquainted with the nature of the assignment would provide the Services more effectively/efficiently.

The Assessment Panel should focus discussion on widely differed marks (marks differing by two grades or more), and any unusual high or low marks. Discussion on why marks have been so different and conclusions of the discussion (e.g. whether or not marks have been adjusted and the marking member(s) concerned in each case; why diverging views/marks are acceptable; why a certain consultant has been considered suitable by the Panel despite negative comments/relatively low grades given by member(s)) should be properly recorded in the minutes. Reason(s) for mark adjustment(s) should be recorded in sufficient detail as a matter of good practice and proper record. The minutes of the Assessment Panel meeting should also indicate clearly whether the consultants are technically capable of undertaking the assignment. The perceived strengths and weaknesses of each technical proposal discussed by the Assessment Panel should be recorded in the meeting minutes as far as possible. If the Assessment Panel considers that the rating of any section/sub-section, in particular the adequacy of professional and technical manpower input, is unacceptably low, it should further consider carefully the suitability of the consultant in undertaking the assignment. If the consultant is considered to be unsuitable, the Assessment Panel shall make a recommendation to the EACSB whether the proposal should be rejected without opening the respective fee proposals in the Stage 2 (Nomination) submission. In circumstances where a certain criterion of the Technical Proposal has been assessed by members as "Poor", the Panel's conclusion/view as to why the consultant is still considered capable of undertaking the assignment despite such rather negative assessment result should be clearly addressed and recorded in the minutes.

A summary of the results and the relevant minutes of Assessment Panel meetings should be sent to the Chairman, EACSB through the Secretary, EACSB requesting for Fee Proposals to be opened.

In certain circumstances, the managing department may require the consultants to make short presentations of their Technical Proposals prior to the marking of the Proposals. Such presentations should only be made to the Assessment Panel alone.

Standard disclaimer clauses with reference to paragraphs 4 and 5 of **Appendix 3.17** should be included in any post-tender correspondences with the bidders concerned.

3.10.1 Manpower Resources Checking System

(a) Public Works Consultants Resources Allocation Register

A manpower resources checking system, namely Public Works Consultants Resources Allocation Register (PWCRAR), has been developed to serve as a central database to facilitate management of consultants included in the List by the list management departments, and to upkeep and maintain the manpower input earmarked for each EACSB consultancy by consultants for the purpose of checking overloading in tender assessment and performance appraisal by procuring departments.

The PWCRAR can be accessed through the Government Backbone Networks via the Departmental Portal. A user manual and a training manual of the system can be downloaded from the web page of the system. The PWCRAR allows the consultants to submit quarterly updates direct to the PWCRAR through registered email accounts.

To ensure that the basic information of the consultancies and the associated access right are consistent with those in the Consultants' Performance Information System (CNPIS), the relevant project and user group data will be synchronized from the CNPIS to the PWCRAR regularly. To effect the two-tier checking/confirmation of the data input, the users of the PWCRAR will be divided into two different user groups (i.e. officers and endorsers) which will have different access right in the system. In general, officers are to upload/input manpower data into the PWCRAR while endorsers are to confirm the manpower data uploaded/input by the officers in the PWCRAR. Please refer to the user manuals for details on the mapping of access rights.

Currently, there are departmental system administrators, one for each user department, assigned with the right to update and amend the user list of their departments in CNPIS. Any change in the access right shall first be carried out in CNPIS and the change will then be synchronized to the PWCRAR accordingly.

After the revamping of CNPIS, the PWCRAR will be subsumed in CNPIS and synchronization of access right or project data will no longer be required.

(b) Management of the List of Consultants

As mentioned in **Appendix 2.1**, the consultants shall submit applications to Secretary of EACSB for admission to the List of Consultants. Secretary of EACSB will upload the relevant information, such as the consultants profile form, to the PWCRAR accordingly. EACSB will base on the recommendations of the list management departments, approve or reject the admission applications. Upon approval of admission by EACSB, the list management departments shall update the information in the PWCRAR when required and confirm the data in the PWCRAR accordingly. The list management departments can also retrieve relevant information of consultants through

the PWCRAR and carry out checking, updating and/or renewal when required. Please refer to Part (A) of **Appendix 3.20E** for the workflow of list management for reference.

(c) Overloading Checking in Tender Assessment

The overloading checking requirements in this Section shall apply to consultants selection exercises following the EACSB procurement procedures.

The bidders are currently required to submit the curriculum vitae (CV) of the key staff in their T&F Proposals when they bid for the consultancies. The procuring departments will base on the CV to assess the experience and capability of the key staff and give marks to the corresponding attributes of the T&F Proposals of the bidders accordingly. With the PWCRAR in place, the procuring departments can check at the tender stage the workload situation of the key staff proposed and see if they can undertake additional works in accordance with the manning schedule of the T&F Proposals. Any overloading situation (i.e. staff working at more than 4 man-weeks per month) can be taken into consideration and reflected in assessing the "Adequacy of professional and technical manpower input" attribute of the T&F Proposals in accordance with Section 3.10. Please refer to Part (B) of **Appendix 3.20E** for the workflow of tender assessment and **Appendix 3.20F** for details of overloading checking in tender assessment.

As overloading checking will involve the checking of the workloads of bidders in other bidding exercises and on-going consultancies as contained in the PWCRAR, provisions in Appendix 3.3 of the Guidelines (which have been subsumed in Appendices 3.1, 3.1A, 3.3, 3.3A, 3.4, 3.4A, 3.4B, 3.13 and 4.21) have to be incorporated in the invitation letters under the new policy to obtain consent of the bidders on access to their workloads in other bidding exercises and on-going consultancies for the purpose of tender assessment.

A bidder (i.e. a lead consultant or any participant of a joint venture) who has submitted a T&F Proposal for a particular consultant selection exercise may submit an enquiry to the procuring department regarding the total number of T&F Proposals received in that consultant selection exercise, for the purpose of facilitating the preparation of T&F Proposals for other consultant selection exercises. In such circumstance, the procuring departments shall reply to the bidder accordingly, irrespective of the status of the consultant selection exercise concerned. A sample letter replying to the bidders is attached at **Appendix 3.20I** for reference.

(d) Performance Appraisal

To align with Section 3.10.1(c) above, the overloading monitoring requirements in this Section shall apply to consultancies which are procured in accordance with the EACSB procedures.

Under the new policy, the consultants will be required to provide quarterly updates on the manpower input deployed and/or to be deployed for the consultancies that they are working on. The quarterly updates on the manpower input can be monitored through

the PWCRAR which can provide an objective basis for assessing the adequacy of staff deployed by the consultants.

The procuring departments shall, however, note that there are various factors affecting the amount of manpower input earmarked by the consultants for the consultancies. The procuring departments shall take into account various factors in assessing consultants' performance. The quality of works is still the focus of the assessment and the performance of the consultants shall not be unnecessarily marked down simply due to the submission of a manpower input lower than that proposed in the T&F Proposal.

Please refer to Part (C) of **Appendix 3.20E** for the workflow and **Appendix 3.20J** for details of quarterly update of manpower input.

The consultants are required to submit declarations that the manpower resources provided are in accordance with the staffing proposal made at the tender stage (or as amended and agreed subsequently by the procuring department). The Special Condition of Employment and sample clauses for consultancy brief in **Appendix 3.20K** have to be incorporated in the consultancy agreement invited under the new policy.

3.11 Submission and Assessment of Fee Proposals

3.11.1 Fee Proposals

Details relating to the Fee Proposal were originally promulgated in WBTC No. 15/2001, ETWB TCW No. 23/2003, ETWB TCW No. 23/2003A and ETWB TCW No. 23/2003B which have been archived and their requirements have generally been subsumed hereunder.

With a view to facilitating the Assessment Panel to make accurate assessment on the manpower input and unit charge rates proposed by consultants, the proposed lump sum fee on the first page of the Fee Proposal shall be equal to the total fee for staff and non-staff costs for all stages in the summary breakdown of lump sum fee. The information/data, in particular, the manpower input in the Fee Proposal, shall tally with the Technical Proposal.

Departments should not recommend the acceptance of Fee Proposal in which the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff costs in the summary breakdown of lump sum fee. When a department finds that the lump sum fee is different from the total fee for the staff and non-staff costs for all stages in the summary breakdown of lump sum fee or the information/data, in particular, the manpower input in the Fee Proposal does not tally with the Technical Proposal, the department should request the consultant to rectify it within a reasonable time limit to be specified by the department. The consultant shall be allowed to rectify the Fee Proposal by correcting arithmetic errors or making adjustments to the unit charge rates or amending any information/data to bring it in line with the Technical Proposal, where appropriate. However, the consultant shall not be allowed to make any

adjustment to the lump sum fee, all-inclusive time charge rates and on-cost rates on the first page of the Fee Proposal.

Consultants are required to submit in the Fee Proposal a lump sum fee which is derived from their manpower input and the corresponding staff rates (hereafter called "staff rates in lump sum fee" in this paragraph). Consultants are also required to provide in the same Fee Proposal a set of all-inclusive time charge rates for additional Services (hereafter called "staff rates for additional Services" in this paragraph) to be used for ordering additional Services which are not covered by the original scope. Whilst the staff rates in lump sum fee are derived from pre-determined programme and scope of assignment, the staff rates for additional Services have to cater for the uncertainties arising from the additional Services of undefined scope at the time of submission. Therefore, it is acceptable that two sets of staff rates are different. However, in some of the submissions, there are substantial differences between these two sets of staff rates, which are unreasonable. Therefore a mechanism is introduced to rationalize Fee Proposals submitted by Consultants. A linkage between "staff rates in lump sum fee" and "staff rates for additional Services" is imposed so that the percentage difference between these two sets of staff rates, in respect of both professional and technical staff, shall not exceed a "Specified Percentage Range" of -10% to 40%. Fee Proposals in which the percentage difference between the two sets of staff rates exceeds the "Specified Percentage Range" shall not be accepted.

Departments should incorporate the requirements in the above three paragraphs as conditions in the letter inviting submissions from consultants so that the consultants would be bound to follow the requirements. A set of conditions is incorporated in the sample invitation letter given at **Appendix 3.4**.

The Fee Proposal should include, as appropriate to the project:

(a) lump sum fee figure (or all-inclusive time-charge rates where it is not feasible to invite lump sum fee);

(b) all-inclusive time charge rates for additional Services;

(c) where appropriate, RSS on-cost rates to be used in calculating payment for the administration of RSS;

(d) breakdown of fee among stages of the Agreement;

(e) breakdown of fee among disciplines of the project; and

(f) make-up of lump sum fee for staff cost, in the form of a Manning Schedule with all-inclusive unit rates shown against each staff member.

Consultants shall be required to present their Fee Proposals on a standard proforma prepared by the managing department in the format specified at **Appendix 3.13** with related details at **Appendix 3.13A**. Provision should be made in the proforma for the consultant to list any items of additional Services that are recommended for inclusion in the Brief. The consultant shall provide an estimated lump sum fee for each item.

Such lump sum(s) will only be for the Client/Employer's reference and shall not form part of the lump sum used in the assessment of Fee Proposals and application of the technical/consultancy fee/fee quality weighting.

The sample Fee Proforma for time charge assignments at **Appendix 3.13B** should be used for assignments where the bidding and remuneration of the consultant on a lump sum basis is considered to be inapplicable.

In accordance with DEVB TCW No. 2/2016, the managing department should check the compliance with the Specified Percentage Range requirement, as well as assess the consultancy fees and fee quality in the assessment of fee proposal.

Compliance with the Specified Percentage Range Requirement

It is a policy to impose a linkage between the "staff rates in lump sum fee" and the "staff rates for additional Services" so that the percentage differences between the two sets of staff rates are not unreasonable and should not exceed a specified percentage range (SPR).

Whilst the "staff rates for additional Services" are those rates entered by the consultants in the fee proposals, the "staff rates in lump sum fee" shall entail the consultants' own calculation also in the fee proposals. The "staff rates for additional Services" and the "staff rates in lump sum fee" are normally expressed in the units of man-hours and man-weeks respectively.

The detailed method of comparing the two sets of rates against the SPR is set out at Appendix D to DEVB TCW No. 2/2016 and **Appendix 3.16**. For all agreements, an SPR of -10% to +40% shall be adopted. If the comparison reveals exceedance of the SPR for any group of staff rates, the consultant's submission shall not be considered further. This is an important requirement resulting in rejection of the consultant's submission if the SPR is not met. The managing department should include a clear advice in the letter for inviting technical and fee proposals to draw to the attention of consultants.

If the managing department requires the consultants to submit more than one set of all-inclusive time charge rates, e.g. for additional Services of emergency nature or additional Services of work to be done overseas, such additional sets of all-inclusive time charge rates should not be used in calculating the "staff rates for additional Services". The procuring department should extract the "staff rates in lump sum fee", in respect of each staff category, from "Table D" of all stages in the Fee Proposal.

A conversion factor of 40 hours/week shall be adopted throughout the calculation of the "Percentage Difference".

Assessment of Consultancy Fees

The consultants shall be asked to tender in the fee proposals a lump sum for completing the assignment, all-inclusive time charge rates for various staff categories for use in

valuing additional Services, and if applicable, on-cost rates for various ranks of the notional resident site staff establishment.

For the purpose of assessment of fee proposals and their fee quality (i.e. Weighted Consultancy Fee Score and Fee Quality Score), a "consultancy fee" shall be calculated for each fee proposal by summing (a) the lump sum fee (comprising staff costs and non-staff costs), (b) the adjusted notional value for additional Services (see Section 3.11.2), and (c) if applicable, the notional resident site staff on-cost charges (see Section 3.11.3). In addition, the fee-diving control mechanism as described in **Appendix 3.20B** shall be adopted.

Assessment of Fee Quality

The Fee Quality Score is an essential component of the Combined Score with the objective of suppressing exceptionally low charge rates. The Fee Quality Score, on a sliding scale of 0 to 10 as shown in the table below, shall be determined based on the calculated Factor for Marking Fee Quality as defined in the following formula.

Factor for Marking Fee Quality =

$$\frac{\text{Lump sum fee of the bid}}{\text{Median of lump sum fees of all conforming bids}^{+}\text{ (including the pre-tender estimate)}} \times \frac{1}{M_x}$$

whereas M_x is

$$\frac{\text{Weighted total manpower input of the bid}}{\text{Median weighted total manpower input of all conforming bids}^{+}\text{ (including the pre-tender estimate)}}$$

+ For the purpose of determining the medians, those bids not proceeded for fee opening or those with staff rate exceeding the SPR (i.e. non-conforming bids) shall not be considered.

The Fee Quality Score shall then be determined as follows:

Factor for Marking Fee Quality	Fee Quality Score
≤ 0.5	0
> 0.5 and < 0.8	On sliding scale between 0 and 10
≥ 0.8	10

A worked example for ascertaining the Fee Quality Score is given at Appendix E to DEVB TCW No. 2/2016 and **Appendix 3.16**.

3.11.2 Additional Services

Under Clause 33 of the Government's GCE and Clause 5 of the Schedule of Fees, the Consultants are entitled to payment where additional Services are performed.

For additional Services paid on a time charge basis under Agreements awarded prior to the promulgation of ETWB TCW No. 23/2003, partners and directors were to be paid at a preset fixed rate, whereas professional and technical staff were to be paid according to the salary costs of the staff actually deployed for the job and the time charge multiplier proposed by the Consultants in the Fee Proposals.

Upon the promulgation of the above TCW in August 2003, the method of determining Consultants' fees for additional Services was revised to eliminate inconsistency and to strengthen competitiveness in consultancy bidding. Under this currently adopted approach/method, consultants are invited to propose all-inclusive time charge rates for different categories of staff for additional Services in their Fee Proposals. These rates should be used to calculate the adjusted notional value (AN) for additional Services which should then be added to other fee components to arrive at a total fee for assessment of Fee Proposals.

Despite the fact that the time charge rates are fixed at the time of submitting Fee Proposals, it is expected that Consultants will deploy the most suitable staff for the additional Services because the quality of their services will be reflected in their performance reports.

Procedures to be Adopted by Departments Before Inviting Consultancy Proposals

Notional Value

Before invitation of Technical and Fee Proposals, the managing department should have determined a Notional Value (N) for additional Services, to cover contingency and any designated services of unknown quantity e.g. site investigation supervision. The managing department should assess the risks of changes to the Brief (including the scope of assignment, service requirements, consultation strategy, etc.), leading to additional Services, and endeavour to reduce the risks as far as practicable. The amount of this notional value will depend on the comprehensiveness of the Brief and the nature of the Assignment, and should not exceed 10% of the estimated lump sum fee unless with full justifications.

If the residual risks are still expected to result in notional value exceeding 10% of the estimated lump sum fee after all risk mitigation measures have been taken practicably, the managing department should seek approval from the EACSB for a higher notional value for additional Services. Alternatively, the managing department may consider switching to time charge mode for procuring a part of the Services where the exact extent still cannot be fully defined before the invitation of consultancy proposals.

To establish the notional value, the department should:

(i) establish the categories of staff e.g. partners/directors, professional and technical staff (with additional categories, and/or further breakdown into different ranks

and disciplines if necessary), for the purpose of considering Consultants' fees for additional Services;

(ii) specify the minimum qualifications, experience and other requirements for each and every category of staff (sample at **Appendix 3.13A**) ;

(iii) determine the notional man-hours for additional Services for each and every category of staff;

(iv) estimate the hourly rates for each and every category of staff by making reference to similar rates proposed by consultants in recent consultancies and other relevant information;

(v) based on (iii) and (iv), calculate a notional value for additional Services by adding the products of the notional man-hours for additional Services and the estimated hourly rates for all categories of staff.

Procedures to be Adopted by Departments on Reviewing Consultants' Proposals:

The consultant shall in response insert in its Fee Proposal a lump sum offer for performing the Assignment and an all-inclusive hourly rate for each and every category of staff for use in valuing any additional Services instructed.

Adjusted Notional Value

The managing department will use the notional man-hours for additional Services and the consultant's proposed all-inclusive hourly rates entered in the Fee Proposal to calculate the adjusted notional value (AN) for additional Services, by using the formula

$$\text{Adjusted notional value for additional Services} = \Sigma \left[\text{Notional man-hours for additional Services} \times \text{Proposed all-inclusive hourly rate} \right]$$

The adjusted notional value for additional Services will be added to other fee components to arrive at a total fee for assessment of Fee Proposals.

Fee Ceiling

The fee ceiling for additional Services to be approved by the consultants selection board should be equal to the adjusted notional value for additional Services, or 10% of the Consultant's lump sum offer for performing the Assignment accepted by the Employer, whichever is the lesser except if a percentage higher than 10% has been approved by the EACSB.

3.11.3 Notional Resident Site Staff On-Cost

Where appropriate, estimated requirements of RSS cost and on-cost should be determined by the managing department. The determination of fees relating to RSS directly employed by the consultants and requirements of the relevant standard documents are given in the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated under DEVB TC(W) No. 7/2018 and its subsequent updates (if any) (hereinafter referred as "RSS Management Handbook").

3.11.4 Opening of Fee Proposals

The Fee Proposals are to be received by the Chairman, EACSB and kept sealed and secure. To ensure that the Fee Proposals do not influence the technical assessment, the Chairman, EACSB will open the Fee Proposals only after the summary of the finalised results of the technical assessment are received by the Secretary, EACSB upon the completion of the technical assessment. The Fee Proposals will then be collected by the managing department. The managing department should check the Fee Proposals, apply approved technical/consultancy fee/fee quality weightings in the combined score assessment and make a formal submission and recommendation to the EACSB.

No amendment shall be made to the Fee Proposals except for the correction of arithmetical errors. The details of any inconsistencies or omissions, with recommendations on how they should be dealt with, should be included in the submission to the EACSB. No negotiation of the proposed fees will be allowed.

If, at the time of the technical assessment, the Assessment Panel considers that a consultant is unacceptable on technical or other appropriate grounds and shall not be considered further, the managing department should record the detailed justifications in the minutes of the Assessment Panel Meeting before the Fee Proposals are opened. A sample memo for the release of Fee Proposals is given at **Appendix 3.7**.

As promulgated in ETWB TCW No. 8/2003, it is not in the interest of the Government to accept an unreasonably low bid. Managing departments should adopt a flexible approach and reject bids which have been priced unreasonably low. The head of the managing department must be personally satisfied with and agree to the recommendation made to the EACSB to reject an unreasonably low bid. The recommendation itself must be fully justified. Provisions to supplement the policy are promulgated in SDEV's memorandum ref. (022UY-01-10) in DEVB(PS) 510/10/01 dated 31 August 2009 for unreasonably low bids. A sample letter to the bidders on unreasonably low bids is given at **Appendix 3.17**, which may be amended by project officers to suit the needs of their individual consultancy agreements, and in case of doubt, they should consult LAD(W). Support / endorsement by the relevant HoD for rejecting an unreasonably low bid must be clearly indicated and detailed in the EACSB submission, under the heading "Background/Argument".

3.11.5 Pre-tender Estimates and Examination of Fees and Rates of Consultancy Proposals

(a) Pre-tender Estimates

To ensure that the pre-tender estimates, i.e. the "Estimated Fees" reflect the market prices closely, the managing department should review and update, where appropriate, the "Estimated Fees" prior to inviting EOI by making reference to the prevailing market prices and any other relevant information. In this connection, a list has been compiled in accordance with data extracted from EACSB / DCSC submissions (the List) providing relevant information for department's reference.

The List can be accessed via the Consultants' Performance Information System (CNPIS). It lists out the median values of manpower input and staff rates in lump sum fee, all-inclusive time charge rates for additional Services and RSS on-cost rates for typical staff categories amongst all conforming bids and the department's estimate.

During the shortlisting stage and after the subsequent pre-submission meeting with the consultants, the Brief may be altered which in turn may affect the "Estimated Fees". While this "Estimated Fees" should reflect closely the market prices, it should normally be expected to remain unaltered after the finalization of the Brief incorporating any comments received in the shortlisting stage and the subsequent pre-submission meeting.

In any event, all necessary revisions to the "Estimated Fees" should be made before the deadline for the submission of the Technical and Fee Proposals. Any such revision to the "Estimated Fees" should be recorded in the submission to the EACSB indicating the time of and the reasons for the revision.

(b) Examination of Fees and Rates

Upon receiving the opened Fee Proposals, an assessment on the reasonableness of fees and rates against paragraph 7 of ETWB TCW No. 8/2003 should be carried out.

A further evaluation of reasonableness of lump sum fee, total fee, staff rates, on-cost rates and non-staff charges of the recommended bid in comparison with the pre-tender estimate (PTE), other bids, other recently awarded consultancies and appropriate information shall be conducted. If the recommended bid is suspected to be unreasonably low, the managing department should make enquiry to the bidder concerned, seeking justifications with positive proof for the unreasonably low bid, so as to find out whether the bidder is capable of fulfilling the terms of the consultancy before making recommendation.

The head of managing department must be personally satisfied with and agree to the recommendation made to the EACSB to reject an unreasonably low bid. The recommendation itself must be fully justified.

The details of the assessment should be presented in the nomination stage submission to the EACSB. As the case may be, the managing department should draw the attention of the EACSB on fees and rates which are considered substantially over or under-priced.

Standard disclaimer clauses with reference to paragraphs 4 and 5 of **Appendix 3.17** should be included in any post-tender correspondences with the bidders concerned.

3.11.6 Combined score assessment

The Technical and Fee Proposals will be assessed on the basis of a combined score in terms of technical, consultancy fee and fee quality in a rationalised approach as follows:

$$\text{Combined Score} = \text{Weighted Technical Score} + \text{Weighted}^{**} \text{ Consultancy Fee Score} + \text{Fee Quality Score}$$

where :

$$\text{Weighted Technical Score} = \text{Specified Weighting} \times \frac{\text{Technical score of the bid being assessed}}{\text{Highest technical score among all conforming bids}}$$

** Weighted Consultancy Fee Score shall be assessed in accordance with the fee-diving control mechanism as described in **Appendix 3.20B**.

$$\text{Fee Quality Score} = \text{Sliding scale of Factor for Marking Fee Quality}$$

Sliding scale : The tender will score 10 marks on the assessment criterion of "fee quality" for a ratio of 0.8 or above, 0 mark for a ratio of 0.5 or below and a proportional mark for a ratio between 0.8 and 0.5.

Unless there are other considerations which shall be justified by the Assessment Panel, the bid with the highest Combined Score should normally be recommended for acceptance.

3.12 Stage 2 EACSB Submission (Nomination Stage)

The EACSB submission should include:

(a) fee estimate/order of cost of project, summary of fees, funding sources;

(b) brief report on the Technical Proposals and order of assessment;

(c) outline of the assessment process, including composition of the Assessment Panel, minutes of the Assessment Panel meetings, weightings, and any other relevant

factors considered;

(d) a table showing the eligibility of the proposed consultants and sub-consultants;

(e) a summary of assessment of Technical and Fee Proposals;

(f) statement to the effect that the issue of SPR 186 has been fully addressed;

(g) recommendation for a preferred consultant; and

(h) soft copies of any previous DCSC submissions. (If applicable, departments should attach a CD-Rom/DVD-Rom containing soft copies of all previous submissions approved by DCSC for the same agreement (with record of approval) but not having been submitted to EACSB before. Each previous submission should be contained in a single pdf file.)

A sample submission is given at **Appendix 3.8**.

After the EACSB's approval has been given and the Agreement has been signed, the Secretary, EACSB should be notified, using the standard memo form at **Appendix 3.9**, that the Agreement has been entered into. A certified copy of the Agreement document should also be forwarded to the Secretary, EACSB for record purpose.

3.13 Notification of Technical Marks, Fees and Manpower Input to Shortlisted Consultants

Once the EACSB/DCSC has approved the appointment of a consultant, the Secretary, EACSB/DCSC will provide the managing department/office with the information on technical marks, fees and manpower input in the format shown at **Appendix 3.11**. The managing department should forward this information without delay to the shortlisted consultants of which the Technical and Fee Proposals have been completely assessed. At the same time, the managing department should separately advise any consultant(s) of which the Technical and Fee Proposals have not been completely assessed with reasons why the Assessment Panel has made such a decision. In case the Assessment Panel has affirmed the consultant(s) not technically capable of carrying out the consultancy and recommend not open the fee proposal(s), the managing departments should inform the Secretary, EACSB to return any unopened fee proposal(s) to the consultant(s).

In addition to the above, the managing department should also provide feedback to bidders, including debriefing where appropriate to unsuccessful bidders. Details are given in ETWB TCW No. 42/2002 and SDEV's memorandum ref. 02UH8-01-7 in DEVB(PS) 106/43) dated 12 July 2016, the relevant content of which have now been subsumed at **Appendix 3.18**.

3.14 Release of Information on Consultancy Studies

In order to further enhance the openness of the government procurement process, upon request by a third party, the lump sum fee of the successful consultants will be released. Managing departments should incorporate the provisions set out at **Appendix 3.12** into the SCE.

Managing departments should publish the award of consultancies on their websites, after a formal consultancy agreement is signed. Such information should be updated on a regular basis, preferably not less than once every month. Notice of award of a consultancy should remain on the website for a reasonable period of not shorter than six months. Information on award of consultancies to be published should include agreement number, agreement title, name of successful consultant(s), lump sum fee (or estimated/notional fee if remuneration is not based on lump sum), commencement date and estimated completion date.

3.15 Direct Selection of a Single Consultant for Fee Negotiation

All consultancies should be awarded on the basis of technical and fee competition unless there are very exceptional reasons for a direct selection. Circumstances which might warrant a direct selection of a single consultant without calling for Technical and Fee Proposals are:

(a) where, after a detailed preliminary assessment, it is clear that only one consultant is available who possesses the necessary requirements for the assignment;

(b) where, because of prior association with related works, a particular consultant already possesses unique knowledge or experience which makes him clearly much better qualified than any other consultant;

(c) where the Services are required so urgently that an extreme problem would arise if a full submission procedure were used, and where a suitable consultant is clearly available; and

(d) where a consultant is obtained by application to Head (Geotechnical Engineering Office), Civil Engineering and Development Department (H(GEO), CEDD) for urgent geotechnical work of an estimated value not exceeding $15M.

All fee packages should be negotiated as far as possible as a lump sum fee independent of the cost of the works. If it is considered that the negotiation of a lump sum is not feasible, the fee should be based on time charges.

Following approval from the EACSB to commence negotiations with a directly selected consultant, an approach should be made as soon as possible. It is only possible to agree terms properly if the fees and conditions including the draft Brief are taken together. Therefore the consultants should be provided with a copy of the various parts of the standard forms of agreement, which it is intended to apply to the particular assignment under consideration together with a request to provide a fee submission. All relevant information required with the fee submission, such as detailed staffing

proposal, breakdown of time charge rates etc., should also be mentioned in the request. The more comprehensive the information obtained initially the sooner satisfactory agreement can be reached. The brief must also be finalized during the negotiating process.

Guidelines on negotiation of a lump sum fee for direct appointment are given in Section 5.3.3.

3.16 Summary of Steps in Appointment of Consultants

A flow chart summarising the steps in the selection and appointment of consultants is given in Figure 3.1 at the end of this Chapter.

3.17 Variations – Submission to EACSB

When the accumulated value of variations will exceed the total authorised amount (the EACSB's original approved fee ceiling for additional Services plus the financial limit for variations set out in the SPR, see Section 8.2.8), or when the variations are outside the approved scope of the consultancy assignment provided that the additional Services are within the approved scope of the project (see Section 8.2.10), the managing department should seek the EACSB's approval to negotiate with the consultant to undertake any proposed variations prior to agreeing with the consultant.

The EACSB submission should include:

(a) brief account of expenditure incurred so far and the current financial status of the agreement;

(b) justification for proposed negotiation with the original consultant to undertake the proposed additional Services (under a supplementary agreement, where appropriate), if letting out a new assignment for the additional Services is not recommended;

(c) supplementary Brief, where appropriate;

(d) supplementary Schedule of Fees, where appropriate;

(e) detailed breakdown of fee estimate together with the managing department's estimated manpower input and rates for the negotiation of the supplementary agreement; and

(f) soft copies of any previous DCSC submissions, following the same requirements in Section 3.12(h).

As a general principle, the managing department should always take into consideration the full implications of the proposed additional Services, and present all relevant details in the submission for the EACSB's consideration.

Upon approval to proceed with the proposed negotiation, the managing department should take into account the guidelines given in Section 5.3.3 in the negotiation.

CONSULTANTS SELECTION PROCEDURES

PRE - EACSB SUBMISSION PROCEDURES

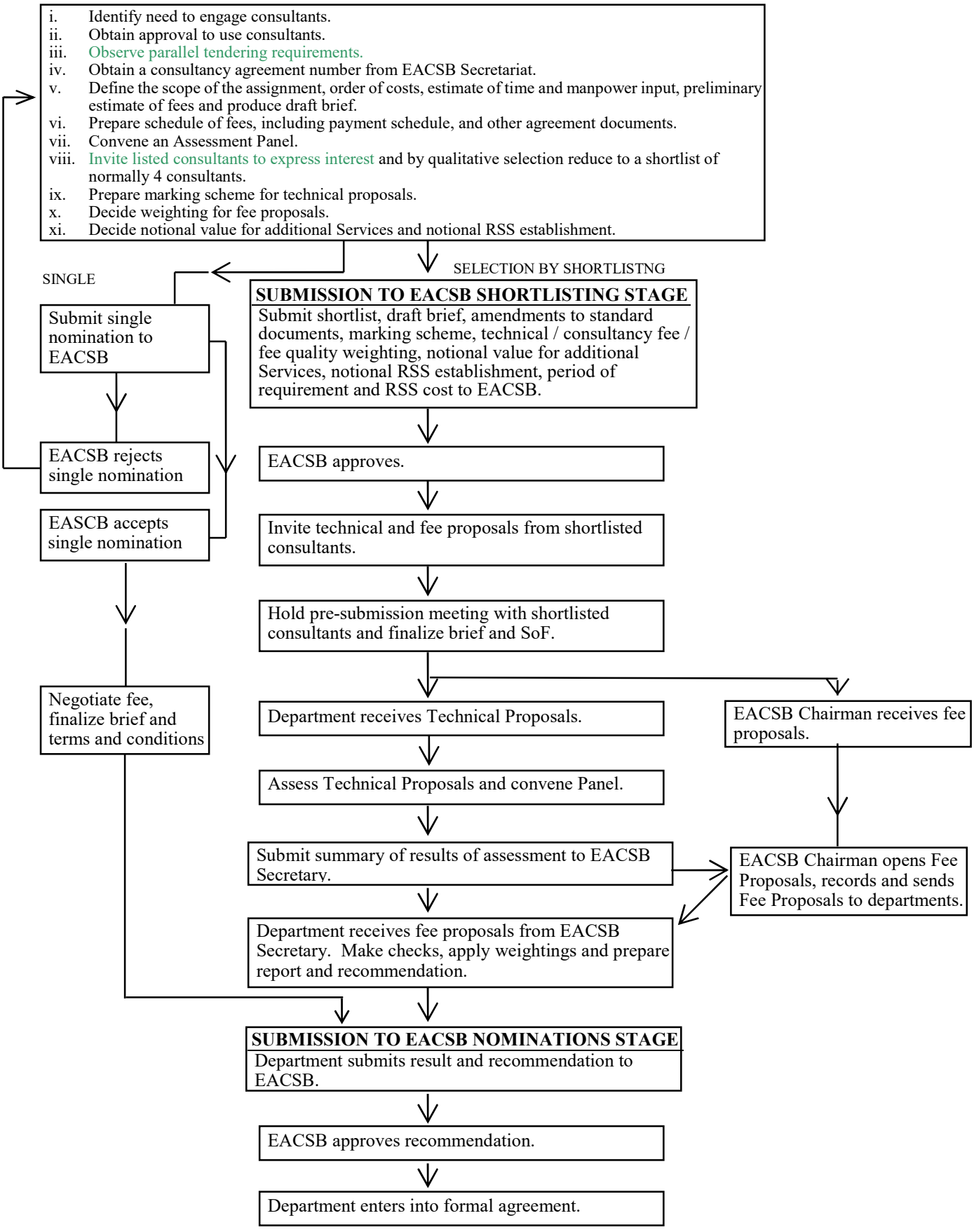


Figure 3.1

4. THE AGREEMENT

4.1 Types of Agreement

A major project is typically divided into four clearly defined "stages" - feasibility study, investigation, design and construction. Consultants are employed under one of the following standard types of Agreement:

(a) Feasibility Study Agreement;

(b) Investigation Agreement; and

(c) Design & Construction Agreement.

As originally promulgated under ETWB TCW No. 16/95B, for projects for which the Controlling Officer is satisfied that the risks of major scope changes following the Investigation stage are low, the use of IDC Agreements is encouraged (see Section 3.1.3).

4.1.1 Feasibility Study Agreement

The Feasibility Study Agreement normally excludes building or engineering design and construction Services and avoids any commitment to proceed beyond the feasibility study or to employ the same consultants for further Services, if any, on the project. It is used for the following types of project:

(a) for study into a problem or proposal of a general nature to determine the need for action (e.g. an investigation of pollution levels, an examination of water resources, or a traffic & transport planning study);

(b) for study into the feasibility of a particular proposal to determine whether and how it can be undertaken (e.g. a proposal for a new road or a land reclamation proposal);

(c) for study into alternative proposals to determine which should be adopted (e.g. whether to construct a bridge or a tunnel; whether to lay a gravity pipeline or a pumping main); and

(d) for study to determine design standards (e.g. geotechnical investigations).

4.1.2 Investigation Agreement

The Investigation Agreement is used for the investigation stage of a project where the feasibility and implications of a project are already well established (perhaps as a result of a previous Feasibility Study agreement). The "Investigation" stage of the assignment is concerned mainly with the technical and practical aspects of the project.

4.1.3 Design and Construction (D & C) Agreement

The D & C Agreement follows the Investigation stage and involves the preparation of detailed designs, drawings, specifications and tender documents and leads onto the administration and technical control of the contracts for works.

4.1.4 Investigation, Design and Construction (IDC) Agreement

The IDC combined type of Agreement may be used in those projects where the risks of major scope changes following the investigation stage are low. For such assignments, the scope of the project can be adequately defined at the commencement of the Investigation stage to enable lump sum fee to be obtained for the design and construction stages. The Services covered in an IDC agreement are a combination of those covered under Sections 4.1.2 and 4.1.3. Whilst the EACSB submission should accordingly indicate clearly the Controlling Officer's satisfaction with the use of a combined IDC arrangement and that the risks of major scope changes following the Investigation stage are low, specific approval from EACSB for the use of IDC type of agreement is not required.

4.1.5 Other Types of Agreement

Subject to the exceptional approval of the EACSB, other types of agreement may be used to suit specific projects.

4.2 Components of the Agreement

The agreement comprises:

(a) Memorandum of Agreement

(b) GCE

(c) SCE (if any)

(d) Schedule of Fees

(e) Brief

(f) Schedule of RSS Standards and Duties (if any for Investigation and/or D & C agreements).

4.3 Memorandum of Agreement

This is the instrument by which the consultants agree to undertake the assignment as set out in the Brief in accordance with the GCE, any SCE and the Schedule of Fees. Two standard forms of Memorandum of Agreement issued by the DEVB (promulgated under DEVB TCW No. 7/2014 and SDEV's memo ref DEVB(PS) 106/43 dated 10 March 2014) are shown at **Appendix 4.1**.

4.4 General Conditions of Employment

The GCE establish the authority of the Employer's Representative and provide for him to be kept fully informed by the consultants and to be given facilities for inspection and approval. They set out the consultants' duties and responsibilities. They also provide for the payment of the consultants and contain general provisions regarding the conduct of the agreement and the rights and obligations of both parties.

Standard booklets of GCE for Feasibility Study, Investigation, and D & C promulgated by the DEVB (originally under WBTC No. 8/98) should be used.

4.5 Special Conditions of Employment

SCE comprise any conditions required for a particular agreement, which are not covered by the GCE. Their incorporation may render amendment, deletion or addition to the GCE.

From time to time, standard and/or mandatory SCE may be promulgated by the DEVB or the EACSB for use in certain circumstances, and where appropriate, together with associated requirements and/or guidelines. Currently, standard and/or mandatory SCE related to the following are in force :

(a) disclosure of fees payable to the consultants (at **Appendix 3.12**);

(b) requirements for ISO9000 certification (as promulgated in WBTC No. 13/2001 and SDEV's memorandum ref. DEVB(W) 520/83/01 dated 4 April 2018 (at **Appendix 4.19**);

(c) direct employment of RSS by Consultants (as promulgated in DEVB TCW No. 4/2008 and SDEV's memorandum ref. DEVB(PS) 106/15/3 dated 1 February 2016) and the setting up and use of an RSS database (as promulgated in DEVB TCW No. 3/2011);

(d) interest on overdue payment (see Section 4.16 and **Appendix 4.10**);

(e) safety training for RSS (as promulgated in WBTC No. 12/2001, DEVB TCW No. 4/2008 and SDEV's memorandum ref. DEVB(PS) 106/15/3 dated 25 July 2016);

(f) approval of major revisions to approved documents and referral and reporting by consultants of variation, claims and delay in works contracts (at **Appendix 4.11**);

(g) professional indemnity cover (as promulgated in DEVB TCW No. 9/2007) and SDEV's memorandum ref (02245-01-13) in DEVB(W) 510/34/01 dated 6 October 2009 (at **Appendix 4.17**);

(h) projects implemented in phases (at **Appendix 4.12**);

(i) exclusive ownership (as set out in the then SETW's memorandum ref. (33) in ETWB(PS)106/1 Pt. 3 dated 24 August 2002);

(j) setting off money due to the Government from defaulting consultants (as promulgated in the then SETW's memoranda ref. (59) in ETWB(PS)106/11 Pt 19 dated 2 June 2003, ref. (13) ETWB(PS)106/11 Pt 21 dated 16 April 2004 and ref. (00UH1-01-7) in ETWB(PS) 106/11 dated 12 October 2005);

(k) disclosure of confidential information concerning matters relating to mediation settlements, arbitration awards and settlement agreements via any other means of dispute resolution process (as promulgated in ETWB TCW No. 29/2003);

(l) ethical commitment by consultants on including confidentiality (as promulgated in ETWB TCW No. 3/2004 and ETWB TCW No. 3/2004A) and conflict of interest and debarring (at **Appendix 4.13** and the then SETW's memorandum ref. (00WNL-02-4) in ETWB(PS) 106/11 dated 6 January 2006);

(m) retention of documents and inspection (at **Appendix 4.14**);

(n) retention of money payable to non-resident consultants for settlement of profits tax in consultancy agreements (at **Appendix 4.15**);

(o) Adaption to New Arbitration Ordinance (as promulgated in SDEV's memorandum ref. (02BYW-01-2) in DEVB(W) 505/17/01 dated 27 May 2011 and further amended in SDEV's memorandum ref. DEVB(W) 510/10/01 dated 4 December 2014) at **Appendix 4.16**; and

(p) conferment of enforceable contractual rights on a third party upon operation of the Contracts (Rights of Third Parties) Ordinance on 1 January 2016 at **Appendix 4.18**.

In all other cases where it is intended to modify the standard forms of agreement by the use of Special Conditions (in addition to any standard Special Conditions), endorsement to the use of such Special Conditions should be sought from the DEVB. Legal advice should be obtained on the wording of such conditions and the management department should directly liaise with the Legal Adviser (Works) of the DEVB. EACSB should be informed accordingly of any such endorsement/advice in the first submission to EACSB.

4.6 The Schedule of Fees

The Schedule of Fees sets out the fees and expenses to be paid to the consultants for carrying out the assignment, as per the Fee Proposal of the winning consultants or in the case of direct appointment, as agreed during the negotiation of the agreement. It sets

out the method of payment of the fees and includes provisions for payment for additional Services or expenses and adjustments in respect of price fluctuations, if any.

The Schedule of Fees will be based on the standard form as given originally in ETWB TCW No. 23/2003, 23/2003A & 23/2003B and SDEV's memorandum ref. (02ULL01-3) in DEVB(PS) 106/43 dated 29 July 2016, the relevant content of which has been subsumed at **Appendix 4.2**. Reference should also be made to Section 5.3.2 on the CPI(C) to be used for fee adjustment for inflation. The standard Schedule of Fees clauses related to the direct employment of RSS are given in RSS Management Handbook.

The draft Schedule of Fees should be attached in the EOI invitation document for the consultants' reference and comment and should in all cases accompany the Stage 1 EACSB submission.

4.6.1 Payment Schedule

The amount and timing of interim payments should be set out in the payment schedule given in the Schedule of Fees. The payment schedule should as far as possible closely match the likely cash flow for the Services provided. Otherwise, the consultant is likely to incur finance charges which may be reflected in the lump sum fee submitted for undertaking the assignment. The payment schedule should therefore be carefully devised to ensure genuine reflection of the likely cash flow taking into account timing for services to be provided or work to be done. Any comment/feedback from consultants during the shortlisting/nomination stages should be duly taken into account with careful consideration of Government's interest in finalizing the payment schedule. This can be effected in respect of the following:

4.6.1.1 Payment upon Signing of Agreement

Managing departments should take into account the nature, complexity and size, i.e. the estimated fee of the Agreement in determining what percentage of the total lump sum fee should be agreed for payment upon signing of an Agreement. The managing department should also take into account the following factors:

(a) The anticipated amount of consultant's input during the initial period which will only be remunerated upon the submission of deliverables at a later stage;

(b) The delivery of expertise/sub-consultants to be engaged for the Agreement; and

(c) The coordination with other purely time-linked payments.

Where it has been agreed by the managing department that a sum of money will be invoiced by the consultant upon the signing of an Agreement, the amount invoiced should not normally exceed the following limits:

Consultancy Type	Percentage payment upon signing of Agreement
Feasibility Study / Investigation	The total lump sum divided by the number of months allowed for the completion of the consultancy, or 5% whichever is the higher
D & C	7% of the total lump sum
IDC	5% of the total lump sum

If the managing department considers it necessary to specify a higher percentage than the above caps, approval shall be obtained from an officer of D3 rank or above and detailed justification should be provided in the Stage 1 EACSB submission under the heading "Background/Argument". While EACSB may comment on department's justifications, it is ultimately for the departments concerned to determine what is the best payment schedule for the purpose of contract management.

4.6.1.2 Purely Time-linked and Milestone Payment

Managing departments should carefully determine the amount of purely time-linked payments (including the initial payment upon signing of Agreement) to match the likely cash flow for the Services provided by the consultants. Managing departments should observe the following guidelines to determine the proportion between purely time-linked and milestone payments in the preparation of the payment schedule:-

(a) The total amount of purely time-linked payments should not be excessive;

(b) More milestone payments, which should be evenly distributed over the consultancy period, should be incorporated into the payment schedule as far as possible;

(c) In general, the proportion split between purely time-linked and milestone payments should be a balance of (i) the Government's interest (only pay for the part of work done) and (ii) the consultant's financial burden (unnecessary finance charges); and

(d) The purely time-linked payments (including the initial payment upon signing of Agreement) should not normally exceed 30% of the total lump sum. For avoidance of conflict of interest, construction stage payments should not directly link with interim payments under works contracts. However, construction stage payments may link with the progress of works, e.g. percentage of columns/spans/sections of structures/road surface area completed. They are not "purely time-linked payments" subject to the 30% limit.

If the managing department considers it necessary to specify a higher percentage of purely time-linked payments than the above cap, approval shall be obtained from an officer of D3 rank or above and detailed justification should be provided in the Stage 1

EACSB submission under the heading "Background/Argument". While EACSB may comment on department's justifications, it is ultimately for the departments concerned to determine what is the best payment schedule for the purpose of contract management.

4.6.1.3 Percentage Split Between Submission and Acceptance of Deliverables

Managing departments should split the deliverable-driven milestone payments into "submission" and "acceptance" of deliverables to reflect more closely the likely cash flow corresponding to the consultant's input. When determining the suitable percentage split between these milestone payments, the managing department should consider the following factors:-

(a) The anticipated amount of consultant's input into the submission of deliverables of acceptable quality in comparison with those for the finalization/acceptance of the deliverables; and

(b) The percentage split of payment for "submission" of deliverables should not be excessive to a degree which might reduce the incentive for the consultant's prompt finalization of the deliverables.

Taking into account the likely consultants' input between the milestones and considering the importance of maintaining incentive for consultants to make prompt finalisation of the deliverables, for general cases, the percentage split between milestone payments for "submission" and "acceptance" of deliverables are to be specified within the range of (i) 60% to 80% for "submission" and (ii) 20% to 40% for "acceptance". Managing departments may however set other appropriate percentage split to suit the specific need of individual consultancy agreements if considered necessary.

If the management department considers it necessary to specify other percentage split, approval shall be obtained from an officer of D3 rank or above and detailed justification should be provided in the Stage 1 EACSB submission under the heading "Background/Argument". While EACSB may comment on department's justifications, it is ultimately for the departments concerned to determine what is the best payment schedule for the purpose of contract management.

4.6.1.4 Payment Schedules for D & C/IDC Assignments

In order to rationalise the preparation of payment schedules to satisfy both the cash flow requirements of consultants and the payment retention requirements of departments, the following payment schedule structures are to be applied to D & C/IDC assignments:-

Phase(s)	Caps for Different Complexities[1]		
	Normal	Complex	Complex with Multiple Project Sites Requiring Substantial Design and Associated Impact Assessments[3]
Investigation/ Design/Tender	65%	70%	75%
Construction/ Commissioning/ Finalisation[2]	35%	30%	25%

Remarks:

1. Reference can be made to Appendix 2.3 to the Guidelines (subsumed in **Appendix 2.2D**), or its subsequent updates, on classification of assignment complexity.
2. The cap for the Construction/Commissioning/Finalisation Phase(s) can be adjusted if the cap adopted for the Investigation/Design/Tender phase(s) is different from that stated above.
3. An example is a project with sites far apart (e.g. sites in different districts) requiring different baseline surveys and information searches, resulting in substantial efforts in design and associated impact assessments for different sites.

Payments within the percentage limits given above will vary depending on the nature of the particular consultancy assignment. The managing department should ensure that the structure of payments within the limits to be paid by milestone payments or a mixture with purely time-linked payments (including payment upon signing of Agreement), properly reflects the likely cash flow that will be incurred by the consultant in undertaking the assignment.

For politically sensitive and controversial projects, the project scheme may evolve with quite some changes after public consultations/engagement to meet public demands before the finalisation of project scheme. With a higher input expected in the investigation and design stage, corresponding larger shares of milestone payments may be provided for these early stages of the consultancy.

For consultancies with phases subject to incorporation mentioned in Section 4.22, the milestone payments should be drawn up with care so that consultants' input at early phases of the consultancy will not be remunerated with milestone payments dependent on the incorporation.

If the managing department considers it necessary to specify other payment structure, approval shall be obtained from an officer of D3 rank or above and detailed justification should be provided in the Stage 1 EACSB submission under the heading "Background/Argument".

4.6.1.5 Endorsement of the Payment Schedule

The payment schedule should be prepared in a prudent manner for each assignment. The managing department should conduct a detailed assessment of the likely input by the consultants and hence the likely cash flow throughout the assignment. The payment schedule so devised should be endorsed by an officer of D2 rank or above

before incorporation into the Schedule of Fees attached to the EOI invitation document and the Stage 1 EACSB submission. Any subsequent minor refinement to the payment schedule proposed by the managing department should also be approved by an officer of D2 rank or above. If the refinements involve any deviation from the caps/ranges specified in Sections 4.6.1.1 to 4.6.1.4, approval from an officer of D3 rank or above should be obtained.

Any approved refinements to the payment schedule should be brought to the attention of the EACSB in the Stage 2 EACSB submission.

4.6.1.6 Comment/Feedback from Consultants on Payment Schedule

The managing department should solicit early comment/feedback from consultants on the payment schedule given in the Schedule of Fees during the shortlisting stage. Consultants' comment/feedback received during the EOI stage and the corresponding actions taken by the managing department should be included in the Stage 1 EACSB submission. If in the light of discussion with the shortlisted consultants at the pre-submission meetings, managing departments consider it necessary to make refinements to the payment schedule, prior approval from the relevant authority should be sought in accordance with Section 4.6.1.5.

4.6.1.7 Substantial Changes to the Draft Documents

In the event that substantial changes/modification to the draft documents would have to be made during the shortlisting/nomination stage, the managing department should consider whether to conduct the selection and EOI afresh.

4.7 The Brief

The Brief describes the project and the assignment which the consultants are to undertake. It should set down clearly the scope and stages of the assignment and all general and specific requirements and/or constraints.

It should be carefully prepared so that the assumptions, methodology and output are clearly defined and both the consultants and the employer have a clear and agreed understanding of the study requirements.

For Feasibility Studies the extreme points in the range of variation of the major parameters for forming options to be tested must be spelt out clearly. The maximum number of options expected to be tested within the scope of the study should also be indicated.

The provisions of the Brief must be consistent with those of the GCE, any SCE, and the other documents comprising the agreement and consideration to the content of these "standard" documents should be given when formulating the Brief. Unless the special circumstances warrant the otherwise, according to GCE Clause 22, the consultants shall exercise all reasonable professional skills, care and diligence in the performance of the Services, instead of ensuring "fit for purpose".

The form and content of the Brief will vary according to the assignment. It is prepared in consultation with all interested offices to whom it should be circulated and whose agreement should be obtained where appropriate. Also where appropriate it should be submitted to the project steering or management group for formal agreement.

As originally promulgated in WBTC No. 16/95, it is of utmost importance for the managing department to write a clear Brief, in order to facilitate the submission of competitive Fee Proposals, especially lump sum fee. The brief for the consultancy should be as comprehensive as possible, as any omissions may result in claims from the consultant. The Brief must give essential information on the nature, scope and time-scale of the project, including commencement and key milestone dates, consultant's duties and responsibilities, phasing, programme and provision of information. Areas of certainty and uncertainty, alternatives and options should be carefully defined. The Brief may be modified following the Shortlisting Stage but must be finalised prior to submission of Technical and Fee Proposals.

In order to enable consultants to quote a lump sum fee competitively, the Brief should state the reasonable maximum number of external meetings which the consultant will be expected to attend with regard to District Councils, Rural Committees, Advisory Council on the Environment etc. Additional attendance at meetings beyond that stated in the Brief should then be paid for as additional Services. The period specified in the Brief for the Consultants to respond to queries after the final submission of deliverables which should be defined/specified clearly (e.g. submission of Final Report) should be kept to a minimum, normally not exceeding 3 months. Response to queries beyond this period should be paid for as additional Services based on time charges or agreed lump sums.

Consultants should not be required to provide secretarial services for meetings at which government officers from the managing department are in attendance, particularly Project Steering Groups. Consultants should also not be asked to draft Public Works Sub-Committee or Finance Committee papers, Project Definition Statement or Technical Feasibility Statement, except when the consultancy itself is for a preliminary project feasibility study. It should be noted that under Financial Circular No. 4/2012, works agents are expected to be able to complete a Technical Feasibility Statement within four months and without recourse to consultancy support, unless a works director is personally satisfied that consultant input through a feasibility study is required for a proposed project before he is in a position to recommend that funding be earmarked and that the project is technically ready for upgrading to Category B in the Capital Works Programme. Under no circumstances should a consultant be engaged exclusively for the sake of completing a Technical Feasibility Statement.

For an Investigation stage consultancy, where a separate consultancy for the subsequent Design and Construction stage may be awarded to another consultant, provision should be made in the Brief requiring the Investigation stage consultant to answer queries raised during the Design and Construction stage. These Services, after the period specified for responding queries, shall be paid for as additional Services in addition to the lump sum fee for completion of the Investigation stage Services.

For a D & C consultancy or an Investigation Consultancy, as appropriate, provisions should be made in the Brief to cover the consultant's duty to administer construction contracts, including dealing with claims, negotiating rates for variations, issuing variation orders and employment and management of RSS.

The Brief must be consistent with the requirements of the project as approved by PWSC /FC or other relevant authority. For a D & C consultancy, in addition to the SCE, break clauses should be incorporated into the relevant Brief clauses. Details are given at **Appendix 4.12**.

In the event that substantial changes/modification to the draft documents would have to be made during the shortlisting/nomination stage, the managing department should consider whether to conduct the selection and EOI afresh.

For an agreement awarded by direct selection, the Brief should be fully discussed and agreed with the consultants prior to signing the agreement.

Guidance notes on the preparation of Briefs together with typical formats of Briefs for Feasibility Study, Investigation, and D & C agreements, as compiled from WBTC No. 11/94 and WBTC No. 11/94A, are given at **Appendices 4.3, 4.4, 4.5 and 4.6**. It should be noted that the section headings are mandatory and should remain unchanged. Any sections that are irrelevant to the study should be stated as "Not-used". As far as possible the Brief should comprise a single document without supplementary Briefs attached as annexes. For an IDC consultancy or a D & C consultancy, terminologies in typical formats of Briefs should be modified as appropriate if New Civil Engineering Contract (NEC) form will be adopted for the works contract as promulgated under SDEV's memo ref. DEVB(W)506/30/07 dated 3 September 2013.

In addition to describing the project, the Brief should also cover the following matters :

(a) the appointment of the Director's Representative, lines of communication and day-to-day management; project steering and/or co-ordination group (if applicable);

(b) information sources and consultation needs;

(c) specifications and standards;

(d) surveys and special investigations;

(e) target dates,milestone events and dates, and due date for commencement of the agreement;

(f) estimates, expenditure forecasts, programmes, and progress reports;

(g) technical reports, working papers and other documentation;

(h) delegation of authority to consultants;

(i) Consultants' office and staff.

4.8 Design Certificate

4.8.1 Background

In the typical brief for a D & C type agreement, there is a requirement that the Consultant shall provide, along with the design calculations, a certificate indicating that an independent check of the design calculations has been carried out. This certificate is normally submitted before the invitation of tenders. However, additional calculations and certificates are required for any design work carried out during the construction stage.

The managing departments should also refer to Section 3.5, Chapter 4 of the Project Administration Handbook for Civil Engineering Works (2020 Edition) and incorporate necessary design certification and checking requirements in the Brief where appropriate.

4.8.2 Standard Form of Design Certificate

The standard form of Design Certificate should be used (**Appendix 4.7**).

4.9 Standard Documents for Direct Employment of Resident Site Staff by Consultants

Standard documents relating to the direct employment of RSS by consultants include:

- SCE
- Brief Clauses
- Schedule of Fees Clauses
- Schedule of RSS Standards and Duties

A detailed description on the direct employment of RSS by consultants is given in the RSS Management Handbook.

4.10 Standard Forms

The various documents mentioned above should where possible be used in their standard forms and any proposals to amend them must be referred to the EACSB.

4.11 Reimbursable Items

4.11.1 Fair and Open Competition

The EACSB considers that the procedures governing the procurement of reimbursable items by the consultants under consultancy agreements should be fair, subject to

competition, and should constitute good value for money. To this end the EACSB has introduced certain arrangements for the procurement of such items.

In the interest of fair and open competition, the procurement of reimbursable items should be subject to a tendering process as set out below. In this context reimbursable items procured by the consultants under consultancy agreements are not subject to the tender procedures set out in Chapter III of SPR.

4.11.2 Definition

A reimbursable item under a consultancy assignment can be defined as any contract, irrespective of value for the supply of a service or equipment for which the consultant is reimbursed by Government after having first made payment to the contractor/supplier from his own funds. It is also known as an out-of pocket expense. A service or equipment of a reimbursable item should not be supplied by the consultant of the assignment or its sister firms so as to avoid any actual, apparent, potential or perceived conflict of interest.

4.11.3 Procedures

(a) Inclusion of Reimbursable Items in Consultancy Assignments

Prior to deciding whether the procurement of a service or equipment should be by means of reimbursement, managing departments should first consider if a direct contract between Government and the contractor/supplier in accordance with the SPR, would be a more suitable arrangement. The managing departments should provide their deliberation/decision in the EACSB submissions if they consider the arrangement of reimbursable items is more suitable.

The total value of reimbursable items should be commensurate with the value of the consultancy. When the estimated total value of reimbursable items is out of proportion to the estimated lump sum fee, the items should be procured through direct contract between Government and the contractor/supplier instead of through the consultant. In which case, the consultant's Services for defining of requirements and preparing of tender documents for these government contracts should be included in the Brief.

Normally, the total value of reimbursable items should not exceed $1.3 million or 20% of the estimated lump sum fee of the agreement, whichever is less. Exceptionally, for the procurement of environmental monitoring and audit (EM&A) services, the value of each reimbursable item (EM&A services contract) should not exceed $5.0 million, provided the total value of all reimbursable items does not exceed 20% of the approved lump sum fee of the agreement. Guidelines on the procurement of EM&A services are described in Section 4.15.

Where it is not possible to define clearly the scope of item to be reimbursed, the Director's Representative should ensure that, as far as possible, a fair and

competitive tendering process is undertaken by the consultant and that the tender sum/rates are reasonable and present the best value for money. Under normal circumstances, the tendering should be conducted in accordance with the relevant procedures set out in the SPR.

The estimated total value of all reimbursable items and details of all individual reimbursable items should be included in the shortlisting submission to the EACSB. The details provided should include the nature of the reimbursable item, the estimated cost, and the programme. A sample summary is given at **Appendix 4.8**. The EACSB will note the details and provide guidance, if necessary, when giving approval to the Shortlist.

(b) Approval of Reimbursable Items which have already been included in EACSB submissions.

For any individual reimbursable item which is estimated at less than $1.3 million, the Director's Representative named in the Agreement shall have the delegated authority of the EACSB to approve the appointment of a suitable contractor/supplier which has been recommended by the consultant, with no further reference to the EACSB.

For reimbursable items with values in excess of $1.3 million but less than $5.0 million, which have been exceptionally approved by the EACSB (for instance, EM&A services), the Director of the managing department shall have the delegated authority of the EACSB to approve the appointment of a suitable contractor/supplier which has been recommended by the consultant. The EACSB should be informed of the nature and cost of the reimbursable item and the name of the contractor/supplier.

For any reimbursable item exceeding $5.0 million in value, the approval of the EACSB shall be sought before the consultant procures the reimbursable item. The Director's Representative should submit a recommendation to the EACSB in the form of the tender report attached at **Appendix 4.9** which includes a recommendation for an approval of the winning tender.

Managing departments should include the estimated total value of all reimbursable items and the details of the reimbursable items in the documentation which is sent to the approved shortlisted consultants for the preparation of their competitive proposals. In providing these details to the consultants, managing departments can assume that all the consultant's costs associated with the procurement of the reimbursable items, together with any financing charges, have been included in the lump sum fee.

4.12 Computer Facilities

Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under consultancy agreements. Standard clauses subsumed from WBTC No. 23/2000 shall be inserted in the Brief as given in **Appendix 4.3**.

4.13 Quality Management System Certification of Consultants

Consultants undertaking agreements approved by the EACSB need to comply with the DEVB's laid down requirements on quality management system certification. Details are given in WBTC No. 13/2001 and SDEV's memorandum ref. DEVB(W)520/83/01 dated 4 April 2018.

4.14 Electronic Dissemination of Tender Documents

Electronic dissemination of tender documents is required for works contracts delivered under consultancies. Details are given in ETWB TCW No. 11/2005.

4.15 Environmental Monitoring and Audit (EM&A) Programme – Arrangement of Consultancy for Implementation of EM&A for Projects undertaken by Consultants

4.15.1 Introduction

EM&A work has become a standard requirement for most of the works projects under the Environmental Impact Assessment Ordinance. The managing department may need to procure services of an Environmental Team (ET) and/or an Independent Environmental Checker (IEC) under the EM&A programme. Procurement of EM&A services can be carried out by various means. ETs can be procured directly by the managing department with reference to the guidelines under DEVB TC(W) No. 5/2012, or procured through its contractors or engineering consultants. IECs should either be procured by the managing department directly or through its engineering consultants in order to ensure the independency of the monitoring role of IECs.

For EM&A services being procured through consultants, Environmental Protection Department have been consulted and it has been agreed that the following guidelines should be observed.

4.15.2 General Principle

(a) In the appointment of EM&A personnel (i.e. ET or IEC) for a particular project, the managing department need to observe the specific requirements/conditions as stipulated in the approved EM&A Manual and/or the Environmental Permit of that project which may vary from project to project depending on the nature and needs of that individual project.

(b) The management structure of the EM&A personnel should be established to ensure impartiality, independence and facilitate proper monitoring on EM&A works. In general the ET shall not be an associated body of the Contractor while the IEC shall not be an associated body of any of the Contractor, the Consultant of the project or the ET.

4.15.3 Standard Arrangement

The following should be observed if the EM&A is to be conducted under the assignment, subject to specific requirements stipulated in the approved EM&A Manual and/or Environmental Permit of that project :

(a) Where the ET is not provided under the works contract, the services of the ET may be included in the lump sum fee of the D & C agreement. If the scope of the ET services cannot be clearly defined at the stage of inviting Technical and Fee proposals, the services should be procured as a reimbursable item (It is considered more appropriate to procure the services as a reimbursable item rather than as additional Services under the D & C agreement. This is to avoid perceived or real conflict of interest that may arise from the setting of the scope of the ET services by the D & C consultant after the agreement is awarded). However, in case the total value of all reimbursable items is not commensurate

with the value of the D & C agreement, the services should be procured as a separate contract.

(b) The services of the IEC should be procured as a reimbursable item. However, in case the total value of all reimbursable items is not commensurate with the value of the D & C agreement, the services should be procured as a separate contract.

(c) All provisions described in the EACSB Handbook, Section 4.11 should be followed when the services of the ET or the IEC are procured as a reimbursable item.

4.16 Interest on Overdue Payments for Consultancy Agreements

The Conditions of Employment (as may be modified by the Special Conditions) provide for money due from the Employer to the Consultants to be paid to the Consultants within a specified period. In the event of failure to make payment to the Consultant within the specified period, the employer shall pay to the Consultant interest at the judgement debt rate prescribed from time to time by the Rules of the High Court (the then Supreme Court) upon any overdue payment from the date on which the same should have been made. The payment of interest on overdue payment by the Government is for compensating the consultants for having to borrow money owing to the overdue payment. In the light of the borrowing rates in the market when promulgating WBTC No. 8/2001 which has generally been subsumed hereunder and archived, the then Works Bureau had determined to adjust the interest rate for overdue payment for consultancy agreement to one per cent below judgement debt rate. This interest rate is in line with the interest rate in the General Conditions of Contract for works contract. The standard SCE for interest on overdue payment is given at **Appendix 4.10**.

4.17 Safety Training for Resident Site Staff

RSS employed by consultants on public works projects need to receive adequate safety training and attend safety refresher courses. Details are given in WBTC No. 12/2001.

4.18 Electronic Dissemination of Invitation Documents for Consultancies

Electronic dissemination of documents is required for invitation of EOIs, and Technical and Fee Proposals. Details subsumed from WBTC No. 17/2001 are given in **Appendix 4.20**.

4.19 Electronic Submission of Consultancy Proposals on Removable Media

Consultants may elect to submit their EOIs and Technical and Fee Proposals in electronic format. Details subsumed from WBTC No. 31/2001 are given in **Appendix 4.21**.

4.20 Adherence to Staff Proposals

It should be set out in the consultancy agreement that the consultant shall provide the staff and manpower input in accordance with the technical proposal made at the bidding stage, and that the Director's Representative shall have the right to check the time-log record of the Consultant's staff deployed for the consultancy assignment.

Relevant provisions should also be set out in the invitation letter for technical and fee proposals. Express provisions as promulgated in SDEV's memorandum ref. (025FA-01-3) in DEVB(PS) 106/43 dated 24 February 2010 should be incorporated into the invitation letter for technical and fee proposals and the Brief for binding of consultants' staff resources proposed in Technical Proposal.

4.21 Professional Indemnity Insurance

Details of the method for determining the Professional Indemnity Insurance (PII) to be taken out by consultants for providing services in consultancy agreements are given in DEVB TCW No. 9/2007 and SDEV's memorandum ref.(02245-01-13) in DEVB(W) 510/34/01 dated 6 October 2009. GCE Clause 47 is deleted and replaced.

4.22 Project Implemented in Phases

Many projects are delivered in phases such as investigation, design, tender and construction. Sometimes a single consultant may be awarded a consultancy agreement with more than one phase. However, the project may at a later stage have to be abandoned or temporarily withheld for some reasons, and in such event, the consultancy agreement has to be terminated or suspended after the completion of a certain phase. For instance, a D & C assignment may have to be terminated after the completion of the design phase due to failure in securing the necessary financial resources for the tendering and construction phases.

Though there are provisions in the GCE for suspension and termination of a consultancy agreement, it is considered that provisions for Phases Subject to Incorporation should also be required in consultancy agreements to cater for projects under the above circumstances. Details are given at **Appendix 4.12**.

4.23 Use of Legal Consultants in Connection with Works-Related Consultancy Studies

This section sets out the policy as promulgated originally under ETWB TCW No. 37/2002 on the use of legal consultants and related matters in connection with works-related consultancy studies.

In some assignments, there may be substantial emphasis in the Brief for the Consultants to provide advice on legal matters. Examples include assignments requiring the Consultants to review existing legislation, to propose changes to the legislation or to provide special contract drafting services. Given that the Consultants are not lawyers themselves, the Consultants will not be in a position to provide the legal input unless they are allowed to engage legal sub-consultant.

The drawbacks of permitting the Consultants to engage legal sub-consultant are that:

(a) the Government's ability to monitor the overall provision of legal services from the private sector, including aspects concerning the quality of the services provided, fairness of the method of appointment and appropriateness of the level of fees charged will be hindered; and

(b) a legal sub-consultant arrangement could be viewed as a "back-door" briefing out for which the Department of Justice and/or the Legal Advisory Division, DEVB (LAD(W)/DEVB) could be criticized for failing to monitor and control the provision of legal services from the private sector.

In view of the above, it is considered inappropriate for departments to engage legal sub-consultants through their works-related consultants to carry out services which involve substantial legal input and cases involving special contract drafting services where the Government's standard contract forms are not applicable. The relevant parts of the Brief which involve legal issues should accordingly be excluded from the Brief and the LAD(W)/DEVB shall be consulted at an early stage of the project on the appropriate way forward to avoid any delay to the progress of the consultancy study. The LAD(W)/DEVB may consider that in the first instance legal input may be provided by the LAD(W)/DEVB directly or if appropriate, legal consultants should be appointed with the assistance of the LAD(W)/DEVB.

In case that a department is not sure if a project involves substantial legal input, it may address its queries to the LAD(W)/DEVB. It should however be clarified that in meeting the Consultants' obligations under government projects, there may be situations where the Consultants have to decide issues on their own without influence from the Employer and in so deciding, legal advice may be required by the Consultants, for instance, whether or not certain activities fall within the scope of Services to be provided by the Consultants under a consultancy study. In those circumstances, the Consultants should take their own independent legal advice as necessary.

4.24 Site Supervision of Civil Engineering Contracts

To address Independent Commission Against Corruption's concerns on site supervision of civil engineering contracts, D & C assignments need to incorporate the requirements of formulating a Quality Site Supervision Plan into the consultancy Brief. Details are given in the then SETW's memorandum ref. ETWB(W) 925/50/01 dated 29 January 2003.

4.25 Review of Preliminary Design before Proceeding with the Detailed Design

It is essential for the managing department to review the preliminary design during the Review Phase of the D & C assignment and at appropriate junctures when significant changes to conditions and circumstances are known to have occurred.

The managing department should set up a Review Committee to review the preliminary design of the project in the form of a layout plan and method statement produced by the consultant/entrusted works agent of the Investigation Assignment before proceeding with the detailed design. Provision should be made in the Brief of the Investigation

Assignment requiring the consultant to respond to queries raised during the Design and Construction stage. Details are given in ETWB TCW No. 19/2003.

4.26 Confidentiality Clauses

In relation to mediation settlements and arbitration awards, Government will introduce a sanitization period whereby the consultant will have the opportunity to withhold consent to the release of commercially sensitive information. After the sanitization period, the consultant will be deemed to have given consent, but they will be informed before any disclosures to the Public Accounts Committee and they may then request commercially sensitive information to be disclosed on a confidential basis. Details are given in ETWB TCW No. 29/2003.

4.27 Ethical Commitment by Consultants

The requirements to enhance ethical commitment of consultants should be followed. Details are given in ETWB TCW Nos. 3/2004 & 3/2004A.

4.28 Retention of Documents and Inspections

The requirements for retaining documents beyond completion of works contract should be followed. Details are given at **Appendix 4.14**.

4.29 Retention of Money Payable to Non-resident Consultants for Settlement of Profits Tax

The requirements for withholding money out of payments made to non-resident consultants should be followed. Details are given at **Appendix 4.15**.

4.30 Setting Off Money due to the Government from Defaulting Consultants

A set of administrative procedures should be observed when applying the setting off clause (see Section 4.5(j)). Details are given in the then SETW's memorandum ref. (00UH1-01-7) in ETWB(PS) 106/11 dated 12 October 2005.

5. FEE REMUNERATION

5.1 General

As originally promulgated in WBTC No. 16/95, the remuneration of consultants for all stages of an assignment will normally be based on a fixed lump sum that is independent of the cost of the works. In this normal case the fixed lump sum will be submitted to the EACSB as a Fee Proposal at the same time as the consultants' Technical Proposal and the award of the consultancy will be subject to a combined score assessment in accordance with the method given in DEVB TCW No. 2/2016 and No. 5/2018 and its subsequent updates (if any). Once approved, the fixed lump sum will not be subject to negotiation. However, if the use of a lump sum is not feasible, the EACSB may agree to award a consultancy based on time charges.

The remuneration for the employment of RSS is separately dealt with vide Section 6.

5.2 Types of Fee Remuneration

Currently there are two methods of remuneration, fixed lump sum and time charges, which may be used separately or in combination; and whichever system or combination is used the aim should be a fair and consistent application of the principles to all agreements.

(a) Fixed (lump sum) fee

A lump sum fee will normally be the basis of payment for all agreements and be determined through competition. If approval is given by the EACSB that a consultant is to be selected by direct negotiation then the lump sum should be negotiated using estimated time charge input as the base.

(b) Time charge fee

This method is usually used in conjunction with the lump sum fee method, to cover additional unexpected items of Services or when the exact extent of some part of the Services involved cannot be fully defined in advance. It may also be appropriate for smaller assignments and particularly those of an unusual nature e.g. providing intermittent specialist advice. A budgetary ceiling figure is usually applied to time charge Services, and this should be obtained at the fee submission stage. Further increases in the budgetary ceiling should be subsequently agreed by the EACSB whenever any major additional time charge Services are anticipated which will exceed the current ceiling and the managing department's delegated authority for variations under the SPR (see Section 8.2.8).

An old method of remuneration, based on the percentage of cost of works, was used with IDC agreements prior to the introduction of an element of fee competition in the system for the selection and remuneration of engineering and associated consultants in May 1991. The percentage scale included in the standard form of Schedule of Fees

allows for a percentage which reduces inversely in proportion to the cost of works. For new assignments, this method shall no longer be used. For existing assignments adopting this method of remuneration, managing departments should refer to **Appendices 5.2 and 5.3** for fee adjustment measures.

5.3 Fixed (lump sum) Fee

5.3.1 Applicability

This method of remuneration should be used where the scope and duration of the Services can be clearly defined. It is usually computed from an assessment of the manpower input. The lump sum fee for a study should be based on the assessed staff time required to complete the study, combined with any non-staff cost.

5.3.2 Adjustment of Lump Sum Fee for Inflation

Lump sum fee for consultancies of planned duration greater than one year shall be adjusted to account for inflation. Adjustments shall be made annually to the balance of the lump sum fee unearned, in accordance with increases and decreases in Consumer Price Index (C)(CPI(C)). The baseline for inflation/deflation adjustment is subject to change as deemed necessary by the Census and Statistics Department and will be announced by DEVB. Currently the October 2014 - September 2015 based CPI(C) is used.

To ensure that the proposed fees together with any inflation-related payments do not exceed the Approved Project Estimate (APE) of relevant projects, the managing departments are required to specify the estimated amount of inflation-related payments in EACSB submissions so as to satisfy that there would be sufficient funding in the relevant project vote to cover all fees/payments under the assignment.

5.3.3 Guidelines on Negotiation of Lump Sum Fee

(a) Direct Selection of a Single Consultant

The lump sum fee for a study should be based on the assessed staff time required to complete the study, combined with non-staff cost. As far as possible reference should be made to prevailing market rates in establishing the baseline fee prior to negotiating with the consultant.

(b) Additional Services Under An Existing Agreement

Payment for additional Services should accord with the all-inclusive time charge rates for different categories of staff for additional Services proposed by the consultants in their Fee Proposals. For existing Agreements not subject to this approach (e.g. commissioned prior to the introduction of all-inclusive time charge rates for different categories of staff for additional Services), or in the situation where the bid all-inclusive charge rates will not apply, the lump sum fee

for carrying out additional Services should be negotiated on the basis of the assessed staff time required to complete the study, plus non-staff cost. The lump sum fee should be

negotiated taking into consideration of the duration of Services, the competitive rates and discounts (if any) offered in the original Fee Proposal, and the prevailing market rates. Where applicable, the managing department should also seek to ensure that the estimated and eventually negotiated lump sum fee for the additional Services would be inclusive of all implications arising from the proposed additional Services, including any prolongation costs, etc.

5.4 Time Charge Fees

5.4.1 General

When the scope of additional Services under an existing agreement cannot be defined prior to its commencement, time charge method should be used. The method of assessing basic time charge fees shall accord with the Schedule of Fees. When time charges are used as the basis of remuneration, the consultants shall be required to maintain detailed time sheets of all staff involved and these should be available for inspection and audit by Government when required. Receipts and other documentary proof of related expenditure such as travel expenses, housing etc., should also be made available as required.

For old agreements adopting the time charge multiplier method, the guidelines given in Sections 5.4.2 to 5.4.4 should also be observed.

5.4.2 Basic Rates

(a) Director's Rate

This is intended to be used only for principals i.e. partners/directors (hereinunder known as directors for simplicity) of a firm. In practice it is relatively rare for directors to be used on actual time charge Services, and the rate is more frequently used to cap the rate for professional staff. The director rate is varied in accordance with movements in average of D1 salaries of the Directorate scale and the revised rate is notified by the Secretary, EACSB following any such movement. Regarding the rate for landscape directors, the managing department should consult Secretary, AACSB.

(b) Rates for Professional and Technical staff

The time charge rate for each member of the professional and technical staff shall be calculated using the actual Annual Salary Cost (ASC) and the Time Charge Multiplier (M) for additional Services quoted in the consultant's Fee proposal. The rate of payment shall be given by:

Hourly Rate = (M x ASC)/1680

"Annual salary cost" is defined as "basic salary including bonus, if any, and the Consultant's contributions to pension or provident funds". The hourly rate computation is based on the assumption that the average actual hours worked in any one year after deductions for all non working time including Sundays, public holidays, casual leave, and for sick leave and annual leave is 1680 hours. This enables the consultants to be compensated for such paid but non-productive time when the rate is applied only to actual productive working time.

No other costs or allowances are to be included in "annual salary cost".

5.4.3 Reimbursable Disbursements

In addition to the basic rate in respect of "Annual Salary Cost" the consultants may be reimbursed the actual cost of additional reimbursable benefits such as housing rental, medical insurance, children's education, overseas leave travel costs and the like. In assessing the suitability of particular individuals for employment on a time charge basis, the basis of assessment should be that the overall reimbursement package should not be more generous than that which Government itself would provide for employing a person of similar status and circumstances. "Similar status and circumstances" means of equivalent qualifications, experience, employment terms and family circumstances (married, number of children etc.). Recognition should also be given in the assessment to other factors, such as special expertise and "expert" knowledge. The normal method of assessment of allowances is to calculate them on an annual basis and then divide by 1680 to produce an equivalent hourly rate. These allowances shall be on hourly rate and reimbursable basis. A sample form of hourly rate calculation sheet is included at **Appendix 5.1**.

5.4.4 Application of Rates

It should be noted that the relevant time charge clauses in the standard Schedules of Fees state clearly that the above basic rates apply in respect of short term and/or intermittent periods of working and the Director's Representative shall negotiate reduced rates in respect of long term continuous periods of working. Any continuous period of full time employment in excess of 3 months for Services of which the scope cannot be defined in advance is usually considered eligible in this respect.

5.5 Fees in Foreign Currencies

Generally fees are paid in Hong Kong and in Hong Kong dollars. Where some part of the expense is incurred in foreign currency it is usually converted to HK dollars for payment purposes in accordance with GCE Clause 30.

However in circumstances where services are to be provided by personnel based outside Hong Kong and salaried in a foreign currency, approval may be given to the fees being paid in foreign currency. Where such is the intention, the managing

department should follow the requirements in SPR 465(c) and highlight the proposed arrangement in EACSB submissions.

5.6 Compulsory Insurance

Under the existing provisions, engineering consultants are required to take out Professional Indemnity Insurance (PII) at a minimum amount specified in the Brief for a certain period after completing the contract works covered by the Agreement. Detailed requirements of the PII are promulgated in DEVB TCW No. 9/2007.

6. DIRECT EMPLOYMENT OF RSS BY CONSULTANTS

6.1 Normal Arrangement

Under the normal arrangement the consultants are required as part of their services to recruit, employ and manage RSS for site supervision and contract management. Details of arrangements for direct employment of RSS by consultants are given in the RSS Management Handbook.

Unless otherwise specified in the RSS Management Handbook, prior approval of DEVB shall be obtained for any deviation to suit the specific needs of individual consultancy agreements.

7. EXECUTION OF THE AGREEMENT

7.1 Authority to Enter into Agreement

The signing of the formal agreement between Government and the consultants can proceed as soon as the EACSB's written approval of the terms and conditions is received from the Secretary, EACSB, funds for employing consultants are available, and relevant SPR requirements in respect of execution of agreement have been followed.

7.2 Consultants which are Limited Liability Companies

One of the prior requirements before entering into an agreement with any consultant who is a limited liability company is that a majority of the voting power in meetings of the company shall be held by directors who are consulting engineers (or equivalent professionals of associated professions, e.g. landscape architects in the case of a landscape architectural firm). The onus is on managing departments before entering into an agreement with consultants to obtain the consultants' confirmation of this. Managing departments should check this during invitation for EOI (or invitation for Technical and Fee Proposals if EOI submission is not required).

7.3 Prevention of Bribery and Declaration of Interest

Managing departments are reminded of the requirements of the clauses in the GCE relating to Prevention of Bribery and Declaration of Interest. The attention of the consultants should be drawn to these clauses and in particular consultants should be requested, prior to entering into any agreement to declare any interest or association they may have with any contractor, supplier, specialist contractor or subcontractor.

7.4 Preparation of Documents

The documents forming the agreement, namely, the Memorandum of Agreement, the GCE, the SCE, the Brief and the Schedule of Fees, and, where applicable, the Schedule of RSS Standards and Duties should be bound together and sealed with wax seal in the approved manner for preparation of contract documents. If the consultants wish, they may also attach their seal to the copies that will be signed.

Copies of correspondence exchanged with the Consultants which amend, qualify, explain or add to the Agreement in someway should be bound into the Agreement. Extreme care should be taken to ensure that the effect of such correspondence is fully understood, and that it is not being used to avoid including SCE.

The compilation and sealing of the documents should be carefully checked, usually by senior accounts staff.

7.5 Signing the Agreement

The client office should notify the consultants in writing, of the award of the consultancy (a sample letter is given at **Appendix 7.1**) and invite them to sign the formal agreement. The consultants should be reminded of the need for their representative(s) to bring letters of authorization or other evidence of authority to sign contracts on behalf of the consultants.

Unsuccessful consultants should also be notified as soon as the results are known (see Section 3.13).

The Employer's Representative or a public officer at directorate level shall sign the Agreement for and on behalf of Government, provided authority to sign contracts has been formally delegated to his appointment.

A duly authorised partner or director of the consultants shall sign or affix the Company Seal for and on behalf of the consultants.

The signatures of both parties shall be separately witnessed. Any alterations to the documents shall be initialled by both parties and witnessed.

Two copies of the agreement shall be signed and sealed in the above manner and checked, usually by senior accounts staff. These copies will be distributed as indicated in Section 7.6(a).

Three copies of the agreement should be franked "Certified True Copy..... (signature)" with post and name of the person (usually professional grade officer or above) who checked them. These copies need not be sealed but they should have the date of signing and the names of signatories and witnesses inserted. These copies will be distributed as indicated in Section 7.6(b).

7.6 Distribution of Documents

(a) A signed and sealed copy should be lodged with :

- Consultants
- Employer's Representative

(b) A certified true copy should be sent to :

- Director of Audit
- Senior Treasury Accountant of managing department HQ
- Secretary, EACSB (see also Section 3.12)

8. MANAGEMENT OF CONSULTANTS

8.1 General

8.1.1 Purpose of Management

Management of consultants is needed to ensure the timely completion of the Project and/or the completion of all other intended objectives of the assignment, taking proper account of the need for adequate liaison with Government and for compliance with the appropriate government policies and regulations. The most effective management will generally be achieved by the adoption of a team approach, recognising that the consultants are professional advisors and maintaining mutual respect for the points of view of both parties. One of the more frequent reasons for employing consultants is to overcome a lack of in-house resources, therefore excessive control will be self-defeating. The object should be the optimum amount of management to maximise efficiency.

8.1.2 Principles of Management

Management of the consultants is carried out by the office of the Director's Representative (or his delegated representative) who is the person authorised to give instructions or convey Government's decisions and views to the consultants. The managing office is responsible for ensuring that the consultants comply fully with the terms and conditions of the agreement. The managing office also forms the point of contact and liaison for other interested government bureaux/departments, who are consulted, kept informed and who provide input to the Agreement. Thus management is an active role requiring input from the government side as well as receiving output from the consultants.

8.1.3 Role of the Managing Office

(a) Within Government

The managing office performs all normal duties within Government in respect of the project to which the consultancy is related, e.g. PWP action, financial control, quarterly reports, comment on town planning layouts, comment on proposed site conditions, processing all relevant ordinance procedures for land clearance, alteration, tree removal etc. After checking the completed contract documents, the managing office gazettes tenders, submits tender reports prepared by the consultants to Central Tender Board, notifies award of and signs contracts etc. Additionally the managing office promotes and controls at all stages, any necessary two-way liaison between interested government bureaux/departments and the consultants. In this respect the managing office should act as a screen between the consultants and client or other offices/departments. It should intercept requests from other offices which are clearly outside the consultancy brief or responsibility to answer, or which it can adequately answer directly. It should also deal directly

wherever possible with requests from the consultants by telephone and/or by meetings followed up by letters of record as a way of cutting down time and improving efficiency. Only matters outside the managing offices' competence should be dealt with expeditiously by referral to the competent authority. Where the Design Stage initially involves developing alternative preliminary designs, selection of the final design concept may have policy implications and involve consultation with Policy Bureaux, or the Steering Group, if any. The managing office should ensure such steps are taken appropriately.

(b) Monitoring and Administering the Agreement

The agreement is a legally binding document and should be administered as such. Managing office staff must keep themselves familiar in detail with the consultant's duties, obligations and benefits and also with the Governments' duties and obligations under the agreement. They should monitor his compliance with the agreement and also, to the extent authorised therein, with government regulations and procedures. Letters on matters of principle under the agreement, or of a disciplinary nature, should be signed by the Director's Representative. Instructions on modifications, extensions to or termination of the agreement should be given in writing by the Director's Representative. The consultants may not proceed from one consultancy stage to the next without the prior written authority of the Director's Representative.

(c) Assisting the Consultants

The managing office should generally assist the consultants in their liaison with Government, and should take steps to resolve any disputes or difficulties which may occur. The consultants should as necessary be fully briefed on Government's structure and on all procedures, and ordinances relevant to the land clearance - acquisition, investigation, design and construction of the works. Contact should be promoted between the managing office's and the consultant's professional and clerical staff on such aspects as financial monitoring and control, routine accounting and personnel management, etc., to avoid potential conflict with procedures.

Regarding liaison with other government bureaux/departments, the degree of direct contact, in either direction, should be controlled by the managing office. Where direct contact is necessary, the managing office should be kept informed and be sent copies of all correspondence between consultants and other departments. On complex projects, the managing office should arrange for each interested government bureau/department and other organization to appoint a representative through whom all internal and external matters regarding the consultancy should be channelled. Details of the contact post, name of incumbent, telephone number and address should be circulated to all parties and regularly updated. At the start of the consultancy the managing office should circulate a letter introducing the consultants to all bureaux/departments they are likely to contact and enlisting their co-operation.

8.1.4 Distribution of Documents to Consultants

The officer controlling the consultancy (Project Officer) should prepare a list of the documents necessary for project implementation using the list at **Appendix 8.1** as guidance. During the circulation of the draft Brief for comment, the Project Officer should include the proposed List and request information on documents that the department considers are important from their point of view. The department should specify the title and contact for the particular documents and these should be added to the List prepared by the Project Officer.

The Project Officer must supply the List to the shortlisted consultants at the time of invitation to submit the Technical and Fee Proposals. The consultants should be asked to indicate, with their submissions, the documents currently held by them and the documents needed, should they be awarded the assignment.

The documents on the List must be made available to the shortlisted consultants to see, if they request, during the preparation of their submissions. Any documents which are on sale should be purchased by the consultants.

During the period of the consultancy, the Project Officer should pass on any amendments to documents on the List, or new documents which he considers relevant to the consultancy.

8.1.5 Policy Steering Group

(a) Need for a Policy Steering Group

Major planning and feasibility studies particularly multi-disciplinary studies will require the formation of a steering group to ensure optimum achievement of Government's objectives. Such studies typically have major external implications and/or policy guidance is needed during the course of the studies.

(b) Membership of Policy Steering Group

The policy steering group should consist of representatives of interested government bureaux/departments, the consultants, and the managing office. Its members should be of sufficiently high rank to be capable of making decisions if necessary, at the steering group meetings. The Chairman may be from the policy bureau responsible for introducing the project into the PWP, up to Deputy Secretary rank or alternatively someone approved by the policy bureau (e.g. from the lead department). The managing office will usually provide the secretary to the steering group, and other representatives as required.

(c) Terms of Reference

The terms of reference of the steering group should establish clear lines of

responsibility and accountability. They should be discussed and agreed at the first meeting of the steering group.

8.1.6 Project Steering Group

(a) Need for a Project Steering Group

A project steering group may be necessary particularly for Investigation and D & C agreements where close liaison of a non-policy and/or operational nature is required between the consultants and various government departments having extensive inter-related or conflicting interests. This steering group may for example determine the requirements of the client/user department(s), the maintenance department(s) and/or of government technical specialists in GEO, Environmental Protection Department etc.

At the construction stage, the group's function would be to facilitate implementation of the works, which may involve such things as resolving problems associated with traffic and utility services.

Project steering committees are required as a matter of policy for all multidisciplinary projects and such committees may also serve as the project steering group where consultants are involved in the project.

(b) Membership of the Project Steering Group

The group should comprise staff of the managing office, the consultants and representatives of interested departments (and Utilities Companies).

The Chairman may be the managing office's HoD, the Director’s Representative or a delegated representative of appropriate seniority (usually Dl or above). Representatives of other departments should be sufficiently senior to speak on behalf of their departments and give decisions on the spot.

In some cases such as traffic or utilities co-ordination, meetings may be chaired by the Consultants.

(c) Terms of Reference

These should state the objectives of the project steering group and establish clear lines of responsibility and accountability. The terms of reference should be agreed at the first meeting of the group.

(d) Frequency of Meetings

The group should meet when required but generally at not less than monthly intervals.

8.1.7 Change of Core Personnel in the Consulting Team

The procedures of approving change of core personnel of consulting team were originally set out in Technical Circular DEVB TCW No. 2/2009. The procedures were streamlined vide SDEV's memorandum ref. DEVB(PS) 106/42 dated 14.1.2013 to improve efficiency and the relevant content of which has now been subsumed at **Appendix 8.2**.

Under the streamlined procedures, the HoD can assign a D2 (or above) officer to approve cases of core personnel leaving the company (including retirement and resignation) or leaving the post and duties for a prolonged period due to family or medical reasons. For all other cases, the HoDs may, having regard to the merit of individual case, personally grant approval. The principle of approving change of core personnel remains unchanged.

8.2 Detail

8.2.1 Introduction

The nature of management for feasibility studies, planning studies and for the preliminary report stage of Investigation and D & C type agreements is different from that required for the detailed implementation of the design and construction of engineering projects. This is increasingly true as the scope and nature of Feasibility Studies widen.

Wherever necessary in this Section, distinctions are made between the two different situations. If no distinction is made it may be assumed that the guidance is relevant to either situation.

8.2.2 Programme

The managing office should ensure that the consultants submit a realistic overall programme as required in the agreement, showing the proposed sequence, timing and working methods proposed for achieving the objects of the Project. For D & C agreements the programme should also show the timing of the main elements in each of the consultancy stages and the works contracts, necessary to achieve the desired completion date for the project. More detailed programmes shall be submitted for each consultancy stage at its commencement. The programme elements should include for all necessary government procedures and checking by the managing office of draft contract documents etc. Adequate time should be allowed for completion of these procedures and for dealing with objections under relevant ordinances. Managing offices should scrutinize draft programmes carefully and liaise with the consultants to ensure that realistic times are allowed for government procedures and input. After approval by the Director's Representative the programmes shall become the basis for control and monitoring of progress.

8.2.3 Progress Reports

The managing office should require the consultants to submit at regular intervals (usually monthly) a brief report in a format, and of a scope, approved by the Director's Representative. The report shall indicate for the previous period, the progress achieved in relation to the approved programme and also any difficulties encountered. The report should also mention any guidance or assistance which the consultants may require. Where there is a steering group, part of its function will be to consider the progress reports, provide feedback to the consultants, and initiate any necessary follow-up action. Other bureaux/departments and utility companies etc., having interest or involvement in the project should be kept informed of the progress by the managing office.

Where necessary, progress meetings chaired by the Director's Representative should be held between the managing office and the consultants, to discuss the progress reports to decide on follow-up action to be taken and revision to the programme to recover lost time.

8.2.4 Supervision, Checking and Reporting on Consultants

Consultants' performance is measured by regular performance reports and by a Final Report on completion of agreement (see Section 10). Where a particular shortcoming of the consultants becomes apparent, the managing office should not delay in drawing this to the attention of the consultants with a view to eliminating the problem as early as possible.

8.2.5 Payment of Fees

Fees should be paid to the consultants at the times and in the amounts stipulated in the Schedule of Fees. Where it is necessary for the consultants to carry out additional Services, these should be instructed in writing by the Director's Representative. Payment for such Services shall either be on a time-charge basis using the appropriate rates and multiplier stated in the Schedule of Fees or by means of a negotiated lump sum fee.

For the "acceptance" of deliverable which is substantially completed, when the delay in finalisation is outside the control of the consultants, managing department should exercise reasonable discretion in considering making the milestone payments. In such cases, consideration should be given to seek the Director's Representative's approval to make part of the milestone payment and subject to the extent of minor outstanding finalisation work, 90% or more of the milestone payments may generally be made. It is mandatory for the Employer to make payment within the specified period of receipt of invoice from the consultant. Managing offices should note this and particular attention should be paid to checking and certifying accounts promptly. The date of receipt of the invoice by the managing department shall be clearly indicated on the invoice. The payment date shall be accurately calculated and clearly stated on the payment vouchers by the managing department. The managing department must ensure that consultants' accounts are checked and certified promptly and that arrangements are made for

payment vouchers to reach the Receipts and Payments Examination Section of the Treasury timely. Director of Accounting Services should be advised of the payment due date when forwarding accounts for payment.

8.2.6 Feasibility Reports

(a) Draft Report

Towards completion of the assignment the consultants shall submit to the managing office a draft report on the project, containing their recommendation and other details, as required by the Brief. The report should be circulated by the managing office to all interested government bureaux/departments for comment. Consideration should be given to whether the District Council's views should be sought at this time. The managing office should check the report for significant errors and the validity of its conclusions and ensure that it fulfils the requirements of the Brief. The managing office should pass all comments received to the consultants and further circulate their response to all parties. Where there is a steering group, the consultants should make a detailed presentation of the report to the group.

The consultants, taking account of all comments received, should then conclude any remaining investigations, refine their findings and proceed with the preparation of the Final Report.

(b) Final Report

Following submission by the consultants of the Final Report incorporating all significant comments received at the draft stage and the consultant's responses thereto, the managing office should check that all comments have been satisfactorily answered and all requirements of the Brief met, before the Director's Representative gives his formal acceptance to the Final Report and distributes it to interested parties for their information. A copy of the Final Report should be kept in the office library and the relevant departmental library, for record. In some major projects, an Executive Summary report will be required as part of the Final Report and such requirement should be specified in the Brief.

(c) Follow Up

After distribution of the Final Report, certain follow-up actions will be required by the managing office. Depending on its nature and relative importance, consideration must be given to presenting a paper with a summary report covering the key recommendations of the report to the District Council(s) for consultation purposes. For development proposals a paper may need to be submitted to the Committee on Planning and Land Development. Other committees which may need to be consulted include the Transport Policy Coordinating Committee and Transport Advisory Committee (for projects with significant transport implications) and Town Planning Board (projects with significant planning implications).

8.2.7 Management during Design, Construction & Commissioning

(a) Regulations and Procedures

The managing office should ensure that the consultants are aware of and, to the extent authorised in the agreement, comply with all government regulations and procedures relevant to the agreement. Attention is drawn to Section 8.1.3(c), the requirements of which should be observed. At the Design and Construction Stage, Chapters 6 and 7 of the Project Administration Handbook, regarding "Tender Procedure" and "Contract Management" are particularly relevant. The consultants should, as far as possible, incorporate government standard forms in the contract documents e.g. Conditions of Contract, General Specifications, Method of Measurement etc. The consultants should obtain the approval of the managing office to any departures from standard procedures/provisions such as Special Conditions of Contract, Particular Specification Clauses and Particular Preambles etc.

(b) Contract Management

(i) Management of the contract will be undertaken by the Consultants in their capacity as the Engineer to the contract. The duties and powers of the Engineer will be laid down in the Conditions of Contract. The consultants must be allowed to carry out the duties of the Engineer independently and impartially, with only those constraints on their contractual powers as are defined in the GCE. Care should be taken to ensure that other terms of the Agreement or administrative procedures or requirements do not impose any additional constraints on the powers of the Engineer.

(ii) The managing office should monitor closely the consultants' performance on contract management to see that they act properly and effectively and that government procedures and regulations are followed. For example, the use of government standard forms of site records should be verified by carrying out a technical audit from time to time.

(iii) The consultants should be reminded of the constraints on their contractual powers, in particular those governing variations to the contract works, extensions of time for completion and claims for additional payment. The managing office should ensure that suitable and agreed procedures including time limit guidelines are laid down and followed, so that all referrals on such matters from the consultants to the Director’s Representative for his approval or comment are dealt with expeditiously.

(iv) The Conditions of Contract provide for payments to the contractor to be made within a specified time limit after the date of the Engineer's Certificate. The managing office should ensure that proper procedures agreed with the Treasury and the Consultants are in place to enable payments to be routinely made within the contractual time limit.

(v) The managing office should advise the Consultants when site records and files should be sent to the managing office for custody after the winding up of each contract. The agreement requires the Consultants to permit

inspection by Government of records and correspondence relevant to any contract or other expenditure of Government funds (GCE Clause 14)

(vi) Where Contract Advisers are intending to carry out a technical audit on completed contracts, such audits should normally be carried out within 12 months of receipt of the complete set of site records from the Consultants, and any queries should be put to the Consultants within a reasonable period of time thereafter.

(c) Financial Control

(i) The managing office should ensure that the consultants are aware of the time and supporting information which will be needed by the Director's Representative when seeking approval for increases in the project estimate, supplementary provisions to increase annual estimates and increases in contract sums.

(ii) As the Engineer to the contract, the consultants can without prior approval (except as described in GCE Clause 24) order variations to the contract works and in other ways commit Government to expenditure within the terms of the contract. The managing office should ensure that the Agreement contains adequate provisions requiring the consultants to keep the Director's Representative fully informed of the financial state of the contract, including regular updating of the estimated final contract sum, forecasts of expenditure and immediate notification of any likelihood of the approved contract sum being exceeded. Formal financial management arrangements should be agreed between the managing office and the consultants to ensure that, throughout the course of the contract, necessary authorities are obtained and funds made available in time to meet contractual payments.

8.2.8 Variations to Consultancy Assignment

SPR 520 specifies the conditions under which managing departments can authorise variations to a contract (consultancy agreement). In addition to the original "fee ceiling for additional Services" approved by the EACSB, managing departments are delegated with authority to approve variations of consultancy agreements within the financial limits set out in Appendix V(B) of SPR.

In case the total amount of variations exceeds the original approved "fee ceiling for additional Services" plus the financial limits under the authority delegated to managing departments as set out in Appendix V(B) of SPR, the EACSB's approval to negotiate with the consultant to undertake the variations is required prior to proceeding with any further variations (see Section 3.17).

While the full implications that might arise from the proposed additional Services must always be given careful consideration, the managing department should also be mindful of situations wherein the instruction of certain additional Services might unavoidably commit the department to further and related additional Services beyond the department's authority at a later stage under the Agreement, albeit well within the

department's financial authority at the time the particular additional Services is contemplated and required. Prior approval of the EACSB might need to be obtained at this stage to avoid otherwise pre-empting the EACSB.

Any agreed variations which are to be paid on a lump sum basis, or on a time-charge basis but with rates different from the original fee proposal, should be executed under a supplementary agreement.

8.2.9 Retrospective Approval of Variations

From a government procurement perspective, prior approval for variations of consultancy contracts involving additional services under Item B.III of Appendix V(B) of the SPR must always be obtained before such additional services are committed or allowed to be undertaken. The practice of seeking covering approval is not encouraged, and should be strictly controlled to avoid abuse. Such covering approval would therefore only be given under exceptional circumstances with full justifications.

For such cases, the managing department is required to provide full justifications to support the covering approval sought for additional Services, and the submission to the EACSB seeking such approval should include the Controlling Officer's agreement concerned.

The department should also confirm in the submission that the subject matter for approval would not be in connection with or involve any extra-contractual settlement of claims as such would be outside the jurisdiction of the EACSB according to the SPR.

8.2.10 Variations for Additional Services that are within the Approved Scope of the Project

For variations falling within the ambit of Item B.III of Appendix V(B) of the SPR which are within the approved scope of the project, the EACSB's approval should be obtained prior to negotiating with the existing consultant for direct single appointment. Such proposals must be fully justified with due consideration of all relevant circumstances including the contractual, financial and programme implications, and presented clearly in the submission for the EACSB's consideration.

9. MODIFICATION TO AN AGREEMENT

9.1 Need

During the course of a study, additional Services or omissions may come to light, or further extension of Services be recommended, and as a result it may be considered appropriate to modify or extend the existing agreement.

An existing agreement may also need to be modified due to a change in status of the consultants, or because of a change in government standards and/or policies. It should be kept in mind that an agreement is a legal contract and cannot be altered or modified without the agreement of both parties.

9.2 Submission to EACSB

Where such need arises an approach should be made to the EACSB for approval to the proposed modification, unless this has already been covered by a general approval as may be the case with certain policy changes.

9.3 Justification

The approach to the EACSB must include a full justification for the proposed modification/extension and an estimate of any additional cost. Where additional fees are involved, approval from the EACSB in principle to the modification/extension should be sought, prior to any negotiation with the Consultants. Prior approval to any additional expenditure should have been obtained and this should be verified and clearly presented in the submission.

Where the modification involves an extension to the Services to be provided under the Brief, full justification including reasons why this should not be carried out as a new agreement should be provided. Normally in such circumstances, extensions should be approved only when the Services are a logical extension of the existing assignment and difficult to separate from it.

9.4 Negotiation and Execution

Following agreement by the EACSB in principle to any modification, it will generally be necessary to negotiate the terms, conditions and any additional fees relevant to the modification or extension, and to obtain EACSB's approval to these prior to executing the modification. Minor changes may be completed by an exchange of letters, major changes may require the execution of a supplementary agreement. In some cases legal advice on the wording of such supplementary agreement may be required and the managing office should liaise directly with the LAD(W), DEVB.

9.5 Novation

Novation of consultancy agreements is allowed under one of the following circumstances:

(a) A consultant has changed from a partnership or sole-proprietorship to a limited liability company. The obligations, liabilities and benefits under the existing consultancy agreements are transferred to the new company.

(b) A consultant is being wound up, will soon cease to carry on business or is intending to wind up his business and is thus unable to perform some or all of the consultancy agreements. The Government on balance agrees to a novation instead of terminating the consultancy agreements.

Other than the above circumstances, the transfer of a consultant's benefits and obligations under consultancy agreements with the Government to a third party, including a sister company, a holding company or a subsidiary company having a separate legal status, will not be permitted. Details on novation of agreements are given in ETWB TCW No. 3/2005 and subsumed in **Appendix 9.1**. The guidelines given in SDEV's memorandum ref. (0211Y-01-12) in DEVB(PS) 106/43 dated 24 July 2009 are applicable to the organizational restructuring scenario of one or more consulting companies (the transferor(s)) integrating into another consulting company (the transferee) by full transfer of their liabilities, assets, staff and resources to the transferee.

9.6 Change of Company Name

Upon receipt of notification from consultants of a change of company name, the government department concerned should pass the notification to the Secretary, EACSB.

The Secretary will then take the matter up direct with the consultants and will seek confirmation from them on whether there have been any changes in corporate structure or transfer of ownership as a result of the name change. The provisions stipulated in Section 1.9 of **Appendix 2.1** would be followed as appropriate.

If there were no changes in corporate structure nor transfer of ownership in the company, Secretary, EACSB will notify departments of the name change. Otherwise a novation of the current consultancy agreements of the company may be required.

9.7 Suspension or Termination

Procedures to be followed if Government wishes to suspend or terminate the Agreement or any stage of the Agreement are given in Clause 41 of the GCE of Engineering and Associated Consultants.

If the Government wishes to suspend or terminate the Agreement for any reason the Director must give the consultants three months notice in writing.

The Director's Representative must inform the consultants in writing, usually within 3 months or as specified in the brief or the agreed programme, whether or not they are to proceed to the next stage.

The suspension or termination clauses in the GCE also describe the consultants' remuneration under such circumstances.

The managing department should submit an evaluation of the consultants' performance of an agreement on suspension or termination.

10. CONSULTANTS' PERFORMANCE

10.1 General

The system of reporting and managing the consultants' performance is given in DEVB TCW No. 3/2016 and 5/2018.

In order to ensure that consultants perform their duties in accordance with their Agreements and the Briefs, they must be effectively managed by the managing departments.

The performance of consultants must be regularly assessed, and an appraisal report for each current agreement must be made timely by the managing department.

It is essential that the consultant's performance is assessed and reported accurately such that the quality of Services can be reflected, and in turn, good value for money Services can be ascertained.

In cases of unsatisfactory performance, action should be taken by the managing department in the first instance.

10.2 Consultants' Performance Information System

Under the consultants' performance information system (CNPIS), a performance score for each interim report can be derived based on the assessment made. A weighted average of the performance scores of a consultant obtained over the immediate past three years in all consultancies will be taken as the consultant's current Past Performance Rating (PPR) which provide a quantitative indicator of the consultant's past performance.

11. CONCLUSION OF THE AGREEMENT

11.1 Scope of Assignment Not to Be Exceeded

There is often insufficient attention given to dealing properly with the concluding stages of an agreement. Authority is given by the EACSB to appoint consultants to carry out a specific assignment and as soon as the duties under that assignment are completed, the consultants should be so advised and the agreement officially completed.

Consultants should not be employed under an existing Agreement to carry out duties not authorised as part of that assignment and/or for which funds have not been properly allocated.

11.2 Summary of Steps to be Followed on Completion of an Agreement

1. Ascertain that the Services as set out in the Brief have been substantially completed and notify consultants of any outstanding items.

2. Process consultants' Final Account.

3. Issue Letter of Completion of Agreement.

4. Complete Final Report on Consultant's Performance.

11.3 Completion of Agreement

The managing office must ensure that all Services set out in the Brief have been substantially completed and the consultants notified of any outstanding items prior to the issue of the letter of completion. If they have not already done so, the consultants should be invited to submit their final account, and this should be cleared subject to any payments in relation to outstanding duties e.g. monitoring, being held back.

Usually with Feasibility Study and Investigation type agreements, the assignment is complete following submission of the final report including any responses to comments on the draft final report. There may however in some agreements be additional monitoring or similar Services of a relatively minor nature which may continue for a considerable period. Based on the exact nature of the Services required by the Brief, the managing office must use its discretion to decide when the assignment is substantially completed, and hence when to issue completion notice and final report.

With a D & C type agreement, the managing department must ensure that the consultants have: properly drawn up final accounts; resolved any outstanding contractual matters; produced as-built drawings, maintenance manuals, and any outstanding design calculations and/or certificates; and preserved site records. The managing department must also ensure that the works has been properly handed over to and taken over by the relevant maintenance authority. Where necessary, any

outstanding items which cannot be attended to immediately through no fault of the consultant may be included in a schedule of outstanding items.

11.4 Letter of Completion

The consultants should be notified that they have completed their duties under the agreement, with the exception of any minor outstanding duties which should be specifically referred to in the letter of completion. Reference should also be made in the notification letter to any ongoing responsibilities such as professional indemnity insurance, keeping of records and the like. A standard form of Letter of Completion is at **Appendix 11.1**. This should be copied to Secretary, EACSB and Director of Audit. The date of the completion should be same as that reported in the Consultants' Performance Information System (CNPIS), i.e. the Final Report on the Consultants' Performance. For the avoidance of doubt, assessment of additional Services and settlement of disputes should normally not be affected by the issuance of the letter of completion.

11.5 Technical Audit on Completed Contracts

The managing office should ensure that all queries on completed contracts requiring action by the consultants should be made within a reasonable time.

11.6 Final Report on Completion of Agreement

The managing office should on completion of the assignment, complete a Final Report on consultants' performance on the agreement in accordance with DEVB TCW No. 3/2016.

11.7 Post-Completion Review on Major Consultancy Agreements

The requirements of post-completion review should be followed. Details are given at **Appendix 11.2**.

APPENDIX 1.1 SUPPLEMENTARY PROCEDURES FOR SELECTION, APPOINTMENT AND ADMINISTRATION OF ENGINEERING AND ASSOCIATED CONSULTANTS APPROVED / TO BE CONSIDERED BY DCSCs

The following supplementary procedures should be followed for consultancy agreements approved / to be considered by Departmental Consultants Selection Committees (DCSCs).

General

Submissions for approval of the list of consulting firms for inviting consultancy proposals, consultancy briefs, marking schemes for assessing consultancy proposals, pre-contract negotiations, appointment of consultants and cancellation of consultants selection exercises should be sent to the Chairman, DCSC and copied to the Members of the DCSC.

The Secretary, EACSB's general administration duties, including allocation of agreement numbers, maintenance of List of Consultants of EACSB, processing requests for change of company name, up-keeping the List as described in Section 3.11.5, remain unchanged. Copies of relevant records of the commencement, termination and completion of an agreement should be sent to Secretary, EASCB.

Opening of Fee Proposals

The minutes of Assessment Panel meeting with proper recording of the deliberations made as requested in Section 3.10 of the EACSB Handbook should be sent to the Chairman, DCSC for endorsement using a memo similar in format to Appendix 3.7. Upon endorsement, the Chairman, DCSC should send a summary of the assessment results of the technical proposals together with the minutes of Assessment Panel meeting to the Secretary, EACSB requesting for releasing of the fee proposals. All the fee proposals received by the EACSB will then be sent, as appropriate, to the Chairman, DCSC for opening in the presence of appropriate witnesses. The Secretary, DCSC should send one copy of the fee proposals to the Chairman of the Assessment Panel and the other copy of the fee proposals should be kept by the Chairman, DCSC.

After combined score assessment, the procuring department should prepare a return with the information on technical marks, fees and manpower input in the format shown at Appendix 3.11 to the Secretary, EACSB for record. Upon appointment of the consultants for the agreement, the Chairman, DCSC should send the copy of fee proposal of the winning consultants kept by him to the Secretary, EACSB for compiling records of approved consultancy agreements and retention.

If, after the technical assessment, the Assessment Panel considers that any consulting firms are unacceptable on technical or other appropriate grounds and shall not be considered further, the recommendation and justifications should be properly recorded in the meeting minutes. Upon endorsement of the recommendation by the Chairman, DCSC, the fee proposals submitted by those consulting firms whose technical proposals

are considered unacceptable should not be opened and upon appointment of the consultants for the agreement, the procuring department should return the unopened fee proposals to those consulting firms.

APPENDIX 2.1 ADMINISTRATIVE RULES FOR THE LIST OF CONSULTANTS UNDER THE PURVIEW OF EACSB

1. Listing and Grouping

EACSB maintains the List of Consultants (the List) for undertaking engineering and associated consultancy services. The rules for administration of the List (the Rules) are set out in the Guidelines attached to DEVB TCW No. 5/2018 and the relevant content of which is subsumed in this Appendix.

1.1 Service Categories

The List comprises the following Service Categories:

Service Category	List Management Department
Civil Infrastructure and Development (CE)	Civil Engineering and Development Department
Drainage and Sewerage (DS)	Drainage Services Department
Electrical and Mechanical (EM)	Electrical and Mechanical Services Department
Environmental (EP)	Environmental Protection Department
Geotechnical and Slope (GE)	Civil Engineering and Development Department
Roads and Associated Structures (HY)	Highways Department
Town Planning (TP)	Planning Department
Traffic and Transport (TT)	Transport Department
Waterworks (WS)	Water Supplies Department

The list management department for a Service Category is the department most closely connected with that particular type of consultancy and is responsible for servicing and monitoring the performance of all consultants within that Service Category. The list management department for a category may not necessarily be the department responsible for procuring/managing a consultancy issued under that particular Service Category.

1.2 Grouping

(a) Service Categories of CE, DS, GE, HY and WS are each divided into 3 Groups of consultants to accord with the size of the firms, while Service Categories of EM, EP, TP and TT are each divided into 2 Groups. Details of grouping and the admission criteria for individual Service Categories are listed at **Appendix 2.2B**. Dividing the latter four Service Categories into 3 Groups will be considered when the job opportunities for these four Service Categories become sufficiently large.

(b) An up-to-date list of the various Service Categories of consultants is maintained by the Secretary of EACSB and can be accessed via the internet website of the Civil Engineering and Development Department (http://www.cedd.gov.hk).

(c) Office audits as stated in Section 1.11 of this Appendix shall be conducted on selected consultants for verifying their submitted returns, i.e. the updated company information, and documents submitted by the consultants for the biennial renewal exercise.

(d) A consultant may apply for inclusion in more than one Service Category subject to compliance with the corresponding admission criteria.

(e) A consultant cannot be listed on more than one Group within the same Service Category.

(f) A consulting firm can be listed on more than one Service Categories but not more than one Group within the same Service Category. Associated companies (subsidiaries, parent/sister companies) of separate legal entities but with overlap of personnel shall be permitted to be included under different but not the same Service Categories. Associate companies of separate legal entities and no overlap of personnel at all ranks/grades shall be permitted to be included under the same Service Categories and Group. For the avoidance of doubt, consultants (i.e. consulting firms to be eligible for being considered for a particular tendering exercise) having linkages to each other (e.g. subsidiaries, parent or sister companies) are not allowed to bid on the same agreement. If a consultant has any associated companies that are already included in the List or making application for inclusion in the List, the consultant shall mention all these

associated companies in its admission application and provide declaration to confirm that the requirements stated in this item are met.

(g) A consultant may apply for direct entry/promotion to any one Group of a Service Category, subject to compliance with the minimum admission criteria for that particular Group.

1.3 Criteria for Inclusion in the List

Criteria for inclusion in the List are:

(a) Number of qualified staff employed, their qualifications and resident status;

(b) The experience of the consultant;

(c) The local facilities used by the consultant's local office; and

(d) ISO 9000 certification covering the Service Category(ies) applied.

The minimum entry criteria for inclusion in the List are given at **Appendix 2.2B**.

1.4 Application for Inclusion

A consultant profile shall be submitted by any consultant who wishes to apply for inclusion in the List. The consultant profile form together with all the required documents shall be addressed to the Secretary of EACSB, Civil Engineering and Development Department, 16/F, Civil Engineering and Development Building, 101 Princess Margaret Road, Homantin, Kowloon. The consultant profile form can be downloaded via the internet website of the Civil Engineering and Development Department (http://www.cedd.gov.hk).

Upon receipt of an admission application referred by the Secretary of EACSB, DCRC of the appropriate list management department will conduct an investigation to check the documents submitted and confirm compliance with the relevant admission criteria for the List as provided in **Appendix 2.2B**. The DCRC concerned will make recommendation to EACSB for approval within 2 months from the date of referral to the list management department.

If the DCRC concerned considers appropriate, office audits would be conducted as part of the investigation to check the documents submitted.

The processing of an application for inclusion in the List should normally be completed within 4 months after receiving a fully substantiated application from the consultant. If the consultant is requested to provide supplementary information to substantiate its admission application, the consultant shall provide such information in a timely manner. If the consultant fails to provide the information as per request without any justifiable reason, its admission application will be processed based on the information available as appropriate. The same shall apply in processing any application made by the consultant under Sections 1.5 to 1.13 of this Appendix.

A consultant on the List shall be responsible for the good behaviour of its employees, agents and sub-consultants in relation to any consultancy appointments for public works projects under its control. The consultant shall advise its employees, agents or sub-consultants that they are not allowed to offer or give any advantage or excessive entertainment to any of the Government employees or members of their family, or to solicit or accept any advantage or excessive entertainment from the contractors, their employees, agents or subcontractors in relation to the works under any consultancy appointments for public works projects. The consultant may be subject to regulating actions as stated in Section 4 of the Guidelines if the consultant, its employees, agents or sub-consultants has/have committed any offence under the Prevention of Bribery Ordinance in relation to any consultancy appointments for public works projects unless the misconduct is not within the control of the consultant. In addition, the consultant may be subject to regulating actions for poor integrity such as negligence, misconduct and impropriety as proven in cases where its employees, agents or sub-consultants have solicited, accepted or been given advantage as defined in the Prevention of Bribery Ordinance in relation to any consultancy appointment for public works project unless the misconduct is not within the control of the consultant.

Application for inclusion or permission for retention on the List under any Service Category shall mean the consultant unconditionally accepts the Rules and any future amendments or additions thereto. Failure or refusal to observe the Rules may lead to refusal of entry to the List for the Service Category being applied for, or suspension from bidding consultancies under the purview of EACSB or removal from all Service Categories in which the consultant is listed.

1.4.1 Application from Consultant under Suspension

A consultant, who is being suspended from bidding for new agreements under one or more Service Categories, may submit application for inclusion in the List under Service Category(ies) in which it is not yet included. The application will be processed in accordance with the procedure stipulated in Section 1.4 of this Appendix as to whether the consultant will be included in the Service Category(ies) applied. However, depending on the nature and seriousness of the cause of suspension, the DCRC concerned shall consider whether suspension should also be imposed on the Service Category(ies) being applied for as if the consultant was listed in that Service Category at the time when the suspension was imposed. If affirmative, the consultant will be subject to current suspension even if the application for inclusion is accepted. Otherwise, the consultant will not be subject to current suspension if the application for inclusion is accepted. DCRC concerned shall make recommendation to EACSB for approval.

1.4.2 Application from Consultant under Debarment from Re-admission

A consultant, who has been removed and is being debarred from re-admission under one or more Service Categories, may submit application for inclusion in the List under other Service Category(ies) in which it has not been previously included. The application will be processed in accordance with the procedure stipulated in Section 1.4 of this Appendix as to whether the consultant will be included in the Service Category(ies) applied. However, depending on the nature and seriousness of the cause of removal, the DCRC concerned shall consider whether the removal and debarment should also be imposed on the Service Category(ies) being applied as if the consultant was listed in that Service Category at the time when the removal and debarment from re-admission was imposed. If affirmative, the consultant will be debarred from admission and the application for inclusion will be rejected. Otherwise, the application will be processed accordingly. DCRC concerned shall make recommendation to EACSB for approval.

1.5 Changes of Group

A consultant may apply for change to another Group within the same Service Category, subject to compliance with the corresponding listing criteria of that Group and any imposition of debarment on change of Group. The applications for change of Group made under the biennial renewal exercise and those not made under this exercise (in-year applications) are processed in accordance with the procedures stipulated in Sections 1.8.1 and 1.4 of this Appendix respectively.

The consultant who applies for change to another Group within the same Service

Category, whether it is an in-year application or the application made under the biennial renewal exercise, will be debarred from further application for change of Group in the concerned Service Category within 12 months upon approval (the Group Change Debarment Period), subject to Sections 1.6 and/or 1.7 of this Appendix. Consultants shall remain in the respective Groups until the end of the Group Change Debarment Period, except downgrading in accordance with Sections 1.6 and/or 1.7 of this Appendix.

To streamline the processing of applications, the consultant whose in-year application for change of Group in a Service Category is still in process at the commencement of the biennial renewal exercise of a particular year will be exempted from that renewal exercise for the Service Category concerned. For instance, if the Secretary of EACSB informs that the biennial renewal exercise commences on 1 December 2020 in accordance with Section 1.8.1 of this Appendix and the processing of in-year application submitted by a consultant for change of Group in CE Service Category is yet to be completed by Civil Engineering and Development Department on or before 30 November 2020, the consultant will then be exempted from the renewal exercise for the CE Service Category. In addition, the Group Change Debarment Period will start when the in-year application for change of Group is approved and a consultant will be exempted from the biennial renewal exercise for the Service Category concerned if the renewal exercise commences before the Group Change Debarment Period lapses.

1.6 Duty to Remain Eligible after Admission

Consultants on the List have the duty to remain eligible at any time after admission, i.e. the consultants on the List shall be able to satisfy the admission criteria for the Group and Service Category in which they are included. A consultant who does not meet the minimum admission criteria for its associated Group of a Service Category on the List at any time after admission shall notify the Secretary of EACSB in writing within one month and will be suspended from bidding for EACSB consultancies in that Service Category upon instruction by EACSB until such time the minimum requirement is met and accepted by EACSB. Alternatively, the consultant may apply, in the same notification, to downgrade to a lower Group if the minimum admission requirements are met. Such application for downgrading of Group will be processed as an in-year application for change to another Group in accordance with Section 1.5 of this Appendix and the Group Change Debarment Period will be imposed accordingly upon approval of the change. The Consultant will be suspended from bidding for EACSB consultancies in that Service Category upon instruction by EACSB until its application is approved by EACSB.

Upon the receipt of the notification, the Secretary of EACSB will inform the relevant list management departments on the notification. DCRC(s) of the relevant list management departments shall carry out investigation to review the status of the consultant and office audit may be conducted, if necessary. Recommendation for suspension or downgrading to a lower Group in this regard shall be submitted by the DCRC for EACSB's approval. Similarly, DCRC shall review any further information submitted by the consultant to demonstrate the minimum admission requirements are met again and make recommendation regarding lifting of the suspension for EACSB's approval. If a suspended consultant still does not meet the minimum admission requirement within twelve months after the date of suspension, DCRC should consider seeking the approval of EACSB, following endorsement of DCRC's recommendation by ICRC, to remove this consultant from the List.

A suspended consultant shall notify the Secretary of EACSB when the minimum requirement is met and apply for lifting of suspension. Similar procedure as for notification above shall be followed.

1.7 Duty to Report Reduction of Staff Promptly

Consultants on the List have the duty to report reduction of staff promptly. The following regulating actions would be taken by EACSB if a consultant fails to notify the Secretary of EACSB within one month, without reasons acceptable to EACSB, when its qualified professional staff resources fall below the minimum number required for the particular Group in the List:

(a) If a consultant agrees to downgrade to any lower Group of which the staffing requirement could be met, it would be suspended from bidding for all EACSB consultancies in that Service Category for 3 months after it is approved by EACSB to be downgraded to such a lower Group. The downgrading of Group will be processed as an in-year application for change to another Group in accordance with Section 1.5 of this Appendix and the Group Change Debarment Period will be imposed accordingly upon approval of the change.

(b) If a consultant could not meet the minimum staff requirement of any Groups, or if a consultant refuses to downgrade to any lower Group of which the staff requirement could be met, it would not only be suspended from bidding for all EACSB consultancies in that Service Category but would also be suspended for 3 additional months after the original suspension should otherwise have been approved to be lifted. If the consultant does not provide any reply by the

specified deadline, if any, in this circumstance, DCRCs may proceed as if the consultant refuses to downgrade to any lower Group.

The effective date of suspension of a consultant and the subsequent lifting in this respect shall be recommended by the DCRC concerned. In case the consultant is already under suspension arising from any other regulating actions, the above 3 additional months of suspension should be imposed after such existing suspension has been lifted. The DCRC concerned will submit recommendation to EACSB for approval.

1.8 Biennial Renewal and Re-grouping

1.8.1 Biennial Renewal

A renewal exercise following the procedures below will be conducted on a biennial basis. Consultants on the List are required to submit returns on their staff resources as well as other documents showing compliance with the minimum admission criteria for the respective Service Categories and Groups of the consultants, subject to the exemption mentioned in Section 1.5 of this Appendix.

When the biennial renewal exercise commences, the Secretary of EACSB will inform the consultants, send the following information to the consultants on the List and request them to submit returns within 3 months on their updated information and documents:

(a) Company information records kept in the computer system as described in Section 3.10.1(b) of the EACSB Handbook;

(b) the result of re-grouping exercise in Section 1.8.2 of this Appendix, if any; and

(c) a reply slip as in **Appendix 2.2F**.

Consultants who need to update their information and/or changes to other Groups in the same Service Categories shall submit the updated information and documents together with the duly completed reply slip to the Secretary of EACSB. Consultants shall indicate in the reply slip the updates to be made and highlight the updates in the updated documents accordingly to facilitate processing.

Consultants who do not need to update their information or change to other Groups shall submit the duly completed reply slip to the Secretary of EACSB.

Upon receipt of submissions referred by the Secretary of EACSB, DCRCs of the list management departments will review the submissions and make recommendations normally within 3 months on listing status to EACSB for consideration. If necessary, DCRCs of the list management departments may seek clarifications and/or supplementary information from the consultants. In addition, as stated in Section 1.11 of this Appendix, office audits will be conducted on the selected consultants for verifying the information and documents as appropriate.

Upon receipt of the recommendations of DCRCs of the list management departments, the Secretary of EACSB will issue provisional result of the biennial renewal exercise to the consultants. If the consultants have any supplementary information to provide, they shall submit it to the Secretary of EACSB with copy to the respective list management departments within 2 weeks. Late submission of supplementary information will not be considered unless under exceptional circumstances.

Subject to the provision of supplementary information, if any, by the consultants and the review by the respective DCRCs of the list management departments, the recommendations of DCRCs of the list management department will be submitted to EACSB for approval. The Secretary of EACSB will then issue the result of the biennial renewal exercise to the consultants, normally in the third quarter of the year, and publish the updated List via the internet website.

If a consultant fails to meet the minimum admission criteria of the respective Group but meets those of lower Groups, DCRCs of the list management departments should seek confirmation from the consultant on whether it agrees to downgrade to the lower Groups, and then seek EACSB's approval to downgrade the consultant and/or take regulating actions as appropriate in accordance with Sections 1.6 and/or 1.7 of this Appendix. If the consultant does not provide any reply by the specified deadline in this circumstance, DCRCs may proceed as if the consultant chooses to remain in the respective Group. DCRCs shall seek EACSB's approval to take regulating actions and/or downgrade the consultant as appropriate in a timely manner, regardless of the programme of the biennial renewal exercise. The Secretary of EACSB shall inform the consultant of the regulating actions and update the List accordingly upon approval.

1.8.2 Re-grouping

A re-grouping exercise will be conducted for all Service Categories, normally once every four years, by DCRCs of the list management departments prior to the renewal exercise of that year. In a re-grouping exercise, the balance of job opportunities and the number of consultants available in each Group(s)/ Service Category(ies) will be assessed. Adjustment on the bidding restrictions, such as grouping structure and tendering limits as provided in Section 2 of this Appendix may be considered. Normally, the tendering limits shall be adjusted if the cumulated adjustment percentage based on the Consumer Price Index (C) published by Census and Statistics Department since the last adjustment is equal to or more than ±10%. The Secretary of ICRC will liaise with DEVB in initiating the re-grouping exercise and promulgate the schedule for DCRCs to submit their recommendations to facilitate the re-grouping exercise. According to the schedule, DCRCs of the list management departments will submit recommendations in one go to ICRC for endorsement before submission to EACSB for approval. The Secretary of ICRC may provide guidance, if any, on various operational issues relating to the management of the List of Consultants of EACSB as appropriate for the re-grouping exercise.

If there is any proposed adjustment on the bidding restrictions, such as grouping structure and/or tendering limit, DCRCs in consultation with DEVB may consider and recommend for approval by EACSB whether or not the Group Change Debarment Period shall be lifted. The result of the re-grouping exercise and, where appropriate, any lifting of Group Change Debarment Period will be announced by EACSB upon approval and would be effective starting from the forthcoming biennial renewal exercise.

1.9 Application for Change of Company Name

The section associated with the change of company name in EACSB Handbook shall be supplemented with the provisions stipulated below in this sub-section:

When the company name of a consultant has been changed, the consultant shall notify the Secretary of EACSB in writing of the change in name and submit:

(a) a copy of the Business Registration Certificate in the new name;

(b) (i) in the case of a company incorporated in Hong Kong, a copy of the Certificate of Change of Name issued under Section 107(3)(b) of the Companies Ordinance (Cap. 622); or

(ii) in the case of a registered non-Hong Kong company, a copy of the Certificate of Registration containing the current corporate name issued under Section 779(1)(b) of the Companies Ordinance (Cap. 622), and a legal opinion (original copy) from a lawyer practising in the country in which the company was incorporated confirming that under the law of that country a change of name by a company does not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings that could have been commenced or continued against it by its former name may be commenced or continued against it by its new name. The authenticity of the lawyer's professional qualifications also needs to be certified correct by a government or related establishment;

(c) an updated consultant profile together with all the required documents (First paragraph of Section 1.4 of this Appendix refers);

(d) a list of all current agreements with the Government; and

(e) change of bank accounts, if any.

Subject to the receipt of the above documents from the consultant, the Secretary of EACSB will register the change of name in the List for the Service Category(ies) in which the consultant was previously listed under the former company name; and notify the relevant list management department(s) and relevant procuring departments, which have agreement(s) with the consultant, of the change. Consultants are required to answer all reasonable enquiries from the Secretary of EACSB and the list management departments.

Upon the notification of the Secretary of EACSB, the DCRC of relevant list management department shall investigate if necessary and recommend to EACSB whether there should be any change in the consultant's status within one calendar month from the date of referral by the Secretary of EACSB. The consultant will continue to be allowed to bid for agreements unless the DCRC of the relevant list management department recommends to EACSB that the consultant should be suspended from bidding.

1.10 Organizational Restructuring of Consulting Companies – Integration

The guidelines given in SDEV's memorandum ref. (0211Y-01-12) in DEVB(PS)

106/43 dated 24 July 2009 are applicable to the organizational restructuring scenario of one or more consulting companies (the transferor(s)) integrating into another consulting company (the transferee) by full transfer of their liabilities, assets, staff and resources to the transferee.

If the transferor still remains in existence after the restructuring, it shall provide a deed to the Secretary of EACSB to undertake not to make any reference to any of its past records, including consultant experience and past performance records in previous public works contracts/consultancies, as these deem to have been transferred to the transferee.

The transferee shall submit an application to the Secretary of EACSB if it intends to attain the same listing status as the transferor(s) upon the organizational restructuring. The application will be processed by following the procedure stipulated in Section 1.4 of this Appendix. If necessary, the Secretary of EACSB may also forward the documents provided by the transferee on the organizational restructuring, including legal opinion and undertakings, to the list management departments for reference.

1.11 Office Audits on Consultants

Office audits on selected consultants for verifying the company information and documents submitted by the consultants will be conducted in February, June and October every year. If biennial renewal exercise is held in that year, the office audit in February will serve as the office audit for the exercise and its schedule may be adjusted to suit the programme of the biennial renewal exercise if needed. Normally, a consultant under a particular Service Category shall be audited for not more than once every year. No office audit is required for a particular Service Category and Group if all consultants under that Service Category and Group have been audited within one year. Notwithstanding the above, if there is information that would give rise to reasonable suspicions as to the technical capability of a consultant, e.g. dramatic reduction of staff resources or recent unsatisfactory performance etc., additional office audits may be arranged by DCRCs at any time of the year.

Irrespective of the grouping status of the consultants, at least one consultant shall be selected from each Group under each Service Category for each office audit exercise. To be fair in the selection of consultants for conducting office audit, factors to be considered shall include the following:

(a) whether the consultant was audited in the previous quarters;

(b) whether the consultant received one or more adverse performance reports in the past 12 months;

(c) whether the consultant was restructured;

(d) whether the consultant was inactive, for example it has not participated in/ has not been awarded any consultancy agreements in the past few years; and

(e) other circumstances which are considered appropriate in consultation with the Secretary of EACSB.

The Secretary of EACSB will coordinate the selection of consultants by DCRCs of the list management departments for office audit and return the consolidated list of firms to be audited to DCRCs for conducting the audits accordingly. DCRCs should assign, normally, one senior professional rank officer and one professional rank officer to carry out each office audit. Prior to the audit, nominated officers should obtain the latest company information submitted by the consultants for checking. If a consultant fails to submit updated company information and relevant documents as required for the biennial renewal exercise or to cooperate with the audit team for conducting the office audit without reasonable justifications, DCRC shall consider seeking EACSB's approval to suspend such consultant from bidding for EACSB consultancies in the Service Category until EACSB is satisfied that the consultant meets the minimum admission criteria for the Service Category on the List. If a suspended consultant still cannot demonstrate that it can meet the minimum admission requirement within twelve months after the date of suspension, DCRC shall consider seeking EACSB's approval to remove the consultant from the List. Recommendation for removal in this regard shall be submitted by DCRC for endorsement by ICRC before seeking EACSB's approval.

An audit report as in **Appendix 2.2C** shall be completed and submitted to the DCRCs for follow up action, in consultation with EACSB if necessary, after each audit. DCRCs should ensure that all consultants being audited have duly followed up with the findings revealed from the audits and submitted any documents required to the Secretary of EACSB and/or DCRCs for further review where necessary.

1.12 Removal of consultants from the List

Under any of the following circumstances and upon receipt of recommendation from DCRC, and endorsement of ICRC, EACSB would consider that a consultant does not have the technical capability, integrity and/or intention to undertake further EACSB consultancies, and would resolve to remove it from a particular Service Category or all Service Categories under the List.

(a) A consultant fails or refuses to observe the Rules and criteria pertaining to the administration of the List. (Last paragraph of Section 1.4 of this Appendix refers)

(b) A consultant has been suspended from bidding for EACSB consultancies in the appropriate Service Category due to non-compliance with the minimum admission requirement such as inadequate number of qualified professional staff or as a consequence of the biennial renewal exercise or office audit conducted and still fails to meet the said requirement within 12 months after the date of suspension (Sections 1.6, 1.7 and 1.11 of this Appendix refer).

(c) If it is noted in an office audit that a consultant has not practised in local or overseas consultancy business of the relevant discipline actively for the required number of years as stated in the admission criteria, an investigation of the firm would be conducted in order to check whether it is still eligible for retention on the List. For the avoidance of doubt, "not practised" shall mean a consultant not engaging as lead or sub-consultant in local or overseas engineering project of appropriate scale and nature of work relevant to the Service Category concerned.

External mitigating factors relating to changes in the business environment such as general economy, local and overseas market conditions, availability of human resources, level of competition in the market etc. shall be considered by EACSB in this case.

(d) A consultant who has requested for the novation of existing consultancy agreement(s).

(e) A consultant refuses to submit Technical and Fee (T&F) Proposal after being shortlisted or withdraws T&F Proposals after submission of T&F Proposals without justifications to the satisfaction of EACSB on three or more occasions within a period of three years counting from the closing date for submission of T&F Proposal for the consultant selection exercise associated with first

occurrence of such failure. In this regard, a warning letter shall, if practicable, be sent by EACSB to the consultant concerned on such occasion.

(f) If it is noted that a consultant has ceased its operation for three months or more without notifying EACSB, the situation should be reported to corresponding DCRC for issue of warning letter by registered mail to the consultant and an ad hoc office audit should be conducted prior to seeking EACSB's decision to remove this consultant from the List.

(g) Other cases as stipulated in Section 4.3 of the Guidelines.

Subject to recommendation of DCRC, endorsement of ICRC and approval of EACSB, consultants removed from the List will normally be subject to a 12-month debarment period from re-admission.

1.13 Appeal

The consultant, who does not agree to the decision on its application or the regulating action imposed on it may appeal in writing, with substantiations and supporting evidence, to EACSB within 14 calendar days from the date when the copy of the decision or the notice of regulating action is sent to the consultant. The appeal can be delivered either by post, by fax or by email. Late submissions will not be considered. EACSB with the necessary assistance of respective DCRC(s) would decide on the case within one month if practicable, and such decision shall be final. Any imposed regulating actions will only be lifted when EACSB is satisfied that the appeal is sustained. The result of the successful appeal will not have any retrospective effect on the award of consultancies or decisions made in any consultant selection exercise that have already been conducted.

2. Bidding Restrictions

(Refer to implementation dates stated in **Appendix 2.2A**)

Unless there is no appropriate Service Category available, all consultancy bids are to be invited from the List.

2.1 Procurement under EACSB and DCSCs

To promote competition and widen participation, bidding restrictions will be based on "estimated lump sum fee" as shown in **Figure 2.1**. Cross-Group bidding is only allowed in a controlled manner as stipulated in Section 3.5.1.1 of the EACSB Handbook or when prior approval of the Head of Department has been obtained in accordance with Section 2.3 of the this Appendix.

Bidding Restrictions – Service Categories with 3 Groups:

Tendering Limit	Grouping
>$10M	Group 3
>$5M & <=$10M	Group 2
<=$5M	Group 1

Bidding Restrictions – Service Categories with 2 Groups:

Tendering Limit	Grouping
>$5M	Group 2
<=$5M	Group 1

Figure 2.1 – Bidding restrictions

The procuring departments normally should not bundle assignments into one consultancy agreement merely for the sake of minimizing administrative work unless there are strong justifications. Unless otherwise agreed with DEVB beforehand, the procuring departments shall seek comments from DEVB on the packaging of the consultancies which are to be procured by following the EACSB procurement procedures before issuing invitation for EOI submission or direct invitation for T&F Proposal (if EOI submission is not required).

(a) Bidding as Sole/Lead Consultant

For assignments under listed Service Category, the sole/lead consultant under the corresponding listed Service Category should have the listed Group status for that particular assignment as stipulated in **Figure 2.1**. For example, for an assignment with an estimated lump sum fee exceeding $5M but not exceeding $10M under Service Categories with three Groups, only consultants in Group 2 are permitted to bid as sole/lead consultant. For an assignment with an estimated lump sum fee exceeding $5M under Service Categories with two Groups, only consultants in Group 2 are permitted to bid as sole/lead consultant.

For engineering and associated consultancy assignments not under the listed Service Category, the Assessment Panel should select suitable consultants from all reasonably available sources to form a non-restrictive list based on the agreed selection criteria. The invitation of Expression of Interest (EOI) (or T&F proposals under one-stage selection process) shall not be restricted to the consultants on the list. Other suitable consultants not on the list should also be considered. In addition, for assignments with estimated lump sum fee not exceeding $5M, a consultant shall only be considered as eligible for bidding and award of the assignments if the total number of its works-related professional staff (please refer to Remark No. 5 of Appendix 2.2B for determining whether a staff member is a "professional" in this regard), for example, engineers, architects, surveyors, planners and landscape architects, does not exceed 15, and the consultant concerned shall be registered and maintain an active office in Hong Kong. The consultant shall be requested to submit a declaration letter declaring that the total number of its works-related professional staff is not more than 15 with its EOI submission (or T&F proposal under one-stage selection process) as shown in **Appendix 2.2E**.

If there is/are one or more associated companies having the listed Group status for that particular assignment as stipulated in **Figure 2.1**, only one of the associated companies shall be allowed to bid in that assignment.

(b) Engagement of Sub-consultants[1]

For assignments under any of the listed Service Categories, engagement of sub-consultants as required by procuring departments and/or initiated by the

1 A sub-consultant is allowed to associate with more than one lead consultant under the same bidding exercise.

bidders themselves shall be subject to the following requirements:

(i) if the lead consultant engages a sub-consultant to undertake service of a listed Service Category, the sub-consultant shall (1) be listed under the relevant Service Category and (2) have the same or a lower Group status as compared to the Group status for that particular assignment as shown in **Figure 2.1**. For example, for an assignment with an estimated lump sum fee exceeding $10M under listed Service Categories, consultants in Groups 1 to 3 under Service Categories with three Groups, or Groups 1 to 2 under Service Categories with two Groups shall be engaged as sub-consultant. For an assignment with an estimated lump sum fee exceeding $5M but not exceeding $10M under listed Service Categories, only consultants in Group 1 to 2 shall be engaged as sub-consultant;

(ii) if there is no appropriate Service Category for the sub-consulting services but the services fall within a list of consultants maintained and published by the Government which is of restrictive nature (e.g. Architectural and Associated Consultants Selection Board (AACSB)), the procuring department shall, provide a restrictive list of sub-consulting firms by referring to other lists of consultants maintained and published by the Government (e.g. AACSB) for the service discipline concerned. In that case, the lead consultant shall engage a sub-consultant on the restrictive list so provided to undertake such sub-consulting service; and

(iii) If the service discipline is not available in any list of consultants maintained and published by the Government, the procuring department may provide a non-restrictive list of sub-consulting firms based on all reasonably available sources for the lead consultants' reference. The lead consultant is not obliged to engage a sub-consultant on the non-restrictive list of sub-consulting firms.

For other engineering and associated consultancy assignments not under the listed Service Category, engagement of sub-consultants as required by procuring departments and/or initiated by bidders themselves shall be subject to the following requirements:

(iv) for the sub-consulting service under listed Service Category, consulting firms eligible to be the sub-consultant shall also be determined by referring

to Section 2.1(b)(i) of this Appendix as if the assignment is under the respective listed Service Category. For example, for an assignment with estimated lump sum fee exceeding $5M but not exceeding $10M, only consulting firms in Groups 1 to 2 shall be engaged as sub-consultant; and

(v) for the sub-consulting service not under the listed Service Category, Section 2.1(b)(ii) and (iii) above applies.

Any submission of EOI or T&F Proposals which does not comply with Section 2.1(b)(i) and (ii) of this Appendix, and subject to Section 2.1(d)(i) and (ii) below, will not be considered.

In case consultants have enquiries during tendering period on whether the proposed sub-consulting services are within the scopes of the listed Service Categories or disciplines on the restrictive list provided by the procuring departments, they may seek clarifications from the procuring departments accordingly. The consultants shall submit enquiries with sufficient details to facilitate the processing of clarifications. Upon receipt of enquiries from consultants during tendering period, the Assessment Panels shall, in consultation with the relevant list management departments as appropriate, make the decisions and provide to all consultants invited with the same information before the closing date for submission of EOI and/or T&F Proposals for sake of fairness and transparency. For enquiries regarding whether the proposed sub-consulting service is within the scope of listed Service Categories under the purview of EACSB, the Assessment Panel may first make reference to the classification of assignment complexity table in **Appendix 2.2D** of the EACSB Handbook before consulting with the list management departments. In any case, subject to the advice of the list management departments, services which are recognized as specialized and/or innovative in the industry and/or not generally available among the consultants on the concerned list of consultants based on the respective admission criteria can be considered outside the scope of the respective listed Service Categories or disciplines. If the enquiries raised by the consultants require extra time to resolve, the procuring departments may consider extending the tendering period as appropriate.

(c) Bidding as Joint Venture

For assignments under listed Service Category, only joint venture formed by two

or more listed consulting firms under the corresponding listed Service Category with the listed Group status for that particular type of assignment as stipulated in **Figure 2.1** are allowed. For example, for an assignment with estimated lump sum fee exceeding $5M but not exceeding $10M under Service Categories with three Groups, joint venture of consulting firms in Group 2 can be formed. For an assignment with estimated lump sum fee exceeding $5M under Service Categories with two Groups, joint venture of consulting firms in Group 2 can be formed.

For engineering and associated assignments not under the listed Service Category, the Assessment Panel shall specify the selection criteria of suitable consultants for formation of joint venture. However, for assignments with estimated lump sum fee not exceeding $5M, a joint venture will only be considered as eligible for bidding and award of the assignments if the total number of works-related professional staff in the joint venture does not exceed 15 and the total number of works-related professional staff in each of the individual participants does not exceed 15. In addition, the joint venture or the participants shall be registered and maintain an active office in Hong Kong.

(d) Engagement of Unlisted Consultants as Participants in Joint Ventures or as Sub-consultants to undertake sub-consulting services under listed Service Category

Unlisted consultants are allowed to form joint ventures with listed consultants or to be engaged as sub-consultants to undertake sub-consulting services under any of listed Service Category subject to the following conditions:

(i) Application for inclusion on the List under appropriate Service Category and Group has been submitted by the unlisted consultants on or before the date set for the close of submission of EOI, or if this has been extended, the extended date;

(ii) If a consultant proposes to engage unlisted consultants as sub-consultant, where EOI are invited, the unlisted consultant shall make an application for inclusion on the List under the appropriate Service Category on or before the submission of EOI. The lead consultant shall either remove the unlisted consultant or replace the unlisted consultant with a listed consultant and deliver the notification to the project office before the deadline set for change of sub-consultants as more particularly stated in the invitation letter

for T&F Proposals if the application for inclusion on the List made by the unlisted consultant is yet to be approved by EACSB. In all cases, the lead consultant shall ensure that the application for inclusion on the List made by the unlisted consultant can be approved by EACSB on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date; and

(iii) For unlisted consultants bidding as a participant under a joint venture, the application for inclusion on the List shall be approved by EACSB on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date.

Any submission of EOI or T&F Proposals which does not comply with any of the conditions in Section 2.1(d) of this Appendix will not be considered.

2.2 Procurement by Quotation

For procuring engineering and associated consultancies not exceeding the financial limit as set out in Section 220 of Stores and Procurement Regulations (currently set at $3M), i.e. by means of seeking quotations, **Figure 2.1** is still applicable. For assignments under the listed Service Category, only listed consulting firms in Group 1 shall be invited to submit quotation for the consultancies. Likewise, Cross-Group bidding is only allowed in a controlled manner as stipulated in Section 3.5.1.1 of the EACSB Handbook or when prior approval of the Head of Department has been obtained in accordance with Section 2.3 of this Appendix and restriction on sub-consulting and formation of joint-venture mentioned in Section 2.1 of this Appendix will also be applicable. Prior to the award of the consultancy, the procuring department shall check whether the nominated lead consultant and sub-consultant(s) are still eligible for appointment. The procuring department may make reference to the procedures in **Appendix 3.20C** as appropriate.

For assignments not under the listed Service Category, the requirement on inviting quotation from listed consulting firms will not be applicable. However, a consultant will only be considered as eligible for bidding and award of the assignments if the total number of its works-related professional staff does not exceed 15.

2.3 Deviation from Bidding Restrictions

Unless otherwise specified in the Guidelines attached to DEVB TCW No. 5/2018, prior approval of the Head of Department should be obtained for any deviation from the bidding restrictions stated in Section 2.1 of this Appendix. The approval of the deviation shall cover the proposed alternative tender arrangement to be adopted for the consultant selection exercise. The procuring department shall inform DEVB of the approval of Head of Department, providing relevant details of the consultancy for record purpose.

2.4 Engagement of Specialist Sub-consultants

Depending on the nature and complexity of the assignment, there may be a need for engaging sub-consultants possessing specialized knowledge, overseas experience, and/or providing expert/innovative input etc. on particular areas which may benefit the outcome of the assignment. Procuring departments shall seek prior approval on the relevant deviation from bidding restriction in accordance with Section 2.3 of this Appendix if necessary. The requirements on engagement of the specialist sub-consultants should be clearly stated in the invitation documents as appropriate. The procuring departments shall also include relevant provisions in the invitation documents to suit the corresponding tender arrangement.

APPENDIX 2.2A IMPLEMENTATION PLAN

Activities	Start	Finish
1. Registration		
- Formal registration	3 Jul 2018	-
- Accept full time local/ overseas professionals recognized by local professional bodies	3 Jul 2018	30 Nov 2020
- Accept full time local professionals recognized by local professional bodies only	1 Dec 2020	-
- Allow change Group after registration without imposing debarment period subject to compliance with relevant admission criteria	3 Jul 2018	30 Nov 2020
- First biennial renewal of registration	1 Dec 2020	-
- First re-grouping exercise	2022	
2. Consultancy Tender		
- All EOI/ Tenders to be invited from new Service Categories/Groups *[For consultancies having EOI submission or T&F Proposal (for one-stage procedure) invited on or after the date shown]*	3 Dec 2018	-
- Implement new VFM Measures (Fee Diving Control Mechanism & Full Mark Approach) *[For consultancies having EOI submission or T&F Proposal (for one-stage procedure) invited on or after the date shown]*	3 Dec 2018	
- Implement regulating action against manpower irregularity by deducting marks in technical assessment *[For consultancies having EOI submission or T&F Proposal (for one-stage procedure) invited on or after the date shown]*	3 Dec 2018	
3. Performance Monitoring and Management		
- Continue to adopt current disciplinary action	Current	2 Dec 2018
- Implement disciplinary action in respect of List of Consultants of EACSB, including removing from the List and debarring for re-admission.	3 Dec 2018	-
- Introduce a separate assessment aspect on consultants' professional conduct	1 Jun 2021	-
4. Enhancing Inter-Bureaux/ Departments Coordination		
- Expansion of function of DCRCs	3 Jul 2018	-
- Establishment of ICRC	3 Dec 2018	
- Allow authorized access to PWCRAR and PWPLPR by DEVB Group of Departments	3 Jul 2018	-

APPENDIX 2.2B ADMISSION CRITERIA FOR INCLUSION IN THE LIST

A. Civil Infrastructure and Development (CE) Category

Cat	Staff			History/Standard of Work			Local Office	ISO 9000
	Group 1	Group 2	Group 3	Group 1	Group 2	Group 3		
CE	(1) P1 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P1 >= 3	P1 >= 10	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over $5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P1 stands for professional in General Civil Engineering.

B. Drainage and Sewerage (DS) Category

Cat	Staff			History/Standard of Work			Local Office	ISO 9000
	Group 1	Group 2	Group 3	Group 1	Group 2	Group 3		
DS	(1) P1 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P1 >= 3	P1 >= 10 P3 >= 2 P6 >= 2	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over $5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P1, P3 & P6 stand for professional in “General Civil Engineering”, “Water Supply, Hydraulics and Hydrology” and “Environmental Studies” respectively.

C. Geotechnical and Slope (GE) Category

Cat	Staff			History/Standard of Work			Local Office	ISO 9000
	Group 1	Group 2	Group 3	Group 1	Group 2	Group 3		
GE	(1) P2 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	(1) P2 >= 3; and (2) Incl. min. 1 no. RPE(G) with 15 years post-graduation experience	(1) P2 >= 10; and (2) Incl. min. 1 no. RPE(G) with 15 years post-graduation experience	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over $5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P2 stands for professional in "Geotechnical Engineering/Geology".

D. Roads and Associated Structure (HY) Category

Cat	Staff			History/Standard of Work			Local Office	ISO 9000
	Group 1	Group 2	Group 3	Group 1	Group 2	Group 3		
HY	(1) P1 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P1 >= 3	P1 >= 10 P4 >= 2 P5 >= 2	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over $5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P1, P4 & P5 stand for professional in "General Civil Engineering", "Traffic Engineering/Transportation" and "Highway Engineering/Bridge" respectively.

E. Waterworks (WS) Category

Cat	Staff			History/Standard of Work			Local Office	ISO 9000
	Group 1	Group 2	Group 3	Group 1	Group 2	Group 3		
WS	(1) P3 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P3 >= 3	P3 >= 10	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over HK$5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P3 stands for professional in "Water Supply, Hydraulics and Hydrology".

F. Electrical and Mechanical (EM) Category

Cat	Staff		History/Standard of Work		Local Office	ISO 9000
	Group 1	Group 2	Group 1	Group 2		
EM	(1) P8 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P8 >=3	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas); and (2) Satisfactory completion of either at least one agreement of value over $10M or two agreements of value each over HK$5M in relevant discipline in past 5 years (local or overseas).	Yes	Yes

Note: (1) P8 stands for professional in "Electrical"; "Mechanical"; "Building Services" or "Electronics".

G. Environmental (EP) Category

Cat	Staff		History/Standard of Work		Local Office	ISO 9000
	Group 1	Group 2	Group 1	Group 2		
EP	(1) P6 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P6 >=3	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	(1) Min. 2 years of practice in the discipline in past 5 years (local or overseas)	Yes	Yes

Note: (1) P6 stands for professional in "Environmental Studies".

H. Town Planning (TP) Category

Cat	Staff		History/Standard of Work		Local Office	ISO 9000
	Group 1	Group 2	Group 1	Group 2		
TP	(1) P7 >= 1 with min. 2 years of post- qualification experience; and (2) All works-related professional staff <= 15 (Declaration required)	P7 >= 3 with min. 5 years of post-qualification experience	Min. 2 years of practice in the discipline in past 5 years (local or overseas)	(1) Min. 5 years of practice in the discipline in past 5 years (local or overseas)	Yes	Yes

Note: (1) P7 stands for professional in "Town Planning".

I. Traffic and Transport (TT) Category

Cat	Staff		History/Standard of Work		Local Office	ISO 9000
	Group 1	Group 2	Group 1	Group 2		
TT	(1) P4 >= 1; and (2) All works-related professional staff <= 15 (Declaration required)	P4 >= 3	Min. 1 year of practice in the discipline in past 5 years (local or overseas)	(1) Min. 2 years of practice in the discipline in past 5 years (local or overseas)	Yes	Yes

Note: (1) P4 stands for professional in "Traffic Engineering/Transportation".

Remarks for Appendix 2.2B

1. Both relevant public/private sector agreements will be counted for assessing history/standard of work for admission.

2. For agreements completed by the applicant as a participant or shareholder in the joint venture or as a sub-consultant, only the part of the agreement completed by the applicant shall be accredited and shall be calculated in accordance with its share of works by value. The part completed by the applicant shall be relevant to the services under the Service Category it is applying for. The applicant shall provide sufficient evidence to demonstrate the experience acquired as a participant or shareholder in the joint venture or as a sub-consultant from its completed part of the agreement. Agreements completed by the associated companies of the applicant will not be counted.

3. Completion of agreement refers to the issue of letter of completion of the services. Completion of a significant project milestone in an agreement would also be accepted, provided the consultant could provide evidence that the consultant had satisfactorily completed a range of services which were relevant to the admission application to the satisfaction of the list management department.

4. "Value" refers to the client's estimated value of completed services and, in case of agreements completed by the consultant as a participant or shareholder in the joint venture or as a sub-consultant, the shared value of completed services undertaken by the applicant.

5. "Works-related professional staff" means professional staff input from which is directly related to works, for example, engineers, architects, surveyors, planners and landscape architects, etc. For the avoidance of doubt, the academic/professional qualification and experience requirements stipulated in the "Categories of Staff" section in Appendix C to DEVB TC(W) No. 2/2016 shall be referred to for the assessment of whether a staff member is a "professional" in this regard.

6. For the requirement of minimum number of year of practice, it should be the status as at the date of application.

7. For the requirement of Staff, the staff proposed by the consultant must be employed by the consultant on full time basis. For the avoidance of doubt, staff employed by the associated companies of the applicant will not be counted as staff of the applicant. A staff proposed by the consultant can be counted once for each combination of category and expertise provided the staff proposed can meet the qualification and experience required. For example, if a consultant applying for both CE and DS Categories employs, on full time basis, Staff A who possesses qualification and experience satisfying the requirement of civil engineering (P1), water supply, hydraulics and hydrology (P3) and environmental studies (P6), then Staff A can be proposed by the consultant for satisfying the requirement of having one staff for P1, P3 and P6 each for DS Category and one staff for P1 for CE Category.

8. Referring to the implementation date stated in **Appendix 2.2A**, to count as staff, individuals must be Hong Kong ID Card holders or residents with relevant working visa. In the interim, full-time overseas registered professional satisfying the requirements will also be accepted.

9. Qualification and experience requirements for P1 to P8 are shown below:

Expertise Concerned	Qualification and Experience Requirement
Professional in General Civil Engineering (P1)	(1) A corporate member of the HKIE (Civil Discipline) or equivalent
Professional in Geotechnical Engineering/ Geology (P2)	(1) Geotechnical Stream: a corporate member of the HKIE (Geotechnical Discipline) or equivalent or a Registered Professional Engineer (Geotechnical) (2) Geologist Stream: a holder of an university degree in earth sciences, geology or engineering geology or equivalent with at least 5 years relevant post-qualification experience
Professional in Water Supply, Hydraulics and Hydrology (P3)	(1) A corporate member of the HKIE (Civil Discipline) or equivalent with at least 1 year relevant post-qualification working experience in waterworks
Professional in Traffic Engineering/ Transportation (P4)	(1) A corporate member of the HKIE (Civil Discipline) or equivalent with at least 3 years relevant post-qualification experience in traffic and transport; or (2) A corporate member of the HKIE (Logistics and Transportation Discipline) or equivalent
Professional in Highway Engineering/Bridge (P5)	(1) A corporate member of the HKIE (Civil or Structural Discipline) or equivalent with at least 1 year relevant post-qualification working experience
Professional in Environmental Studies (P6)	(1) A corporate member of the HKIE (Environmental Discipline) or equivalent; or (2) A professional member of Hong Kong Institute of Qualified Environmental Professionals (HKIQEP), or equivalent; or (3) A holder of university degree or equivalent in a relevant discipline, such as environmental science, with 8 years relevant post-qualification experience
Professional in Town Planning (P7)	(1) A corporate member of the Hong Kong Institute of Planners or a Registered Professional Planner in Hong Kong, or equivalent

Expertise Concerned	Qualification and Experience Requirement
Professional in Electrical, Mechanical, Building Services, Electronics (P8)	(1) A corporate member of the Hong Kong Institution of Engineers (Electrical, Mechanical, Building Services or Electronics Discipline) or equivalent, or (2) A Registered Professional Engineer of Electrical, Mechanical, Building Services or Electronics disciplines.

APPENDIX 2.2C REPORT ON OFFICE AUDIT

List of Consultants of EACSB

Report on Office Audit

PART I - CONSULTANT DETAILS

1. Name of Consultant :

2. Date of first included in the List :

3. Service Categories & Groups at the time of audit :

Cat.	CE	DS	GE	HY	WS	EM	EP	TP	TT
Group									

PART II – OFFICE VISITS AND STAFF INTERVIEWED

1. Date(s) of this audit :

2. Service Categories & Groups covered in this audit :

Cat.	CE	DS	GE	HY	WS	EM	EP	TP	TT
Group									

3. This audit is conducted by : *[Name of list management department]*

4. The last audit was made on :

5. Service Categories & Groups covered in the last audit :

Cat.	CE	DS	GE	HY	WS	EM	EP	TP	TT
Group									

6. Staff Interviewed for this audit

Name	Position

PART III – ITEMS AUDITED

Item	Compliance with Requirements			Remarks
	Yes	No.	N/A	
1. Staff 2. History/standard of works 3. Local Office 4. ISO 9000 Certificate				

PART IV – DETAILS OF NON-COMPLIANCE AND OTHER OBSERVATION

[Finding of the audit to be included.]

PART V – GENERAL REMARKS, CONCLUSIONS AND RECOMMENDATIONS

The consultant is / is not eligible to be admitted / remain in Group [ ] under [ ] Category of the List.
[Other general remarks, conclusions and recommendations can be added.]

Audited by:

Signed:		Signed	
Name of Auditor:		Name of Auditor:	
Post:		Post:	
Date:		Date:	

Note on Items to be checked:

Details of the checking for each item is stated below for reference only, audit officers shall decide on the relevant aspects to be checked or include other aspects as appropriate.

Item	Details of the Checking
1. Staff	(a) Whether the staff appeared in the consultant's application/ EACSB's record or staff claimed to have provided service for the Government could be found in the office at the time of audit and, if not, whether his/her working space could be found; (b) Whether the staff concerned could present relevant and valid academic /professional certificates, if there is any doubt; (c) Whether the consultant could present proof for full-time employment status of the staff concerned (e.g. payrolls, bank statements or MPF records); (d) Whether the staff concerned could present HKID Card / working visa; (e) Whether number of works related professional is below 15 (for Group 1 consultant only); (f) Whether there is prima facie staff at any ranks/grades working for the consultant's associated companies; and (g) If the consultant's application or EACSB's record need updating, whether the consultant's qualified professional staff resource has prima facie been reduced to below the minimum number required for the particular Group.
2. History/ standard of works	(a) Whether the consultant could present evidence of practicing in relevant discipline for the required number of years in past 5 years as at the date of audit and/or evidence of undertaking assignments for satisfying the admission criteria.
3. Local Office	(a) Whether local office is of reasonable size, suitably furnished and adequately equipped with appropriate drafting and computing facilities; and (b) Whether the consultant could present valid Business Registration Certificate.
4. ISO 9000 Certificate	(a) Whether the consultant could present a valid ISO 9000 Certificate covering the Service Category(ies) applied.

APPENDIX 2.2D CLASSIFICATION OF ASSIGNMENT COMPLEXITY

	Complex Assignments	Normal Complexity Assignments
Civil Infrastructure & Development (CE)	● Major civil infrastructures including ◆ transport networks and structures; ◆ boundary control point; ◆ site formation works; ◆ port works/ reclamations; ◆ construction and demolition material handling facilities; and ◆ related ancillary works ● Feasibility Study / Planning & Engineering Study for major developments requiring multi-disciplinary inputs / full consideration of interfacing / environmental and cultural heritage issues	● Minor civil infrastructures including ◆ local road networks and structures; ◆ uplifting / beautification / revitalization works and cycle track construction with lesser site constraints / technical difficulties; ◆ site formation works with lesser site constraints / technical difficulties; ◆ port works with lesser site constraints / technical difficulties; and ◆ related ancillary works ● Feasibility Study for minor development projects
Drainage and Sewerage (DS)	● Drainage and sewerage projects involving sewage treatment works, major pumping stations, caverns, tunneling works, major trenchless works, major dry weather flow interceptors, retention/detention facilities, eco-hydraulics/river revitalization, major sustainable drainage system, or requiring multi-disciplinary inputs ● Drainage / sewerage master plan study ● Designated projects under EIA Ordinance ● Feasibility study	● General drainage and sewerage projects such as pipe laying works, village sewerage not involving EIA study and/or sewage treatment works
Geotechnical & Slope (GE)	● Natural Terrain Hazard Study / Mitigation ● Tunnel and Cavern ● Underground Development ● Landslide Investigation ● Development of new standards ● Mines & Quarries	● Upgrading of man-made slopes ● Management and Operation of Public Works Regional Laboratories ● Slope Safety Screening ● Maintenance of man-made slopes

	Complex Assignments	Normal Complexity Assignments
Waterworks (WS)	● Review on water supply strategy including topics on assessment on rainfall yield, water gathering ground, utilization of various water supply sources, water demand forecast. ● Projects involving major and intelligent water supply network including raw water supply from Dongjiang, interconnection of water treatment works supply zones, strategic planning of Pressure Management Areas (PMA) and District Management Areas (DMA) ● Water treatment facilities adopting advanced and contemporary processes such as seawater desalination plant, ozone and UV disinfection. ● Safety review of impounding reservoirs and large service reservoirs ● Consultancy studies and services involving cavern formation	● Design and laying of water mains for local supply zones ● Pumping stations and service reservoirs ● Improvement to catch water system ● Safety review of service reservoirs
Roads & Associated Structures (HY)	● Major road networks, including expressway, trunk road, primary distributor road or district distributor road ● Significant highway structures, including tunnel, flyover, subway, railway bridge and noise barriers/ enclosures spanning over carriageway ● Designated projects under EIA Ordinance ● Feasibility study	● Minor road network, including local road and rural road ● Noise barriers not spanning over carriageway ● Simple highway structures, including bridge and subway without geometric, geotechnical or hydraulic complications
Electrical & Mechanical (EM)	● Major E & M projects ● Complex projects involve input from professionals of multi-discipline ● Projects that require new or special equipment, installation or design input	● Ordinary E & M design projects ● Normal E & M equipment replacement or improvement projects ● Ordinary projects involve professionals of not more than 3 disciplines
Environmental (EP)	● Territory-wide planning studies e.g.	● Scientific / technical or engineering

	Complex Assignments	Normal Complexity Assignments
	master plan of infrastructure ● Strategic / regional environmental facilities e.g. landfill, RTS, waste treatment facility ● Pilot study involving works on environmental facilities ● Scientific / technical or engineering studies / projects require multi-disciplinary inputs ● Strategic / regional / large scale project-based environmental monitoring and audit / impact assessment ● Pilot specialist researches / projects	studies / projects not involving multi-disciplinary input ● Small scale project-based / local environmental monitoring and audit / impact assessment ● Local / community environmental facilities e.g. AQMS, CGS
Town Planning (TP)	● Regional/territorial studies ● Planning & engineering studies ● Special topical planning/urban design study ● Planning studies involving multi-disciplines	● Straightforward planning studies ● Site specific/area or district-based land use/urban design and landscaping/ planning/review or conceptual studies not involving multi-disciplines
Traffic & Transport (TT)	● Major traffic study and transport planning involving traffic impact assessment (requiring the application of transport model) ● Traffic/ transport related Feasibility Study ● Area Traffic Control and CCTV works ● Intelligent Transport Systems ● Large Scale Traffic Surveys such as Annual Traffic Census & Travel Characteristic Survey	● Minor traffic study and transport planning involving traffic review or traffic impact assessment (not requiring the application of transport model) ● Minor scale of traffic / public transport/ parking surveys, etc. ● Cycle tracks and cycle parking facilities

Declaration for Bidding Consultancies with Estimated Lump Sum Fee not exceeding $5M
(for use in consultancy not under the listed Service Category)

1. I/we hereby declare that the total number of the works-related professional staff, for example, engineers, architects, surveyors, planners and landscape architects, of my/our firm(s) does not exceed 15.

2. I/we understand that the declared information is used for the purposes of assessing my/our eligibility for bidding and award of the consultancy assignment in this consultant selection exercise and is subject to verification checking. I/we agree that the information provided in this declaration may be disclosed to the third party for purpose of verification.

3. I/We understand that any misrepresentation in the information that I/we provide on this declaration form may result in the eligibility for bidding and award of the consultancy assignment being jeopardized and/or legal consequences against me/us.

_____

(Name of the Consultants) ……..
(Name of the Signatory) ……..
(Position of the Signatory) ……..
(Date) ……..

APPENDIX 2.2F BIENNIAL RENEWAL EXERCISE REPLY SLIP

Engineering and Associated Consultants Selection Board
Biennial Renewal Exercise
Reply Slip

To: Secretary for EACSB
(Attn: XXXXXXXXX)
16/F, Civil Engineering and Development Building,
101 Princess Margaret Road, Homantin, Kowloon

Please put a tick in the appropriate box.
Provide supplementary sheet if necessary.

☐ I / We would like to confirm that the admission records are still valid and we satisfy the admission criteria in the Guidelines promulgated under DEVB TC(W) No. 5/2018; and propose no further update to the admission records for the purpose of biennial renewal exercise.

☐ I /We propose the following change(s) in our admission records:

☐ Change of Groups

Service Category	CE	DS	GE	HY	WS	EM	EP	TP	TT
Existing Group No.									
Proposed Group No.									

☐ Update of ISO 9000 Certification

☐ Update of Business Registration

☐ Update of organization chart

☐ Update of office layout plan

☐ Update of other information in the Consultant Profile Form[1]

[1] Other information updated shall be highlighted in yellow in the profile form. Information updated without a clear indication in the form may not be considered.

☐ Addition/deduction/amendment of staff information

☐ Addition/deduction/amendment of consultant's experience

Signature: _____

Name: _____

Post: _____

Company: _____

Date: _____

APPENDIX 3.1 - SAMPLE INVITATION LETTER FOR EXPRESSION OF INTEREST

Date

Dear Sirs,

Agreement No. CE XX/XX
(Agreement Title)

1. I am pleased to inform you that you are invited to express interest in undertaking the above consultancy. The invitation documents, referred to as Electronic Invitation Package (EIP), are sent to you on CD-ROM/DVD-ROM* in accordance with WBTC No. 17/2001.

2. The scope of this assignment, which is to commence in _____, is indicated in the attached copy of the draft Brief given in Annex ___ of the EIP.

3. If you are interested in this assignment, please reply to this Office before 12:00 noon on _____ by submitting ____ sets of documents containing the following information in a maximum of four*(for less complex and technically straight-forward assignments if considered appropriate by the Assessment Panel)/six* A4 pages with a minimum font size of 12 points Times New Roman or equivalent:-

(a) your appreciation of the key requirements and constraints/risks of the assignment and approach and strategy to meet the requirements of the assignment;
(b) previous relevant experience both in Hong Kong and elsewhere;
(c) an indication of key staff likely to be employed for the assignment (together with attachments showing their curriculum vitae and an organization chart of the study/project team as necessary);
(d) an indication of sub-consultants to be employed (which should include all individual academic institutions, specialists, advisors, experts and the like proposed to be externally engaged to provide the Services under the Agreement, and all references to "sub-consultants" in this letter should be construed accordingly) and the services to be undertaken by each sub-consultant. For the avoidance of doubt, subject to your confirmation on the employment status, staff seconded from your associated companies (subsidiaries, parent companies or subsidiaries of your parent company) not externally engaged as sub-consultants shall be regarded as your own staff for the purpose of tender assessment, including the overloading checking of manpower input, for this Assignment; and
(e) your comments on the draft Brief given in Annex ___ of the EIP and the draft Schedule of Fees given in Annex ___ of the EIP.

* Delete as appropriate

4. Please note that no attachments, except attachments for the curriculum vitae of the key staff likely to be employed on the consultancy (limited to 2 pages in A4 size per staff) and the organization chart of the study/project team (limited to 1 page in A3 size) as mentioned above, should be included in your submission. The expression of interest (EOI) submission including the attachments shall be inexpensively bound and printed on both sides. Late submissions or submissions containing pricing information shall not be considered. For exceedance of the specified number of pages of EOI submission and attachments or inclusion of attachments other than curriculum vitae and organization chart, all the exceeded pages shall be discarded prior to the assessment. Also, 1 mark shall be deducted from the overall score for non-compliance

with the specified format such as the page size, font size, or double-sided printing. Documents submitted in response to paragraphs 9, 10, 13, 14, 17, 19 and undertakings as required in paragraph 18 below are not counted towards the number of pages of the EOI submission.

5. You may make your submission in either electronic format or hard copy format. If part of the submissions is made in both electronic and hard copy formats, the electronic format shall prevail over the corresponding hard copy format. If you elect to make your submission in electronic format, the documents for your proposal shall be prepared and submitted in accordance with Annex _____ - Requirements for Submission of Proposal in Electronic Format. All proposals, whether submitted in electronic format or hard copy format, will be evaluated on an equal basis.

6. The electronic documents for preparing your submission are listed in Schedule 2 to the Licence Conditions for the EIP. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2.

7. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or "extreme conditions after super typhoons" announced by the Government is/are in force between 9:00 am and 12:00 noon on the above deadline, the deadline will be extended to 12:00 noon on the following working day. Saturday is not counted as a working day.

8. The assessment criteria and weightings for marking the EOI submitted by consultants and the composition of the Assessment Panel are given in Annex ___ of the EIP.

9. If you are a limited liability company, then you are required to submit documentary proof that the majority of the voting power in meetings of the company shall be held by directors who are consulting engineers (or equivalent professionals of associated professions).

10. You are also required to declare any involvement or interest if it is considered by you to be in real or apparent conflict with the duties to be performed for this consultancy. Any involvement or interest declared would be carefully considered but would not automatically bar you from being further considered in the selection process.

11. For information, the Assessment Panel has agreed that for this consultancy, the past performance of sub-consultants will [*or will not*] be assessed in the Technical and Fee Proposal stage.

12. Consultants in Group [number] under the Service Category of [name of Service Category] maintained by EACSB are invited to make Expression of Interest submission for this Assignment. The initial list of qualified consultants approached for this Assignment is given in Annex_____of the EIP for your information. Joint ventures with participation of local and/or overseas consultants with at least one of the participants or shareholders being on the above initial list are also invited to make submission of Expression of Interest for this Assignment. Based on the response received, normally [four*/five*(the latter for pairing of consultant selection exercises)] suitable firms will be shortlisted for submission of technical and fee proposals. 【*Inclusion of Annex B as an Annex to this letter is mandatory.*】

12a. Your attention is drawn to the bidding restrictions set out in Annex _____ to this letter. 【*Inclusion of Annex C as an Annex to this letter is mandatory.*】

12b. If you propose to engage sub-consultants for this Assignment to undertake sub-consulting services under any of the listed Service Categories and/or service discipline having a list of consultants maintained and published by the Government shown in Annex _____ to this letter, 【*Inclusion of Annex D as an Annex to this letter is mandatory.*】 you must ensure that the sub-consultants concerned have complied with bidding restrictions as set out in Annex _____ 【*Inclusion of this Annex to this letter is mandatory - see*

Paragraph 12a. above】. Failure to comply with this requirement will lead to disqualification of your Expression of Interest submission."

12c. 【*Insert if applicable*】The list of sub-consulting firms for undertaking sub-consulting service not under any service discipline having a list of consultants maintained and published by the Government is given in Annex _____ to this letter for your information. 【*Inclusion of this Annex to this letter is discretionary - see Section 2.3.1(b)(iii) of the Guidelines*】 You may consider teaming up with the sub-consulting firms on the list if required for this Assignment. For the avoidance of doubt, this attached list of sub-consulting firms is non-restrictive and for your information only. You are not obliged to engage the sub-consulting firms on the attached non-restrictive list as sub-consultants for this Assignment. The Expression of Interest submission for this Assignment in respect of sub-consultants will be evaluated on an equal basis, whether the sub-consultants are on the attached non-restrictive list or not. The Government will not be responsible for any liability in respect of your engagement of sub-consulting firms on the attached non-restrictive list.【*Insert Annex E, if applicable*】

12d. 【*Insert if applicable*】For the avoidance of doubt, you are not obliged to engage only the consulting firms on the lists given in Annex _____ to this letter 【*Inclusion of Annex D – see Paragraph 12b. above*】 for solely undertaking the following services in this Assignment:
【*This paragraph can be inserted (i) when the Assignment comprises services outside the listed Service Categories or disciplines and the procuring department considers that the consultants may propose in the submission to engage sub-consultants for undertaking such services, and/or (ii) when the procuring departments would like the consultants to engage sub-consultants with specialized knowledge, overseas experience and/or providing expert/innovative input, etc. Before inserting this paragraph, the procuring department shall check with the list management departments where appropriate or seek prior approval for deviation from bidding restrictions – See Sections 2.3.1(b) and Section 2.3.4 of the Guidelines*】

The Expression of Interest submission for this Assignment in respect of the sub-consultants solely for the above services will be evaluated on an equal basis, whether the sub-consultants are on the lists given in Annex _____ to this letter【*Inclusion of Annex D – see Paragraph 12b. above*】 or not.

13. No consultants are permitted to submit more than one bid for the same agreement. For the avoidance of doubt, consultants who submit a bid in their own name and a bid in the name of an un-incorporated joint venture/partnership (with the consultants concerned as a participant/partner) will be considered as having submitted two bids. Consultants (these must be consulting firms to be eligible for being considered for this consultant selection exercise) having linkages to each other, e.g. subsidiaries, parent or sister companies are not allowed to bid on the same agreement. Only one firm among such consultants, as the case may be, should be allowed to submit expression of interest for a consultancy agreement. In your expression of interest submissions, you are thus required to declare any linkage with other consultants on the above list. For the avoidance of doubt, if you have no linkage with any consultants on the above list, you are also required to declare the same in the expression of interest submissions. The existence of a holding-subsidiary relationship shall be determined in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap 622), "Sister companies" shall mean all companies which are subsidiaries of or otherwise belonging to the same holding company. Consultants having linkages should sort out among themselves before submitting any expression of interest.

14. For the purpose of this "no linkage" requirement, an academic institution and any separate entities/companies formed by the same academic institution or any of its current staff, or any two of such entities/companies (whether formed by the same staff or not), shall be regarded as "linked". An academic institution, and all such entities/companies formed by it or any of its current staff (whether by the same staff or not), shall be allowed to submit only one expression of interest for the same consultancy agreement. You are also required to declare any such linkage with other consultants on the above list, if applicable. An

entity/company is regarded as formed by the academic institution or its staff if the latter is a partner/shareholder or a director of the former, whether or not the latter is a founding partner/subscriber when the entity/company was formed. However, the "no linkage" rule does not apply to "linked" consulting firms (including academic institutions) who bid as sub-consultants only for any agreement.

15. Failure to observe the requirement stated in paragraphs 13 and 14 shall render all related expression of interest submitted null and void and any such submission shall not be considered.

16. 【*Insert if applicable, please refer to the-then SETW's memo ref (00WNL-02-4) in ETWB(PS) 106/11 dated 6.1.2006 for details*: The consultant appointed in the early stage consultancy is a potential bidders, but all the information which was made available to that consultant and all the advice which the consultant has provided and which is relevant to the procurement of this consultancy will be equally made available to all potential consultants upon request.】

17. If sub-consultants are to be employed, you are required to complete the table in Annex _____ to this letter indicating, if any, the scope of sub-consulting services to be undertaken by each listed and unlisted sub-consultant to be employed, the relevant listed service category or discipline for which each sub-consultant is to be employed and the corresponding list maintained and published by the Government. If your proposed sub-consultant is unlisted but an application for application for inclusion on the List of Consultants of EACSB under the relevant Service Category has been made prior to the date set for close of submission of Expression of Interest, please also indicate on which the date such application is made in the table. Failure to submit the table as required above with the Expression of Interest submission will lead to disqualification of the consultant's Expression of Interest submission. If you have any enquiry in completing the table on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline and would like to seek clarification, your enquiry must be delivered to me by hand before 12:00 noon,_____【*the procuring department should specify the exact date here, say at least ten working days before the deadline for submission of EOI*】. The enquiry shall be sufficiently specific to facilitate the preparation of clarification. Late enquiry will not be entertained. 【*Inclusion of Annex F as an Annex to this letter is mandatory.*】

18. You should indicate in your staffing proposal which of the proposed staff are core personnel and the employment status (i.e. fulltime or not) at the time of bidding of each and every core personnel to be deployed by you or your sub-consultants in this Assignment. You should also indicate which core personnel will undertake the designations of the Project Manager, the Project Director and the [three] Team Leader(s)【*the procuring department shall amend it where appropriate to align with the assessment criteria*】as required in the assessment criteria. You should produce undertaking signed by all non-fulltime core personnel (of yourself or your sub-consultants) to confirm their involvement in the event that you are awarded the consultancy.

19. 【*For agreements that are administered by works departments and exceeding the Quotation Limit in SPR 220, this paragraph and inclusion of* ***Annex A*** *as an Annex to this letter are mandatory.* 】The requirements for ISO 9000 certification are set out at Annex __ to this letter.

20. Please note that documents of unsuccessful consulting firms will be destroyed three months after the date the Agreement has been awarded and signed.

21. 【*Insert if applicable: Please note that this invitation is made before the necessary funds for the consultancy have been approved. The Government reserves the right to cancel this consultant selection exercise for not having the necessary funds approved or for any other reason, in which case you will accordingly be notified.*】 It should be noted that the Government will not be responsible for the reimbursement of any cost incurred by you for the preparation of the submission.

22. I should be pleased if you would acknowledge receipt of this invitation letter.

23. If you require further details, please contact _____at telephone _____.

Yours faithfully,

( )

cc.
Secretary, EACSB - w/o encl.
【*Insert if applicable: Secretary, DCSC - w/o encl.* 】

Note - This sample letter should be modified where necessary to suit the circumstances in accordance with the details set out in the relevant Technical Circulars or circular memoranda, e.g. the open invitation for expression of interest, pairing of consultant selection exercises, etc. If it is intended that the past performance of sub-consultants should be one of the assessment criteria in the assessment of Technical Proposals at the next stage, the longlisted and interested consultants should be so informed in this letter, and the relevant practices as set out in Section 3.5.2 of the EACSB Handbook should have been followed prior to this invitation.

Annex A

[Annex__] to Invitation Letter for EOI – Requirements of ISO 9000 Certification

(1) The consultant shall submit, together with its expression of interest, a copy of its ISO 9001:2015 certificate acceptable to the Employer showing the scope of certification and a statement either:

(A) confirming that no area / aspect in the consultancy agreement which its quality system specifically excludes; or

(B) disclosing the areas / aspects in the consultancy agreement which its quality system specifically excludes.

(2) Subject to the following paragraphs, submissions from consultants who have not obtained ISO 9001:2015 certification on or before the date of this invitation may not be considered.

(3) If the consultant, due to circumstances beyond its control, has not obtained ISO 9001:2015 certification but a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong by a certification body acceptable to the Employer and such Quality Manual has been confirmed by the certification body as being in conformity with the requirements of ISO 9001:2015 standard on or before the date of this invitation, the submission by the consultant will still be considered provided that the consultant shall undertake in writing if it is awarded the consultancy agreement, to book within three months of the award of the consultancy agreement, the date of audit for the ISO 9001:2015 certification with the certification body; with detailed documented quality system procedures ready at the time of booking. The booking of the audit shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

(4) If the consultant whose scope of certification excludes site activities service which is required to be provided by the consultant under the consultancy agreement, its submission will be considered to be non-conforming in respect of the certification requirements. If the consultant can prove to the satisfaction of 【*name of the department concerned*】 that such exclusion is due to circumstances beyond its control, the proposal may still be considered to be conforming in respect of the certification requirements provided that the consultant shall undertake in writing that if the consultant is awarded the consultancy agreement, it shall apply within three months of the award of the consultancy agreement to the certification body for revision of its current scope to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. The submission of an application for revision of the scope of its ISO 9001:2015 certification to cover site activities service shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

(5) If the consultant is a joint venture, the consultant shall submit, together with its expression of interest, a statement declaring that it shall implement the quality system of one of its participants or shareholders, and specifying which one. The reference to ISO 9001:2015 certificate, ISO 9001:2015 certification and Quality Manual referred to paragraphs (1) to (4) above shall refer to that of the specified participant or shareholder. The consultant shall also submit a copy of the written notification to the certification body of the specified participant or shareholder that the joint venture shall implement the quality system by the specified participant or shareholders and the written agreement of all participants, or as the case may be, shareholders of the joint venture that the activities of the joint venture shall be subject to the surveillance of the certification body.

Annex B

INVITATION FOR EXPRESSION OF INTEREST

Consultancy Agreement No. _____
(Agreement Title)

List of Consultants Invited for Expression of Interest

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____

N.B

(a) Please check for the most updated list of consultants in each Service Category maintained by EACSB on the CEDD's website.

(b) Please insert the full name of the consultant.

Annex C

[Annex__] to Invitation Letter for Expression of Interest – Bidding Restrictions

1. Any Expression of Interest (EOI) submission made by a consultant not eligible for being invited to make EOI submission at the time of invitation will not be considered.

2. If the EOI submission is made by a joint venture, the bidding restrictions stipulated in Section 2.3 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines) in respect of engagement of joint venture shall be complied with. Any EOI submission made by a joint venture in the form being not acceptable in accordance with Section 2.3 of the Guidelines will not be considered.

3. (a) If a joint venture is formed by listed consultants with one or more unlisted consultants, the listed consultants in the joint venture shall confirm that each unlisted consultant is technically capable for that part of the consultancy services it undertakes. For unlisted consultants bidding as participants in a joint venture, they shall make application for inclusion on the List of Consultant of EACSB (the List) under the appropriate Service Category on or before the submission of the EOI. Otherwise, the EOI submitted by the concerned joint venture will not be considered.

   (b) In the event the scenario in paragraph 3(a) above applies and the joint venture is shortlisted for submission of the Technical and Fee (T&F) Proposal, approval from EACSB for inclusion on the List shall be obtained for all the unlisted consultants on or before the date set for the close of submission of the T&F Proposal, or if this has been extended, the extended date. Otherwise, the T&F Proposal submitted by the concerned joint venture will not be considered.

4.1 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed Service Category maintained by EACSB, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall choose to engage sub-consultant(s) with the listed status in Group _____ or lower under the relevant Service Category with three Groups and /or in Group _____ or lower under the relevant Service Category with two Groups maintained by EACSB for the sub-consulting service concerned. 【*the procuring department shall input the appropriate Group Number(s) as determined in accordance with Section 2.3.1(b) of the Guidelines.*】

   (b) Failure by a consultant to comply with the requirements in paragraph 4.1(a) above will lead to disqualification of the consultant's EOI submission unless the unlisted sub-consultant proposed has made an application for inclusion on the List under the appropriate Service Category on or before the submission of the EOI.

(c) In the event that the "unless" scenario in paragraph 4.1(b) above applies, the consultant shall ensure that the application for inclusion on the List made by the unlisted sub-consultant is approved by EACSB on or before the date set for the close of submission of T&F Proposal, or this has been extended, the extended date. Otherwise, the consultant, if shortlisted, shall either remove the unlisted sub-consultant or replace the unlisted sub-consultant with a listed sub-consultant and deliver the notification to the project office before the deadline set for change of sub-consultant as more particularly stated in the invitation letter for T&F Proposal. T&F Proposal which does not comply with the above requirements will not be considered.

4.2 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed service discipline/categories maintained by Architectural and Associated Consultants Selection Board ("AACSB") 【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided in the invitation letter*) 】, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall engage sub-consultant(s) with the listed status for the relevant service discipline/category maintained by AACSB【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided*) 】 for the sub-consulting service concerned.

(b) Failure by a consultant to comply with the requirement in paragraph 4.2(a) above will lead to disqualification of the consultant's EOI submission.

4.3 If the consultant proposes one or more sub-consultants to undertake sub-consulting service not under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2 above, the consultant may engage any sub-consultant(s) even if they are not listed under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2.

5. Subject to paragraphs 3(a) and 4.1(b) above, the consultant must ensure that at the time of submission of EOI, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ 【*Refer to Annex D to this sample invitation letter*】to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the consultant's EOI submission.

6. If the consultant becomes ineligible for consideration because of change in listing status during the assessment period of EOI submission, the consultant's EOI submission will not be considered further. If a consultant who submitted the EOI submission has teamed up with a sub-consultant who is no longer eligible for shortlisting after the closing date for EOI submission, the Assessment Panel may

continue the assessment by referring the listing status as at the closing date for EOI submission.

Annex D

INVITATION FOR EXPRESSION OF INTEREST

Consultancy Agreement No. _____
(Agreement Title)

Listed Service Category or Service Discipline
having a List of Consultants Maintained and Published by the Government

1 All listed Service Categories maintained by EACSB; [*Mandatory to be included*]
2 All listed Service Categories maintained by AACSB; [*Mandatory to be included*]
3 [*Procuring departments to add relevant lists which are of restrictive nature*];
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____

Note:

(a) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines).

(b) The consultant must ensure that at the time of submission of EOI, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown above are eligible for bidding under the proposed service category in the relevant list. Subject to note (c) below, failure to comply with this requirement will lead to disqualification of the respective EOI submission.

(c) Unlisted consultants are allowed to be engaged as sub-consultants to undertake sub-consulting services under listed Service Category maintained by EACSB subject to prior application for inclusion in the List of Consultants having been made and compliance with the requirements set out in Section 2.3.1 (d) of the Guidelines.

(d) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may

seek clarification from procuring departments as stated in the invitation letter.

N.B

Procuring departments shall add relevant lists above to suit the specific natures of projects where appropriate.

Annex E

INVITATION FOR EXPRESSION OF INTEREST

Consultancy Agreement No. _____
(Agreement Title)

List of Sub-consulting Firms for Undertaking Sub-consulting Service not under Listed Service Category Maintained by EACSB or any Service Discipline having a List of Consultants Maintained and Published by the Government

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____

Note:

(a) The list is non-restrictive and for information only. The tenderers are not obliged to engage the sub-consulting firms on the above list as sub-consultants for this Assignment.

(b) The Government will not be responsible for any liability in respect of tenderers' engagement of sub-consulting firms on the above list.

N.B

Please insert the full name of the consultant.

Annex F

Table of Listed and Unlisted Sub-Consultants
and Scope of Sub-consulting Services to be undertaken

Consultancy Agreement No. _____
(Agreement Title)

Name of Sub-consultant	Listed Service Category or Discipline (Notes a and b)	Corresponding List maintained and published by the Government (Note b)	Scope of Sub-consulting Services to be undertaken (Notes c to f)
e.g. Company A	Traffic and Transport Category	The Engineering and Associated Consultants Selection Board	Traffic study and planning
	Architectural Category	The Architectural and Associated Consultants Selection Board	Architectural aesthetic design

Note:

(a) If the proposed sub-consultant is unlisted but an application for inclusion on the List of Consultants of EACSB under the relevant Service Category has been made prior to the date set for close of submission of EOI, please also indicate the date such application is made.

(b) If the proposed sub-consultant is unlisted without making any application for inclusion on the List of Consultants of EACSB, please mark "Nil".

(c) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines).

(d) The consultant must ensure that at the time of submission of EOI, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ 【Refer to Annex D to this sample invitation letter】 to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Subject to note (e) below, failure to comply with this requirement will lead to disqualification of the respective EOI submission.

(e) Unlisted consultants are allowed to be engaged as sub-consultants to undertake sub-consulting services under listed Service Category maintained by EACSB subject to prior application for inclusion in the List of Consultants having been made and compliance with the requirements set out in Section 2.3.1 (d) of the Guidelines.

(f) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

Appendix 3.1A – Sample Template for Shortlisting Criteria

The selection criteria for forming a short-list are given below:-

Selection Criterion	Percentage mark to be allocated (%)
1. Appreciation of the key requirements and constraints/risks (See Note 2)	XX
2. Approach and strategy to meet the requirements of the assignment [Procuring department may include sub-criteria where appropriate, to cover the consultants' approach and strategy on innovation, creativity, mechanisation, prefabrication, other productivity enhancements, cost reduction, expenditure leveling, etc.] (See Note 3)	XX
3. Previous relevant experience both in Hong Kong and elsewhere (See Note 4)	XX
4. Knowledge, experience and capability of key staff (See Note 5)	XX
5. Past performance of the consultant (See Note 6)	XX
6. Past performance of sub-consultants (See Note 6)	XX
Total	**100**

Notes:

1) For each selection criterion for shortlisting, each Assessment Panel Member should grade the particular aspect as either "very good", "good", "fair" or "poor". The marks corresponding to these grades are:

Grade	Marks (%)
Very Good (VG)	1.0 × Y
Good (G)	0.8 × Y
Fair (F)	0.6 × Y
Poor (P)	0.3 × Y

where Y is the percentage mark allocated to the criterion.

2) Criterion (1) shall be assessed based on the consultants' appreciation of key requirements and constraints/risks additional to those set out in the Brief. If no additional appreciation is included, a "fair" grading at most should be given.

3) The consultants' detailed proposals for Criterion (2) are not expected and shall not be assessed in the shortlisting stage but the consultants are encouraged to indicate their broad approach and strategy, particularly on innovative ideas, productivity enhancements, cost savings which may demonstrate their edge in undertaking the assignment.

4) For attaining full mark (i.e. grade VG), a consultant should possess experience on having conducted [5] or more relevant consultancy assignments within [10] years on or before the original or the extended expression of interest submission closing date.

No. of relevant consultancies involved	Grade
[5] or more	VG
[3] to [4]	G
[1] to [2]	F
0	P

5) For attaining full mark (i.e. grade VG), a consultant should provide the minimum number of core personnel who should possess the corresponding minimum qualification and experience as mentioned in the tables below. Marks allocated to each core personnel under the same designation are on equal basis.

If the undertakings signed by non-fulltime core personnel to confirm their involvement in undertaking the designations of Project Manager, Project Director and/or Team Leaders 【*the procuring department shall amend it where appropriate to align with the assessment criteria*】 cannot be produced, the staff concerned shall be considered as failure to meet the requirements and "P" shall be marked for the staff concerned accordingly.

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Project Manager] (Mark: XX%) Minimum number: [1] Minimum qualification of a [P/D] category	Not less than [20] years	Not less than [5] projects	VG
	Not less than [18] years	Not less than [3] projects	G
	Not less than [15] years	Not less than [1] project	F
	Fail to meet the standard above		P

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Project Director] (Mark: YY%) Minimum number: [1] Minimum qualification of a [P/D] category	Not less than [20] years	Not less than [5] projects	VG
	Not less than [18] years	Not less than [3] projects	G
	Not less than [15] years	Not less than [1] project	F
	Fail to meet the standard above		P

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Team Leader] (Mark: ZZ%) Minimum number: [3] Minimum qualification of a [CP] category	Not less than [18] years (professional); or Not less than [23] years (academic)	Not less than [5] projects	VG
	Not less than [15] years (professional); or Not less than [20] years (academic)	Not less than [3] projects	G
	Not less than [12] years (professional); or Not less than [17] years (academic)	Not less than [1] project	F
	Fail to meet the standard above		P

(N.B: The sum of XX, YY and ZZ shall be 100. Add additional tables if required. In addition,

the job reference to be counted as relevant may be elaborated to suit the specific nature of project where appropriate.)

The minimum qualification and experience requirements of individual categories of staff are shown in the table below. Only the qualification and experience obtained by the proposed staff on or before the closing date of submission of EOI for this tender shall be counted.

Staff category	**Minimum academic / professional qualifications**	**Minimum experience requirement**
Partners/ Directors	Corporate member of an appropriate professional institution or equivalent	15 years relevant post-qualification experience (applicable to professional membership only)
Chief Professional	Corporate member of an appropriate professional institution or equivalent	12 years relevant post-qualification experience
	University degree or equivalent in an appropriate discipline for specialist trades, such as geology, transport, environmental science or other trades where appropriate professional institutions are not commonly in existence	17 years relevant post-qualification experience

(N.B: Include other categories of staff if required.)

6) The following method shall be used in the assessment of past performance of the consultant and sub-consultants:

(a) Assessment of past performance of a consultant and his sub-consultants (if applicable) should be carried out separately, based on their updated Past Performance Rating (PPR) under the purview of the board which the consultancy is procured in the Consultants' Performance Information System (CNPIS). Details of PPR shall be referred to Development Bureau (DEVB) Technical Circular (Works) (TC(W)) No. 3/2016. For any unincorporated joint venture making a submission, his PPR shall be taken as the average of PPRs of all his participants having a PPR *(or the weighted average of PPRs of all his participants having a PPR if approved by EACSB/AACSB/relevant DCSC). The latest PPR issued by DEVB on or before the due date for submission of the expression of interest shall be used for the marking of the past performance of the consultant and sub-consultants in the shortlisting stage.

(b) Those consultants proposing no sub-consultant should be assessed under the criterion "past performance of sub-consultants" as if they were sub-consultants to themselves.

(c) Where a consultant proposes more than one sub-consultant, the PPR shall be taken as the average of PPRs of those sub-consultants who have a PPR.

(d) Where none of the proposed sub-consultants of a consultant has a PPR, the consultant should be assessed under the criterion "past performance of sub-consultants" as if he was a sub-consultant to himself.

(e) The following formula shall be used to calculate the mark for "past performance of the consultant" (same for sub-consultants):

$$\text{Mark assigned to consultant "i"} = \text{Mark allocated for the criterion of past performance} \times \frac{R_i}{R_{highest}}$$

where: (i) R_i is the current PPR of consultant "i".

(ii) $R_{highest}$ is the highest current PPR among all of the consultants involved in the exercise.

(iii) In case there is only one consultant in the exercise having a PPR, his mark in the criterion of past performance shall be calculated by:

$$\text{Mark allocated for the criterion of past performance} \times \frac{\text{PPR of the consultant}}{100}$$

and the calculated mark shall then be taken as a "cap" for all the other consultants' marks calculated using the method in the Note 6(f) below.

(f) For a consultant having less than 4 performance scores under the relevant consultants selection board concerned in the past three years, his PPR shall not be considered. The "past performance of the consultant" sub-section shall then be marked based on the consultant's weighted average percentage mark (not the grade) in the remaining sections excluding the "past performance of sub-consultants" sub-section if any, subject to the cap derived in Note 6(e)(iii) above for the case with only one consultant having a PPR if applicable.

(g) A consultant who is under suspension from bidding shall not be shortlisted for submission of technical and fee proposals for further consultancy assignments until the suspension is lifted. Submission already submitted by the consultant in response to invitations before the suspension is imposed should continue to be assessed subject to further consideration as given in Note 6(h) below.

(h) For a consultant who is suspended from bidding after he has submitted expression of interest or a consultant, although not suspended from bidding but serious default or non-performance of him (such as those mentioned in paragraph 22 of Annex I of DEVB TC(W) No. 3/2016) has been made known to the Assessment Panel, the Assessment Panel shall carefully consider whether the submission of such consultant should be further processed. If the

Assessment Panel decides not to further process the proposal of such consultant, the Assessment Panel should seek endorsement from the AACSB/EACSB (or the relevant DCSC) on such decision before continuing with the consultant selection exercise.

7) The Assessment Panel comprises [insert the number] marking members from [insert the department names and respective numbers] and [insert the number] non-marking members (Chairperson and Secretary) from [insert the department name].

Remarks:

1. The procuring department shall make reference to DEVB TC(W) No. 2/2016 and No. 5/2018 and amend the guidelines as appropriate.

2. The procuring department should update the information in square brackets to suit specific project need as appropriate.

* Delete as appropriate.

APPENDIX 3.2 SAMPLE MEMO FOR SHORTLISTING STAGE SUBMISSION TO EACSB

RESTRICTED (CONTRACT)

MEMO

From	Head of Department	*To*	Chairman EACSB
Ref	*in*		(1 copy thro' Secretary EACSB)
Tel No		*Your Ref*	*in*
Fax No		*dated*	
Date		*Fax No*	

Engineering & Associated Consultants Selection Board (EACSB)
(Submission for consideration at meeting on _____)

1. **CONSULTANCY AGREEMENT NO. & TITLE**

Agreement No. CE XX/XX -

2. **AUTHORITY TO EMPLOY CONSULTANTS**

PWP Item No. :

Agreement from *(the Head of Department)* was given on ___ and policy support from *(the relevant Director of Bureau or a public officer authorised by him)* was also obtained on _____, for the employment of consultants.

*Parallel tendering was adopted in accordance with the Financial Circular No. 3/2020. *Approval for exemption from *(or* adoption of*, where appropriate)* parallel tendering was granted by _ _____ on _____ in accordance with the Financial Circular No. 3/2020. *Funding approval was given by _____ on _____ *(or)* *The consultancy will be funded by _____ to be created under _____. *(* delete as appropriate)*

*Funds approved *(or)* *Funds to be approved:_____ *(* delete as appropriate)*

Breakdown of cost (without MOD adjustment)

Estimated fees :

(a) Lump sum _____

(b) Variations _____

(c) Inflation-related payments _____ *(ref. Handbook Section 5.3.2)*

(d) RSS on-cost _____ *(if applicable)*

The details on how the staff rates for the six staff categories are derived for estimation of the lump sum, variations and RSS on-cost *(if applicable)* are given in Appendix A.

Notional RSS cost : _____ *(if applicable)*

Estimated total value of all reimbursable items : _____ *(if applicable)*

Study period : _____months

Estimated manpower input :

Directors / Partners:	_____	man-weeks
Chief Professional Staff:	_____	man-weeks
Senior Professional Staff:	_____	man-weeks
Professional Staff:	_____	man-weeks
Assistant Professional Staff:	_____	man-weeks
Technical Staff:	_____	man-weeks

3. APPROVAL NOW REQUESTED

The Board's approval is sought to adopt :-

3.1 the shortlist of ____ firms/joint ventures of consultants listed below and to invite them to submit technical and fee proposals for the Assignment :-

.....

3.2 the marking scheme for the technical proposals, and the technical/consultancy fee/fee quality weighting of ___%/___%/__% to be applied to the overall assessment; and

3.3 the Notional Value of $ _____ for additional Services.

4. PREVIOUS SUBMISSIONS TO EACSB

'None' if no previous submissions have been made.

Dept/Office	Date of EACSB/DCSC(if any) meeting, or state "CIRCULATION"	Decision or Approval given	EACSB/DCSC (if any) ref. & date

5. BACKGROUND/ARGUMENT

State concisely the background leading to this consultancy agreement and the recommendations for approval. The following are some of the elements that should be mentioned :-

5.1 The Assessment Panel comprises _____. The Assessment Panel met on _____ to determine the Service Category and Group(s) of consultants under the List of Consultants of EACSB to be invited to express interest for the Assignment and the complexity of the Assignment. As determined by the Assessment Panel, the Assignment is normal* *(or)* complex* complexity *(* delete as appropriate)* according to Appendix 2.3 of

the Guidelines attached to DEVB TCW No. 5/2018 (the Guidelines) as it involves ___ _____ *(elaborate the scope of works / reasons for the selection of the complexity for the Assignment)*. _____ consultants in Group(s) _____ of ____ Service Category, as agreed by the Assessment Panel and listed in Appendix B, were invited to express interest in undertaking the assignment. A notice of inviting expression of interest (EOI) through internet was also posted on the website of this department.

5.2 In response to the invitation, amongst the _____ consultants invited, _____ of them expressed interest while _____ did not express interest for reasons given in Appendix B. *(State the assessment of the EOI submissions for compliance with the submission requirements, any exceed pages discarded prior to assessment and any mark deduction due to non-compliance with the format requirements.)*

5.3 The issues of SPR 186 have been fully addressed. All members, including the Chairperson and the Secretary, of the Assessment Panel have declared they have no conflict of interest (actual, potential or perceived) in conducting the consultants selection for the agreement. Also, all officers involved in preparing consultancy documentation (including consultancy briefs and marking schemes) and assessment for the shortlisting exercise have declared they have no conflict of interest (actual, potential or perceived).

5.4 The Assessment Panel met on _____ to discuss the scores given to the submissions. A summary of the assessment made by the Panel is given in Appendix C. The Assessment Panel also reviewed the latest listing status of the _____ consultants and the eligibility of the sub-consultants proposed by each of the consultant in their EOI submission. The review of the Assessment Panel confirms that the consultants and sub-consultants comply with the bidding restrictions as set out in Section 2.3 of the Guidelines and are eligible for bidding. Summary of the eligibility of the consultants and sub-consultants is attached in Appendix D *(The summary of the eligibility of the sub-consultants should include (i) the names of all consultants and their sub-consultants, (ii) the area of involvement / sub-consulting services provided by the sub-consultants, (iii) whether the area of involvement / sub-consulting services provided by the sub-consultants is under appropriate listed service category and the corresponding listing status of the sub-consultants and (iv) the Assessment Panel's assessment on the eligibility of the sub-consultants. Confirmation from the relevant list management department(s) on whether certain sub-consulting services are within/outside the scope of any particular Service Category(ies) should be provided to support the Assessment Panel's assessment.*)

5.5 The key points discussed by the Assessment Panel are highlighted as follows:-

.....

5.6 The proposed "Guidelines on Preparation of Technical Proposal" are shown in Appendix E.

5.7 The detailed marking scheme which consists of the proposed marks to be allocated to each main section and sub-section, and the weighting to be applied to each panel member are shown in Appendix F.

5.8 The Assessment Panel has endorsed the following parameters for the assessment … *(The justifications for adopting the weighting of staff composition should be stated.)*

5.9 A technical/consultancy fee/fee quality weighting of ___%/___%/___% is proposed due to ..... *(give justification to the weighting proposed)*.

5.10 The following documents are attached for the Board's examination in principle :

(a) The draft Consultancy Brief is attached at Appendix G.

(b) The draft Schedule of Fees which includes the payment schedule is attached at Appendix H.

(c) The consultants will be required to submit a lump sum fee proposal using the proforma given at Appendix I.

5.11 Details of reimbursable items as at Appendix I will be provided to the consultants. … *(with deliberation / decision on why the arrangement of reimbursable items is considered more suitable)*

6. ATTENDANCE

State name, post and contact telephone and fax numbers of the officer (D2 or above) who will attend the EACSB meeting when so required by the Board.

7. ATTACHMENTS

Appendix A - Estimation of the staff rates for the six staff categories for the lump sum, variations and RSS on-cost *(if applicable)* Appendix B - List of consultants invited to express interest and reasons for those consultants who did not express interest and consultants not in the longlist that expressed interest.
Appendix C - Summary of scores for consultants (a sample is given in **Appendix 3.14**) and minutes of the Assessment Panel Meeting for shortlisting of consultants
Appendix D - Summary on Eligibility of the Consultants and Sub-consultants
Appendix E - Guidelines on Preparation of Technical Proposals
Appendix F - Marking Scheme for assessing Technical Proposals
Appendix G - Draft Consultancy Brief (without appendices except general layout plans)
Appendix H - Draft Schedule of Fees
Appendix I - Fee Proposal Proforma
Appendix J - Details of Reimbursable Items (with cost estimate)

( )

cc. SFST (Attn. DS(Tsy)3) w/e
SDEV (Attn. DS(W)3)

Notes:

- *This sample memo should be modified where necessary to suit the circumstances.*
- *The estimated variations stated in Section 2 should not be more than 10% of the estimated lump sum unless special circumstances justify (ref. Handbook Section 3.11.2).*
- *The proposed Notional Value in Section 3 should be the same value of the estimated variations in Section 2.*

APPENDIX 3.2A SAMPLE MEMO FOR FIRST SUBMISSION TO EACSB BEFORE INVITATION OF TECHNICAL AND FEE PROPOSALS (FOR ONE-STAGE CONSULTANTS SELECTION)

RESTRICTED (CONTRACT)

MEMO

From Head of Department	*To* Chairman EACSB
Ref ..... *in*	(1 copy thro' Secretary EACSB)
Tel No	*Your Ref* ..... *in* .....
Fax No	*dated* .....
Date	*Fax No* .....

Engineering & Associated Consultants Selection Board (EACSB)
(Submission for consideration at meeting on _____)

1. **CONSULTANCY AGREEMENT NO. & TITLE**

Agreement No. CE XX/XX -

2. **AUTHORITY TO EMPLOY CONSULTANTS**

PWP Item No. :

Agreement from *(the Head of Department)* was given on ___ and policy support from *(the relevant Director of Bureau or a public officer authorised by him)* was also obtained on _____, for the employment of consultants.

*Parallel tendering was adopted in accordance with the Financial Circular No. 3/2020. *Approval for exemption from *(or* adoption of, *where appropriate)* parallel tendering was granted by _ on _____ in accordance with the Financial Circular No. 3/2020. *Funding approval was given by _____ on _____ *(or)* *The consultancy will be funded by _____ to be created under _____. *(* delete as appropriate)*

*Funds approved *(or)* *Funds to be approved:_____ *(* delete as appropriate)*

Breakdown of cost (without MOD adjustment)

Estimated fees :

(a) Lump sum _____

(b) Variations _____

(c) Inflation-related payments _____ *(ref. Handbook Section 5.3.2)*

(d) RSS on-cost _____ *(if applicable)*

The details on how the staff rates for the six staff categories are derived for estimation of the lump sum, variations and RSS on-cost *(if applicable)* is given in Appendix A.

Notional RSS cost : _____ *(if applicable)*

Estimated total value of all reimbursable items : _____ *(if applicable)*

Study period : _____months

Estimated manpower input :

Directors / Partners:	_____	man-weeks
Chief Professional Staff:	_____	man-weeks
Senior Professional Staff:	_____	man-weeks
Professional Staff:	_____	man-weeks
Assistant Professional Staff:	_____	man-weeks
Technical Staff:	_____	man-weeks

3. **APPROVAL NOW REQUESTED**

The Board's endorsement of the following is sought :-

3.1 consultants selection would follow one-stage selection process;

3.2 the marking scheme for the Technical Proposals, and the technical/consultancy fee/fee quality weighting of ___%/ ___%/___% to be applied to the overall assessment; and

3.3 the Notional Value of $ _____ for additional Services.

4. **PREVIOUS SUBMISSIONS TO EACSB**

'None' if no previous submissions have been made.

Dept/Office	Date of EACSB meeting, or state "CIRCULATION"	Decision or Approval given	EACSB ref. & date

5. **BACKGROUND/ARGUMENT**

State concisely the background leading to this consultancy agreement and the recommendations for approval. The following are some of the elements that should be mentioned :-

5.1 The [Head of Department / Assessment Panel] is satisfied that the one-stage consultant selection process is suitable for the Assignment… *(give justification)*. The Assessment Panel comprises _____. The Assessment Panel met on _____ to determine the Service Category and Group(s) of consultants under the List of Consultants of EACSB to be invited to submit Technical and Fee Proposals and the complexity of the Assignment. As determined by the Assessment Panel, the Assignment is normal* *(or)* complex* complexity *(* delete as appropriate)* according to Appendix 2.3 of "The Guidelines for the Implementation of the New Policy on Selection, Appointment and Management of Consultants under the purview of the Engineering and Associated Consultants Selection Board" (the Guidelines) attached to DEVB TC(W) No. 5/2018 as it involves _____ *(elaborate the scope of works / reasons for the selection of the complexity for the Assignment)*. Consultants in Group(s) _____ of ____ Service Category will be invited to submit Technical and Fee Proposals. A notice of inviting

submission of Technical and Fee Proposals through internet will also be posted on the website of this department.

5.2 The proposed "Guidelines on Preparation of Technical Proposals" are shown at Appendix B. The issues of SPR 186 have been fully addressed. The Chairperson, the Secretary and all members of the Assessment Panel have declared they have no conflict of interest (actual, potential or perceived) in conducting the consultants selection for the agreement.

5.3 Also, all officers involved in preparing consultancy documentation (including consultancy briefs and marking schemes) and assessment for the selection exercise have declared they have no conflict of interest (actual, potential or perceived).

5.4 The detailed marking scheme which consists of the proposed marks to be allocated to each main section and sub-section, and the weighting to be applied to each panel member are shown in Appendix C.

5.5 The Assessment Panel has endorsed the following parameters for the assessment … *(The justifications for adopting the weighting of staff composition should be stated.)*

5.6 A technical/consultancy fee/fee quality weighting of ___%/___%/___% is proposed due to ..... *(give justification to the weighting proposed)*.

5.7 The following documents are attached for the Board's examination in principle :

(a) The draft Consultancy Brief is attached at Appendix D.

(b) The draft Schedule of Fees which includes the payment schedule is attached at Appendix E.

(c) The consultants will be required to submit a lump sum fee proposal using the proforma given at Appendix F.

5.8 Details of reimbursable items as at Appendix G will be provided to the consultants. … *(with deliberation / decision on why the arrangement of reimbursable items is considered more suitable)*

6. ATTENDANCE

State name, post and contact telephone and fax numbers of the officer (D2 or above) who will attend the EACSB meeting when so required by the Board.

7. ATTACHMENTS

Appendix A - Estimation of the staff rates for the six staff categories for the lump sum, variations and RSS on-cost *(if applicable)*
Appendix B - Guidelines on Preparation of Technical Proposals
Appendix C - Marking Scheme for assessing Technical Proposals
Appendix D - Draft Consultancy Brief (without appendices except general layout plans)
Appendix E - Draft Schedule of Fees
Appendix F - Fee Proposal Proforma
Appendix G - Details of Reimbursable Items (with cost estimate)

( )

cc. SFST (Attn. DS(Tsy)3) w/e
SDEV (Attn. DS(W)3)

Notes

- *This sample memo should be modified where necessary to suit the circumstances.*
- *The estimated variations stated in Section 2 should not be more than 10% of the estimated lump sum unless special circumstances justify (ref. Handbook Section 3.11.2).*
- *The proposed Notional Value in Section 3 should be the same value of the estimated variations in Section 2.*

APPENDIX 3.3 SAMPLE NOTICE OF INVITING EXPRESSION OF INTEREST TO BE POSTED ON INTERNET

Notice of Invitation for Expression of Interest

Consultancy Agreement No.:	CE XX/YYYY (ZZ)
Agreement Title:	*[Agreement title to be inserted]*
Invitation Date:	*[Invitation date to be inserted]*
Closing Date and Time:	*[Closing date and time to be inserted]*
Contact Person:	*[Contact Person to be inserted]*
Telephone No.:	*[Telephone No. to be inserted]*

Consultants in Group [number] under the Service Category of [name of Service Category] maintained by EACSB are invited to express interest in undertaking the above consultancy.

Sole/Lead Consultants Invited:

[Category and Group to be inserted]

1. ….
2. ….

The scope of this consultancy, which is currently expected to commence on _____, is indicated in the draft Brief. *[to be hyperlinked] [This can be modified to indicate alternative means for the interested consultants to obtain the electronic invitation package if the size of the package is too large to be posted on the website.]*

Attention is drawn to bidding restrictions set out in the respective invitation letter sent to the above consultants and relevant sections of the Guidelines attached to DEVB TC(W) No. 5/2018.

Note: This sample Notice may be modified where necessary to suit the circumstances.

APPENDIX 3.3A SAMPLE NOTICE OF INVITING SUBMISSION OF TECHNICAL AND FEE PROPOSALS TO BE POSTED ON INTERNET (FOR ONE-STAGE CONSULTANTS SELECTION)

Notice of Invitation for Technical and Fee Proposals

Consultancy Agreement No.:	CE XX/YYYY (ZZ)
Agreement Title:	*[Agreement title to be inserted]*
Invitation Date:	*[Invitation date to be inserted]*
Closing Date and Time:	*[Closing date and time to be inserted]*
Contact Person:	*[Contact Person to be inserted]*
Telephone No.:	*[Telephone No. to be inserted]*

Consultants in Group [number] under the Service Category of [name of Service Category] maintained by EACSB are invited to submit Technical and Fee Proposals for undertaking the above consultancy.

Sole/Lead Consultants Invited:

[Category and Group to be inserted]

1. ….
2. ….

The scope of this consultancy, which is currently expected to commence on _____, is indicated in the draft Brief. *[to be hyperlinked] [This can be modified to indicate alternative means for the interested consultants to obtain the electronic invitation package if the size of the package is too large to be posted on the website.]*

Attention is drawn to bidding restrictions set out in the respective invitation letter sent to the above consultants and relevant sections of the Guidelines attached to DEVB TC(W) No. 5/2018.

Note. This sample Notice may be modified where necessary to suit the circumstances.

APPENDIX 3.4 - SAMPLE INVITATION LETTER FOR TECHNICAL AND FEE PROPOSALS

Dear Sirs,

Agreement No. CE _____/_____

---

1. I am pleased to invite you to submit Technical and Fee Proposals for bidding for Agreement No. CE _____/_____ - _____. Please note that submissions are being invited on a non-commitment basis.

2. The following electronic documents for preparing your submission are included in the attached CD-ROM/DVD-ROM* and are listed in Schedule 2 to the attached Licence Conditions for Electronic Invitation Package (EIP) in Annex ____ to this letter. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2.

i) This covering letter;
ii) Memorandum of Agreement;
iii) General Conditions of Employment of Engineering and Associated Consultants for a Assignment (_____) Edition;
iv) Special Conditions of Employment (if any);
v) Schedule of Resident Site Staff Standards and Duties (if any);
vi) Schedule of Fees;
vii) Brief;
viii) Guidelines on Preparation of Technical Proposal;
ix) Proforma for the Presentation of Fee Proposal;
x) List of Participating Consultants and Sub-consultants (the term "Sub-consultants" or "sub-consultants" should include all individual academic institutions, specialists, advisors, experts and the like proposed to be externally engaged to provide the Services under the Agreement, and all references to "Sub-consultants" or "sub-consultants" in this letter should be construed accordingly. Your attention is drawn in particular to the requirement to verify the list of your sub-consultants and ensure its completeness as required in paragraph 15 below). For the avoidance of doubt, subject to your confirmation on the employment status, staff seconded from the consultant's associated companies (subsidiaries, parent companies or subsidiaries of your parent company) not externally engaged as sub-consultants shall be regarded as your own staff for the purpose of tender assessment, including the overloading checking of manpower input, for this Assignment;
xi) manning schedule template;
xii) personal information collection statement; and
xiii) Other documents (please state).

* Delete as appropriate

3. You may make your submission in either electronic format or hard copy format, except that the manning schedule should be submitted in both the prescribed electronic format and hard copy format. If part of the submission is made in both electronic and hard copy formats, the electronic format shall prevail over the corresponding hard copy format. If the manning schedule in the submission is made in hard copy format only, you shall provide the same manning schedule in the prescribed electronic format upon request by us. In such circumstance, the manning schedule in

hard copy format in the submission made on or before the deadline specified in paragraph 4 below shall prevail. The documents for your proposal submitted in electronic format, including manning schedule and any part of the submission which you elect to submit so, shall be prepared and submitted in accordance with Annex [__] 【*Insert appropriate Annex number*】 - Requirements for Submission of Proposal in Electronic Format. Subject to the above, all proposals, whether submitted in electronic format or in hard copy format, will be evaluated on an equal basis.

4. If you wish to be considered for possible appointment to undertake the Agreement, you should submit your Technical and Fee Proposals by 12:00 noon on _____. You should submit your Technical Proposal to me 【 *please state address* 】 and submit two copies of your Fee Proposal in a sealed envelope clearly indicating the consultants' name and project reference to the Chairman of EACSB at Civil Engineering and Development Department, 15/F., Civil Engineering and Development Building, 101, Princess Margaret Road, Homantin, Kowloon. Your Technical Proposal and Fee Proposal must be deposited in the respective locations as specified above on or before the submission deadline. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or "extreme conditions after super typhoons" announced by the Government is/are in force between 9:00 am and 12:00 noon on the above deadline, the deadline will be extended to 12:00 noon on the following working day. Saturday is not counted as a working day. Late submission of Technical and/or Fee Proposal(s), and/or any Proposal(s) not deposited in the location(s) specified above, shall not be considered. The Government reserves its right to notify you of any disqualification of your submission for any reason(s) after the completion of this consultant selection exercise where appropriate.

5. Your submission should be concise and accurate and should comply with the following conditions:

(i) Each consultant must provide information in the Technical Proposal on the manpower input for the Assignment. You are therefore required to state your proposed total manpower input under [six] categories of staff[1], [partners/directors, chief professional, senior professional, professional, assistant professional and technical staff] in terms of man-weeks and include a manning schedule using the template provided, to show the manpower input of staff proposed in the Technical Proposal. However, you should <u>not</u> provide any information in the Technical Proposal on charge rates or fees. If there is any difference between your proposed total manpower input in the Technical Proposal and the total manpower input calculated from the monthly breakdown in the manning schedule, the total manpower input calculated from the monthly breakdown in the manning schedule shall prevail. We will seek confirmation from you to abide by the bid with the corrected total manpower input for bid assessment purpose and for management of the Consultants upon award of the Assignment. If you fail to confirm your agreement to abide by the bid with the total manpower input so corrected in writing by a specified deadline, your bid shall not be considered further for this consultant selection exercise.

(ii) In addition, you are required to give a manning schedule (with charge rates and fees) in the Fee Proposal. The manning schedule (with charge rates and fees) should be included in the Fee Proposal <u>only</u> and not in the Technical Proposal.

(iii) The proposed lump sum fee on the first page of the Fee Proposal shall be equal to the total fee for staff and non-staff charges for all stages in the summary breakdown of lump sum fee. The information/data, in particular, the manpower input in the Fee Proposal, shall tally

[1] The qualification and experience requirements are attached at *[Annex xxx]* to this letter. Only the qualification and experience obtained by the proposed staff on or before *[the closing date as stated in para. 4]* shall be counted.

with the Technical Proposal.

(iv) The proposed all-inclusive time charge rates for additional Services could be different from the staff charge rates indicated in the manning schedule at sub-paragraph (ii) of this paragraph.

6. We shall not accept any Fee Proposal where:

(i) the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee; or

(ii) the percentage difference between the "staff rates for additional Services" and the "staff rates in lump sum fee" exceeds the "Specified Percentage Range".

7. Where the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee or the information/data, in particular, the manpower input in the Fee Proposal, does not tally with the Technical Proposal, you will be asked to rectify the discrepancy by correcting arithmetic errors or making adjustments to the unit charge rate or amending any information/data in the Fee Proposal to bring it in line with the Technical Proposal, where appropriate. If you fail to rectify the discrepancy within [_____] days/weeks 【*Fill in the numbers of days*】 of the date of the request for rectification, your submission shall be disqualified and shall not be considered. You are not, however, allowed to make any adjustment to the lump sum fee, all-inclusive time charge rates and on-cost rates on the first page of the Fee Proposal.

8. In respect of each category of staff specified in the prescribed Fee Proposal Proforma for "additional Services", irrespective of the number of sub-consultants that may be involved, only ONE time charge rate shall be inserted as specified. Submissions which do not comply with this requirement shall not be considered.

9. In respect of each category of staff specified in the prescribed Fee Proposal Proforma for "Direct Employment of Resident Site Staff", only ONE on-cost rate shall be inserted as specified. Submissions which do not comply with this requirement shall not be considered.

10. Your attention is drawn to the requirement to insert the all-inclusive time charge rates in respect of each category of staff specified in the prescribed Fee Proposal Proforma for "additional Services" and the on-cost rate in respect of each category of staff specified in the prescribed Fee Proposal Proforma for "Direct Employment of Resident Site Staff", which information is essential for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If a zero rate is inserted for any or all of these rates, we will seek confirmation from you to abide by the bid with the zero rate(s) so proposed for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If you fail to put in any or all of these rates, the relevant rate(s) shall be corrected by deeming the rate(s) as zero and we will seek confirmation from you to abide by the bid with the relevant rate(s) so corrected for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If you confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected, the combined score assessment of Technical and Fee Proposals would then be completed in the prescribed manner in accordance with Development Bureau (DEVB) Technical Circular (Works) (TC(W)) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) on the basis of the proposed fee and/or rates with such rate(s) so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected in writing by a specified deadline, your bid shall not be considered further for this consultant selection exercise.

10a. A central database, namely Public Works Consultants Resources Allocation Register (PWCRAR), has been developed to maintain the manpower input deployed and/or to be deployed by the consultants for the consultancies they are working on for monitoring purpose. The manpower input contained in your Technical and Fee Proposals for the assignment will be input into the PWCRAR. By submission of the Technical and Fee Proposal, you are deemed to have given consent to the Employer to use any information on or in connection with the manpower input contained in your Technical and Fee Proposals and/or contained in any of your submissions to the Employer for other tenders and/or consultancies awarded to you or your sub-consultants for purpose of tender assessment for this Assignment which is in connection with you, your sub-consultants or staff employed.

11. Your attention is also drawn to the units of the rates as specified in the prescribed Fee Proposal Proforma attached to this letter. Where any of the units of the rates as presented on the first page of the Fee Proposal you have submitted differs from the unit(s) of the respective rate(s) specified in the prescribed Fee Proposal Proforma, such discrepancy shall be corrected by regarding the former as an inadvertent typographical error and the unit(s) concerned in the Fee Proposal submitted shall be automatically corrected to the corresponding unit(s) as per the prescribed Fee Proposal Proforma. For such corrections, only the units are to be so corrected, but not the numerical figures as filled in by you in the Fee Proposal submitted. We will then seek confirmation from you to abide by the bid with units so corrected. If you confirm your agreement to abide by the bid with units corrected, the combined score assessment of Technical and Fee Proposals would then be completed in the prescribed manner in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) on the basis of the proposed fee and/or rates with units so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with units so corrected in writing by a specified deadline, your bid shall not be considered further for this consultant selection exercise.

12. You are required to confirm that you agree to abide by your Technical and Fee Proposals for a period of ninety (90) 【*the procuring department may set a longer validity period, depending on the nature and complexity of the consultancy assignment*】 days from the due date for submission of Technical and Fee Proposals and it shall remain binding upon you and may be accepted at any time before the expiration of that period.

13. The name of the consultant awarded the consultancy agreement, the combined score and technical score awarded to each bidder, together with the lump sum fee, adjusted notional value for additional Services, [notional Resident Site Staff on-cost charges]【*if applicable*】, fee quality score, and manpower input proposed by each bidder where appropriate, will be made known to those, and only those, consultants making submissions and of which their Technical and Fee Proposals have been completely assessed in the combined score assessment after the completion of this consultant selection exercise. You will be deemed to agree to the disclosure of the above-mentioned information of your bid to the other relevant bidders. I would also like to draw your particular attention to the requirements stipulated in Clause __ of the Special Conditions of Employment regarding the disclosure of fees payable to the consultant awarded the consultancy agreement.

14. In the case of a submission in the joint name of two or more consultants, documentary proof of formal association for the purpose of undertaking this Assignment should be provided at the same time. Similar proof of agreement with firms, organizations or individuals who will act as your sub-consultants should also be submitted.

15. A list of the names of all the shortlisted consultants and their sub-consultants involved in this consultant selection exercise that have been submitted by individual consultants is enclosed for

your information. You are required to verify the list of your sub-consultants and ensure its completeness. If you wish to change the list of your sub-consultant(s), whether by way of addition, replacement, removal or otherwise, your notification must be delivered to me by hand before 12:00 noon, _____ 【 *the managing department should specify the exact date here, say at least five working days before the deadline for submission of the Technical and Fee Proposals* 】. The proposed change of your sub-consultant(s) will be assessed to see if your shortlist status will be adversely affected, and the Government is not obliged to accept any proposed change. Where appropriate and practicable, all the shortlisted consultants will be provided an updated list of the shortlisted consultants and their sub-consultants (with the accepted change(s)) before the submission deadline as far as possible. Late notification of the proposed change of your sub-consultant(s) may result in disqualification of your submission because it may deprive the Assessment Panel of a proper chance to review how the proposed change will affect your shortlist status before the submission deadline.

15a. Your attention is drawn to the bidding restrictions set out in Annex ____ to this letter. 【*Inclusion of Annex B as an Annex to this letter is mandatory.*】

15b. If you propose to engage sub-consultants for this Assignment to undertake sub-consulting services under the listed Service Categories or service discipline having a list of consultants maintained and published by the Government as shown in Annex _____ to this letter. 【*Inclusion of Annex C as an Annex to this letter is mandatory.*】 you must ensure that the sub-consultants concerned have complied with bidding restrictions as set out in Annex _____ 【*Annex B as stated in paragraph 15a above.*】. Failure to comply with this requirement will lead to disqualification of your Technical and Fee Proposal.

15c. 【*Insert if applicable*】For the avoidance of doubt, you are not obliged to engage only the consulting firms on the lists given in Annex _____ to this letter 【*Inclusion of Annex C – see Paragraph 15b. above*】 for solely undertaking the following services in this Assignment:
【*This paragraph can be inserted (i) when the Assignment comprises services outside the listed Service Categories or disciplines and the procuring department considers that the consultants may propose in the submission to engage sub-consultants for undertaking such services, and/or (ii) when the procuring departments would like the consultants to engage sub-consultants with specialized knowledge, overseas experience and/or providing expert/innovative input, etc. Before inserting this paragraph, the procuring department shall check with the list management departments where appropriate or seek prior approval for deviation from bidding restrictions – See Sections 2.3.1(b) and Section 2.3.4 of the Guidelines*】
The Technical and Fee Proposal for this Assignment in respect of the sub-consultants solely for the above services will be evaluated on an equal basis, whether the sub-consultants are on the lists given in Annex _____ to this letter【*Inclusion of Annex C – see Paragraph 15b. above*】or not.

16. You are required to submit declaration for consultant's resident status with your submission. Please refer to [Annex__] 【*Include **Annex A** as an Annex to this letter*】 for the provisions of retention of money payable to non-resident consultant for settlement of profits tax.

17. The Government has no objection:

(a) to any consulting firm or its associate or associated person lodging one submission to act as a consultant and concurrently proposing to act as a sub-consultant to another bidding consulting firm in this consultant selection exercise; or

(b) to different and unconnected consulting firms proposing to engage the same sub-

consultant(s) or its/their associate(s) or associated person(s) in this consultant selection exercise,

PROVIDED that:

(i) all the relevant circumstances are disclosed in the submissions; and

(ii) where any consulting firm or its associate or associated person lodges one submission to act as a consultant and concurrently proposes to act as a sub-consultant of another consulting firm in the submission of that other consulting firm, the first-mentioned consulting firm or its associate or associated person shall confirm in its submissions as the consultant and as the sub-consultant that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions; and

(iii) where any consulting firm proposes to act as a sub-consultant of more than one bidding consulting firms, it shall confirm in the submissions of all of those bidding consulting firms that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions.

Therefore, you and your sub-consultant(s) are required to confirm that no confidential information, confidentiality restrictions and restraints of trade or business have been contravened in lodging the submissions in which the main consultant and/or sub-consultant may be in common or affiliated with the sub-consultant of another bidder.

18. You are reminded of Government's policy on competitive selection. The Fee Proposal submitted should be your best price determined without reference to any other shortlisted consultants. Failure to observe this condition may cause your submission to be disqualified.

19. Subject to the Government's right to reject bids which are considered to have been priced unreasonably low, the selection of consultants will be determined on the basis of a combined score assessment of Technical and Fee Proposals in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any). Your Technical and Fee Proposals will be construed as a bid for this consultancy agreement and, unless under very special circumstances, there will be no fee negotiations.

20. The Government is not bound to accept any submission it may receive. In addition, the Government will reject bids which are considered to have been priced unreasonably low.

21. You are also reminded that, as a general policy, importation of labour from outside Hong Kong is not allowed by the Immigration Department, save that in some circumstances, the Director of Immigration may permit the importation of key management and technical personnel on a temporary basis.

22. You should indicate in your staffing proposal which of the proposed staff are core personnel and the employment status (i.e. fulltime or not) at the time of bidding of each and every core personnel to be deployed by you or your sub-consultants in this Assignment. You should also indicate which core personnel will undertake the designations of the Project Manager, the Project Director and the [three] Team Leader(s) 【*the procuring department shall amend it where appropriate to align with the Guidelines for Preparation of Technical Proposal*】 as required in the Guidelines for Preparation of Technical Proposal. You should produce undertaking signed by all non-fulltime core personnel (of yourself or your sub-consultants) to confirm their involvement

in the event that you are awarded the consultancy.

23. The documents listed in Clause xx 【*example, clause 16 for D&C consultancy at Appendix 4.6*】 of the Brief are considered necessary for the implementation of the consultancy. 【*Insert if applicable, please refer to the-then SETW's memo ref (00WNL-02-4) in ETWB(PS) 106/11 dated 6.1.2006 for details: The consultant appointed in the early stage consultancy is one of the shortlisted consultants, but all the information which was made available to that consultant and all the advice which the consultant has provided and which is relevant to the procurement of this consultancy will be equally made available to all shortlisted consultants upon request.*】 You may request to see the documents during the preparation of the submissions. Any documents which are on sale should be purchased by you.

23a.【*Insert if RSS will be employed: You are reminded that relevant sections of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent will form parts of the Special Conditions of Employment and the Brief of this consultancy agreement. This Handbook can be found in the link below:*

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html】

24. Documents of unsuccessful consulting firms will be destroyed three months after the date the consultancy has been awarded and the agreement signed. The manpower input proposed by the unsuccessful consulting firms and contained in the PWCRAR will be disposed of three months after the date the consultancy has been awarded and the agreement signed or the date when such manpower input is no longer required to be used by the Government for tendering purpose, whichever is later.

25. If sub-consultants are to be employed, you are required to complete the table attached in Annex to this letter indicating, if any, the scope of sub-consulting services to be undertaken by each listed and unlisted sub-consultant to be employed, the relevant listed service category or discipline for which each sub-consultant is to be employed and the corresponding list maintained and published by the Government. Failure to submit the table as required above with the Technical and Fee Proposal will lead to disqualification of consultant's Technical and Fee Proposal. If you have any enquiry in completing the table on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline and would like to seek clarification, your enquiry must be delivered to me by hand before 12:00 noon, _____【*the procuring department should specify the exact date here, preferably same as the deadline of provision of list of queries for pre-submission meeting*】. The enquiry shall be sufficiently specific to facilitate the preparation of clarification. Late enquiry will not be entertained.【*Inclusion of Annex D as an Annex to this letter is mandatory.*】

26. 【*Insert if applicable: Please note that this invitation is made before the necessary funds for the consultancy have been approved. The Government reserves the right to cancel this selection exercise for not having the necessary funds approved or for any other reason, in which case you will accordingly be notified.*】 It should be noted that the Government will not be responsible for the reimbursement of any cost incurred by you for the preparation of the submission.

27. Please note that a consultant who has requested for novation of consultancy agreements due to winding up of business pursuant to paragraph 6(ii) of ETWB TCW No. 3/2005 will not be

awarded any further consultancies. Similarly, bids submitted by consultants who engage such a consultant as a sub-consultant will not be considered. Nevertheless, consultants may propose a change of sub-consultants if the deadline for notification of change has not been lapsed.

28. To resolve queries and to ensure that the shortlisted consultants are fully aware of the requirements of the Agreement, and of the requirements for the Technical Proposal and Fee Proposal, a pre-submission meeting is scheduled as follows:- 【*Insert details of the pre-submission meeting below*】

Date:
Time:
Venue:

29. Representatives from each shortlisted consultants should be restricted to not more than [two (2)] 【*Insert number*】. Please provide me with the details (name and post) of your representative(s), together with a list of queries that you prepare to ask in the pre-submission meeting by 12:00 noon on _____【*Insert date*】.

30. If you require further details, please contact _____ at telephone _____.

31. Please acknowledge receipt of this letter and the enclosures by signing and returning the duplicate of this letter.

Yours faithfully,

( )

Encl.

c.c.
Secretary, EACSB – w/first 2 pages of Fee Proposal Proforma together with the names of all the shortlisted consultants (including also sub-consultants)

【*Insert if applicable: Secretary, DCSC – w/first 2 pages of Fee Proposal Proforma together with the names of all the shortlisted consultants (including also sub-consultants)*】

Note :

Relevant requirements of the Technical Circulars and circular memoranda should also be incorporated as appropriate, e.g. pairing of consultant selection exercises (if adopted).

Annex A

[Annex ___] to the Invitation Letter - Retention of Money Payable to Non-resident Consultant for Settlement of Profits Tax

(1) Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (For the details of the current profits tax rates , please refer to the website of the Inland Revenue Department www.ird.gov.hk.) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.

(2) Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, should they be awarded the consultancy, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

(3) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

(4) Consultants shall declare their resident status or the sole proprietor's resident status in their consultancy proposals. If the Consultants are unincorporated joint venture or partnership, the Consultants must declare the resident status of each and every participant or partner thereof. A sample declaration letter is attached at the Appendix to this Annex. 【*Attach the Sample Declaration Letter in Appendix 4.15 of EACSB Handbook.* 】

Annex B

[Annex__] to Invitation Letter for Technical and Fee Proposal – Bidding Restrictions

1. If the Technical and Fee (T&F) Proposal is made by a joint venture, the bidding restrictions stipulated in Section 2.3 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines) in respect of engagement of joint venture shall be complied with. Any T&F Proposal made by a joint venture in the form being not acceptable in accordance with Section 2.3 of the Guidelines will not be considered.

2. If a joint venture is formed by listed consultants with one or more unlisted consultants, it must ensure (i) the same arrangement was proposed in the earlier Expression of Interest (EOI) submission; (ii) all the unlisted consultants have made applications for inclusion on the List of Consultant of EACSB (the List) under the appropriate Service Category on or before the submission of the EOI; and (iii) such applications have been approved by EACSB on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date. Otherwise, the T&F Proposal submitted by the concerned joint venture will not be considered.

3. The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ 【*Refer to Annex C to this sample invitation letter*】to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the consultant's T&F Proposal.

4.1 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed Service Category maintained by EACSB, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall choose to engage sub-consultant(s) with the listed status in Group _____ or lower under the relevant Service Category with three Groups and /or in Group _____ or lower under the relevant Service Category with two Groups maintained by EACSB for the sub-consulting service concerned. 【*the procuring department shall input the appropriate Group Number(s) as determined in accordance with Section 2.3.1(b) of the Guidelines.*】

(b) Failure by a consultant to comply with the requirements in paragraph 4.1(a) above will lead

to disqualification of the consultant's T&F Proposal unless the unlisted sub-consultant proposed has made an application for inclusion on the List under the appropriate Service Category on or before the submission of the EOI and approval of EACSB is obtained on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date.

(c) In the event the approval of EACSB, in the consultant's assessment, is unlikely to be obtained on or before the deadline as mentioned in paragraph 4.1(b) above and the consultant wishes to either remove the unlisted sub-consultant or replace the unlisted sub-consultant with a listed sub-consultant, the consultant shall deliver the notification to the project office before deadline for change of sub-consultant as more particularly stated in paragraph [XX] of the invitation letter of T&F Proposal. T&F Proposal which does not comply with the above requirements will not be considered.

4.2 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed service discipline/categories maintained by Architectural and Associated Consultants Selection Board (AACSB) 【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided in the invitation letter*) 】, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall engage sub-consultant(s) with the listed status for the relevant service discipline/category maintained by AACSB 【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided*) 】 for the sub-consulting service concerned.

(b) Failure by a consultant to comply with the requirement in paragraph 4.2(a) above will lead to disqualification of the consultant's T&F Proposal.

4.3 If the consultant proposes one or more sub-consultants to undertake sub-consulting service not under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2, the consultant may engage any sub-consultant(s) even if they are not listed under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2.

5. If a consultant who submitted the T&F Proposal has teamed up with a sub-consultant who is no longer eligible for award of the consultancy after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment by referring the listing status as at the closing date for submission of T&F Proposal. If the consultant concerned attains the highest combined score, the consultant concerned may still be eligible for award of the agreement.

Annex C

INVITATION FOR TECHNICAL AND FEE PROPOSAL

Consultancy Agreement No. _____
(Agreement Title)

Listed Service Category or Listed Service Discipline
Maintained and Published by the Government

1 All listed Service Categories maintained by EACSB; [*Mandatory to be included*]
2 All listed Service Categories maintained by AACSB; [*Mandatory to be included*]
3 [*Procuring departments to add relevant lists which are of restrictive nature*];
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____

Note:

(a) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018.

(b) The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown above are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the respective T&F Proposal.

(c) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

N.B

Procuring departments shall add relevant lists above to suit the specific natures of projects where appropriate.

Annex D

Table of Listed and Unlisted Sub-Consultants and
Scope of Sub-consulting Services to be undertaken

Consultancy Agreement No. _____
(Agreement Title)

Name of Sub-consultant	Listed Service Category or Discipline (Note a)	Corresponding List maintained and published by the Government (Note a)	Scope of Sub-consulting Services to be undertaken (Notes b to d)
e.g. Company A	Traffic and Transport Category	The Engineering and Associated Consultants Selection Board	Traffic study and planning
	Architectural Category	The Architectural and Associated Consultants Selection Board	Architectural aesthetic design

Note:

(a) If the proposed sub-consultant is unlisted, please mark "Nil".

(b) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018.

(c) The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____【*Refer to Annex C to this sample invitation letter*】 to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the respective T&F Proposal.

(d) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

APPENDIX 3.4A SAMPLE INVITATION LETTER FOR TECHNICAL AND FEE PROPOSALS (FOR ONE-STAGE CONSULTANTS SELECTION)

Dear Sirs,

Agreement No. CE _____/_____

---

1. I am pleased to invite you to submit Technical and Fee Proposals for bidding for Agreement No. CE _____/_____ - _____. Please note that submissions are being invited on a non-commitment basis.

2. The following electronic documents for preparing your submission are included in the attached CD-ROM/DVD-ROM* and are listed in Schedule 2 to the attached Licence Conditions for Electronic Invitation Package (EIP) in Annex ____ to this letter. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2.

i) This covering letter;
ii) Memorandum of Agreement;
iii) General Conditions of Employment of Engineering and Associated Consultants for a Assignment (_____) Edition;
iv) Special Conditions of Employment (if any);
v) Schedule of Resident Site Staff Standards and Duties (if any);
vi) Schedule of Fees;
vii) Brief;
viii) Guidelines on Preparation of Technical Proposal;
ix) Proforma for the Presentation of Fee Proposal;
x) Initial List of Consultants Approached for this Assignment;
xi) manning schedule template;
xii) personal information collection statement; and
xiii) Other documents (please state).

* Delete as appropriate

3. You may make your submission in either electronic format or hard copy format, except that the manning schedule should be submitted in both the prescribed electronic format and hard copy format. If part of the submission is made in both electronic and hard copy formats, the electronic format shall prevail over the corresponding hard copy format. If the manning schedule in the submission is made in hard copy format only, you shall provide the same manning schedule in the prescribed electronic format upon request by us. In such circumstance, the manning schedule in hard copy format in the submission made on or before the deadline specified in paragraph 4 below shall prevail. The documents for your proposal submitted in electronic format, including manning schedule and any part of the submission which you elect to submit so, shall be prepared and submitted in accordance with Annex [___]【*Insert appropriate Annex number*】 - Requirements for Submission of Proposal in Electronic Format. Subject to the above, all proposals, whether submitted in electronic format or in hard copy format, will be evaluated on an equal basis.

4. If you wish to be considered for possible appointment to undertake the Agreement, you

should submit your Technical and Fee Proposals by 12:00 noon on _____. You should submit your Technical Proposal to me 【 *please state address* 】 and submit two copies of your Fee Proposal in a sealed envelope clearly indicating the consultants' name and project reference to the Chairman of EACSB at Civil Engineering and Development Department, 15/F., Civil Engineering and Development Building, 101, Princess Margaret Road, Homantin, Kowloon. Your Technical Proposal and Fee Proposal must be deposited in the respective locations as specified above on or before the submission deadline. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or "extreme conditions after super typhoons" announced by the Government is/are in force between 9:00 am and 12:00 noon on the above deadline, the deadline will be extended to 12:00 noon on the following working day. Saturday is not counted as a working day. Late submission of Technical and/or Fee Proposal(s), and/or any Proposal(s) not deposited in the location(s) specified above, shall not be considered. The Government reserves its right to notify you of any disqualification of your submission for any reason(s) after the completion of this consultant selection exercise where appropriate.

5. Your submission should be concise and accurate and should comply with the following conditions:

(i) Each consultant must provide information in the Technical Proposal on the manpower input for the Assignment. You are therefore required to state your proposed total manpower input under [six] categories of staff, [partners/directors, chief professional, senior professional, professional, assistant professional and technical staff] in terms of man-weeks and include a manning schedule using the template provided, to show the manpower input of staff proposed in the Technical Proposal. However, you should not provide any information in the Technical Proposal on charge rates or fees. If there is any difference between your proposed total manpower input in the Technical Proposal and the total manpower input calculated from the monthly breakdown in the manning schedule, the total manpower input calculated from the monthly breakdown in the manning schedule shall prevail. We will seek confirmation from you to abide by the bid with the corrected total manpower input for bid assessment purpose and for management of the Consultants upon award of the Assignment. If you fail to confirm your agreement to abide by the bid with the total manpower input so corrected in writing by a specified deadline, your bid shall not be considered further for this consultant selection exercise.

(ii) In addition, you are required to give a manning schedule (with charge rates and fees) in the Fee Proposal. The manning schedule (with charge rates and fees) should be included in the Fee Proposal only and not in the Technical Proposal.

(iii) The proposed lump sum fee on the first page of the Fee Proposal shall be equal to the total fee for staff and non-staff charges for all stages in the summary breakdown of lump sum fee. The information/data, in particular, the manpower input in the Fee Proposal, shall tally with the Technical Proposal.

(iv) The proposed all-inclusive time charge rates for additional Services could be different from the staff charge rates indicated in the manning schedule at sub-paragraph (ii) of this paragraph.

6. We shall not accept any Fee Proposal where:

(i) the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee; or

(ii) the percentage difference between the "staff rates for additional Services" and the "staff rates in lump sum fee" exceeds the "Specified Percentage Range".

7. Where the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee or the information/data, in particular, the manpower input in the Fee Proposal, does not tally with the Technical Proposal, you will be asked to rectify the discrepancy by correcting arithmetic errors or making adjustments to the unit charge rate or amending any information/data in the Fee Proposal to bring it in line with the Technical Proposal, where appropriate. If you fail to rectify the discrepancy within [_____] days/weeks 【*Fill in the numbers of days*】of the date of the request for rectification, your submission shall be disqualified and shall not be considered. You are not, however, allowed to make any adjustment to the lump sum fee, all-inclusive time charge rates and on-cost rates on the first page of the Fee Proposal.

8. In respect of each category of staff specified in the prescribed Fee Proposal Proforma for "additional Services", irrespective of the number of sub-consultants that may be involved, only ONE time charge rate shall be inserted as specified. Submissions which do not comply with this requirement shall not be considered.

9. In respect of each category of staff specified in the prescribed Fee Proposal Proforma for "Direct Employment of Resident Site Staff", only ONE on-cost rate shall be inserted as specified. Submissions which do not comply with this requirement shall not be considered.

10. Your attention is drawn to the requirement to insert the all-inclusive time charge rates in respect of each category of staff specified in the prescribed Fee Proposal Proforma for "additional Services" and the on-cost rate in respect of each category of staff specified in the prescribed Fee Proposal Proforma for "Direct Employment of Resident Site Staff", which information is essential for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If a zero rate is inserted for any or all of these rates, we will seek confirmation from you to abide by the bid with the zero rate(s) so proposed for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If you fail to put in any or all of these rates, the relevant rate(s) shall be corrected by deeming the rate(s) as zero and we will seek confirmation from you to abide by the bid with the relevant rate(s) so corrected for bid assessment purpose and for payment/management of the Consultants upon award of the Assignment. If you confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected, the combined score assessment of Technical and Fee Proposals would then be completed in the prescribed manner in accordance with Development Bureau (DEVB) Technical Circular (Works) (TC(W)) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) on the basis of the proposed fee and/or rates with such rate(s) so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected in writing by a specified deadline, your bid shall not be considered further for this consultants selection exercise.

10a. A central database, namely Public Works Consultants Resources Allocation Register (PWCRAR), has been developed to maintain the manpower input deployed and/or to be deployed by the consultants for the consultancies they are working on for monitoring purpose. The manpower input contained in your Technical and Fee Proposals for the assignment will be input into the PWCRAR. By submission of the Technical and Fee Proposal, you are deemed to have given consent to the Employer to use any information on or in connection with the manpower input contained in your Technical and Fee Proposals and/or contained in any of your submissions to the Employer for other tenders and/or consultancies awarded to you or your

sub-consultants for purpose of tender assessment for this Assignment which is in connection with you, your sub-consultants or staff employed.

11. Your attention is also drawn to the units of the rates as specified in the prescribed Fee Proposal Proforma attached to this letter. Where any of the units of the rates as presented on the first page of the Fee Proposal you have submitted differs from the unit(s) of the respective rate(s) specified in the prescribed Fee Proposal Proforma, such discrepancy shall be corrected by regarding the former as an inadvertent typographical error and the unit(s) concerned in the Fee Proposal submitted shall be automatically corrected to the corresponding unit(s) as per the prescribed Fee Proposal Proforma. For such corrections, only the units are to be so corrected, but not the numerical figures as filled in by you in the Fee Proposal submitted. We will then seek confirmation from you to abide by the bid with units so corrected. If you confirm your agreement to abide by the bid with units corrected, the combined score assessment of Technical and Fee Proposals would then be completed in the prescribed manner in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) on the basis of the proposed fee and/or rates with units so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with units so corrected in writing by a specified deadline, your bid shall not be considered further for this consultants selection exercise.

12. 【*For agreements that are administered by works departments and exceeding the Quotation Limit in SPR 220, this paragraph and inclusion of* ***Annex A*** *as an Annex to this letter are mandatory.* 】 The requirements of ISO 9000 certification are set out at Annex __ to this letter.

13. You are required to confirm that you agree to abide by your Technical and Fee Proposals for a period of ninety (90) 【*the procuring department may set a longer validity period, depending on the nature and complexity of the consultancy assignment*】 days from the due date for submission of Technical and Fee Proposals and it shall remain binding upon you and may be accepted at any time before the expiration of that period.

14. Consultants in Group [number] under the Service Category of [name of Service Category] maintained by EACSB are invited to make Technical and Fee Proposals for this Assignment. The initial list of qualified consultants approached for this Assignment is given in Annex_____of the EIP for your information. Joint ventures with participation of local and/or overseas consultants with at least one of the participants or shareholders being on the above initial list are also invited to make submission of Technical and Fee Proposals for this Assignment. Upon completion of the assessment of Technical Proposals, Fee Proposals of those consultants that are considered technically capable of undertaking this Assignment will normally be opened and combined score assessment of Technical and Fee Proposals will be carried out in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any). 【*Inclusion of Annex C as an Annex to this letter is mandatory.*】

14a. Your attention is drawn to the bidding restrictions set out in Annex _____ to this letter. 【*Inclusion of Annex D as an Annex to this letter is mandatory.*】

14b. If you propose to engage sub-consultants for this Assignment to undertake sub-consulting services under any of the listed Service Categories and/or service discipline having a list of consultants maintained and published by the Government shown in Annex _____ to this letter, 【*Inclusion of Annex E as an Annex to this letter is mandatory.*】you must ensure that the sub-consultants concerned have complied with bidding restrictions as set out in Annex _____ 【*Inclusion of this Annex to this letter is mandatory - see Paragraph 14a. above*】. Failure to comply with this requirement will lead to disqualification of your Technical and Fee Proposal.

14c. 【*Insert if applicable*】For the avoidance of doubt, you are not obliged to engage only the consulting firms on the lists given in Annex _____ to this letter 【*Inclusion of Annex E – see Paragraph 14b. above*】 for solely undertaking the following services in this Assignment:
【*This paragraph can be inserted (i) when the Assignment comprises services outside the listed Service Categories or disciplines and the procuring department considers that the consultants may propose in the submission to engage sub-consultants for undertaking such services, and/or (ii) when the procuring departments would like the consultants to engage sub-consultants with specialized knowledge, overseas experience and/or providing expert/innovative input, etc. Before inserting this paragraph, the procuring department shall check with the list management departments where appropriate or seek prior approval for deviation from bidding restrictions – See Sections 2.3.1(b) and Section 2.3.4 of the Guidelines*】
The Technical and Fee Proposal for this Assignment in respect of the sub-consultants solely for the above services will be evaluated on an equal basis, whether the sub-consultants are on the lists given in Annex _____ to this letter【*Inclusion of Annex E – see Paragraph 14b. above*】or not.

14d. 【*Insert if applicable*】The list of sub-consulting firms for undertaking sub-consulting service not under any service discipline having a list of consultants maintained and published by the Government is given in Annex _____ to this letter for your information. 【*Inclusion of this Annex to this letter is discretionary - see Section 2.3.1(b)(iii) of the Guidelines*】 You may consider teaming up with the sub-consulting firms on the list if required for this Assignment. For the avoidance of doubt, this attached list of sub-consulting firms is non-restrictive and for your information only. You are not obliged to engage the sub-consulting firms on the attached non-restrictive list as sub-consultants for this Assignment. The Technical and Fee Proposals for this Assignment in respect of sub-consultants will be evaluated on an equal basis, whether the sub-consultants are on the attached non-restrictive list or not. The Government will not be responsible for any liability in respect of your engagement of sub-consulting firms on the attached non-restrictive list.【*Insert Annex F, if applicable*】

15. The name of the consultant awarded the consultancy agreement, the combined score and technical score awarded to each bidder, together with the lump sum fee, adjusted notional value for additional Services, [notional Resident Site Staff on-cost charges]【*if applicable*】, fee quality score, and manpower input proposed by each bidder where appropriate, will be made known to those, and only those, consultants making submissions and of which their Technical and Fee Proposals have been completely assessed in the combined score assessment after the completion of this consultant selection exercise. You will be deemed to agree to disclosure of the above-mentioned information of your bid to the other relevant bidders. I would also like to draw your particular attention to the requirements stipulated in Clause _____ of the Special Conditions of Employment regarding the disclosure of fees payable to the consultant awarded the consultancy agreement.

16. In the case of a submission in the joint name of two or more consultants, documentary proof of formal association for the purpose of undertaking this Assignment should be provided at the same time. Similar proof of agreement with firms, organizations or individuals who will act as your sub-consultants should also be submitted. The term "Sub-consultant" or "sub-consultants" should include all individual academic institutions, specialists, advisors, experts and the like proposed to be externally engaged to provide Services under the Agreement, and all references to "Sub-consultants" or "sub-consultants" in this letter should be construed accordingly. For the avoidance of doubt, subject to your confirmation on the employment status, staff seconded from the consultant's associated companies (subsidiaries, parent / sister companies) not externally engaged as sub-consultants shall be regarded as your own staff for the purpose of

tender assessment, including the overloading checking of manpower input, for this Assignment.

17. If you are a limited liability company, then you are required to submit documentary proof that the majority of the voting power in meetings of the company shall be held by directors who are consulting engineers (or equivalent professionals of associated professions).

18. You are also required to declare any involvement or interest if it is considered by you to be in real or apparent conflict with the duties to be performed for this consultancy. Any involvement or interest declared would be carefully considered but would not automatically bar you from being further considered in the selection process.

19. Consultants (these must be consulting firms to be eligible for being considered for this consultant selection exercise) having linkages to each other, e.g. subsidiaries, parent or sister companies are not allowed to bid on the same agreement. Only one firm among such consultants, as the case may be, should be allowed to submit Technical and Fee Proposals for a consultancy agreement. In your Technical Proposal, you are thus required to declare any linkage with other consultants on the above list. For the avoidance of doubt, if you have no linkage with any consultants on the above list, you are also required to declare the same in the Technical Proposals. The existence of a holding-subsidiary relationship shall be determined in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap 622), "Sister companies" shall mean all companies which are subsidiaries of or otherwise belonging to the same holding company. Consultants having linkages should sort out among themselves before submitting Technical and Fee Proposals.

20. For the purpose of this "no linkage" requirement, an academic institution and any separate entities/companies formed by the same academic institution or any of its current staff, or any two of such entities/companies (whether formed by the same staff or not), shall be regarded as "linked". An academic institution, and all such entities/companies formed by it or any of its current staff (whether by the same staff or not), shall be allowed to submit only one set of Technical and Fee Proposals for the same consultancy agreement. You are also required to declare any such linkage with other consultants on the above list, if applicable. An entity/company is regarded as formed by the academic institution or its staff if the latter is a partner/shareholder or a director of the former, whether or not the latter is a founding partner/subscriber when the entity/company was formed. However, the "no linkage" rule does not apply to "linked" consulting firms (including academic institutions) who bid as sub-consultants only for any agreement.

21. Failure to observe the requirement stated in paragraphs 19 and 20 shall render all related Technical and Fee Proposals submitted null and void and any such submission shall not be considered.

22. You are required to submit declaration for consultant's resident status with your submission. Please refer to [Annex__] 【*Include **Annex B** as an Annex to this letter*】 for the provisions of retention of money payable to non-resident consultant for settlement of profits tax.

23. The Government has no objection:

(a) to any consulting firm or its associate or associated person lodging one submission to act as a consultant and concurrently proposing to act as a sub-consultant to another bidding consulting firm in this consultant selection exercise; or

(b) to different and unconnected consulting firms proposing to engage the same

sub-consultant(s) or its/their associate(s) or associated person(s) in this consultant selection exercise,

PROVIDED that:

(i) all the relevant circumstances are disclosed in the submissions; and

(ii) where any consulting firm or its associate or associated person lodges one submission to act as a consultant and concurrently proposes to act as a sub-consultant of another consulting firm in the submission of that other consulting firm, the first-mentioned consulting firm or its associate or associated person shall confirm in its submissions as the consultant and as the sub-consultant that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions; and

(iii) where any consulting firm proposes to act as a sub-consultant of more than one bidding consulting firms, it shall confirm in the submissions of all of those bidding consulting firms that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions.

Therefore, you and your sub-consultant(s) are required to confirm that no confidential information, confidentiality restrictions and restraints of trade or business have been contravened in lodging the submissions in which the main consultant and/or sub-consultant may be in common or affiliated with the sub-consultant of another bidder.

24. You are reminded of Government's policy on competitive selection. The Fee Proposal submitted should be your best price determined without reference to any other consultants approached for this Assignment. Failure to observe this condition may cause your submission to be disqualified.

25. Subject to the Government's right to reject bids which are considered to have been priced unreasonably low, the selection of consultants will be determined on the basis of a combined score assessment of Technical and Fee Proposals in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any). Your Technical and Fee Proposals will be construed as a bid for this consultancy agreement and, unless under very special circumstances, there will be no fee negotiations.

26. The Government is not bound to accept any submission it may receive. In addition, the Government will reject bids which are considered to have been priced unreasonably low.

27. You are also reminded that, as a general policy, importation of labour from outside Hong Kong is not allowed by the Immigration Department, save that in some circumstances, the Director of Immigration may permit the importation of key management and technical personnel on a temporary basis.

28. You should indicate in your staffing proposal which of the proposed staff are core personnel and the employment status (i.e. fulltime or not) at the time of bidding of each and every core personnel to be deployed by you or your sub-consultants in this Assignment. You should also indicate which core personnel will undertake the designations of the Project Manager, the Project Director and the [three] Team Leader(s) 【*the procuring department shall amend it where appropriate to align with the Guidelines for Preparation of Technical Proposal*】 as required in the Guidelines for Preparation of Technical Proposal. You should produce

undertaking signed by all non-fulltime core personnel (of yourself or your sub-consultants) to confirm their involvement in the event that you are awarded the consultancy.

29. The documents listed in Clause xx 【*example, clause 16 for D&C consultancy at Appendix 4.6*】 of the Brief are considered necessary for the implementation of the consultancy. 【*Insert if applicable, please refer to the-then SETW's memo ref (00WNL-02-4) in ETWB(PS) 106/11 dated 6.1.2006 for details: The consultant appointed in the early stage consultancy is a potential bidder, but all the information which was made available to that consultant and all the advice which the consultant has provided and which is relevant to the procurement of this consultancy will be equally made available to all potential consultants upon request.*】 You may request to see the documents during the preparation of the submissions. Any documents which are on sale should be purchased by you.

29a.【*Insert if RSS will be employed: You are reminded that relevant sections of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent will form parts of the Special Conditions of Employment and the Brief of this consultancy agreement. This Handbook can be found in the link below:*

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html】

30. Documents of unsuccessful consulting firms will be destroyed three months after the date the consultancy has been awarded and the agreement signed. The manpower input proposed by the unsuccessful consulting firms and contained in the PWCRAR will be disposed of three months after the date the consultancy has been awarded and the agreement signed or the date when such manpower input is no longer required to be used by the Government for tendering purpose, whichever is later.

31. If sub-consultants are to be employed, you are required to complete the table attached in Annex _____ to this letter indicating, if any, the scope of sub-consulting services to be undertaken by each listed and unlisted sub-consultant to be employed, the relevant listed service category or discipline for which each sub-consultant is to be employed and the corresponding list maintained and published by the Government. Failure to submit the table as required above with the Technical and Fee Proposal will lead to disqualification of consultant's Technical and Fee Proposal. If you have any enquiry in completing the table on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline and would like to seek clarification, your enquiry must be delivered to me by hand before 12:00 noon, _____【*the procuring department should specify the exact date here, preferably same as the deadline of provision of list of queries for pre-submission meeting*】. The enquiry shall be sufficiently specific to facilitate the preparation of clarification. Late enquiry will not be entertained.【*Inclusion of Annex G as an Annex to this letter is mandatory.*】

32. 【*Insert if applicable: Please note that this invitation is made before the necessary funds for the consultancy have been approved. The Government reserves the right to cancel this selection exercise for not having the necessary funds approved or for any other reason, in which case you will accordingly be notified.*】 It should be noted that the Government will not be responsible for the reimbursement of any cost incurred by you for the preparation of the submission.

33. Please note that a consultant who has requested for novation of consultancy agreements

due to winding up of business pursuant to paragraph 6(ii) in ETWB TCW No. 3/2005 will not be awarded any further consultancies. Similarly, bids submitted by consultants who engage such a consultant as a sub-consultant will not be considered.

34. To resolve queries and to ensure that the eligible consultants are fully aware of the requirements of the Agreement, and of the requirements for the Technical Proposal and Fee Proposal, a pre-submission meeting is scheduled as follows:- 【*Insert details of the pre-submission meeting below*】

Date:
Time:
Venue:

35. Representatives from each eligible consultants should be restricted to not more than [two (2)] 【*Insert number*】. Please provide me with the details (name and post) of your representative(s), together with a list of queries that you prepare to ask in the pre-submission meeting by 12:00 noon on _____【*Insert date*】.

36. If you require further details, please contact _____ at telephone _____.

37. Please acknowledge receipt of this letter and the enclosures by signing and returning the duplicate of this letter.

Yours faithfully,

( )

Encl.

c.c.
Secretary, EACSB – w/first 2 pages of Fee Proposal Proforma together with the names of all the shortlisted consultants (including also sub-consultants)

【*Insert if applicable: Secretary, DCSC – w/first 2 pages of Fee Proposal Proforma together with the names of all the longtlisted consultants* 】

Note :

Relevant requirements of the Technical Circulars and circular memoranda should also be incorporated as appropriate, e.g. pairing of consultant selection exercises (if adopted).

[Annex ___] to the Invitation Letter – Requirements of ISO 9000 Certification

(1) The consultant shall submit, together with its technical proposal, a copy of its ISO 9001:2015 certificate acceptable to the Employer showing the scope of certification and a statement either:

(A) confirming that no area / aspect in the consultancy agreement which its quality system specifically excludes; or
(B) disclosing the areas / aspects in the consultancy agreement which its quality system specifically excludes.

(2) Subject to the following paragraphs, submissions from consultants who have not obtained ISO 9001:2015 certification on or before the date of this invitation may not be considered.

(3) If the consultant, due to circumstances beyond its control, has not obtained ISO 9001:2015 certification but a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong by a certification body acceptable to the Employer and such Quality Manual has been confirmed by the certification body as being in conformity with the requirements of ISO 9001:2015 standard on or before the date of this invitation, the submission by the consultant will still be considered provided that the consultant shall undertake in writing if it is awarded the consultancy agreement, to book within three months of the award of the consultancy agreement, the date of audit for the ISO 9001:2015 certification with the certification body; with detailed documented quality system procedures ready at the time of booking. The booking of the audit shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

(4) If the consultant whose scope of certification excludes site activities service which is required to be provided by the consultant under the consultancy agreement, its submission will be considered to be non-conforming in respect of the certification requirements. If the consultant can prove to the satisfaction of 【*name of the department concerned*】 that such exclusion is due to circumstances beyond its control, the proposal may still be considered to be conforming in respect of the certification requirements provided that the consultant shall undertake in writing that if the consultant is awarded the consultancy agreement, it shall apply within three months of the award of the consultancy agreement to the certification body for revision of its current scope to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. The submission of an application for revision of the scope of its ISO 9001:2015 certification to cover site activities service shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

(5) If the consultant is a joint venture, the consultant shall submit, together with its technical proposal, a statement declaring that it shall implement the quality system of one of its participants or shareholders, and specifying which one. The reference to ISO 9001:2015 certificate, ISO 9001:2015 certification and Quality Manual referred to paragraphs (1) to (4) above shall refer to that of the specified participant or shareholder. The consultant shall also submit a copy of the written notification to the certification body of the specified participant or shareholder that the joint venture shall implement the quality system by the specified participant or shareholders and the written agreement of all participants, or as the case may be, shareholders of the joint venture that the activities of the joint venture shall be subject to the surveillance of the certification body.

Annex B

[Annex ___] to the Invitation Letter - Retention of Money Payable to Non-resident Consultant for Settlement of Profits Tax

(1) Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (For the details of the current profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk.) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.

(2) Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, should they be awarded the consultancy, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

(3) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

(4) Consultants shall declare their resident status or the sole proprietor's resident status in their consultancy proposals. If the Consultants are unincorporated joint venture or partnership, the Consultants must declare the resident status of each and every participant or partner thereof. A sample declaration letter is attached at the Appendix to this Annex. 【*Attach the Sample Declaration Letter in Appendix 4.15 of EACSB Handbook.* 】

Annex C

INVITATION FOR TECHNICAL AND FEE PROPOSAL

Consultancy Agreement No. _____
(Agreement Title)

List of Consultants Invited for Technical and Fee Proposal

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____

N.B

(a) Please check for the most updated list of consultants in each Service Category maintained by EACSB on the CEDD's website.

(b) Please insert the full name of the consultant.

[Annex__] to Invitation Letter for Technical and Fee Proposal – Bidding Restrictions

1. Any Technical and Fee (T&F) Proposal made by a consultant not eligible for being invited to make T&F Proposal at the time of invitation will not be considered.

2. If the T&F Proposal is made by a joint venture, the bidding restrictions stipulated in Section 2.3 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines) in respect of engagement of joint venture shall be complied with. Any T&F Proposal made by a joint venture in the form being not acceptable in accordance with Section 2.3 of the Guidelines will not be considered.

3. If a joint venture is formed by listed consultants with one or more consultants who are unlisted at the time of invitation for T&F Proposal, it must ensure all the unlisted consultants concerned have been approved by EACSB for inclusion on the List of Consultant of EACSB (the List) under the appropriate Service Category on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date. Otherwise, the T&F Proposal submitted by the concerned joint venture will not be considered.

4. The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ 【*Refer to Annex E to this sample invitation letter*】 to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the consultant's T&F Proposal.

4.1 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed Service Category maintained by EACSB, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall choose to engage sub-consultant(s) with the listed status in Group _____ or lower under the relevant Service Category with three Groups and /or in Group _____ or lower under the relevant Service Category with two Groups maintained by EACSB for the sub-consulting service concerned.【*the procuring department shall input the appropriate Group Number(s) as determined in accordance with Section 2.3.1(b) of the Guidelines.*】

If the sub-consultant proposed is unlisted at the time of invitation for T&F Proposal, the consultant shall ensure that the unlisted sub-consultant concerned has been approved by EACSB for inclusion on the List under the appropriate Service Category on or before the

date set for the close of submission of T&F Proposal, or if this has been extended, the extended date.

(b) Failure by a consultant to comply with the requirements in paragraph 4.1(a) above will lead to disqualification of the consultant's T&F Proposal.

4.2 (a) If the consultant proposes one or more sub-consultants to undertake sub-consulting service under the listed service discipline/categories maintained by Architectural and Associated Consultants Selection Board (AACSB) 【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided in the invitation letter*) 】, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of sub-consultant shall be complied with. In that case, the consultant shall engage sub-consultant(s) with the listed status for the relevant service discipline/category maintained by AACSB 【and/or (*the procuring department shall add relevant lists to align with the restrictive list provided*) 】 for the sub-consulting service concerned.

(b) Failure by a consultant to comply with the requirement in paragraph 4.2(a) above will lead to disqualification of the consultant's T&F Proposal.

4.3 If the consultant proposes one or more sub-consultants to undertake sub-consulting service not under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2, the consultant may engage any sub-consultant(s) even if they are not listed under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2.

5. If a consultant who submitted the T&F Proposal has teamed up with a sub-consultant who is no longer eligible for award of the consultancy after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment by referring the listing status as at the closing date for submission of T&F Proposal. If the consultant concerned attains the highest combined score, the consultant concerned may still be eligible for award of the agreement.

Annex E

INVITATION FOR TECHNICAL AND FEE PROPOSAL

Consultancy Agreement No. _____
(Agreement Title)

Listed Service Category or Listed Service Discipline
Maintained and Published by the Government

1 All listed Service Categories maintained by EACSB; [*Mandatory to be included*]
2 All listed Service Categories maintained by AACSB; [*Mandatory to be included*]
3 [*Procuring departments to add relevant lists which are of restrictive nature*];
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____

Note:

(a) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018.

(b) The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown above are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the respective T&F Proposal.

(c) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

N.B

Procuring departments shall add relevant lists above to suit the specific natures of projects where appropriate.

Annex F

INVITATION FOR TECHNICAL AND FEE PROPOSAL

Consultancy Agreement No. _____
(Agreement Title)

List of Sub-consulting Firms for Undertaking Sub-consulting Service not under Listed Service Category Maintained by EACSB or any Service Discipline having a List of Consultants Maintained and Published by the Government

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____

Note:

(a) The list is non-restrictive and for information only. The tenderers are not obliged to engage the sub-consulting firms on the above list as sub-consultants for this Assignment.

(b) The Government will not be responsible for any liability in respect of tenderers' engagement of sub-consulting firms on the above list.

N.B

Please insert the full name of the consultant.

Annex G

Table of Listed and Unlisted Sub-Consultants and
Scope of Sub-consulting Services to be undertaken

Consultancy Agreement No. _____
(Agreement Title)

Name of Sub-consultant	Listed Service Category or Discipline (Note a)	Corresponding List maintained and published by the Government (Note a)	Scope of Sub-consulting Services to be undertaken (Notes b to d)
e.g. Company A	Traffic and Transport Category	The Engineering and Associated Consultants Selection Board	Traffic study and planning
	Architectural Category	The Architectural and Associated Consultants Selection Board	Architectural aesthetic design

Note:

(a) If the proposed sub-consultant is unlisted, please mark "Nil".

(b) If you propose to engage one or more sub-consultants for this Assignment, you shall comply with the relevant bidding restrictions stipulated in Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018.

(c) The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its sub-consultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ 【*Refer to Annex E to this sample invitation letter*】 to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the respective T&F Proposal.

(d) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a sub-consultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

Appendix 3.4B – Sample Template for Guidelines on Preparation of Technical Proposal

(A) Requirements of Technical Proposals

Consultants are encouraged to use electronic format in submitting their proposals. They are nevertheless free to choose the format (i.e. paper or CD-ROM). The technical proposals should be limited to [**8-15**[1]] pages in A4 size, excluding attachments of appendices, figures/drawings and curriculum vitae, with a minimum font size of 12 points Times New Roman or equivalent. The appendices attached to the technical proposals should be limited to [**20**[1]] pages in A4 size (excluding pages of manning schedule in A3 size, the table indicating the listed and unlisted sub-consultants to be employed and the sub-consulting service undertaken, curriculum vitae and any declarations/ confirmations required in A4 size), the figures/drawings/illustrations limited to [**15**[1]] pages in A3 size and the curriculum vitae limited to [**2**] pages per staff in A4 size. The technical proposals including the attachments shall be inexpensively bound, printed on both sides.

For exceedance of the specified number of pages of technical proposals, appendices, figures/drawings/illustrations and curriculum vitae in the first paragraph above, all the exceeded pages shall be discarded prior to the assessment. For non-compliance with the specified format in the first paragraph above, such as font size, paper size, double-sided printing etc., mark(s) shall be deducted from the overall technical score (see Note (5) in Part B).

The technical proposals shall be divided into sections and sub-sections under main headings as shown below.

1. CONSULTANT'S EXPERIENCE

(a) The relevant consultancy assignments conducted; and

(b) Relevant experience and knowledge.

2. RESPONSE TO THE BRIEF

To include sub-sections on –

(a) Identification of key issues/problems in the assignment, including but not limited to project constraints/risks, special requirements, etc.; and

(b) Suggestions of practicable solutions to address the key issues/problems identified, including presentation of design approach and ideas (in regard to aspects such as general arrangement, layout, functionality, green measures, heritage conservation, aesthetics and overall appearance where appropriate).

3. APPROACH TO COST-EFFECTIVENESS AND SUSTAINABILITY

To include sub-sections on –

(a) examples and discussion of past projects to demonstrate the consultant's will, ability and physical measures to produce cost-effective, energy efficient and environmentally friendly solutions which are applicable to the project; and

(b) approach to achieve cost-effectiveness (including life-cycle costs vis-à-vis initial project cost), energy efficiency and environmental friendliness on this project.

4. METHODOLOGY AND WORK PROGRAMME

To include sub-sections on –

(a) technical approach to enable delivery of the project practicably having regard to the reasonable time required and other technical constraints vis-à-vis the project requirements (including construction methods to facilitate mechanization, prefabrication and other productivity enhancements where appropriate, especially where they can reduce manpower demands of trades of labour shortage);

(b) health, safety and environmental issues to be addressed in delivering the project;

(c) work programme with highlights to demonstrate ways to expedite the programme where practicable, to deal with programme constraints and interfaces, and to level and reduce the resources peak; and

(d) arrangements for contract management and site supervision including a proposed system of monitoring site supervision.

5. INNOVATION AND CREATIVITY

To include sub-sections on –

(a) particular design aspects/issues/requirements (as identified and specified by the department); and

(b) particular construction aspects/issues/requirements (as identified and specified by the department).

6. STAFFING

To include sub-sections on –

(a) staff organisation chart with highlights on the efficiency and effectiveness of the organisation;

(b) relevant experience (including design constructability and risk management where applicable) and qualifications of key staff. In particular, the post qualification experience and relevant job reference of the specified core personnel in Note (2) of Part B below shall be included;

(c) responsibilities and degree of involvement of key staff; and

(d) adequacy of professional and technical manpower input.

7. APPENDICES

(a) Previous relevant experience and projects completed;

(b) Current projects, listing total and outstanding cost and duration and staff expertise and deployment;

(c) Manning schedule (**without** any indication of cost); and

(d) Brief curriculum vitae of key staff.

(B) Marking Scheme

(1) The marks to be allocated to each main section of the technical proposal shall be within the range indicated below and shall total 100%[2]:

Section		Percentage mark to be allocated (%)	
		Sub-section	Section
(1)	Consultant's Experience	-	XX
(2)	Response to the Brief	-	XX
(3)	Approach to Cost-effectiveness and Sustainability	-	XX
	Sub-section 3(a)	XX	-
	Sub-section 3(b)	XX	-
(4)	Methodology and Work Programme	-	XX
	Sub-section 4(a)	XX	-
	Sub-section 4(b)	XX	-
	Sub-section 4(c)	XX	-
	Sub-section 4(d)	XX	-
(5)	Innovation and Creativity	-	XX
	Sub-section 5(a)	XX	-
	Sub-section 5(b)	XX	-
(6)	Staffing	-	XX
	Sub-section 6(a)	XX	-
	Sub-section 6(b)	XX	-
	Sub-section 6(c)	XX	-
	Sub-section 6(d)	XX	-
(7)	Past Performance	-	XX
	Past Performance of the consultant	XX	-
	Past Performance of sub-consultants	XX	-
	Total	100	100

(2) Each Assessment Panel Member shall grade each section/sub-section, except the "past performance" section/sub-sections and the "adequacy of professional and technical manpower input" sub-section of the "Staffing" section, as either "very good", "good", "fair" or "poor". The marks corresponding to these grades are:

Grade	Marks (%)
Very Good (VG)	1.0 × Y
Good (G)	0.8 × Y
Fair (F)	0.6 × Y
Poor (P)	0.3 × Y

where Y is the percentage mark allocated to the criterion.

For selection criteria "Consultant's experience", "Response to the Brief" and "Staffing" which adopt the "Full Marks Approach", full marks should normally be given if the quantitative specifications set out by the Assessment Panel in the following tables are able to be met as assessed by the Assessment Panel Members:

Consultant's experience

For attaining full mark (i.e. grade VG), a consultant should possess experience on having conducted [5] or more relevant consultancy assignments within [10] years on or before the original or the extended T&F proposal submission closing date.

No. of relevant consultancies involved	Grade
[5] or more	VG
[3] to [4]	G
[1] to [2]	F
0	P

Response to the Brief

For attaining full mark (i.e. grade VG), a consultant should identify in the assignment [5] or more key issues/problems with practicable suggestions on ways of addressing them.

No. of key issues/problems identified	Grade
[5] or more	VG
[3] to [4]	G
[1] to [2]	F
0	P

Staffing – Staff organization chart

The pre-set descriptions for the four different grades are follows:

Description	Grade
Very efficient and effective staff organization with strong teams of experts and professionals and comprehensive communication and collaboration platforms	VG
Efficient and effective staff organization with well-defined teams of experts and professionals and suitable communication and collaboration platforms	G
Fair staff organization showing reasonable teams of experts and professionals and communication and collaboration platforms	F
No information or a poor staff organization	P

Staffing – Relevant experience and qualification of key staff

For attaining full mark (i.e. grade VG), a consultant should provide the minimum number of core personnel who should possess the corresponding minimum qualification and experience as mentioned in the tables below. Marks allocated to each core personnel under the same designation are on equal basis. If the undertakings signed by the non-fulltime core personnel to confirm their involvement in undertaking the designations of Project Manager, Project Director and/or Team Leaders 【*the procuring department shall amend it where appropriate to align with the assessment criteria*】 cannot be produced, the staff concerned shall be considered as failure to meet the requirements and "P" shall be marked for the staff concerned accordingly.

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Project Manager] (Mark: XX%) Minimum number: [1] Minimum qualification of a [P/D] category	Not less than [20] years	Not less than [5] projects	VG
	Not less than [18] years	Not less than [3] projects	G
	Not less than [15] years	Not less than [1] project	F
	Fail to meet the standard above		P

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Project Director] (Mark: YY%) Minimum number: [1] Minimum qualification of a [P/D] category	Not less than [20] years	Not less than [5] projects	VG
	Not less than [18] years	Not less than [3] projects	G
	Not less than [15] years	Not less than [1] project	F
	Fail to meet the standard above		P

Key Staff	Post Qualification Experience	Relevant Job Reference	Grade
[Team Leader] (Mark: ZZ%) Minimum number: [3] Minimum qualification of a [CP] category	Not less than [18] years (professional); or Not less than [23] years (academic)	Not less than [5] projects	VG
	Not less than [15] years (professional); or Not less than [20] years (academic)	Not less than [3] projects	G
	Not less than [12] years (professional); or Not less than [17] years (academic)	Not less than [1] project	F
	Fail to meet the standard above		P

(N.B: The sum of XX, YY and ZZ shall be 100. Add additional tables if required. In addition, the job reference to be counted as relevant may be elaborated to suit the specific nature of project where appropriate.)

Staffing – Responsibility and degree of involvement of key staff

For attaining full mark (i.e. grade VG), a consultant should propose at least [80%] of the weighted total manpower input to be named staff with professional category or above.

Degree of Involvement (X)	Grade
X>=[80]%	VG
[60]%<=X<[80]%	G
[40]%<=X<[60]%	F
X<[40]%	P

where X is calculated by using the following formula:

$$\frac{\text{Weighted manpower input of named staff with professional category or above}}{\text{Weighted total manpower input}} \times 100\%$$

For other selection criteria not adopting the "Full Marks Approach", if the Brief or other relevant requirements are just fulfilled, a "fair" grading at most should normally be given.

The weighted marks of Assessment Panel Members shall be accumulated to produce the final marks for each sub-section. Summation of all sub-section final marks will produce a total mark for the technical proposal.

(3) The method of assessing the "adequacy of professional and technical manpower input" sub-section of the "Staffing" section is set out in **Appendix C of Development Bureau (DEVB) Technical Circular (Works) (TC(W)) No. 2/2016 and No. 5/2018**. For the purpose of assessment of adequacy of professional and technical manpower input only, "conforming bids" mean those technical proposals which have been checked and found to be conforming before the opening of the fee proposals.

If the consultant's proposed staff claimed to be in a particular staff category do not meet the minimum academic/professional qualifications and/or minimum experience requirements, the procedures set out in item 4, Appendix C to DEVB TC(W) No. 2/2016 and No. 5/2018 should be followed. Where the information, together with clarifications from the consultant (if any), reveals non-compliance with the minimum academic/professional qualifications and/or minimum experience for one or more than one staff member, the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the table below.

If the consultant does not input the staff category for any particular staff in the manning schedule of his technical proposal, the consultant may be approached, before the opening of the fee proposal, for clarification on the staff category for that particular staff, if any, input in the manning schedule of his fee proposal. In case the consultant

clarifies that no staff category has been input for the staff in both technical and fee proposals, that particular staff shall be counted as non-compliance with the minimum academic/professional qualifications and/or minimum experience requirements for the purpose of assessment on this aspect only and the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the table below. In determining the degree of non-compliance under this circumstance, the staff category and the academic/professional qualifications and/or experience of that particular staff shall be determined from the information in the curriculum vitae for named staff or the declaration to meet the minimum academic/professional qualifications and/or minimum experience requirements in the relevant staff categories for unnamed staff submitted in the technical proposal together with any clarification from the consultant on the factual information of the staff if appropriate.

Degree of non-compliance	Calculated Percentage = B/A x 100% where A = Weighted total manpower input of the consultant B = Weighted manpower input of the proposed staff claimed to be in a particular staff category not meeting the minimum academic/professional qualifications and/or minimum experience requirements	Mark for the "adequacy of professional and technical manpower input" attribute shall be multiplied by
Minor	> 0% and ≤ (5%)	XX
Medium	> (5%) and < (10%)	XX
Serious	≥ (10%)	XX

[Remarks: The procuring department may update the figures in brackets to suit the project specific circumstances.]

Staff working under an overloading situation

The manpower input as at end of [February, May, August or November YYYY][3] 【*procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment*】 captured in the final snapshot taken by the Public Works Consultants Resources Allocation Register (PWCRAR) as detailed in DEVB TC(W) No. 5/2018 will be used for checking if any named professional staff or above proposed in the manning schedule of his technical proposal

is working under an overloading situation. If overloading is identified for a particular named professional staff or above, the consultant may be approached for clarification.

Where the manpower input data in the PWCRAR, together with relevant clarifications from the consultant (if any) reveals overloading situation, mark to be given for the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the following table:

Overloading Situation	Degree of Overloading	Marks for "Adequacy of professional & technical manpower input" shall be multiplied by
Minor	≤ [5%]	XX
Medium	> [5%] and< [10%]	XX
Serious	≥ [10%]	XX

Notwithstanding the above, the following circumstances shall be considered by the Assessment Panel as "Serious" overloading situation:

(a) Where the consultant or any of its proposed sub-consultant fails to provide the first manpower input updating in accordance with paragraph 3 of Appendix 3.7 to DEVB TC(W) No. 5/2018 with refinements as instructed by the procuring departments for any signed consultancies and consultancies having Expression of Interest Submissions or Technical and Fee Proposals (for one-stage procedure) invited before 3 December 2018 (referred to as "existing consultancies") undertaken by the consultant or any of its proposed sub-consultant as the sole consultant or one of the participants in the joint venture. For the purpose of tender assessment in this regard, a consultant will be considered as failing to provide the first manpower input updating for an existing consultancy if it fails to provide a manpower input updating which enables the procuring department of the existing consultancy concerned to endorse it in the PWCRAR as described in paragraph 2 of Appendix 3.7 to DEVB TC(W) No. 5/2018 for all the reporting quarters before the tender closing date of the tender under assessment; or

(b) Where the consultant fails to provide the manning schedule as required in the invitation letter for the Technical and Fee Proposal for the consultant selection exercise under assessment and/or failed to provide the manning schedule as required in the invitation letter for Technical and Fee Proposal for any concurrent tender with the same bidder, which make the assessment of overloading situation in accordance with DEVB TC(W) No. 5/2018 unable to

be properly performed. For the avoidance of doubt, concurrent tenders shall mean other tenders registered in the PWCRAR which have been closed but not yet been awarded as at end of 【February, May, August or November YYYY】【*procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment*】 captured in the final snapshot taken by the Public Works Consultants Resources Allocation Register (PWCRAR) as detailed in DEVB TC(W) No. 5/2018.

(4) The following method shall be used in the assessment of past performance of the consultant and sub-consultants:

(a) Assessment of past performance of a consultant and his sub-consultants (if applicable) should be carried out separately, based on their updated Past Performance Rating (PPR) under the purview of the board which the consultancy is procured in the CNPIS. Details of PPR shall be referred to DEVB TC(W) No. 3/2016. For any unincorporated joint venture making a submission, his PPR shall be taken as the average of PPRs of all his participants having a PPR *(or the weighted average of PPRs of all his participants having a PPR if approved by EACSB/AACSB/relevant DCSC). The latest PPR issued by DEVB on or before the due date for submission of the technical and fee proposals shall be used for the marking of the past performance of the consultant and sub-consultants in the nomination stage.

(b) Those consultants proposing no sub-consultant should be assessed under the criterion "past performance of sub-consultants" as if they were sub-consultants to themselves.

(c) Where a consultant proposes more than one sub-consultant, the PPR shall be taken as the average of PPRs of those sub-consultants who have a PPR.

(d) Where none of the proposed sub-consultants of a consultant has a PPR, the consultant should be assessed under the criterion "past performance of sub-consultants" as if he was a sub-consultant to himself.

(e) The following formula shall be used to calculate the mark for "past performance of the consultant" (same for sub-consultants):

$$\text{Mark assigned to consultant "i"} = \text{Mark allocated for the criterion of past performance} \times \frac{R_i}{R_{highest}}$$

where: (i) R_i is the current PPR of consultant "i".

(ii) $R_{highest}$ is the highest current PPR among all of the consultants involved in the exercise.

(iii) In case there is only one consultant in the exercise having a PPR, his mark in the criterion of past performance shall be calculated by:

$$\text{Mark allocated for the criterion of past performance} \times \frac{\text{PPR of the consultant}}{100}$$

and the calculated mark shall then be taken as a "cap" for all the other consultants' marks calculated using the method in the item (B)(4)(f) below.

(f) For a consultant having less than 4 performance scores under the relevant consultants selection board concerned in the past three years, his PPR shall not be considered. The "past performance of the consultant" sub-section shall then be marked based on the consultant's weighted average percentage mark (not the grade) in the remaining sections excluding the "past performance of sub-consultants" sub-section if any, subject to the cap derived in item (B)(4)(e)(iii) above for the case with only one consultant having a PPR if applicable.

(g) A consultant who is under suspension from bidding shall not be shortlisted for submission of technical and fee proposals for further consultancy assignments until the suspension is lifted. Bids already submitted by the shortlisted consultant in response to invitations before the suspension from bidding, which is imposed after submission of technical and fee proposals, should continue to be assessed subject to further consideration as given in item (B)(4)(h) below. Bids submitted by the shortlisted consultant who is under suspension from bidding, which is imposed before submission of technical and fee proposals, shall not be considered further.

(h) For a consultant who is suspended from bidding after he has submitted technical and fee proposals or a consultant, although not suspended from bidding but serious default or non-performance of him (such as those mentioned in paragraph 22 of Annex I of DEVB TC(W) No. 3/2016) has been made known to the Assessment

Panel, the Assessment Panel shall carefully consider whether the proposals of such consultant should be further processed. If the Assessment Panel decides not to further process the bid of such consultant, the Assessment Panel should seek endorsement from the AACSB/EACSB (or the relevant DCSC) on such decision before continuing with the consultant selection exercise.

(5) [**1**] mark shall be deducted for non-compliance with the format.

(6) Combined score assessment of Technical and Fee Proposals will be carried out in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any).

(7) The Assessment Panel comprises [insert the number] marking members from [insert the department names and respective numbers] and [insert the number] non-marking members (Chairperson and Secretary) from [insert the department name].

Remarks:

1. It is the procuring department's responsibility to select an appropriate page limit that suits the nature of an assignment under consideration. The page limits set in the first paragraph should generally be used under normal circumstances. Guidelines on the page limits for normal and special circumstances are given below:

	Page Limits		
	Technical proposal	Appendices	Figures/ Drawings/ Illustrations
Normal circumstances	8 to 15	Up to 20	Up to 15
Special circumstances (e.g. assignments of high complexity, large scale or other circumstances that the Assessment Panel considers appropriate)	Up to 30	Up to 30	Up to 30

Page limits deviating from the above table can also be adopted, subject to the approval by an officer of D3 rank or above. The justifications including deliberations by the Assessment Panel should be properly recorded.

Project offices may solicit comments from consultants on the page limits at the pre-submission meeting if necessary. In case any subsequent adjustment of the page limits is considered appropriate by the Assessment Panel, the consultants should be

notified of the change and be given adequate time for preparing the Technical Proposals in response to the revised submission requirement.

2. The marks to be allocated to each main section of the technical proposals shall be within the range indicated below and shall total 100%:

Section (Each Section to be expanded into Sub-sections with a percentage mark to be allocated to each Sub-section which should be made known to the bidders)	Percentage mark to be allocated (%) [Percentage mark (%) in square brackets is to be adopted if EOI is not used] EACSB
1. Consultant's Experience	0 – 5 * [5 – 10 *]
2. Response to the Brief	5 – 15
3. Approach to Cost-effectiveness and Sustainability	10 – 25
4. Methodology and Work Programme	20 – 30
5. Innovation and Creativity	5 –15
6. Staffing#	25 – 35
7. Past Performance Past Performance of the consultant Past Performance of sub-consultants	10 – 25 10 – 20 0 – 10

* For major tunnel/cavern projects with difficult geological and ground conditions, or major projects with high risks of scope changes and project complexities, the top mark of "10" or "5", whichever is appropriate, could be adopted so as to assign a greater weight for consultants' experience and knowledge on geotechnical conditions and risk management.

\# The "adequacy of professional and technical manpower input" sub-section of the "Staffing" section should carry 7–12% of the overall marks.

3. The end month of the reporting quarter to be input is determined as follows:

End month to be input	**Final snapshot captured on**	**Applicable to tender closing dates between**
February XXXX	00:00 of 23 March	23 March to 22 June
May XXXX	00:00 of 23 June	23 June to 22 September

August XXXX	00:00 of 23 September	23 September to 22 December
November XXXX	00:00 of 23 December	23 December to 22 March

For more details, please refer to **Appendix 3.20F**.

4. The procuring department should make reference to DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) and amend the guidelines as appropriate.

5. The procuring department should update the information in square brackets to suit specific project need.

6. The procuring department should update the relevant note similar to Note (6) in Part B above in the fee proforma.

7. For one-stage consultants selection process, reference should be made to the provisions in Appendix 3.10.

* Delete as appropriate

APPENDIX 3.6 ASSESSMENT PANEL ON CONSULTANTS SELECTION

Functions of Assessment Panel

The major functions of an assessment panel are:

(a) To determine the Service Category and Group of consultants to be invited, and the criteria and marking scheme for the Shortlist, prior to sending out invitation letters for expression of interest and posting of the invitation notice on the departmental website.

(b) To assess expression of interest (EOI) proposals and to recommend a Shortlist of suitable consultants.

(c) To establish and agree on the marking scheme for technical proposals.

(d) To agree on a technical/fee weighting.

(e) To review the approved Shortlist of consultants in case there are changes in circumstances that may have affected the original shortlisting results.

(f) To assess the technical proposals and to affirm the technical suitability of the consultants for carrying out the consultancy.

(g) To discuss and agree on special matters, if any, relating to EACSB submission and consultants selection.

Setting Up and Operation of Assessment Panel

Departments shall observe the following guidelines in the setting up and operation of assessment panels:

(a) An assessment panel shall be chaired by an officer ranked preferably at D2, but not lower than D1, and comprise members of not lower than senior professional ranks from appropriate Government departments, except that the assessment panel secretary may be of professional rank if he/she is non-marking. To maintain consistency within a department, each department should set its own guidelines on the ranking of assessment panel chairpersons.

(b) The chairperson of an assessment panel shall be appointed by an officer ranked at D3 or above in the managing department. Assessment panel members shall be appointed by an officer ranked at D2 or above, who may be the chairperson of the assessment panel.

(c) The chairperson and secretary of an assessment panel should preferably be non-marking to allow them to be more focused on discharging their duties,

especially during assessment panel meetings. Nevertheless, this is not a mandatory requirement. To maintain consistency within a department, each department should set a policy on whether the chairperson and/or the secretary should be marking or non-marking. If for a particular consultancy, the assessment panel considers it necessary to depart from the set policy, the reasons should be recorded in the minutes of the assessment panel meeting. The decision should be made at the first assessment panel meeting.

(d) An assessment panel should normally have three to five marking members. The number of assessment panel members may exceed five for very complex assignments.

(e) It is in the interest of the managing department to consult with other departments having a major interest in the fields and disciplines that are covered by the consultancy and who may be able to contribute to the consultant selection process. At least one member of the assessment panel should if possible come from another department.

(f) The composition (i.e. number of marking members and name of departments involved) of the assessment panel should be made known to the shortlisted consultants. However, the identities of the individual assessment panel members should not be disclosed to avoid any lobbying activities.

(g) In general, every assessment panel member should carry equal weighting. Nevertheless, flexibility is allowed for assessment panel members to agree among themselves on their weighting to reflect the scope of their involvement in the assessment. Care should be taken to avoid a single member dominating the outcome of the assessment. The reasons for having unequal weightings should also be recorded in the minutes of the assessment panel meeting and incorporated in the submission to EACSB.

(h) Each assessment panel member should conduct his/her assessment independently. Assessment panel members should not discuss or exchange views on the marking before the assessment panel meeting. However, assessment panel members may discuss technical issues to achieve better understanding of the proposals and to clarify facts before the assessment panel meeting.

(i) Assessment panel members should acquaint themselves with the project background, issues, constraints and considerations relevant to the assessment exercise, and the managing department should facilitate this by providing necessary information and documents to them. Normally all marking members should assess and mark the whole submissions from all bidders. Nevertheless, assessment panel members should not mark on sections or sub-sections which they do not have sufficient technical knowledge. The percentage marks for the various sections and sub-sections in the marking

scheme should not be affected due to the fact that some assessment panel members do not give marks for a particular section or sub-section. There should be a minimum of three marking members for each section/sub-section. The scope of assessment by individual assessment panel members should be determined at or before the first assessment panel meeting and recorded in the minutes of the meeting.

(j) For assignments with specialized areas where only some assessment panel members may have the competence to assess, setting up of sub-panels of competent persons may be considered by the assessment panel. Suitable persons outside the assessment panel could be appointed as sub-panel members, subject to the approval of an officer ranked at D2 or above. If sub-panels are to be set up, the assessment panel should determine the weighting assigned to each sub-panel before inviting proposals from the consultants. The assessment result of the sub-panels for each section/sub-section should first be worked out and then integrated with that of the main assessment panel, as if the sub-panel is an assessment panel member.

(k) Justifications and decisions to adopt practices different from the usual/standard process should be recorded and incorporated in the relevant submissions to EACSB in a self-contained manner.

APPENDIX 3.7 SAMPLE MEMO TO REQUEST FOR RELEASE OF FEE PROPOSALS

RESTRICTED (CONTRACT)

MEMO

From	Head of Department	*To*	Chairman EACSB thro' Secretary EACSB
Ref	*in*		
Tel No		*Your Ref*	*in*
Fax No		*dated*	
Date		*Fax No*	

Agreement No. CE XX/XX
(Title of Agreement)
(Results of Technical Assessment)

I enclose for your reference the following:-

(a) a copy of the minutes of the assessment panel meeting for the technical assessment;

(b) a summary table of the marks given by each assessment panel member for each section of the technical proposal (a sample is given in **Appendix 3.14**); and

(c) a summary of estimated staff rates for lump sum fee and additional Services, [*as well as RSS on-cost rates].

2. I should be pleased if you would release the consultants' fee proposals (, except the one submitted by _____,) * for my combined assessment. The Assessment Panel considers that all of the shortlisted consultants are capable of undertaking the assignment (except _____ because _____ as detailed in paragraph _____ of the above minutes of meeting).

( )

* omit as appropriate

APPENDIX 3.8 SAMPLE MEMO FOR NOMINATION STAGE SUBMISSION TO EACSB

RESTRICTED (CONTRACT)

MEMO

From Head of Department	*To* Chairman EACSB thro' Secretary EACSB
Ref. ( ) *in* _____	(*Attn.*: _____)
Tel. No. _____	*Your Ref.* _____ *in* _____
Fax. No. _____	*dated* _____ *Fax. No.* _____
Date _____	*Total Pages* _____

Engineering & Associated Consultants Selection Board (EACSB)
(Submission for consideration at meeting on _____)

1. **CONSULTANCY AGREEMENT NO. & TITLE**

Agreement No. CE XX/XX -

2. **AUTHORITY TO EMPLOY CONSULTANTS**

PWP Item No. :

*Parallel tendering was adopted in accordance with the Financial Circular No. 3/2020. *Approval for exemption from *(or* adoption of, *where appropriate)* parallel tendering was granted by ____ _____ on _____ in accordance with the Financial Circular No. 3/2020. *Funding approval was given by _____ on _____ *(or)* *The consultancy will be funded by _____ to be created under _____. *(* delete as appropriate)*

* Funds approved *(or)* *Funds to be approved :_____ *(* delete as appropriate)*

Breakdown of cost (without MOD adjustment)

Estimated fees :

(a)	Lump sum	_____	
(b)	Variations	_____	
(c)	Inflation-related Payments	_____	(ref. Handbook Section 5.3.2)
(d)	RSS on-cost	_____	(if applicable)

Notional value of RSS cost : _____ (if applicable)

Estimated total value of all reimbursable items : _____ (if applicable)

Study period : _____months

Estimated manpower input :

Directors / Partners:	_____	man-weeks
Chief Professional Staff:		man-weeks

Senior Professional Staff:	_____	man-weeks
Professional Staff:	_____	man-weeks
Assistant Professional Staff:	_____	man-weeks
Technical Staff:	_____	man-weeks

3. **APPROVAL NOW REQUESTED**

The Board's approval is sought to appoint _____ to undertake the assignment at a lump sum of $_____ and the RSS on-cost rates submitted in the fee proposal *(if applicable)* plus a fee ceiling of $_____ for additional Services *(mention "*subject to availability of funds" *if applicable)*.

4. **PREVIOUS SUBMISSIONS TO EACSB**

Dept/Office	Date of EACSB/ DCSC (if any) meeting, or state "CIRCULATION"	Decision/ Approval given	EACSB/ DCSC (if any) ref. & date

5. **BACKGROUND/ARGUMENT**

5.1 The issues of SPR 186 have been fully addressed. All members, including the Chairperson and the Secretary, of the Assessment Panel have declared they have no conflict of interest (actual, potential or perceived) in conducting the consultants selection for the agreement. Also, all officers involved in preparing consultancy documentation (including consultancy briefs and marking schemes) and assessment for the shortlisting exercise have declared they have no conflict of interest (actual, potential or perceived).

5.2 Approval for invitation of the Technical and Fee Proposals from ____ shortlisted consultants was given by EACSB at the _____meeting on _____. The shortlisted consultants to submit the Technical and Fee Proposals on _____.

5.3 A pre-submission meeting with the shortlisted consultants was held on _____. The shortlisted consultants had no comment / comment(s) *(summarize the comment(s))* on the documents enclosed in the invitation letter. The documents enclosed in the invitation letter were finalised without any/with amendment on _____. The notes of pre-submission meeting were also issued to the shortlisted consultants on _____.

5.4 By the deadline of _____ for notification of the change of sub-consultants, _____ *(state any proposed changes of the sub-consultants received and the Assessment Panel's review on the effect on the shortlist status brought by the proposed changes.)* An updated list of consultants and sub-consultants was issued to all shortlisted consultants on ____. *(if applicable)*

5.5 ____ shortlisted consultants submitted their Technical Proposals by the deadline of _____. *(State the assessment of the Technical Proposals for compliance with the submission requirements, any exceed pages discarded prior to assessment and any mark deduction due to non-compliance with the format requirement.)*

5.6 The Assessment Panel reviewed the latest listing status of the _____ shortlisted consultants and the eligibility of the sub-consultants proposed by each of the consultant. The consultants and sub-consultants comply with the bidding restrictions as set out in Section 2.3 of the Guidelines

attached to DEVB TCW No. 5/2018 and are eligible for bidding. Summary of the eligibility of the consultants and sub-consultants is attached in Appendix A *(The summary of the eligibility of the sub-consultants should include (i) the names of all consultants and their sub-consultants, (ii) the area of involvement / sub-consulting services provided by the sub-consultants, (iii) whether the area of involvement / sub-consulting services provided by the sub-consultants is under appropriate listed service category and the corresponding listing status of the sub-consultants and (iv) the Assessment Panel's assessment on the eligibility of the sub-consultants. Confirmation from the relevant list management department(s) on whether certain sub-consulting services are within/outside the scope of any particular Service Category(ies) should be provided to support the Assessment Panel's assessment.)*

5.7 State concisely the result of the combined score assessment and the arguments leading to the recommendation of a consultant for the Assignment. The detailed combined score assessment is enclosed.

5.8 Rejection of consultants, if any, shall be fully substantiated in the submission.

5.9 An assessment on the reasonableness of fees and rates against the items set out in paragraph 7 of ETWB TCW No. 8/2003 should be carried out and the details of the assessment should be presented in the submission to the Board. As the case may be, the department should draw the attention of the Board on fees and rates which are considered substantially over or under-priced.

5.10 Checking of compliance with linkage requirements of Consultants' staff rates has been conducted in accordance with DEVB TC(W) No. 2/2016. The percentage differences between the "staff rates for additional Services" and staff rates in lump sum fee" for all consultants do not exceed the "Specified Percentage Range".

5.11 I confirm that sufficient funding is available for the award of the Agreement as the fee of the recommended bid has exceeded our estimated fee. *(if applicable)*

6. **ATTENDANCE**

State name, post and contact telephone and (confidential registry) fax numbers of the officer (D2 or above) who will attend the EACSB meeting when so directed by the Board.

7. **ATTACHMENTS**

Appendix A - Summary on Eligibility of the Consultants and Sub-consultants
Appendix B - Minutes of the assessment panel meeting for the technical assessment, including a summary table of the marks given by each assessment panel member for each section of the technical proposal (ref. **Appendix 3.14**)
Appendix C - Combined score assessment of the consultants' Technical and Fee Proposals
Appendix D - Soft copy of any previous DCSC submissions, following the requirements in Section 3.12(g) *(if applicable)*

( )

c.c. SFST (Attn : DS(Tsy)3)
SDEV (Attn : DS(W)3)

w/e

APPENDIX 3.9 STANDARD MEMO NOTIFYING EACSB OF SIGNING OF AGREEMENT

RESTRICTED (CONTRACT)

MEMO

From Head of Department	*To* Secretary, EACSB
Ref ..... *in*	
Tel No	*Your Ref* ..... *in* .....
Fax No	*dated* .....
Date	*Fax No* .....

Agreement No.
Agreement Title

In compliance with the stipulated procedure for the appointment of consultants for items approved by the EACSB, I append hereunder the information pertinent to the captioned Agreement :

Title of Agreement :

Name of Consultant :

Signing Date :

Commencement Date :

Anticipated Completion Date :

2. Enclosed is a certified true copy of the Agreement document.

( )

APPENDIX 3.10 REFERENCE PROCEDURES FOR ONE-STAGE CONSULTANTS SELECTION

The reference procedures for the one-stage consultants selection process are set out in this Appendix.

2. Following the requirements in Section 3.1.3.1, the managing departments may adopt a one-stage consultants selection process as described in the following procedures:

a) The managing department shall, before inviting Technical and Fee Proposals, submit to the EACSB/DCSC (i) the marking scheme (see **Annex I to Appendix 3.10 and Appendix 3.4B**), Technical and Fee weighting, notional value for additional Services, and the List of Consultants of EACSB[(1)] to be invited for endorsement and (ii) the draft Brief & related documents for comment. The sample memo for first submission to EACSB/DCSC is given at **Appendix 3.2A**;

b) Upon EACSB/DCSC's endorsement in principle in paragraph (a), the managing department shall invite Technical and Fee Proposals (sample invitation letter for Technical and Fee Proposals is given at **Appendix 3.4A**) from normally not fewer than 6 consulting firms[(2)] (based on the endorsed selection criteria) as well as through open invitation, i.e. by posting the one-stage invitation on the website of the managing department (sample notice of inviting submission of Technical and Fee Proposals to be posted on internet is given at **Appendix 3.3A**). The number of pages of Technical Proposals shall normally be limited to 12 (Option 1) or 20 (Option 2) (see **Annex I to Appendix 3.10**). The consulting firms shall be required to declare that they meet the selection criteria (with supplementary proof, as stated/required by the managing department where necessary) as in the open invitation for EOI of a conventional two-stage consultants selection process;

c) The Assessment Panel shall assess Technical Proposals of consulting firms who meet the selection criteria. Upon completion of the assessment of the Technical Proposals, the Assessment Panel shall obtain the Fee Proposals of those consultants that are considered technically capable of undertaking the assignment from the Secretary of EACSB to conduct the combined score assessment of the Technical and Fee Proposals in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any) as in the stage 2 of a conventional two-stage consultants selection process to determine which consulting firm should be recommended for award of the consultancy.

d) The managing departments shall then proceed with the "Stage 2 EACSB/DCSC Submission" according to the procedures given in Section 3.12 of the EACSB Handbook to complete the consultants selection exercise.

Note:

(1) When determining the List of Consultants of EACSB to be invited, the Assessment Panel shall make reference to DEVB TC(W) No. 5/2018 and its subsequent updates (if any). Unless otherwise agreed with DEVB beforehand, the procuring departments shall seek comments from DEVB on the packaging of the consultancies which are to be procured by following the EACSB procurement procedures before direct invitation for T&F Proposal.

(2) The initial list of consulting firms to be invited for submission of Technical and Fee Proposals shall be submitted together with the selection criteria in the first submission mentioned in paragraph 4(b) for the EACSB/DCSC's reference. The managing department shall provide explanation/justification in their first submission for the EACSB's consideration where less than 10 consulting firms are to be invited (For cases in which there is no appropriate Service Category of consultants under the List).

(3) The managing department shall follow the general principles given in the EACSB Handbook. In case of discrepancies or inconsistencies between this Appendix and the Sections referred to, the provisions of this Appendix shall prevail for the one-stage consultant selection process.

ANNEX I to APPENDIX 3.10 GUIDELINES ON PREPARATION OF MARKING SCHEME

Guidelines on Preparation of Marking Scheme

The managing department shall follow the guidelines given below when preparing a marking scheme for Technical Proposals:

1. The marking scheme and the limit on page/number of Technical Proposals (and attached document) invited under "Option 1" and "Option 2" are given in the following tables:

Marking Scheme		
Assessment Criteria	Option 1	Option 2
Consultant's Experience	5%-10%*	5%-10%*
Response to the Brief	0%-10%	5%-15%
Approach to Cost Effectiveness and Sustainability	0%-20%	10%-25%
Methodology & Work Programme	0%-20%	20%-30%
Innovation and Creativity	5%-10%	5%-15%
Staffing	30%-35%	25%-35%
Past Performance - Past Performance of the consultant - Past Performance of sub-consultants	 10%-20% 0%-10%+	 10%-20% 0%-10%+

** For major tunnel projects with envisaged difficult geological and ground conditions, or major projects with high risks of scope changes and project complexities, the top mark of "10" could be adopted so as to place a greater weight for consultants' experience and knowledge on local geotechnical conditions and risk management for difficult complex conditions and changes.*

+ Regarding the assessment of past performance of sub-consultants in Technical Proposals, the Assessment Panel shall observe the requirements given in Section 3.5.2 of the EACSB Handbook.

Limits on Page/Number		
Submissions	Option 1	Option 2
Technical Proposals	12 pages	20 pages
Appendices (excluding curriculum vitae)	20 pages	30 pages
Curriculum Vitae	2 pages/staff	2 pages/staff
Total number of Figures/Drawings attached to Technical Proposals	12 nos.	20 nos.

2. An officer at D2 or above level (normally, the chairperson of Assessment Panel) shall recommend which option to be adopted. For consultancies requiring intensive technical input, "Option 2" is considered more appropriate.

3. The marks to be allocated to each section of the Technical Proposal shall be within the range indicated in the above table and shall amount to 100%. The Assessment Panel shall pre-determine the marks to be allocated to each section and sub-section of the Technical Proposal.

4. The marking scheme shall be endorsed by the EACSB/DCSC prior to inviting Technical and Fee Proposals.

Appendix 3.11 STANDARD FORM FOR SUMMARY OF TECHNICAL AND FEE PROPOSALS

RESTRICTED (CONTRACT)

ENGINEERING & ASSOCIATED CONSULTANTS SELECTION BOARD (EACSB)

Summary of Technical and Fee Proposals

Agreement No.: CE /

Agreement Title :

Project Office's Estimated Manpower Input (man-week (mw)) : P/D & CP: SP & P: AP & T:
Technical/Consultancy Fee/Fee Quality Weighting : % / % / %
Notional number of man-hours (mh) for time charge staff : Notional number of man-months (mm) for RSS :

Technical Assessment & Fees

Consultant	Tech Score (TS, max: 100) / Fee Quality (FQ, max: 10)	Lump Sum ($) (L)	Adjusted Notional Value for Additional Services ($) (AN)	Notional RSS On-cost Charges ($) (AR)	Value for Total Fee ($) (L) + (AN) + (AR)	Manpower Input (mw)
A						P/D & CP: SP & P: AP & T:
B						P/D & CP: SP & P: AP & T:
C						P/D & CP: SP & P: AP & T:
D						P/D & CP: SP & P: AP & T:

Consultant	Combined Scores (calculations based on DEVB TC(W) No. 2/2016)
A	
B	
C	
D	

Consultancy to be awarded to :

Name of Consultant (Consultant A/B/C/D)

Abbreviations :
P/D: Partners/ Directors
CP: Chief Professional Staff
SP: Senior Professional Staff
P: Professional Staff
AP: Assistant Professional Staff
T: Technical Staff

Secretary, EACSB

Date :

RESTRICTED (CONTRACT)

APPENDIX 3.12 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : DISCLOSURE OF FEE PAYABLE TO THE CONSULTANTS

SCE1.1 The Consultants hereby irrecoverably authorize, consent and agree that the Employer may, whenever the Employer considers appropriate or upon request by any person (written or otherwise) and without further reference to the Consultants, disclose to any person in such form and manner as the Employer deems fit -

(a) the fees, costs and expenses payable by the Employer for engaging the Consultants; and

(b) the lump sum fee proposal submitted by the selected consultant (in case of assignment remunerated on lump sum fee basis) / the notional time charge ceiling for the consultancy study (in case of assignment remunerated on time-charge basis) / the estimated lump sum fee calculated based on the percentage-fee proposal submitted by the selected consultant (in case of assignment remunerated on percentage-fee basis).

SCE1.2 The Consultants hereby waive and forego their right, if any, to make any claims against the Employer for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Employer.

APPENDIX 3.13 SAMPLE FEE PROFORMA

RESTRICTED (CONTRACT)

ENGINEERING & ASSOCIATED CONSULTANTS SELECTION BOARD

FEE PROPOSAL

for

_____

(Agreement No.)

submitted by

_____

PROPOSED LUMP SUM FEE (L) # HK$ _____

ALL-INCLUSIVE TIME CHARGE RATES

&Partners/Directors (P/D)	HK$ _____/ man-hour
&Chief Professional Staff (CP)	HK$ _____/ man-hour
&Senior Professional Staff (SP)	HK$ _____/ man-hour
&Professional Staff (P)	HK$ _____/ man-hour
&Assistant Professional Staff AP)	HK$ _____/ man-hour
&Technical Staff (T)	HK$ _____/ man-hour

*The Resident Site Staff ("RSS") on-cost rates are:

Collective rank of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer	**RSS on-cost rate of each collective rank ($/man-month)**
^R1	
^R2	
^R3	
^R4	
^R5	
^R10	

Signed _____ Date _____

( )

Technical/ Consultancy Fee/ Fee Quality weighting for this consultancy = %/ %/ 10%

[$]Notional man-hours for additional Services

[&]Partners/Directors (P/D) =
[&]Chief Professional Staff (CP) =
[&]Senior Professional Staff (SP) =
[&]Professional Staff (P) =
[&]Assistant Professional Staff (AP) =
[&]Technical Staff (T) =

* The notional numbers of man-months of collective ranks of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer are listed in the table below. The RSS on-cost rates in the Fee Proposal will be applied with the notional numbers of man-months to arrive at the "notional RSS on-cost charges" to be used for purpose of the combined score assessment of Technical and Fee Proposals.

Collective rank of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer	**[$]Notional number of man-months of each collective rank (man-month)**
[^]R1	
[^]R2	
[^]R3	
[^]R4	
[^]R5	
[^!]R10	

* The notional RSS establishment is given in **Attachment A**.

* The details of the collective ranks of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer are in Clause SCE YY [*Insert the clause no.*] of the Special Conditions of Employment.

==========

Two signed copies of this Fee Proposal must be delivered ***by hand*** before 12:00 noon on _____ to:

Chairman, EACSB,
Director of Civil Engineering and Development,
15/F, Civil Engineering and Development Building,
101, Princess Margaret Road,
Ho Man Tin, Kowloon.

The Proposal must be in a sealed envelope marked "EACSB Fee Proposal for Agreement No. _____, submitted by _____".

==========

Notes on the preparation of this Fee Proposal are given on Pages 9 & 10 of this Appendix

Remarks:

The Proposed Lump Sum Fee shall be equal to the total fee for the Staff Charges and Non-Staff Charges for all stages in the summary breakdown in Part A.

[&] *to be modified as appropriate; other categories for specialist staff as suggested at Appendix 3.13A of the EACSB Handbook may be incorporated as appropriate.* [*only for reference of the department's staff*]

[*] *to be deleted if not relevant.* [*only for reference of the department's staff*]

[^] *Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.* [*only for reference of the department's staff*]

[$] *To be inserted by managing department before invitation of Technical and Fee Proposals.* [*only for reference of the department's staff*]

[!] *Please provide the further breakdown of notional number of man-months for Government staff to be posted for "Design Training" and "Site Training" if appropriate.* [*only for reference of the department's staff*]

A. SUMMARY BREAKDOWN OF LUMP SUM FEE AMONG STAGES OF THE AGREEMENT

1. Staff Charges

Consultancy Stage +	Man-Weeks #						Fee (HK$)*
	P/D	CP	SP	P	AP	T	
Feasibility (F) Stage							
Investigation (I) Stage							
Design (D) Stage							
Construction (C) Stage							
Total							

2. Non-Staff Charges

Consultancy Stage +	Fee (HK$)*
Feasibility (F) Stage	
Investigation (I) Stage	
Design (D) Stage	
Construction (C) Stage	
Total	

NB # The manpower input in this breakdown shall tally with the manpower input in the technical proposal as well as that in Part D.

* The fees for Staff Charges and Non-Staff Charges for all stages shall be carried forward from Part D.

+ *Departments' staff should only include the relevant stage(s) in these tables.*

B. SPLIT OF LUMP SUM FEE AMONG CONSULTANTS

Name of Main Consultant(s)/Sub-consultant(s)	Fee (HK$)	% of Total
Total		100%

C. ADDITIONAL SERVICES/ITEMS PROPOSED FOR THE CLIENT'S CONSIDERATION

No.	Description	Fee (HK$)
1		
2		
3		
4		
5		
6		
7		
8		

N.B. These items will ***not*** be taken into consideration in the assessment of Fee Proposals.

D. BREAKDOWN OF FEE FOR _____ STAGE*

1. Staff Charges for Project Disciplines

Discipline	Man-Weeks@						Fees (HK$)					
	P/D	CP	SP	P	AP	T	P/D	CP	SP	P	AP	T
Total												

2. Non-Staff Charges

Item	Charge (HK$)
Other Charges (please specify, if any):	
Total	

* N.B. *A separate sheet must be included in the Fee Proforma issued to the shortlisted consultants for each of the Feasibility, Investigation, Design and Construction Stages of the consultancy.*

@N.B. *A conversion factor of 40.00 hours/week shall be adopted throughout the calculation.*

E. MANNING SCHEDULE AND CHARGE RATES

No	Name	Position	Category of Staff (P/D, CP, SP, P, AP and T)	Weekly Charge Rate (HK$)	Manpower Input (Man-Weeks)	Fee (HK$)
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20						
Total						

N.B. (a) Charge rates must be all-inclusive rates.
(b) Key staff such as partners/directors, professional and technical staff (of relevant disciplines) should be shown.

***Attachment A – Notional RSS Establishment**

(I) Rank	(II) Posts in notional RSS establishment	(III) Number in notional RSS establishment	(IV) Notional number of man-months	(V) Collective rank of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer
			(sub-total =)	^R1
			(sub-total =)	^R2
			(sub-total =)	^R3
			(sub-total =)	^R4
			(sub-total =)	^R5
			(sub-total =)	^R10

Remarks:

^ *Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.* [*only for reference of the department's staff*]

ENGINEERING & ASSOCIATED CONSULTANTS SELECTION BOARD

NOTES ON THE PREPARATION OF FEE PROPOSALS

Client Department [*These notes in italics are only for reference of the department's staff*]

i. Before the Fee Proposal forms are sent to the shortlisted consultants, the Client Department must enter the Agreement title and number, the technical/ consultancy fee/ fee quality weighting, the notional man-hours for additional Services, and the date on which the completed proposal must be delivered. Where applicable, the notional number of man-months of RSS and the notional number of man-months of Government staff to be posted on site should also be entered.

ii. The disciplines into which the fee should be broken down (e.g. civil engineering, E&M engineering, environmental, planning) must be entered in Part D.

iii. When the Fee Proposal forms for an Agreement are sent to shortlisted consultants, a copy of Pages 1 and 2 must be sent to the EACSB Chairman.

iv. The Client Department must also predetermine the payment schedule and provide this to the shortlisted consultants along with the Fee Proposal forms. The payment schedule should be expressed as a proportion of the fee against time (e.g. monthly) or against progress (e.g. milestones).

Consultant

1. The Fee Proposal should be completed in all respects appropriate to the consultancy using the Proforma provided. Two sets of the Fee Proposal should be submitted to the Chairman, EACSB.

2. If the Fee Proposal is submitted by a Joint Venture, all participants in the Joint Venture must sign the Fee Proposal.

3. The time charge rates entered in the Fee Proposal will be used for payment for additional Services not covered by the Brief. In addition, these rates will be applied with the notional man-hours for additional Services to arrive at the 'adjusted notional value for additional Services' to be used for fee assessment purposes. Please refer to the Schedule of Fees for details.

4. The Proposed Lump Sum Fee on Page 1 of the Fee Proposal shall be equal to the total of the Staff Charges and Non-Staff Charges for all stages in Part A.

5. Part C will not be taken into account in assessing fees for the award of this consultancy.

6. Part D should be completed for each stage covered by this consultancy.

7. The details required in Part E should be provided by using as many sheets as necessary if the consultancy lasts longer than 12 months or if more than 20 personnel are involved. It should be noted that the charge rates quoted must be all-inclusive rates. This information is for checking that the consultant has fully accounted for the Services and has not made arithmetical errors. The rates shown will not be used for calculating payment for additional Services.

8. Combined score assessment of Technical and Fee Proposals will be carried out in accordance with the EACSB Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants and any subsequent related Circulars, DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any).

9. Questions regarding the completion of this Fee Proposal should be made to *[the Client Department]*.

APPENDIX 3.13A SUGGESTED CATEGORIES OF STAFF FOR SERVICES AND ADDITIONAL SERVICES

The following are recommended categories of staff for the Services but the list is not meant to be exhaustive.

Category	Minimum Qualification Requirement	Minimum Experience Requirement
Partners/ Directors	Corporate member of an appropriate professional institution or equivalent **[A partner, or a company director who is a member of the Board with voting power at Board meetings]*	15 years relevant post- qualification experience (applicable to professional membership only)
Chief Professional	Corporate member of an appropriate professional institution or equivalent	12 years relevant post- qualification experience
	University degree or equivalent in an appropriate discipline for specialist trades, such as *geology, transport, environmental science, or other trades where appropriate professional institutions are not commonly in existence*	17 years relevant post- qualification experience
Senior Professional	Corporate member of an appropriate professional institution or equivalent	5 years relevant post- qualification experience
	University degree or equivalent in an appropriate discipline for specialist trades, such as *geology, transport, environmental science, or other trades where appropriate professional institutions are not commonly in existence*	10 years relevant post-qualification experience
Professional	Corporate member of an appropriate professional institution or equivalent	No additional requirement
	University degree or equivalent in an appropriate discipline for specialist trades, such as *geology, transport, environmental science or other trades where appropriate professional institutions are not commonly in existence*	5 years relevant post-qualification experience
Assistant Professional	University degree or equivalent in an appropriate discipline	No additional requirement
Technical	Diploma or Higher Certificate or equivalent in an appropriate discipline	No additional requirement

As regards the additional Services, the managing departments should select, modify and append items to suit individual consultancy. If considered necessary, the categories could be further broken down into disciplines.

If the managing department specifies staff for additional Services of categories other than those mentioned above, the equivalent staff category in the Services should also be clearly specified in the invitation document.

* [To be deleted. The requirement shall be removed from the suggested minimum academic/professional qualification requirement for staff under Partners/ Directors category. However, project offices may consider including the requirement if needed to suit the specific requirement of the project.]

APPENDIX 3.13B SAMPLE FEE PROFORMA FOR TIME CHARGE ASSIGNMENT

RESTRICTED (CONTRACT)

ENGINEERING & ASSOCIATED CONSULTANTS SELECTION BOARD

FEE PROPOSAL
for

_____

(Agreement No.)

submitted by

_____

(Name of the Consultant)

Staff Grades (*Note i*)	(1) Notional Man-hours Input (man-hours)	(2) All-inclusive Charge Rate (HK$ /man-hour)
Partners/Directors		
Chief Professional Staff		
Expert		
(a) Working in Hong Kong		
(b) Working in home country		
Senior Professional Staff		
Professional Staff		
Assistant Professional Staff		
Technical Staff		

Signed _____ Date _____
( )

Notes for department's staff preparing the fee proforma:

i. *The staff grades/categories basically follow those at* **Appendix 3.13** *with provision for input from experts as necessary, and may be modified as appropriate to suit individual assignments.*

ii. *Relevant notes on the preparation of fee proposals may be incorporated with reference to those given at* **Appendix 3.13**.

Note: A notional total fee will be calculated by the department by summing up the products of individual all-inclusive charge rates and the corresponding notional man-hours input in this Fee Proposal. This notional total fee will be used in the combined score assessment of Technical and Fee Proposals to be carried out in accordance with DEVB TC(W) No. 2/2016 and No. 5/2018 and its subsequent updates (if any).

Technical/Consultancy Fee/Fee Quality weighting for this consultancy = %/ %/ %

Two signed copies of this Fee Proposal must be delivered ***by hand*** before 12:00 noon on _____ to:

Chairman, EACSB,
Director of Civil Engineering and Development
15/F, Civil Engineering and Development Building,
101, Princess Margaret Road,
Ho Man Tin, Kowloon.

The Proposal must be in a sealed envelope marked:

"EACSB Fee Proposal for Agreement No. _____ ,

submitted by _____ "

Agreement No. CE xx/201y (zz)
(State Agreement Title)
Summary of Assessment of EOIs
(Input and to be submitted to EACSB)

	Assessment Criteria	Marks (Total 100%)	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5
			Consultant A					Consultant B					Consultant C					Consultant D					Consultant E				
1.	Appreciation of the key requirements and constraints/risks	10%	VG	VG	G			G	G	G			VG	G	G			F	G	G			G	G	VG		
2.	Approach and strategy to meet the requirements of the assignment	30%	G	VG	G			VG	G	G			G	G	F			F	F	G			VG	G	VG		
3.	Previous relevant experience both in Hong Kong and elsewhere	5%	G	F	F			G	F	F			F	G	F			F	G	G			G	F	G		
4.	Knowledge, experience and capability of key staff	35%	G	VG	G			G	F	G			VG	G	G			P	F	F			G	F	F		
5.	Past performance of the consultant	15%	13.84	13.84	13.84			13.58	13.58	13.58			13.25	13.25	13.25			12.68	12.68	12.68			13.82	13.82	13.82		
6.	Past performance of sub-consultants	5%	4.77	4.77	4.77			4.68	4.68	4.68			4.77	4.77	4.77			4.77	4.77	4.77			5.00	5.00	5.00		
Total		100%	84.61	96.61	81.61	0.00	0.00	88.25	74.25	81.25	0.00	0.00	90.02	82.02	75.02	0.00	0.00	54.95	68.45	74.45	0.00	0.00	88.82	74.82	83.82	0.00	0.00
Avg		100%	87.61					81.25					82.35					65.95					82.48				
Rank			2					9					6					14					5				
			Consultant F					Consultant G					Consultant H					Consultant I					Consultant J				
1.	Appreciation of the key requirements and constraints/risks	10%	VG	G	G			G	G	F			F	F	P			G	G	G			G	VG	VG		
2.	Approach and strategy to meet the requirements of the assignment	30%	G	G	G			G	F	G			P	F	P			VG	G	G			G	VG	VG		
3.	Previous relevant experience both in Hong Kong and elsewhere	5%	VG	G	VG			F	G	G			F	G	F			G	F	G			F	G	F		
4.	Knowledge, experience and capability of key staff	35%	F	G	F			VG	G	G			VG	G	G			G	G	F			F	P	F		
5.	Past performance of the consultant	15%	13.88	13.88	13.88			14.28	14.28	14.28			9.50	9.50	9.50			13.91	13.91	13.91			14.28	14.28	14.28		
6.	Past performance of sub-consultants	5%	4.68	4.68	4.68			4.68	4.68	4.68			3.17	3.17	3.17			4.77	4.77	4.77			4.77	4.77	4.77		
Total		100%	78.56	82.56	76.56	0.00	0.00	88.95	76.95	80.95	0.00	0.00	65.67	68.67	55.67	0.00	0.00	88.68	81.68	75.68	0.00	0.00	75.05	73.55	83.05	0.00	0.00
Avg		100%	79.22					82.29					63.33					82.01					77.21				
Rank			10					7					15					8					12				
			Consultant K					Consultant L					Consultant M					Consultant N					Consultant O				
1.	Appreciation of the key requirements and constraints/risks	10%	G	G	G			G	G	G			VG	VG	G			VG	VG	G			G	G	F		
2.	Approach and strategy to meet the requirements of the assignment	30%	G	VG	G			VG	G	G			VG	G	G			G	VG	G			G	G	G		
3.	Previous relevant experience both in Hong Kong and elsewhere	5%	F	G	G			G	F	F			G	F	F			VG	G	G			G	VG	G		
4.	Knowledge, experience and capability of key staff	35%	VG	VG	G			F	P	F			F	G	G			G	G	G			F	G	F		
5.	Past performance of the consultant	15%	13.40	13.40	13.40			12.59	12.59	12.59			14.69	14.69	14.69			14.85	14.85	14.85			15.00	15.00	15.00		
6.	Past performance of sub-consultants	5%	4.77	4.77	4.77			4.56	4.56	4.56			4.77	4.77	4.77			4.77	4.77	4.77			4.77	4.77	4.77		
Total		100%	88.17	95.17	82.17	0.00	0.00	80.15	62.65	73.15	0.00	0.00	84.46	84.46	82.46	0.00	0.00	86.62	91.62	83.62	0.00	0.00	76.77	84.77	74.77	0.00	0.00
Avg		100%	88.50					71.98					83.80					87.28					78.77				
Rank			1					13					4					3					11				
			Consultant P					Consultant Q					Consultant R					Consultant S					Consultant T				
1.	Appreciation of the key requirements and constraints/risks	10%																									
2.	Approach and strategy to meet the requirements of the assignment	30%																									
3.	Previous relevant experience both in Hong Kong and elsewhere	5%																									
4.	Knowledge, experience and capability of key staff	35%																									
5.	Past performance of the consultant	15%		0.00	0.00				0.00	0.00				0.00	0.00				0.00	0.00				0.00	0.00		
6.	Past performance of sub-consultants	5%		0.00	0.00				0.00	0.00				0.00	0.00				0.00	0.00				0.00	0.00		
Total		100%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Avg		100%	0.00					0.00					0.00					0.00					0.00				
Rank			-					-					-					-					-				

Notes: (1) Weighting of Assessment Panel Members (assume equal weighting)
No. of Members : 5 1/5 each
(2) For criteria 1 to 4, insert grade (i.e. VG, G, F or P, as the case may be) .
(3) For criteria 5 and 6, insert the mark assigned to the consultant [ref. Paragraphs 9 to 14 and Appendix D in Annex I of DEVB TC(W) No. 3/2016].

Scores:

VG	(Very Good)	1.0
G	(Good)	0.8
F	(Fair)	0.6
P	(Poor)	0.3

(Name)

Chairman, Assessment Panel
Date: 00-Jan-00

RESTRICTED (CONTRACT)

Agreement No. CE
(State Agreement Title)
Summary of Assessment of Technical Proposals

	Assessment Criteria	Marks (Total 100%)	Consultant A					Consultant B					Consultant C					Consultant D				
			Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5	Member 1	Member 2	Member 3	Member 4	Member 5
1.0	Consultant's Experience	**5%**	G	VG	VG	VG	VG	G	G	G	G	G	G	G	G	F	G	G	G	G	F	G
2.0	Response to the Brief	**10%**	G	G	G	VG	G	F	G	G	G	G	G	G	G	F	G	G	G	G	VG	G
3.0	Approach to Cost-effectiveness and Sustainability	**7%**																				
(a)	Examples and discussion of past projects to demonstrate the consultant's will, ability and physical measures to produce cost-effective, energy efficient and environmentally friendly solutions which are applicable to the project	3%	G	G	G	VG	G	G	G	G	VG	G	F	F	F	F	G	F	F	F	F	F
(b)	Approach to achieve cost-effectiveness (including life-cycle costs vis-à-vis initial project cost), energy efficiency and environmental friendliness on this project	4%	F	G	G	G	G	G	G	G	G	G	F	F	F	F	F	F	F	F	F	F
4.0	Methodology and Work Programme	**25%**																				
(a)	Technical approach to enable delivery of the project practicably having regard to the reasonable time required and other technical constraints vis-à-vis the project requirements (including construction methods to facilitate mechanization, prefabrication and other productivity enhancements where appropriate, especially where they can reduce manpower demands of trades of acute labour shortage)	15%	G	VG	VG	VG	VG	G	G	G	G	G	F	G	F	F	G	F	G	F	F	G
(b)	Health & safety and environmental issues to be addressed in delivering the project	3%	G	VG	VG	VG	VG	G	G	G	G	G	F	G	F	G	G	G	F	G	G	F
(c)	Work programme with highlights to demonstrate ways to fast-track the programme where practicable, to deal with programme constraints and interfaces, and to level and reduce the resources peak	4%	G	G	G	G	G	G	G	G	G	G	F	G	G	G	F	F	G	G	G	G
(d)	Arrangement for contract management and site supervision including a proposed system of monitoring site supervision	3%	F	F	G	G	G	F	F	F	F	F	F	F	F	F	G	F	F	F	F	G
5.0	Innovation and Creativity	**8%**																				
(a)	Particular design aspects/issues/requirements (as identified and specified by the departments)	4%	F	G	G	G	F	G	G	G	G	F	G	VG	G	VG	G	VG	VG	VG	G	G
(b)	Particular construction aspects/issues/requirements (as identified and specified by the departments)	4%	G	G	G	G	F	F	G	G	G	G	G	VG	G	VG	G	G	VG	VG	VG	G
6.0	Staffing	**25%**																				
(a)	Staff organisation chart with highlights on the efficiency and effectiveness of the organisation	5%	G	VG	VG	VG	VG	F	G	G	G	G	G	VG	G	G	VG	F	G	G	G	G
(b)	Relevant experience (including design constructability and risk management where applicable) and qualifications of key staff	5%	G	VG	VG	VG	G	G	G	G	G	G	G	G	G	F	G	G	G	G	F	G
(c)	Responsibilities and degree of involvement of key staff	5%	F	G	G	VG	G	F	G	G	G	VG	G	VG	VG	G	VG	G	G	G	G	G
(d)	Adequacy of professional and technical manpower input	10%	F	F	F	F	F	VG	VG	VG	VG	VG	G	G	G	G	G	VG	VG	VG	VG	VG
7.0	Past Performance	**20%**																				
(a)	Past performance of the consultant	20%	20.00					19.62					19.15					15.31				
Total :		**100%**	78.80	88.00	88.60	92.20	86.00	80.22	85.02	85.02	85.62	85.22	76.75	84.75	78.55	75.75	83.55	75.31	80.31	77.91	77.11	79.31
Average :		**100%**	86.72					84.22					79.87					77.99				
Rank :			1					2					3					4				

Notes : (1) Weighting of Assessment
Panel Members :
Members 1 – 5 0.2 each

(2) Scores :

VG	(Very Good)	1.0
G	(Good)	0.8
F	(Fair)	0.6
P	(Poor)	0.3

(3) Members shall be clearly identified

_____ AD, _____
Chairman, Assessment Panel
Date : _____

APPENDIX 3.16 DETAILS ON CHECKING OF COMPLIANCE WITH SPECIFIED PERCENTAGE RANGE, WORKED EXAMPLE FOR ASCERTAINING FEE QUALITY SCORE AND SAMPLE TEMPLATE FOR DEFINING DEGREE OF NON-COMPLIANCE WITH MINIMUM ACADEMIC/PROFESSIONAL QUALIFICATIONS AND/OR MINIMUM EXPERIENCE AND STAFF WORKING UNDER OVERLOADING SITUATION

Checking of Compliance with Specified Percentage Range

1. Checking shall be conducted for the following three staff groups

- Partners/Directors and Chief Professional	P/D and CP
- Senior Professional and Professional	SP and P
- Assistant Professional and Technical	AP and T

2. "Staff rate in lump sum fee" for a staff group shall be calculated as:

$$\frac{\text{Total fee of the staff group}}{\text{Total manpower input of the staff group}}$$

For example, the staff rate in lump sum fee for the staff group "P/D and CP" shall be calculated as:

$$\frac{\text{Total Fee}_{P/D} + \text{Total Fee}_{CP}}{\text{Total Manpower Input}_{P/D} + \text{Total Manpower Input}_{CP}}$$

3. "Staff rate for additional Services (AS)" of a staff group shall be calculated as:

$$\frac{\sum(\text{staff rate for AS} \times \text{Corresponding Notional Manhour}) \text{of the Staff Group}}{\sum(\text{Notional Manhour}) \text{ of the Staff Group}}$$

For example, the staff rate for AS for the staff group "P/D and CP" shall be calculated as:

$$\frac{\text{Rate for AS}_{P/D} \times \text{Notional Man-hour}_{P/D} + \text{Rate for AS}_{CP} \times \text{Notional Man-hour}_{CP}}{\text{Notional Man-hour}_{P/D} + \text{Notional Man-hour}_{CP}}$$

4. A "% Difference" shall be calculated for each staff group according to the following formula:

$$\% \text{ Difference} = \frac{\text{Staff rate for AS} - \text{Staff rate in lump sum fee}}{\text{Staff rate for AS}}$$

Any bid with "% Difference" for any staff group exceeding the Specified Percentage Range (SPR) of -10% to 40% shall not be further considered. If the total fee and total manpower input of a particular staff group are both zero, the requirement of SPR is not applicable to this staff group. However, the procuring department should further evaluate the reasonableness of the concerned manpower input and staff rates of this staff group in accordance with paragraph 26 of this Circular.

Note: If conversion from man-week to man-hour is required, a conversion factor of 40 hours/week is normally adopted.

A Worked Example for Ascertaining Fee Quality Score

Technical and Fee Proposals have been received from four bidders W, X, Y and Z with details as follows --

Table 1:

Bidder	Consultancy Fees ($ million)				
	Lump Sum Fee [A] = [B] + [C]		Adjusted Notional Values for Additional Services [D]	Notional Resident Site Staff On-cost Charges [E]	Total Fee [F] = [A] + [D] + [E]
	Staff Costs [B]	Non-staff Costs [C]			
W	20.57	0	2.53	5.23	28.33
X	30.15	0	3.06	7.23	40.44
Y	16.37	0	1.90	4.80	23.07
Z	31.11	0	2.94	6.53	40.58

The steps for determining the Fee Quality Score for each bidder are as follows:

- **Step 1** : Calculate the weighted total manpower input of the technical proposal for each bidder using the ratio for three staff groups (viz. "P/D and CP", "SP and P", and "AP and T") as determined by the Assessment Panel (a ratio of 6:3:1* assumed in this worked example) by means of the assessment method at Appendix C of DEVB TC(W) No. 2/2016, and insert in Table 2 below.

- **Step 2** : Calculate M_x for each bidder, being the weighted total manpower input of the concerned tenderer divided by the median weighted total manpower input which is equal to the median of the weight total manpower inputs of all conforming bids (including the PTE) using the formula:

$$\frac{\text{weighted total manpower input of the bidder}}{\text{median weighted total manpower input of all conforming bids (including the PTE)}}$$

- **Step 3** : Insert lump sum fee for each bidder into Table 2 below.

- **Step 4** : Calculate the ratio of the lump sum fee to the median of lump sum fees of all conforming bids (including the PTE), for each bidder.

- Step 5 : Calculate a Factor for Marking Fee Quality Score as

$$\frac{\text{lump sum fee of the bidder}}{\text{median of lump sum fees of all conforming bids (including the PTE)}} \times \frac{1}{M_x}$$

- Step 6 : Determine the Fee Quality Score as follows:

Factor for Marking Fee Quality	Fee Quality Score
≤ 0.5	0
> 0.5 but < 0.8	On sliding scale between 0 and 10
≥ 0.8	10

The calculated figures for the above steps for each bidder are tabulated in Table 2 below.

Table 2:

Bidder	Weighted Total Manpower Input (Man-weeks) [G]	M_x [H]= [G] / Median of [G]	Lump Sum Fee ($million) [I]	Ratio of Lump Sum Fee to Median of Lump Sum Fees [J]=[I] / Median of [I]	Factor for Marking Fee Quality [K]= [J]/[H]	Fee Quality Score
W	640.7	0.8712	20.57	0.6823	0.7831	9.44
X	674.0	0.9165	30.15	1.0000	1.0911	10.00
Y	735.4	1.0000	16.37	0.5430	0.5430	1.43
Z	824.6	1.1213	31.11	1.0318	0.9202	10.00
PTE	826.0	-	30.60	-	-	-
Median	735.4	-	30.15	-	-	-

The lump sum fee of a consultant is normally, prima facie, unreasonably low if both ratios of his lump sum fee / lump sum fee of the PTE and his lump sum fee / median of lump sum fees of all conforming bids (including the PTE) are less than 0.6.

* the ratio for three staff groups (viz. “P/D and CP”, “SP and P”, and “AP and T”) shall be 4:2:1 according to DEVB TC(W) No. 5/2018.

Sample Template for Defining Degree of Non-compliance with Minimum Academic/Professional Qualifications and/or Minimum Experience

Degree of non-compliance	Calculated Percentage = B/A x 100% where A = Weighted total manpower input of the consultant B = Weighted manpower input of the proposed staff claimed to be in a particular staff category not meeting the minimum academic/professional qualifications and/or minimum experience requirements	Mark for the "adequacy of professional and technical manpower input" attribute shall be multiplied by (Exact multiplier to be decided by the Assessment Panel in the Marking Scheme)
Minor	> 0% and ≤ (5%)	0.95 to 0.9 (e.g. 0.95)
Medium	> (5%) and < (10%)	0.9 to 0.8 (e.g. 0.9)
Serious	≥ (10%)	Below 0.8 (e.g. 0.6)

Note:

(a) If the consultant's proposed staff claimed to be in a particular staff category do not meet the minimum academic/professional qualifications and/or minimum experience requirements, the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the criteria above.

(b) If the consultant does not input the staff category for any particular staff in the manning schedule of his technical proposal, the consultant may be approached before opening of the fee proposal, for clarification on the staff category for that particular staff, if any, input in the manning schedule of his fee proposal. In case the consultant clarifies that no staff category has been input for the staff in both technical and fee proposals, that particular staff shall be counted as non-compliance with the minimum academic/professional qualifications and/or minimum experience requirements for the purpose of assessment on this aspect only and the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the criteria above. In determining the degree of non-compliance under this circumstance, the staff category and the academic/professional qualifications and/or experience of that particular staff shall be determined from the information in the curriculum vitae for named staff or the declaration to meet the minimum academic/professional qualifications and/or minimum experience requirements in the relevant staff categories for unnamed staff submitted in the technical proposal together with any clarification from the consultant on the factual information of the staff if appropriate.

Remarks:

1. The percentages in the brackets should be determined by the Assessment Panel to suit the consultancy agreement.

2. The criteria to determine the degree of non-compliance with explanatory notes above should be included in the Marking Scheme and **made known to the bidders**.
3. The Assessment Panel has its discretion to decide another new set of criteria for determining the degree of non-compliance provided that such criteria with explanatory notes are commented by DEVB, and if necessary, by LAD(W).

Sample Template for Defining Degree of Staff Working under Overloading Situation

Overloading Situation	Degree of Overloading	Mark for the "adequacy of professional and technical manpower input" attribute shall be multiplied by (Exact multiplier to be decided by the Assessment Panel in the Marking Scheme)
Minor	≤ (5%)%	0.9 to 0.95 (e.g. 0.95)
Medium	> (5)% and < (10)%	0.8 to 0.9 (e.g. 0.9)
Serious	≥ (10)%	0.7 to 0.8 (e.g. 0.8)

Note:

(a) The manpower input as at end of [February, May, August or November YYYY][Remarks 4] 【*procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment, see Remarks 4 below*】 captured in the final snapshot taken by the Public Works Consultants Resources Allocation Register (PWCRAR) as detailed in DEVB TC(W) No. 5/2018 will be used for checking if any named professional staff or above proposed in the manning schedule of his technical proposal is working under an overloading situation. If overloading is identified for a particular named professional staff or above, the consultant may be approached for clarification.

(b) Where the manpower input data in the PWCRAR, together with relevant clarifications from the consultant (if any) reveals overloading situation in the manpower input, mark to be given for the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the criteria above.

(c) Notwithstanding the above, the following circumstances shall be considered by the Assessment Panel as "Serious" overloading situation:

  (i) Where the consultant or any of its proposed sub-consultant fails to provide the first manpower input updating in accordance with paragraph 3 of Appendix 3.7 to DEVB TC(W) No. 5/2018 with refinements as instructed by the procuring departments for any signed consultancies and consultancies having Expression of Interest Submissions or Technical and Fee Proposals (for one-stage procedure) invited before 3 December 2018 (referred to as "existing consultancies") undertaken by the consultant or any of its proposed sub-consultant as the sole consultant or one of the participants in the joint venture. For the purpose of tender assessment in this regard, a consultant will be considered as failing to provide the first manpower input updating for an existing consultancy if it fails to provide a manpower input updating which enables the

procuring department of the existing consultancy concerned to endorse it in the PWCRAR as described in paragraph 2 of Appendix 3.7 to DEVB TC(W) No. 5/2018 for all the reporting quarters before the tender closing date of the tender under assessment; or

(ii) Where the consultant fails to provide the manning schedule as required in the invitation letter for the Technical and Fee Proposal for the consultants selection exercise under assessment and/or failed to provide the manning schedule as required in the invitation letter for Technical and Fee Proposal for any concurrent tender with the same bidder, which make the assessment of overloading situation in accordance with DEVB TC(W) No. 5/2018 unable to be properly performed. For the avoidance of doubt, concurrent tenders shall mean other tenders registered in the PWCRAR which have been closed but not yet been awarded as at end of 【February, May, August or November YYYY】【*procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment, see Remarks 4 below*】 captured in the final snapshot taken by the Public Works Consultants Resources Allocation Register (PWCRAR) as detailed in DEVB TC(W) No. 5/2018.

Remarks:

1. The percentages in the brackets should be determined by the Assessment Panel to suit the consultancy agreement.
2. The criteria to determine the degree of non-compliance with explanatory notes above should be included in the Marking Scheme and **made known to the bidders**.
3. The Assessment Panel has its discretion to decide another new set of criteria for determining the degree of non-compliance provided that such criteria with explanatory notes are commented by DEVB, and if necessary, by LAD(W).
4. The end month of the reporting quarter to be input is determined as follows:

End month to be input	**Final snapshot captured on**	**Applicable to tender closing dates between**
February XXXX (Dec to Feb)	00:00 of 23 March	23 March to 22 June
May XXXX (March to May)	00:00 of 23 June	23 June to 22 September
August XXXX (June to August)	00:00 of 23 September	23 September to 22 December
November XXXX (September to November)	00:00 of 23 December	23 December to 22 March

APPENDIX 3.17 SAMPLE LETTER TO BIDDERS WITH UNREASONABLY LOW BIDS

Dear Sirs,

Agreement No. CE /

(Agreement Title)

I refer to your Technical and Fee Proposals submitted for the captioned Consultancy Agreement dated *DD/MM/YYYY*.

2 Upon a preliminary vetting of your Fee Proposal, it appears that your proposed fee is unreasonably low. Thus, it raises doubts as to whether you are capable of fulfilling the terms of the Consultancy. *[Procuring departments shall also cite the prices or unit rates of any major items which are considered as unreasonably low, or other specific issues in relation to the proposed fee that the procuring department considers relevant in casting doubt on the consultant's capability.]*

3 To address our concern on this issue, you are requested to provide clarification or justification or any information which may be helpful in explaining why the proposed fee *[and the prices or unit rates of any major items mentioned in the above paragraph]* is/are not unreasonably low and how you are able to fulfil the consultancy at such a low price on or before *DD/MM/YYYY*.

4 Please note that only clarification or justification or any information provided in response to the third paragraph above can be submitted and considered by the Assessment Panel. You are not allowed to introduce any change to the Technical and Fee Proposals.

5 Please be reminded that this letter shall not be construed as either an acceptance or a rejection of your Technical and Fee Proposals. All bids are still under consideration and the Government of the Hong Kong Special Administration Region does not bind itself to accept any bid irrespective of whether the bid is the lowest or, where the assessment of the bids is based on a marking scheme or formula approach, the bid has the highest overall mark.

Yours faithfully,

_____

( )

APPENDIX 3.18 FEEDBACK AND DEBRIEFING TO UNSUCCESSFUL BIDDERS FOR CONSULTANCY AGREEMENTS

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 42/2002 for departments to provide feedback to bidders including debriefing to unsuccessful bidders. The relevant paragraphs from the original circular are basically subsumed hereunder. This Appendix has also been updated to bring in line with the revised marking schemes for selection of consultants promulgated under DEVB TCW No. 2/2016 and the extended category of unsuccessful bidders allowed to lodge requests for debriefing for consultancy agreements under SDEV's memo ref. (02UH8-01-7) in DEVB(PS) 106/43 dated 12 July 2016.

Effective Date

2. The above Circular has been effected on 1 February 2003. The arrangements stipulated in the Circular shall apply to the consultancy agreements for which the submission for approval of a shortlist is made to EACSB on or after 1 February 2003.

Background

3. Past performance, experience and the quality of technical submissions have become significant aspects in the selection process of consultants. As such, it is considered necessary that the managing departments shall provide feedback to unsuccessful bidders to help improve their competitive performance in future bidding exercises.

Policy

4. For a consultancy agreement with an awarded fee or fee ceiling above $3 million, the managing department shall disclose to the bidders or, as the case may be, shortlisted/prequalified bidders, who have submitted conforming technical and fee proposals, the following information where applicable:

(a) winning bid price;
(b) the overall quality score of the winning bid (where applicable);
(c) the highest score attained for each quality attribute in the exercise (where applicable); and
(d) the bidder's own overall quality score and score for each quality attribute (where applicable).

5. The managing departments shall also notify the unsuccessful bidders in the following categories that they can lodge a request for a debriefing if considered beneficial:

> Shortlisted but unsuccessful bidders for two-stage selection or unsuccessful bidders for one-stage selction, whose technical proposals have been completely assessed by the managing departments for consultancy agreements each of value exceeding the Quotation Limit as set out in section 220 of the Stores and Procurement Regulations (SPR 220).

Guidelines and Procedures

6. After the award of a consultancy agreement, the managing department shall provide the information in accordance with paragraph 4 to the bidders when notifying whether their bids have been accepted or not.

7. Where applicable, the unsuccessful bidders shall also be informed, pursuant to paragraph 5 above, that they can request for a debriefing session. Such request shall be raised within three weeks from the dates of the notification letter mentioned in paragraph 6 above. Late request will not be entertained. The request shall include a list of questions or issues that the unsuccessful bidder would like to have further feedback from the procuring department.

8. The unsuccessful bidders should be informed of the following ground rules for the debriefing:

(a) the debriefing will be informal;
(b) the bidders will be told the perceived strengths and weaknesses of their bidding submissions and their responses will be noted;
(c) the merits of other bids, including the winning bid, will not be discussed;
(d) the decision on the award of the consultancy agreement is final thus the debriefing session shall not be taken as a means or an opportunity for the bidder to lodge appeal or complaint against the bidding result of the consultancy agreement;
(e) tape recording during the debriefing will not be allowed;
(f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained, and
(g) The bidder shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

9. It should make it clear to the bidders that the debriefing should not be used to change the choice of consultant nor to re-open the selection procedure.

10. Any request from an unsuccessful bidder who fails to expressly agree or refuses to be bound by the ground rules shall not be entertained. Sample letters to unsuccessful bidders for consultancy agreements are given in Annex B respectively.

11. Upon receipt of a request for debriefing, the managing department shall fix the date, time and place of the debriefing. Separate debriefing session shall be arranged for individual bidder. The debriefing shall be conducted by a team led by an officer of the rank of senior professional or above from the managing department. At least one member of the team should have been a member of the assessment panel or have assisted directly in evaluating the bidding documents. When preparing the consultancy brief at EOI stage, the managing department shall note that for a works contract managed by consultants, a senior staff member from the consultant's project team for the project concerned should also be included in the debriefing team. If it is envisaged that the consultant's staff shall be required to serve in any debriefing exercise, the requirement should be spelt out in the consultancy brief concerned. The managing department shall determine the team size and flexibility is allowed to assign different team members to conduct different debriefing sessions under the same works contract or consultancy agreement. To allow exchange of views in a casual manner, the bidder shall be requested to limit the number of representatives attending the debriefing to three.

12. Each debriefing session should be carefully planned with due regard to the weaknesses and strengths of the bidder. In general, discussion should be limited to the information submitted by the bidder without comparison with other submissions. Where practicable, the bidder should be informed frankly, honestly and tactfully of the weaknesses and strengths of his submission which shall be measured against established practices, general experience of the department or standards in the industry. Any information that would impede the law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between consultants should not be released. The discussion during the debriefing should be limited to the issues/questions raised by the bidders as mentioned in paragraph 8 above. If necessary, some topics as suggested in Annex A for consultancy agreements can also be discussed. The departments shall also consider the appropriate level of details to be discussed. Nonetheless, care should be exercised to demonstrate that judgments are made only against the assessment criteria made known to the bidders. To facilitate the debriefing, the perceived strengths and weaknesses of each technical proposal discussed by the Assessment Panel should be recorded in the meeting minutes.

13. The debriefing should be conducted as an informal discussion, and not in writing. Nevertheless, the debriefing team should record the results and conclusions of the debriefings for internal reference in case follow-up actions are needed for improving the process of similar procurements and debriefings. Such notes shall not be sent to the bidder. The bidder is free to take notes for himself. However, request for records of the debriefing or agreement on any notes prepared by either party shall be refused. Tape recording by the bidder shall also be refused as it would hinder a free exchange of views between the parties and thus defeat the purpose of the debriefing.

Examples of Debriefing Topics for Consultancy Agreements

1. Cost – discussion on the competitiveness of the consultant's proposed fee in general terms

2. Consultant's experience – where the experience of the consultant is judged to be less than adequate for the work proposed and reference should only made to projects named in the consultant's technical proposal

3. Response to the brief

4. Cost-effectiveness and sustainability

5. Methodology

6. Works programme

7. Innovation and creativity

8. Staffing

9. Consultant's past performance - reference could be made to the consultant's past performance in the past three years as reflected in the performance reports but comparison with other bidders in qualitative terms should be avoided.

Sample Letter to Unsuccessful Consultants

(Consultant) …….
(Address) …….
……..

Dear Sirs,

Agreement No.: ……
Project Title: …….

Thank you for your proposals submitted for the above consultancy Agreement in response to my letter of (date) .

I regret that on this occasion you have not been selected for the award of the Agreement. A copy of the Summary of Technical and Fee Proposals with the assessment results from the Engineering and Associated Consultants Selection Board in respect of the proposal submitted by the shortlisted consultants is enclosed for your information.

In accordance with Appendix 3.18 of EACSB Handbook, we also provide the following information for your reference:

Description	Highest Value/Score	Your Score
Fee of the winning bid (where applicable)*		
Technical point of the winning bidder (where applicable)*		
Highest score attained for each assessment criteria in Technical Proposals submitted in this exercise (a) Consultant's experience (b) Response to brief (c) Approach to cost effectiveness and sustainability (d) Methodology and work programme (e) Innovation and creativity (f) Staffing (g) Past performance		

* these two items could be deleted from the table if similar information has been given in the Summary as mentioned in the second paragraph above.

In accordance with Appendix 3.18 of EACSB Handbook, we will, at your request, conduct a debriefing in an informal manner with you or your representatives (no more than 3 persons). If you wish to have a debriefing, please lodge your request in writing within 3 weeks from the date of this letter. You are also required to state expressly in your request your agreement to abide by the conditions and ground rules stipulated in this letter. Your request will not be entertained if you fail to do so or refuse to abide by the conditions and ground rules. With a view to enabling us to better prepared for the debriefing session, you are requested to provide a list of specific items related to this selection of consultant exercise which you would like our feedback.

The debriefing session shall not be used as an opportunity for you to lodge appeal/complaint against the award of the consultancy agreement. You should also note that our decision on the award of the consultancy agreement is final and the debriefing cannot be used to change the choice of consultant nor to re-open the selection procedure. The main purpose of a debriefing session is for us to provide feedback to you on any shortcomings of your proposals to enable you to improve your competitive performance in future consultant selection exercises. Please note the following ground rules for the debriefing, if held:

(a) the debriefing will be informal;
(b) you will be told of the perceived strengths and weaknesses of your proposals and your responses will be noted;
(c) the merits of other bids, including the winning bid, will not be discussed;
(d) the debriefing is not to be taken as a means or an opportunity for you to lodge appeal or complaint against the bidding result;
(e) tape recording during the debriefing will not be allowed;
(f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained; and
(g) you shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

Last but not least, your effort and care in formulating your proposals are very much appreciated.

Yours faithfully,

_____

( )

Note
The 4th and 5th paragraphs shall be deleted if debriefing is not to be conducted

Government Departments' Internal Checklist for EACSB Submission

Agreement No. and Title: _____

Department: _____ Date of EACSB Meeting: _____

A. General

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
1.	Check if the submission is in accordance with the required format. (3.3.1)	☐	☐	
2.	State the authority to employ consultants, and availability of funds or approval given for invitation of EOI/T&F Proposals not adopting parallel tendering. (1.3, 1.4 and FC No. 3/2020)	☐	☐	
3.	State officers' declarations on conflicts of interest (actual, potential and perceived), and if there is any, state what remedial actions have been taken. (3.4.4)	☐	☐	
4.	State any non-standard/special requirements in the tender document/supplementary agreement/supplementary brief with advice sought from DEVB and/or LAD(W) where appropriate. (3.3.1)	☐	☐	
5.	State any key recommendations given in case legal advice has been obtained to assist departments in dealing with consultants' submissions.	☐	☐	
6.	Ensure appendices to the draft Brief except general layout plans should not be included and check if the submission is printed on double sides as far as possible. (3.3.1)	☐	☐	

B. Stage 1 - Shortlisting Stage

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
1.	State assessment panel's decisions on the choice of appropriate Category(ies) and Group(s) and if notice of EOI posted on the internet. (Section 3.1.1 of the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	
2.	State, if there is deviation from the bidding restriction, approval of the Head of Department is obtained. (Section 2.3.3 of the Guidelines promulgated under DEVB TC(W) No. 5/2018)	☐	☐	
3.	State, if IDC arrangement is adopted, the controlling officer's satisfaction with the use of it. (4.1.4)	☐	☐	
4.	Check the listing status and the records of suspension and major noticeable events (serious default or non-performance) for consultants and their sub-consultants in the CNPIS and whether they are (i) under suspension from bidding at the deadline for EOI submission, (ii) suspended from bidding after the deadline for EOI submission, or (iii) reported with serious default or non-performance. (DEVB TCW No. 2/2016, 3/2016 and 5/2018)	☐	☐	Refer to Item I of Annex I
5.	Check the shortlisting criteria against the EACSB's guidelines, the arithmetic of technical marks in Summary of Assessment on EOI and the recommended short list of consultants. (3.5.3, 3.6.1 and Appendix 3.1A of EACSB Handbook and Section 3.3 of the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	
6.	Check if the composition of assessment panel (AP) is in line with the EACSB's guidelines and departmental own guidelines. (App. 3.6)	☐	☐	

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
7.	Check the minutes for proper recording of mark adjustment, diverged marks and negative assessment. (3.5.3)	☐	☐	
8.	Include the proposed Marking Scheme, Technical/Consultancy Fee/Fee Quality weighting as recommended by the AP, and state any deviation from the standard ones and the justifications. (3.3.1 and 3.6.2 of EACSB Handbook and Section 3.2 and 3.3 of the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	
9.	State DEVB's endorsement and LAD(W)'s legal vetting if any non-standard SCE or Schedule of Fees clause is proposed. (4.5)	☐	☐	
10.	Check the draft Brief for inclusion of all standard clauses and where appropriate some drawings, specifying the key scope of study/design clearly, limits of PII for different types of assignments, key dates and programme, schedule of deliverables, number of external meetings, clear description of services for procurement and supervision of ground investigation works/reimbursable items where required, submission of manpower input, etc. (4.7 and Appendix 3.8 to the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	
11.	Check the draft Brief against inclusion of secretarial services for meetings and preparation of PDS/TFS/Panel/PWSC submissions. (4.7)	☐	☐	
12.	Check if the SCE "phases subject to incorporation" is required and used, then (i) state the reasons/justifications for adopting the clause for various phases; and (ii) include in the draft Brief the required time table for various phases. (4.22)	☐	☐	
13.	If reimbursable item(s) is/are proposed, (i) state the reasons why the arrangement is more suitable; and (ii) state the value and details; and (iii) check the allowed limit of value. (4.11)	☐	☐	
14.	Check payment schedule in the Schedule of Fees (endorsed by an officer of D2 or above) and state any deviations from standard structure and the justifications. (4.6.1)	☐	☐	
15.	State the consultants' comment/feedback on the draft Brief and Schedule of Fee during EOI and corresponding actions taken. (4.6.1.6)	☐	☐	
16.	Check if the list of sub-consultants is complete.	☐	☐	
17.	Check the submission to ensure its full coverage of those required contents and alignment with the sample. (3.6.2)	☐	☐	

C. Stage 2 - Nomination Stage

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
1.	State any change of sub-consultants and corresponding assessment by AP. (3.8.4)	☐	☐	
2.	State any comments from shortlisted consultants on the tender documents and department's response. (3.9)	☐	☐	
3.	State any refinement to payment schedule approved by HoD. (4.6.1.6)	☐	☐	
4.	Check the listing status and the records of suspension and major noticeable events (serious default or non-performance) for consultants and their sub-consultants in the CNPIS and whether they are (i) under suspension from bidding at the deadline for T&F submission, (ii) suspended from bidding after the deadline for T&F submission, or (iii) reported with serious default or non-performance. (DEVB TCW No. 2/2016, 3/2016 and 5/2018)	☐	☐	Refer to Item II of Annex I
5.	Check arithmetic in the calculations of technical marks and the combined technical and fee assessment.	☐	☐	

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
6.	Vetting the minutes of assessment panel meeting on items requiring attention, like any amendments of grades, deliberation on marks differing by two grades or more among panel members, why the consultant is still technically capable even if panel members have given negative comment/poor grades, and proper record of perceived strengths and weaknesses of each technical proposal discussed by the assessment panel. (3.10)	☐	☐	
7.	State any correction made to the fee proforma or manpower input in technical proposal and any adjustment to the technical marks resulting from any proposed staff of any consultant not meeting the minimum qualification and/or experience requirements and from overloading checking. Provide the correspondences exchanged with the consultant(s) concerned. (3.10 and Section 3.6 of the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	
8.	State the result and provide details of checking on the Specified Percentage Range requirement of -10% to +40% on staff rates in lump sum fee and those for additional Services (3.11 and DEVB TCW No. 2/2016)	☐	☐	
9.	Compare the lump sum fee and staff rates of recommended bid with those of other bidders, pre-tender estimate and other assignments of similar nature / scale. Check against any unreasonably low bid, including the lump sum fee and any unreasonable rates, including staff rates in lump sum fee, staff rates for additional Service and RSS on-cost rates. Make enquiry to the consultant concerned and seek justifications with positive proof for any prima facie unreasonably low bid. State the recommendation with justifications. (3.11.5, ETWB TCW No. 8/2003 and DEVB TCW No. 2/2016)	☐	☐	
10.	State HoD's approval obtained for any proposed rejection of unreasonably low bid. (3.11.5 and ETWB TCW No. 8/2003)	☐	☐	
11.	Check against the expiry of the validity period, and extend if necessary. (3.8.3(d))	☐	☐	
12.	Check if the final recommendation of award is in order. For any disqualification of bids, provide detailed justifications and deliberations.	☐	☐	
13.	Check if funds are adequate for award. (1.4)	☐	☐	
14.	Check the submission to ensure its full coverage of those required contents and alignment with the sample. (3.12)	☐	☐	

D. Prior to Award of the Consultancy *[To be completed by procuring department after EACSB Stage 2 approval is obtained and before the award of the consultancy]*

	Item	Yes	No	Remark
1.	Check if consultants to be awarded for the consultancy are eligible for appointment. (Para. 4(ii), Appendix 3.12 of the Guidelines promulgated under DEVB TCW No. 5/2018)	☐	☐	

E. Submission for direct selection of a single consultant for fee negotiation and /or increase in fee ceilings for additional services

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
1.	State the justifications for direct selection (3.15) or for proposed negotiation with the original consultant. (3.17(b))	☐	☐	
2.	Check if appropriate estimate of manpower and whether prevailing market rates to be adopted. (5.3.3)	☐	☐	
3.	Check whether the proposed extension of consultancy scope is within the approved scope of the project. (3.17)	☐	☐	

	Item (Reference clause in EACSB Handbook / Reference Technical Circulars)	Yes	No	Remark
4.	Include Supplementary Brief and Schedule of Fees, where appropriate. (3.17(c) & (d))	☐	☐	
5.	Include a brief account of expenditures incurred, including (i) a full list of previously approved items, (ii) current approved limits under EACSB & SPR, (iii) calculations to illustrate the increase in ceiling required, and (iv) a list of additional Services which are anticipated at the time of submission. (3.17)	☐	☐	
6.	State if Controlling Officer's agreement has been sought for seeking the Board's any retrospective approval of variations. (8.2.9)	☐	☐	
7.	Check the submission to ensure its full coverage of those required contents and alignment with the sample. (3.17)	☐	☐	
8.	State, if there is deviation from the bidding restriction, approval of the Head of Department is obtained. (Section 2.3.3 of the Guidelines promulgated under DEVB TC(W) No. 5/2018)	☐	☐	
9.	Check the listing status and the records of suspension and major noticeable events (serious default or non-performance) for consultants and their sub-consultants in the CNPIS and whether they are (i) under suspension from bidding at the deadline for T&F submission, (ii) suspended from bidding after the deadline for T&F submission, or (iii) reported with serious default or non-performance. (DEVB TCW No. 2/2016, 3/2016 and 5/2018)	☐	☐	Refer to Item III of Annex I

Completed by -

Signature: _____

Name: _____

Post/Office: _____
(Rank not lower than Senior Professional)

Date: _____

Endorsed by -

Signature: _____

Name: _____

Post/Department: _____
(Rank not lower than D1 level)

Date: _____

Note:- This above checklists are not exhaustive. Project officers should ensure that their submissions should comply with the latest requirements in the EACSB Handbook, SPR and relevant circulars.

Checking for Listing Status of EACSB Consultants

(Reference clause in Appendix 3.12 to the Guidelines, unless otherwise stated, is given in [ ]).

I. Stage 1 – Shortlisting Stage

	Item	Yes	No	Remark
1.	Check if consultants to be invited for EOI Submission are eligible for bidding at the time when EOI Submission is invited. *[Para. 1(i)]*	☐	☐	
2.	Check if consultants are eligible for bidding at the time when EACSB Stage 1 approval is sought. *[Para. 2(ii)]*	☐	☐	
3.	Check if any sub-consultants proposed in the EOI submission are eligible for bidding at the time when EOI Submission is closed. *[Para. 2(iv) & Para. 1(ii)]*	☐	☐	

II. Stage 2 – Nomination Stage

	Item	Yes	No	Remark
1.	Check if consultants to be invited for submission of T&F Proposal are eligible for bidding at the time the submission is invited, applicable to one-stage selection process only. *[Para. 3(i)]*	☐	☐	
2.	Check if consultants are eligible for bidding or is found having serious default or non-performance at the time when EACSB Stage 2 approval is sought. *[Para. 3(ii) & (vi)]*	☐	☐	
3.	Check if any sub-consultants proposed in the T & F Proposal are eligible for bidding at the time when submission of T&F Proposal is closed. *[Para. 3(ii)]*	☐	☐	

III. Submission for direct selection of a single consultant for fee negotiation

	Item	Yes	No	Remark
1.	Check if consultants to be awarded for the consultancy are eligible for appointment. *[Para. 4(ii)]*	☐	☐	

Note:

i. For the purpose of this checklist, consultant/sub-consultant are eligible for bidding/appointment when the consultant/sub-consultant have the listed Group status for type of assignment/sub-consulting service concerned following Section 2.3 of the Guidelines promulgated under DEVB TC(W) No. 5/2018 at the time of consideration.

ii. The above checklists may not be exhaustive. Project officers should ensure that their submissions should comply with the latest requirements in the EACSB Handbook, SPR and relevant circulars.

APPENDIX 3.20A SAMPLE LETTER FOR SOUNDING OUT EXERCISE

To: [The Listed Consultants under the targeted Group and Service Category]

Dear Sirs,

Agreement No.
Agreement Title
Sounding Out Exercise

This Office is planning to invite submission of expression of interest (EOI) from consultants for undertaking the captioned assignment. The brief scope of the assignment and the tentative invitation date are shown below for reference.

(a). Brief Scope of the Assignment
[Input by procuring department]

(b). Tentative EOI Invitation Date
[Input by procuring department]

Please note that the information above may be subject to change without prior notice. In addition, this letter in no way indicates that consultancy will be invited for the captioned assignment, either at the time stated or at any time and either from the List of Consultants maintained by EACSB or any other initial list of consultants where appropriate, and Government accepts no responsibility whatsoever for any loss or expenses that may be incurred as a result of the issuance of this letter.

You are cordially invited to express your interest under this sounding out exercise on a non-committal basis in bidding for the captioned assignment by completing and returning the reply slip enclosed by [Date].

Yours faithfully,

( )

Encl.

Reply Slip

To: [Procuring Departments]

Agreement No.
Agreement Title
Sounding Out Exercise

Dear Sirs,

I refer to your letter ref. [Letter reference] dated [Date] inviting the expression of interest in bidding for the captioned assignment.

☐ I / We would like to express our interest in bidding for the captioned assignment. I / We look forward to receiving invitation documents for the captioned assignment.

☐ I / We are not interested in bidding for the captioned assignment.

Signature: _____
Name: _____
(in Block letter)
Company: _____
Date: _____
Contact Person: _____
Tel. No: _____
Fax. No: _____
Email: _____

*Please put a tick in the appropriate box

APPENDIX 3.20B VALUE FOR MONEY (VFM) MEASURES – FULL MARKS APPROACH AND FEE DIVING CONTROL MECHANISM

A. "Full Marks Approach"

1. Selection criteria which will adopt the "Full Marks Approach" are marked grey below:

(i) **Expression of Interest (EOI) Submission**

Selection Criterion	*Marking Approach*
1. Appreciation of key requirements and constraints/risks	Individual Qualitative Assessment
2. Approach and strategy to meet the requirements	
3. Previous relevant experience	Full Marks if Meeting Specifications
4. Knowledge, experience and capability of key staff	
5. Past performance	Past Performance Rating

(ii) **Technical Proposal**

Selection Criterion	*Marking Approach*
1. Consultant's experience	Full Marks if Meeting Specifications
2. Response to the Brief	
3. Approach to cost-effectiveness and sustainability	Individual Qualitative Assessment
4. Methodology and work programme	
5. Innovation and creativity	
6. Staffing	Full Marks if Meeting Specifications
7. Past Performance	Past Performance Rating

2. Full Marks will be attained by consultant if the consultant is able to meet quantitative specifications to be set out by the Assessment Panel. However, each assessment panel member shall individually assess whether the quantitative specifications have been met.

Selection Criterion	*Specification*
EOI Submission	
3. Previous relevant experience	Number of relevant consultancy assignments conducted by the consultant[1]
4. Knowledge, experience and capability of key staff	Core personnel's years of post-qualification experience and number of relevant job reference[2]

[1] For attaining full mark (i.e. grade VG) in Item 3 of the EOI Submission or Item 1 of Technical Proposal, a consultant shall possess experience on having conducted [5] or more relevant consultancy assignments within [10] years on or before the original or the extended EOI/ T&F proposal submission closing date as agreed by the Assessment Panel (AP) and specified in the EOI/T&F invitation documents. Likewise, the criteria for the other grades shall be determined accordingly. Same set of criteria shall be adopted in both the EOI and T&F invitation documents. The format of marking guideline may be as follows (for illustrative purpose only):

No. of relevant consultancies involved	**Grade**
[5] or more	VG
[3] to [4]	G
[1] to [2]	F
0	P

[2] For attaining full mark (i.e. grade VG) in Item 4 of EOI Submission or Item 6(b) of Technical Proposal, a core personnel (including staff down to Team Leaders) shall possess certain minimum qualification and experience, e.g. a staff belonging to Partner/Director Category as Project Manager, and shall have not less than [20] years post qualification experience and not less than [5] relevant job references as agreed by the AP and specified in the EOI/T&F invitation documents. Likewise, the criteria for the other staff categories shall be determined accordingly. The procuring department shall specify the minimum number of core personnel and their respective designations in the EOI/T&F invitation documents. Marks allocated to each core personnel under the same designation shall be on equal basis. If the undertakings signed by non-fulltime core personnel to confirm their involvement in undertaking the designations cannot be produced, the staff concerned shall be considered as failure to meet the requirements and "P" shall be marked for the staff concerned accordingly. Same set of criteria shall be adopted in both the EOI and T&F invitation documents. The format of the marking guideline may be as follows (for illustrative purpose only):

Key Staff	**Post Qualification Experience**	**Relevant Job Reference**	**Grade**
Project Manager (Mark: XX%) Minimum qualification of a P/D category	Not less than [20] years	Not less than [5] projects	VG
	Not less than [18] years	Not less than [3] projects	G
	Not less than [15] years	Not less than [1] project	F
	Fail to meet the standard above		P

Selection Criterion	*Specification*
Technical Proposal	
1. Consultant's experience	Number of relevant consultancy assignments conducted by the consultant (similar to Item 3 for EOI Submission)
2. Response to the Brief	Number of key issues/problems identified in the assignment with practicable suggestions on ways of addressing them[3]
6. Staffing	
(a) Staff organization chart	Organization chart submitted will be marked using four different grades according to pre-set descriptions[4]
(b) Relevant experience and qualification of key staff	Core personnel's years of post-qualification experience and number of relevant job reference (similar to Item 4 for EOI Submission)

[3] For attaining full mark (i.e. grade VG) in Item 2 of Technical Proposal, a consultant should identify in the Services [5] or more key issues/problems with practicable suggestions on ways of addressing them as agreed by the AP and specified in the T&F invitation documents. Likewise, the criteria for the other grades shall be determined accordingly. The format of marking guideline may be as follows (for illustrative purpose only):

No. of key issues/problems identified	**Grade**
[5] or more	VG
[3] to [4]	G
[1] to [2]	F
0	P

[4] The pre-set descriptions for the four different grades are follows:

Description	**Grade**
Very efficient and effective staff organization with strong teams of experts and professionals and comprehensive communication and collaboration platforms	VG
Efficient and effective staff organization with well-defined teams of experts and professionals and suitable communication and collaboration platforms	G
Fair staff organization showing reasonable teams of experts and professionals and communication and collaboration platforms	F
No information or a poor staff organization	P

Selection Criterion	*Specification*
Technical Proposal	
(c) Responsibility and degree of involvement of key staff	Degree of involvement of staff, in term of weighted manpower input, with professional category or above named in the technical proposal[5].
(d) Adequacy of professional and technical manpower input	Same as the mechanism stipulated in DEVB TC(W) No. 2/2016, with the application of the multiplier for provision of overloaded staff in the tender[6].

[5] For attaining full mark (i.e. grade VG) in Item 6c, a consultant should propose at least [80%] of the weighted total manpower input to be named staff with professional category or above as agreed by the AP and specified in the T&F invitation documents. Likewise, the criteria for the other grades shall be determined accordingly. The format of marking guideline may be as follows (for illustrative purpose only):

Degree of Involvement (X)	Grade
X>=[80]%	VG
[60]%<=X<[80]%	G
[40]%<=X<[60]%	F
X<[40]%	P

where X is calculated by using the following formula:

$$\frac{\text{Weighted manpower input of named staff with professional category or above}}{\text{Weighted total manpower input}} \times 100\%$$

[6] Where the information, together with clarifications from the consultant (if any) reveals overloading situation in the manpower input, mark to be given for the "adequacy of professional and technical manpower input" attribute shall be adjusted by the Assessment Panel using the following as a guide:

Overloading Situation	Degree of Overloading	Marks for "Adequacy of professional & technical manpower input" shall be multiplied by (exact multiplier to be decided by the Panel)
Minor	<= [5]%	0.9 to 0.95
Medium	> [5]% and < [10]%	0.8 to 0.9
Serious	>= [10]%	0.7 to 0.8

Notwithstanding the above, the following circumstances will be considered as "Serious" overloading situations:

(a) Where the consultant or any of its proposed sub-consultant fails to provide the first manpower input updating to enable the procuring departments to endorse it for existing consultancies (i.e. consultancies with EOI submissions or Technical and Fee Proposals (for one-stage procedure) invited before 3 December 2018); or

(b) Where the consultant fails to provide the manning schedule in the Technical and Fee Proposal to enable the procuring departments to properly perform the assessment of overloading situation (refer to Appendix 3.20F for details).

B. Fee Diving Control Mechanism

A threshold is set at 80% of the Median Consultancy Fee (Fx) which is the median of consultancy fees of all conforming bids and the pretender estimated consultancy fee worked out by the procuring department for that particular assignment.

If the lowest fee quoted is higher than or equal to 0.8 Fx, the assessment method of weighted consultancy fee score will be the same for all bids, i.e. the formula below will apply:

$$\text{Weighted Consultancy Fee Score} = \text{Specified weighting} \times \frac{\text{Lowest fee among all confirming bids}}{\text{Fee of bid being assessed}}$$

If the lowest fee quoted is less than 0.8Fx, any fees quoted below 0.8Fx will get the full fee score and other fees quoted will get score by applying the formula below:

$$\text{Weighted Consultancy Fee Score} = \text{Specified weighting} \times \frac{0.8F_x}{\text{Fee of bid being assessed}}$$

APPENDIX 3.20C OPERATIONAL PROCEDURES FOR CHECKING OF LISTING STATUS DURING CONSULTANT SELECTION PROCESS

1. Scenario A - From Compiling the List of Consultants for Inviting EOI to Invitation for EOI Submission

   (i) Prior to invitation for EOI, the procuring department shall check with the Secretary of EACSB for the most updated List. A copy of the invitation letter together with the list of consultants invited shall be sent to the Secretary of EACSB for record as usual.

   (ii) The general rule is that only consultants eligible at the time of invitation should be invited for submitting EOI. For the avoidance of doubt, EOI submitted by sole/lead consultants other than consultants invited shall not be considered. A provision shall be included in the invitation documents stating that the lead consultant must ensure that the lead consultant itself and its sub-consultant(s) are eligible for bidding of consultancies at the time of submission of EOI. Failure to comply with this requirement will lead to disqualification of the consultant's EOI submission.

2. Scenario B - From Invitation for EOI Submissions to the Approval of Stage 1 Submission (Shortlisting Stage) by EACSB or DCSC

   (i) During the EOI assessment stage, the Assessment Panel should keep track on any change on the eligibility for appointment of those lead and sub-consultants who have submitted the EOI, particularly prior to the Stage 1 submission (Shortlisting Stage) for approval by EACSB.

   (ii) For the purpose of determining whether a consultant is eligible for shortlisting, the Assessment Panel shall check the listing status of the consultant at the time when EACSB Stage 1 approval is sought instead of at the time of EOI invitation or submission. In any case, a consultant who is under suspension from bidding shall not be shortlisted for submission of T&F proposals.

   (iii) If a lead consultant who included in the proposed shortlist becomes ineligible for consideration because of subsequent change in listing status, then the next eligible consultant in the priority list of the same shortlisting exercise shall be submitted to EASCB for approval in lieu.

   (iv) If a lead consultant who submitted the EOI submission has teamed up with a sub-consultant who is no longer eligible for shortlisting after the closing date for EOI submission, the Assessment Panel may continue the assessment by referring the listing status as at the closing date for EOI submission.

3. Scenario C - From Invitation for T&F Proposals to Approval of Stage 2 Submission (Nomination Stage) by EACSB or DCSC

(i) For consultancies adopting the one-stage selection process, i.e. without invitation for EOI, only consultants eligible at the time of invitation shall be invited to submit T&F Proposals. For the avoidance of doubt, T&F Proposals submitted by sole/lead consultant other than consultants invited to do so shall not be considered. After the invitation letter of T&F Proposal has been issued, the consultant list shall not be changed.

(ii) Prior to invitation for T&F Proposals from the shortlisted consultants, the procuring department should check with the Secretary of EACSB for the most updated List to ensure the eligibility of the consultants on the shortlist. If necessary, subject to the approval of EACSB, other suitable consultants may also be shortlisted. A provision shall be included in the invitation documents stating that the lead consultant must ensure that the lead consultant itself and its sub-consultant(s) are eligible for bidding of consultancies at the time of submission of T&F Proposals. Failure to comply with this requirement will lead to disqualification of the consultant's T&F Proposals. The invitation letter shall be copied to Secretary of EACSB for record as usual.

(iii) The procuring department should keep track of any change in the listing status of firms that occurs during the invitation period, in particular prior to making the Stage 2 submission (Nomination Stage) for approval by EACSB.

(iv) If a lead consultant has been suspended from bidding or removed from the List after the invitation for T&F Proposals and on or before closing date of submission of T&F Proposals, the procuring department may, after considering the tender competition and other relevant factors, continue the selection exercise concerned without replacement of the suspended shortlisted consultant, or cancel the selection exercise concerned and conduct another one afresh. Regarding a bid with sub-consultant suspended from bidding or removed from the list, the lead consultant has the right to team up with another sub-consultant as stipulated in the standard invitation letter of T&F Proposals subject to changes in circumstances stipulated in EACSB Handbook.

(v) For a consultant who is downgraded due to failure to meet the minimum admission criteria of the original listed Group status or is suspended from bidding or removed from the List after closing date of submission of T&F Proposal or is found having serious default or non-performance (such as those mentioned in paragraph 22 of Annex I of DEVB TC(W) No. 3/2016), though not under suspension from bidding at the moment, the Assessment Panel shall carefully consider whether the T&F Proposal of such consultant should be further processed. If the Assessment Panel decides not to further process the bid of such consultant, they shall seek endorsement from EACSB on such decision before continuing with the consultant selection exercise.

(vi) If a lead consultant who submitted the T&F Proposal has teamed up with a sub-consultant who is no longer eligible for award of the consultancy after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment by referring the listing status as at the closing date for submission of T&F Proposal. The lead consultant concerned may still be eligible for award of the agreement.

4. Scenario D - From the Approval of Stage 2 Submission (Nomination Stage) by EACSB or DCSC to Final Execution of the Agreement

(i) Prior to the award of the consultancy, the procuring department shall check the nominated lead consultant and sub-consultant(s) with respect to the sub-paragraphs (ii) and (iii) below.

(ii) If the nominated lead consultant has poor performance or has been suspended or removed from the List, the procuring department should according to the principle of section (B)(4)(i) in Appendix B to DEVB TC(W) No. 2/2016 critically consider whether the nominated lead consultant is still technically capable or appropriate for entering into the agreement with Government. If necessary, subject to the approval of EACSB, other suitable consultant shall be nominated.

(iii) Regarding a bid with sub-consultant suspended from bidding or removed from the List, the bid should still be eligible for recommendation for award of the agreement. The procuring department should closely monitor the performance of the sub-consultant and take appropriate follow up actions under the provisions of the agreement.

APPENDIX 3.20D SAMPLE TEMPLATE FOR MANNING SCHEDULE
(to be updated from time to time)

Manning Schedule to be Submitted Quarterly during execution of the Agreement

Agreement No. CE XX/YYYY(ZZ)
Actual Commencement Date of the Agreement dd-mm-yyyy
Reporting month Dec-2020

No. * (Note 4)	Surname * (Notes 10, 11 & 12)	First Name *	Resident/ HOK/Overseas/ N/A *	HKID/Pass port No. * (1st 4 Characters)	Company Name * (Notes 5 & 6)	Position *	Core/ Others/ Unlimited *	Staff Category *(PD, CP, SP, P, AP & T)	Total Estimated Manpower Input (Man-Weeks) (Note 8)	Cumulative Manpower Input up to 31-Aug-2020 (Man-Weeks)	2020-09	2020-10	2020-11
1													
2													
					Total				0.00	0.00	0.00	0.00	0.00

N.B. (i) All staff which have been involved or to be involved should be included.
(ii) If conversion between man-hour and man-week is required, a conversion factor of 40 hours/week is to be adopted.
(iii) If conversion from man-month to man-week is required, a conversion factor of 4 weeks per month is normally adopted.

Guidelines for submission of file to Public Works Consultancy Resources Allocation Register (PWCRAR)

1. Please check if agreement no., commencement date of the agreement and reporting month (cells **[b3]**, **[b4]** and **[b5]**) are correct.
2. Mandatory fields are marked with "*".
3. Please provide manpower input deployed in the reporting quarter (i.e. the 3-month period before the reporting month) (**columns L, M & N**) and the forecast manpower input in the following columns.
4. Please fill in staff information below the staff information header row (from **row 11**) and ensure that numbering below "No." column (**column A**) is inserted continuously down the column.
5. Name of company by which the staff are directly employed shall be filled in.
6. Please use the name in the company name worksheet when filling the company name. If the staff are employed by a consulting firm not found in the company name worksheet, please fill in the full company name.
7. If the anticipated completion date of the Agreement has to be extended, please fill in the additional months in the header row (**row 10**) continuously down the row. Manpower input data in the column without month in the header row (**row 10**) will cause failure in uploading the manpower input data.
8. Please fill in manpower input data in 2 decimal places as the unit of man-week. Comma should not be used.
9. Total estimated manpower input will be calculated by the PWCRAR when the Excel file is uploaded. No separate input by consultant is required.
10. Please key in all names in CAPITAL letters as shown in the HKID / Passport.
11. For unnamed staff, the surname should be stated as "UNNAMED-", e.g. UNNAMED-1. Agreement no. should be used as first name, and "TITNA" should be used as "Company Name" and "Position".
12. Manpower input for unnamed staff under the same staff category should be grouped into one row only.

* Cell, row and column information in the guideline marked in **red** refers to the reference location when submitted in soft copy in Excel format.

Public Works Consultants Resources Allocation Register (PWCRAR), Development Bureau (Works Branch) and all Bureaux/Departments procuring or managing engineering consultancy services[1])

STATEMENT OF PURPOSE FOR THE COLLECTION OF PERSONAL DATA

Purpose of Collection

1. The personal data provided by means of the attached form will be used for the following purposes:

   (a) activities relating to the management of the status of the Consultant under the List of Consultants (the List) under the purview of the Engineering and Associated Consultants Selection Board (EACSB) of the Government, including any regulating actions against the Consultant such as downgrading, suspension or removal from the List;.

   (b) activities relating to the award of consultancies including but not limited to the assessment of the Consultant's tenders for consultancies. The Consultant is obliged to provide updated information about his company profile including his employees, projects undertaken etc.

   (c) activities relating to management of consultancies including but not limited to the monitoring of manpower resources provided and the assessment of consultant's performance.

   (d) compilation of statistical report and diagnosis of problems with or concerning PWCRAR or the management of consultants to help the Government to improve.

2. If the Consultant fails to provide the required information in the attached form, the consequences would be:

   (a) for forms associated with his application related to the List or his status in the List, his application could not be proceeded with and/or his status in the List might be adversely affected and/or regulating actions might be imposed;

   (b) for forms associated with his submission for tender, his tender could not be assessed and considered further; and

   (c) for forms associated with his submission of manpower resource in the course of the execution of the consultancy agreements, his performance assessment in the consultancies with respect to the adherence to staffing proposal could be adversely affected due to his non-fulfilment of the contractual obligations and regulating actions might be imposed.

Classes of Transferees

3. The personal data provided by the Consultant may be disclosed to other Government bureaux and departments for the purposes of managing the status of Consultants in the List, assessing their tenders for consultancies or management of consultancies.

4. The personal data provided by means of the attached form may be disclosed to the Commissioner of Police or law enforcement agencies for the purposes of law enforcement when appropriate.

5. In addition to the above, except for consultancy agreements with invitation for submission of Technical and Fee Proposals or quotation before 3rd December 2018, the personal data provided by the Consultant for the purpose mentioned in sub-clause 1(c) above only, including the names of each of the professional staff, the agreements in which he is deployed / to be deployed and his amount of time input in the respective agreements, may be disclosed to a third party including but not limited to consultants who are involved in or in connection with other tendering exercises for consultancies managed by any Government bureaux and departments.

Access to Personal Data

6. The data subject has a right of access and correction with respect to personal data as provided for in Section 18 & 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of his/her personal data provided by means of this form.

Enquiries

7. Enquiries concerning the personal data collected by the attached form, including the making of access and corrections, should be addressed to:

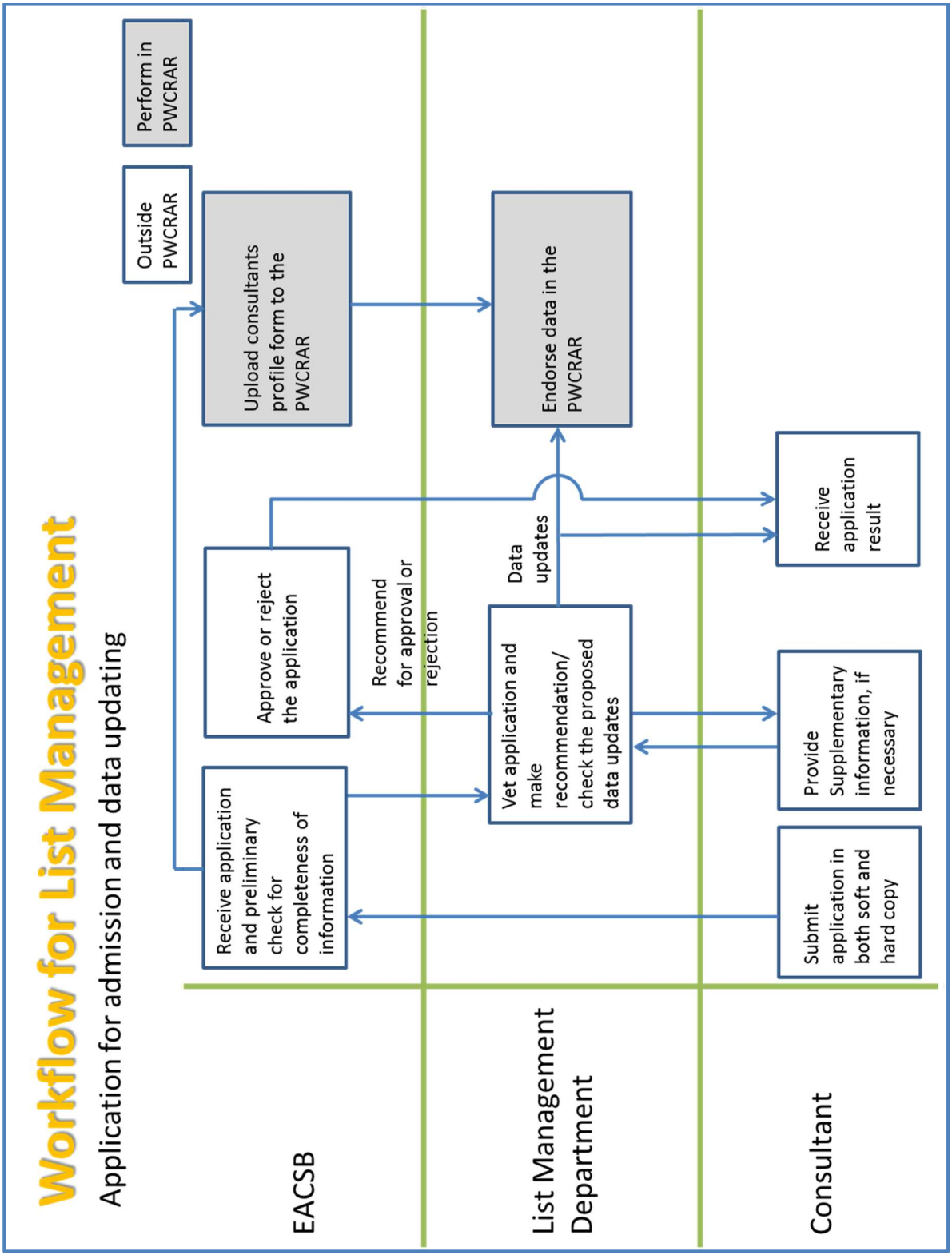
Works Policy 4
Works Branch
Development Bureau
15/F, West Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong
Email: pwcrar_admin@devb.gov.hk

Note:

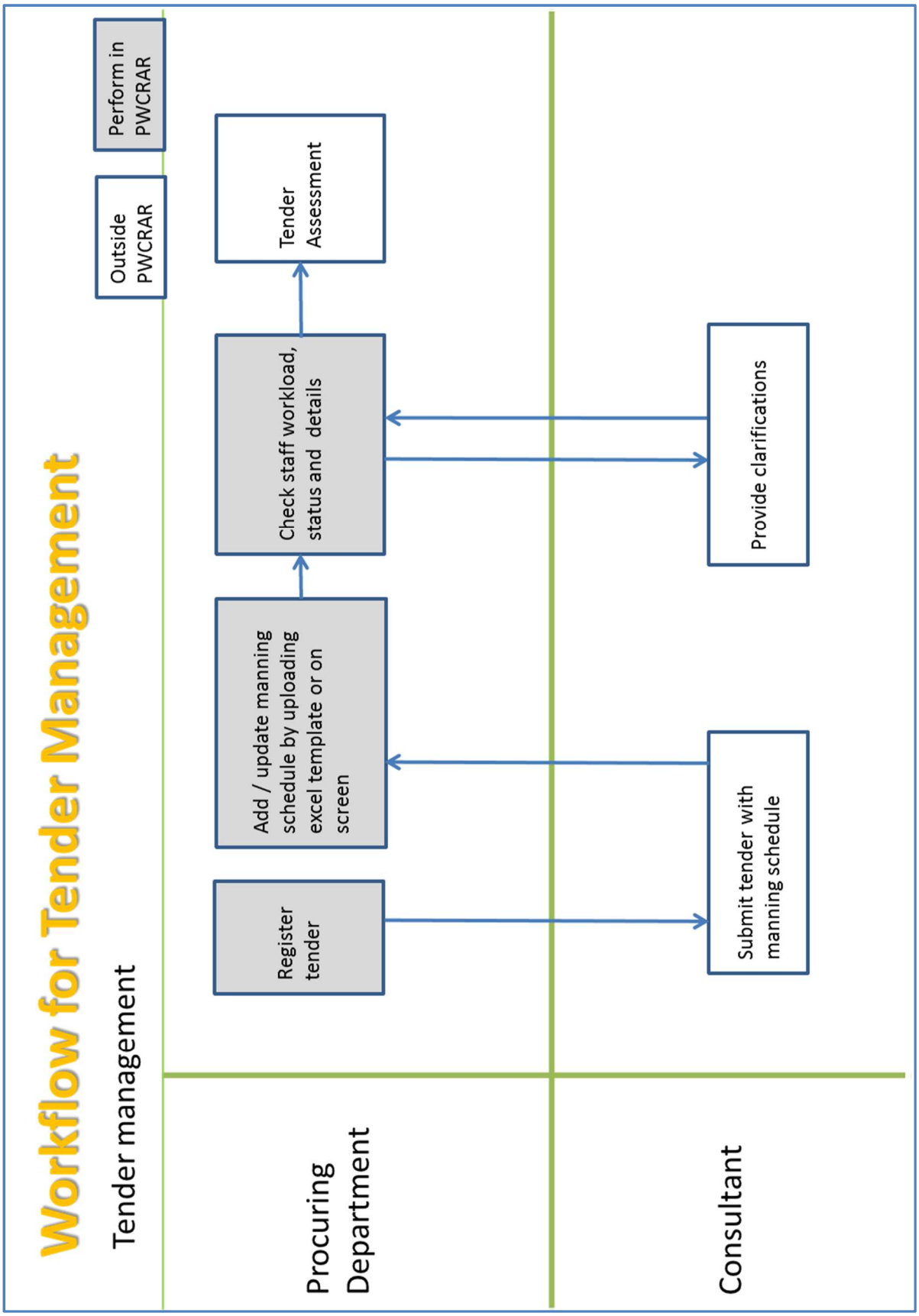
1 Other Bureaux/Departments procuring or managing engineering consultancy services including but not limited to Transport and Housing Bureau, Architectural Services Department, Buildings Department, Civil Engineering and Development Department, Drainage Services Department, Electrical and Mechanical Services Department, Environmental Protection Department, Home Affairs Department, Highways Department, Lands Department, Planning Department, Transport Department and Water Supplies Department.

APPENDIX 3.20E WORKFLOW IN PWCRAR
(to be subsumed in CNPIS)

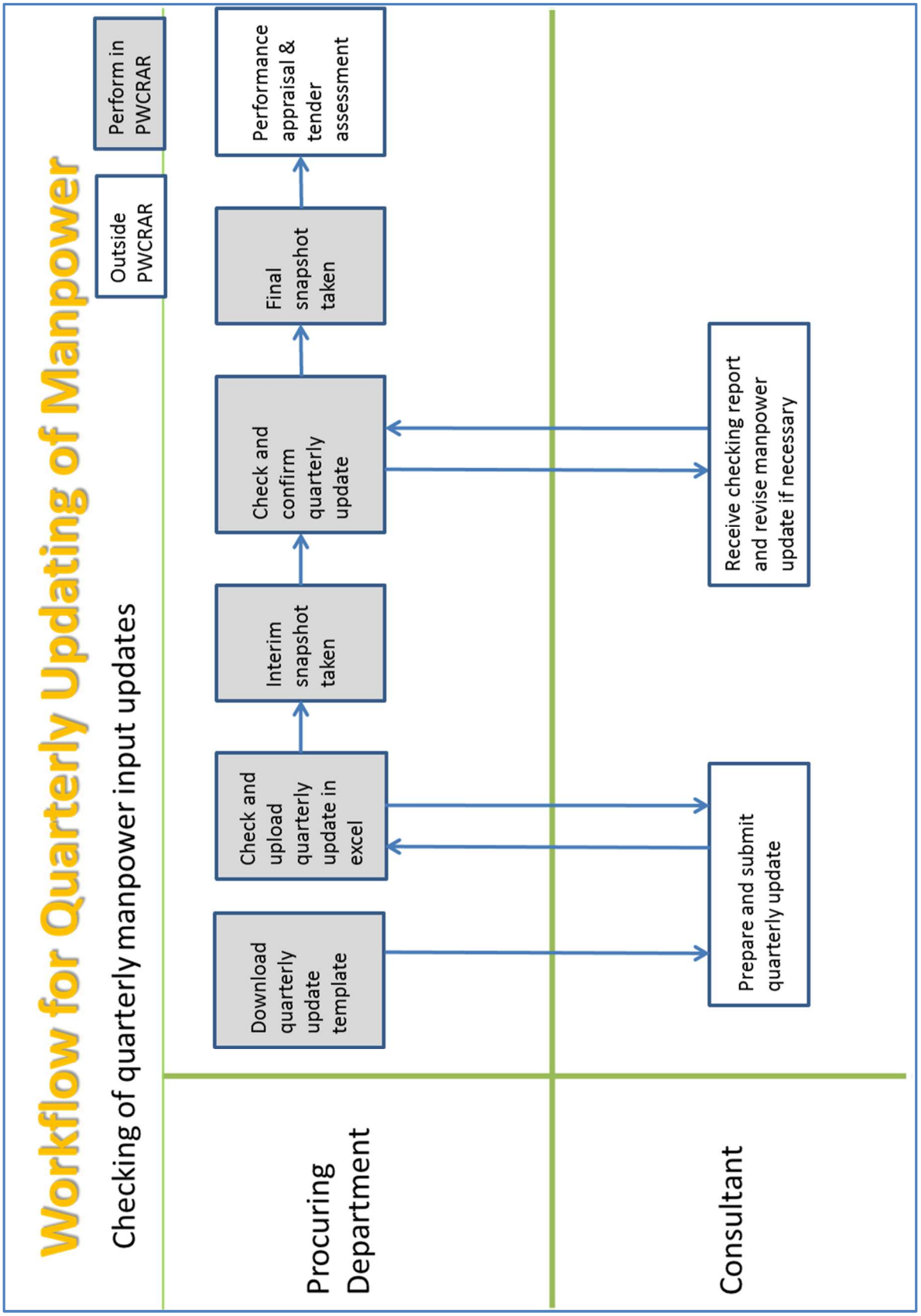
A. List Management



B. Tender Management



C. Quarterly Updating of Manpower



APPENDIX 3.20F OVERLOADING CHECKING IN TENDER ASSESSMENT

1 Checking of Suspected Overloading

1.1 Prior to invitation of Technical and Fee (T&F) Proposals, the procuring departments shall register the bidding exercise in the Public Works Consultants Resources Allocation Register (PWCRAR) and then download the manning schedule templates together with the personal information collection statements to form part of the invitation documents for the T&F Proposals. Any subsequent change of the information of the consultancies before the closing date for submission of T&F Proposal shall be updated in the PWCRAR. In particular, if the update involves change in the consultancy duration, the procuring departments shall download and send the revised manning schedule templates together with the personal information collection statements to the bidders before the aforesaid closing date.

1.2 After the aforesaid closing date, the procuring departments shall upload or manually input the manning schedules submitted by the bidders into the PWCRAR as soon as practicable. While the PWCRAR allows the procuring departments to upload/manually input the manning schedules to the system separately, the procuring department shall only confirm the manning schedules uploaded in the system in the same bidding exercise in one go to ensure the completeness of the data.

1.3 When the procuring departments find that the total manpower input calculated from the manning schedule (softcopy) does not tally with the figures stated in the T&F Proposal, the total manpower input calculated from the manning schedule (softcopy) shall prevail. The procuring departments shall follow the current practice to correct the discrepancies in both the Technical Proposals and Fee Proposals and then seek confirmation from the bidders to abide by their tenders with the corrected total manpower input.

1.4 To avoid confusion, the "reporting month" used in the following paragraphs shall refer to the month in which the final snapshots are taken (i.e. March, June, September and December) and the "reporting quarter" shall refer to the 3-month period immediately before the reporting month (e.g. the period from March to May is the reporting quarter for the reporting month of June). Concurrent tenders shall mean other tenders registered in the PWCRAR which have been closed but not yet been awarded as at end of the reporting quarter which are captured in the final snapshot taken immediately before the tender closing date of the tender under assessment.

1.5 For the purpose of assessing the "Adequacy of professional and technical manpower input" attribute of the T&F Proposals, the manpower input of on-going consultancies and concurrent tenders as at end of the reporting quarter which are captured in the final snapshot taken immediately before the tender closing date of the tender under assessment shall be used to check for any suspected overloading situation. Please note that the PWCRAR will take final snapshot on all the manpower input data in the system at 00:00 on 23rd of every reporting month and generate reports for various purposes, including performance appraisal and tender assessment. The

procuring departments shall upload and confirm in the PWCRAR the manpower input of their tenders closed within the reporting quarter before the PWCRAR takes the final snapshot to facilitate the PWCRAR in calculating the overloading percentage accordingly.

2 Clarifications on Suspected Overloading

2.1 When the procuring departments upload or manually input the manning schedule submitted by the bidders, the PWCRAR will base on the HKID/Passport No. and the name of the staff to check whether the staff concerned has been/ will be deployed for other on-going/up-coming consultancies registered in the PWCRAR (i.e. overlapping cases). If the PWCRAR identifies any suspected overlapping case, such as two persons with the same HKID/passport No. and surname but different first names, it will alert the procuring departments accordingly. The procuring departments may consider seeking clarifications from the bidders on the suspected overlapping case. Upon clarification, the procuring departments shall update the PWCRAR accordingly.

2.2 After the confirmation of the manning schedule in the PWCRAR by the procuring departments, the PWCRAR will check for any suspected overloading situation (i.e. staff working for more than 4 man-week per month) (Checking report Nos. TEN-RPT-01 and 02 are relevant). The procuring department shall also check for any outstanding first manpower input updating in the existing consultancies and/or outstanding submission of manning schedules in the concurrent tenders (Checking report Nos. TEN-RPT-04 and 05 are relevant). Checking reports on any suspected overloading situation and/or outstanding submission of manning schedule are available in the PWCRAR for reference.

2.3 The Assessment Panel may consider seeking clarifications from the bidders on the overloading situations and/or the submission status of manning schedule. Sample letters are attached at **Appendices 3.20G** and **3.20H** for reference. In any circumstance, the principles stipulated in Stores and Procurement Regulations 365 regarding the clarification of tenders shall be strictly observed.

2.4 The Assessment Panel may consider taking into account the clarifications provided by the tenderers, if any, in determining whether there are overloading situations in the T&F Proposals concerned. In any circumstance, tender modification, such as amendment to the manning schedule in the Technical Proposal, shall not be permitted which may give rise to discriminatory practice. The assessment and the associated assessment result shall be discussed and endorsed by the Assessment Panel. Legal advice may be sought if considered necessary. The procuring departments shall include the correspondences with LAD(W) and provide the deliberations/decisions of the Assessment Panel on the assessment of overloading situation of individual tenderers in EACSB submission.

3 Assessment Method

3.1 The reasons for overloading may be due to:

(a) on-going consultancy(ies);

(b) concurrent tender(s) including paired tender(s) with the same bidder; or

(c) a combination of (a) & (b) above.

3.2 For named staff taking part in a concurrent tender, their manpower input to be deployed in the concurrent tender shall be factored down by the number of bids involved in that concurrent tender. The approach has employed the Expectation Theory (i.e. the probability of winning the concurrent tender) to derive the expected manpower input due to the concurrent tender.

3.3 To avoid lengthy lock up of manpower input of consultants in the concurrent tenders and enable better planning of manpower resources, an enhancement will be made when the PWCRAR is to be subsumed in CNPIS after the revamping of CNPIS such that the manpower input of a concurrent tender will not be captured in more than two consecutive final snapshots. For example, for a concurrent tender with a tender closing date on 31 January, if it is eventually awarded on 31 October in the same year, its manpower input will only be captured in the final snapshots taken on 23 March and 23 June but not in the final snapshot taken on 23 September.

3.4 For paired tenders, the procuring departments shall ensure that the tender closing dates of the two tenders fall within the same reporting quarter so that the PWCRAR can include the manpower input of both tenders into the same final snapshot for calculation of overloading percentage. If the bidder concerned has only submitted one bid under pairing arrangement, it will be captured by the PWCRAR as one concurrent tender and the same assessment method mentioned in paragraph 3.2 above will be adopted. However, if the bidder concerned has submitted two bids under pairing arrangement, it will be captured as two concurrent tenders but the expected manpower input due to the paired tenders is taken as the average manpower input of the staff taking part in both tenders factored down by the probability of the consultant winning at least one of the two paired tenders.

3.5 The manpower input of the tender under assessment together with that of the on-going consultancy(ies) are then summed up with the expected manpower inputs due to all concurrent tenders to arrive at the total expected manpower input. The amount of total expected manpower input of a particular staff in excess of 4 man-weeks per month will be considered as an overloading case. The weighted average overloading manpower input for all overloading cases will be used in calculating the overloading percentage which will in turn be used to determine the reduction factor to be applied to the mark given to the "Adequacy of professional and technical manpower input" attribute of the T&F Proposal in accordance with **Appendix 3.20B(A)**. If a proposed key staff member has its manpower input stated under more than one staff categories in the Technical Proposal and such proposed key staff member is found to be working under overloading situation, the highest weighting among the staff categories stated for such staff member shall be used in calculating the overloading percentage. A worked example and a sample report generated by the PWCRAR on details of overloading situation are attached in **Appendix 3.20L** and **Appendix 3.20M** respectively. Please note that the procuring departments shall have the responsibility to

check the calculations done by the PWCRAR based on the data contained in the above report.

3.6 Notwithstanding the above, after checking the checking report Nos. TEN-RPT-04 and 05, the following circumstances shall be considered by the Assessment Panel as "Serious" overloading situation:

(a) Where the consultant or any of its proposed sub-consultant fails to provide the first manpower input updating for any signed consultancies having Expression of Interest Submissions or T&F Proposals (for one-stage procedure) invited before 3 December 2018 (referred to as "existing consultancies") undertaken by the consultant or any of its proposed sub-consultant as the sole consultant or one of the participants in the joint venture. For the purpose of tender assessment in this regard, a consultant will be considered as failing to provide the first manpower input updating for an existing consultancy if it fails to provide a manpower input updating which enables the procuring department of the existing consultancy concerned to endorse it in the PWCRAR as described in paragraph 2 of **Appendix 3.20J** for all the reporting quarters before the tender closing date of the tender under assessment; or

(b) Where the consultant fails to provide the manning schedule as required in the invitation letter for the Technical and Fee Proposal for the consultants selection exercise under assessment and/or failed to provide the manning schedule as required in the invitation letter for Technical and Fee Proposal for any concurrent tender with the same bidder, which make the assessment of overloading situation in accordance with DEVB TC(W) No. 5/2018 unable to be properly performed.

APPENDIX 3.20G SAMPLE LETTER TO TENDERER SEEKING CLARIFICATION ON OVERLOADING SITUATION

Dear Sirs,

Agreement No.
Agreement Title

I refer to your Technical and Fee Proposals submitted for the captioned Consultancy Agreement dated DD/MM/YYYY.

According to our records as at end of MM/YYYY *[the procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment]*, there is/are staff member(s) in your Technical and Fee Proposal who is/are identified to be working under an overloading situation as shown in the attached checking report *[the procuring department shall attach Report No. TEN-RPT-01 downloaded from the PWCRAR to this letter]* after taking into account their manpower input deployed or to be deployed in other consultancies and/or concurrent tenders. Please confirm by DD/MM/YYYY whether there is or will be an overloading situation of the staff member(s) concerned as reflected in the attached checking report. If there is not, please provide your clarifications as to the intended workload of the staff member(s) concerned by the above due date for our consideration. If we do not receive your reply by the above due date, we would proceed with the tender assessment based on the overloading situation as shown in the attached checking report accordingly.

In your reply, you are only allowed to provide factual information about the involvement of the proposed staff member(s) in other consultancies and concurrent tenders and are not allowed to replace the proposed staff member(s) by other staff member(s), and/or change the time input of the proposed staff member(s) in the manning schedule of your Technical and Fee Proposal.

For the avoidance of doubt, in the performance of the assignment, if awarded to you, you are bound to provide the manpower input under each relevant staff category in accordance with your proposal. If any proposed staff member(s) is to work under an overloading situation, you are deemed to agree to rectify the overloading situation at your

cost by making appropriate replacement with other staff member(s), redistributing workload to other staff member(s), and/or providing additional staff member(s) with equal or better qualifications and experience than the proposed staff member(s). The re-deployment of staff member(s) in this regard shall be subject to the approval procedures as if there is a change of core personnel under the assignment.

Please note that this letter should NOT be counted as you are being selected for the award of this assignment.

Yours faithfully,

( )

RESTRICTED

Report Title: TEN-RPT-01 Overloading Situation Summary For Tender Assessment
Report Generation Date: 08/05/2018
Selection criteria:
Department: THB
Agreement no.: CE 02/2018 (TEST)
Staff: OverLoaded
Tenderer: THB Non-Listed Consultant 1
Agreement Title: CE 02/2018 (TEST) title
Tender closing Date: 01/03/2018
Anticipated Commencement Date: 20/03/2018

Name	Staff Category	Figure in tender (cumulative with on-going agreements, cumulative with on-going agreement and submitted tender) (man-week)						
		Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018
David Wong	Chief Professional	2.00(7.00,7.00)	2.00(7.10,7.10)	2.00(7.20,7.20)	2.00(5.60,5.60)	2.00(4.60,4.60)	2.00(4.60,4.60)	2.00(4.60,4.60)

APPENDIX 3.20H SAMPLE LETTER TO TENDERER SEEKING CLARIFICATION ON SUBMISSION OF MANNING SCHEDULE

Dear Sirs,

Agreement No.
Agreement Title

I refer to your Technical and Fee Proposals submitted for the captioned Consultancy Agreement dated DD/MM/YYYY.

According to our records as at end of MM/YYYY *[procuring department shall input the end month of the reporting quarter as at which the manpower input is as captured in the final snapshot taken immediately before the tender closing date of the tender under assessment]*, the following situation(s) is/are identified:

(a) *You failed to provide the first manpower input updating for the existing consultancy agreement No. _____; and/or
(b) *You failed to provide the manning schedule in accordance with the requirements stated in the invitation letter for the tendering exercise for consultancy agreement No. _____.

Please confirm by DD/MM/YYYY whether you have provided the first manpower input updating and/or submitted the manning schedule in accordance with the relevant requirements for the above agreement(s). If affirmative, please advise the date and means of your submission. Please do not submit the first manpower input updating and/or the manning schedule in response to this letter. If we do not receive your reply and the date and means of submission by the above due date, we would consider that you have failed to provide the first manpower input updating and /or submit the manning schedule and would proceed with the tender assessment in accordance with the relevant provisions in the Guidelines for Preparation of Technical Proposal accordingly.

In your reply, you are only allowed to provide factual information about the submission status of the manning schedule(s) concerned. You are not allowed to replace the proposed staff member(s) by other staff member(s), and/or change the time input of the proposed staff member(s) in the manning schedule of your Technical and Fee Proposal.

Please note that this letter should NOT be counted as you are being selected for the award of this assignment.

Yours faithfully,

( )

* Delete where appropriate

Note: 【This notes in italics are only for reference of the departments' staff】

- *Procuring department shall download the checking report Nos. TEN-RPT-04 and TEN-RPT-05 for the final snapshot taken immediately before the tender closing date of the tender under assessment from the PWCRAR to respectively check for any outstanding first manpower input updating in the existing consultancies and/or outstanding submission of manning schedules in concurrent tenders as captured in the final snapshot used for tender assessment.*

- *The procuring department shall seek clarifications from the consultant under the following circumstances:*
    a. *The consultant (including any of its participant(s) in case of joint venture) or any of its proposed sub-consultant(s) is observed in the checking report No. TEN-RPT-04; and/or*
    b. *The consultant is observed as the same bidder for any of the concurrent tenders in the checking report No. TEN-RPT-05.*

APPENDIX 3.20I SAMPLE LETTER – NUMBER OF TECHNICAL AND FEE PROPOSALS RECEIVED

Dear Sirs,

Agreement No.
Agreement Title

I refer to your letter dated DD/MM/YYYY enquiring the total number of Technical and Fee Proposals received for the captioned Consultancy Agreement.

According to our records, we received a total of [number] numbers of Technical and Fee Proposals for the captioned Consultancy Agreement by the tender closing date on DD/MM/YYYY.

Please note that the above information is disclosed to you for the purpose of facilitating your preparation of Technical and Fee Proposals for other consultant selection exercises procured under the purview of EACSB in accordance with DEVB TC(W) No. 5/2018

Yours faithfully,
( )

Note: 【*This notes in italics are only for reference of the departments' staff*】

The procuring department shall check if the consultant who submits the enquiry is one of the bidders (i.e. the lead consultant or any participant of a joint venture) who have submitted Technical and Fee Proposals for the agreement concerned. If negative, the procuring department shall handle the enquiry with reference to the Code on Access to Information accordingly.

APPENDIX 3.20J QUARTERLY UPDATES OF MANPOWER INPUT

1 Manpower Input to be Updated

1.1 To avoid confusion, the "reporting month" and "reporting quarter" used in the following paragraphs shall have the same meaning as those used in Section 3.10.1(c) of the EACSB Handbook.

1.2 The consultants are required to submit curriculum vitae (CV) for the key staff proposed in their Technical and Fee (T&F) Proposals. To demonstrate their adherence to the staffing proposal, the consultants are required to submit quarterly updates on the manpower input for each named staff at professional category or above included in their T&F Proposals. The staff who replaces one of the named staff shall also be a named staff and its manpower input shall be provided for monitoring when staff re-deployment is required. For the unnamed staff, their manpower input shall be grouped together under each staff category.

1.3 In the quarterly updates, the following information on the manpower input as at end of the reporting quarter shall be included:

(a) the manpower input of both the named and unnamed staff deployed in the reporting quarter; and

(b) the manpower input of both the named and unnamed staff to be deployed for the remaining duration of the consultancy.

2 Quarterly Updates of Manpower Input for the Consultancies

2.1 The Public Works Consultants Resources Allocation Register (PWCRAR) has been programmed to generate a quarterly update template based on the manpower input in the previous reporting quarter under each consultancy to facilitate the quarterly updating exercise. The procuring departments should download and send the template to consultants to facilitate the consultants to prepare the next quarterly updates. The consultants shall submit to the procuring departments quarterly updates by the 5th of every reporting month. The PWCRAR allows the consultants to submit quarterly updates direct to the PWCRAR through registered email accounts. When such function is not available, the consultants shall submit the quarterly updates to the respective reporting officer of the procuring departments.

2.2 Upon receipt of the quarterly updates, the procuring departments shall check the updates and liaise with the consultants for clarifications and amendments if necessary. If the procuring departments consider that the quarterly updates submitted by the consultants are generally in order, the procuring departments shall upload/manually input the manpower data into the PWCRAR.

2.3 After uploading the updated manpower input but before taking interim snapshots as mentioned in the paragraph below, the procuring departments can make use of the PWCRAR to conduct

preliminary checking on the quarterly updates by comparing them with the manpower input data in the final snapshots of the last reporting quarters. If necessary, the procuring departments may send the preliminary checking results downloaded from the PWCRAR to the consultants for review and clarification if necessary.

2.4 The PWCRAR will take interim snapshots at 00:00 on the 16th of every reporting month on the manpower input data that has been confirmed by the procuring departments as properly input in the system and generate checking reports on any overloading situations. For performance appraisal purpose, the PWCRAR will determine the overloading situation based on the manpower input of the concerned staff under all on-going consultancy(ies), excluding those having commenced for more than 10 years. If the manpower input updates in the PWCRAR have not been confirmed by the procuring departments before the interim snapshots are taken, the PWCRAR will copy the manpower input updates in final snapshots of the last reporting quarters to interim snapshots as if there is no further update to such manpower input. The procuring departments shall send the checking reports to the consultants for review and clarification if necessary.

2.5 The consultants shall liaise with the procuring departments if they want to amend the manpower input data in the checking reports as soon as possible, in any case before final snapshot is taken, or otherwise the consultants will be deemed to have no comment on the manpower input data in the checking reports. Any amendments to the manpower input data in the checking reports shall be re-confirmed by the procuring departments before final snapshots are taken.

2.6 The PWCRAR will take final snapshots at 00:00 on the 23rd of every reporting month on the manpower input data that has been confirmed by the procuring departments and generate various types of reports. The procuring departments shall send the checking reports to the consultants for retention/reference. If any manpower input updates for an agreement in the PWCRAR have not been confirmed by the procuring departments before the final snapshots are taken, the PWCRAR will copy the manpower input updates in interim snapshots to final snapshots as if there is no further update to such manpower input.

2.7 The manpower input in the final snapshots taken at 00:00 on the 23rd of every reporting month will be used for checking overloading situation in tender assessment of other consultancies. In this connection, any proposed amendment to the manpower input in the final snapshots after the 23rd of the reporting month will only be considered under very exceptional circumstances.

3 Existing Consultancies

3.1 For the purpose of this Appendix, “existing consultancies” means signed consultancies and consultancies having Expression of Interest Submissions or T&F Proposals (for one-stage procedure) invited before 3 December 2018.

3.2 The first manpower input updating for existing consultancies should follow the procedures as mentioned in paragraphs 1 & 2 above, with the refinements in paragraph 3.3 to 3.4 below.

3.3 Notwithstanding the last sentence of paragraph 1.2 above, manpower input updates of unnamed staff are not required for existing consultancies;

3.4 Notwithstanding paragraph 1.3 above, the following information on the manpower input as at end of the reporting quarter shall be included in the quarterly updates for existing consultancies:

(a) the manpower input of the named staff at professional category or above deployed in the reporting quarter;

the manpower input of the named staff at professional category or above to be deployed for 1 year (for Feasibility Study or Investigation type of assignment) or 2 years (for Design and Construction or Investigation, Design and Construction type of assignment) in the future counting from the beginning of the respective reporting month; and

the manpower input of named staff deployed and to be deployed by the sub-consultants in (a) and (b) above respectively is to be excluded.

4 Newly Awarded Consultancies

4.1 For consultancies newly awarded within the reporting quarter, the procuring department shall update the consultancy status in the PWCRAR from a tendering stage to an on-going stage. The update shall be carried out in a timely manner and in any case before the interim snapshot taken so that the latest status of the consultancy can be reflected in the interim snapshot. In updating the PWCRAR, some basic information is required to be entered, such as the award date and the actual commencement date. The procuring departments shall ensure that the same information shall be entered into the CNPIS in preparing the consultants performance reports for sake of consistency.

4.2 Upon the change of consultancy status from a tendering stage to an on-going stage in the PWCRAR, the manning schedule proposed by the consultant who wins the bid will become the "draft" manpower input for the newly awarded consultancy and be included in the quarterly update template. The procuring department shall require the consultant to review and update the "draft" manpower input where appropriate in the first quarterly updating. If update on the "draft" manpower input is not required or has not been confirmed by the procuring departments before the interim snapshot is taken, the updating procedures mentioned in paragraphs from 2.4 to 2.6 shall follow and the "draft" manpower input will be incorporated in the checking reports to be sent to the consultant.

5 Additional Services

5.1 The PWCRAR has a function to allow the procuring department to key in the manpower input for each additional service instructed under a consultancy to facilitate the monitoring of the total manpower input by the consultants.

5.2 After an additional service is instructed, the procuring department should input the relevant data, such as the date of instruction and the agreed manpower input, of the additional service into the

PWCRAR for record and monitoring of the overall manpower input to be provided by the consultants.

5.3 In view that there may be difficulties for the consultants to divide and record manpower inputs for individual additional service under the consultancy, the consultants are normally not required to provide a separate return of manpower input for individual additional service in the quarterly updates. The additional manpower input could be included in the quarterly updates under such circumstances.

6 Consultancies Commenced for More Than 10 years

6.1 Consultants will not be required to submit quarterly updates on manpower input for on-going consultancies which have commenced for more than 10 years. The last update is required for the reporting quarter within which the 10th anniversary date falls. Thereafter, the consultants will not be required to submit further quarterly update and the PWCRAR will not capture the manpower input of the consultancies concerned in the snapshots to be taken in the next reporting month and onward.

7 Completion of Consultancies

7.1 If the anticipated completion date of the on-going consultancy is advanced, the consultant may simply update the manpower input for the months beyond the revised completion date as zero. However, if the anticipated completion date is deferred, the consultant shall insert additional columns in the spreadsheet and fill in the associated manpower input for the extended period accordingly.

7.2 After the actual completion of the consultancy, the procuring departments shall require the consultants to submit the last update on manpower input for that reporting quarter.

7.3 If the procuring department does not confirm the manpower input of the last update in the PWCRAR before the interim snapshot is taken, the updating procedures mentioned in paragraphs from 2.4 to 2.6 shall follow. In this case, if the end date of the previously confirmed manpower input is earlier than the actual completion date, the PWCRAR will automatically input zero for the months in between in the interim and final snapshots. On the other hand, if the end date of the previously confirmed manpower input is latter than the actual completion date, the PWCRAR will only include the manpower input up to the actual completion date in the interim and final snapshots.

APPENDIX 3.20K SPECIAL CONDITIONS OF EMPLOYMENT : SUBMISSION OF MANPOWER INPUT

SCE( ) **Submission of Manpower Input**

(A) Without prejudice to the generality of Clause 11 of the General Conditions of Employment, the Consultants shall submit to the Director's Representative details of all staff deployed and/or to be deployed in the performance of the Services in the form, manner and for the purposes specified in the Brief.

(B) The Consultants or any of the sub-consultants, including any staff employed by them in the performance of the Services, shall be deemed to have read the SCE, the relevant part of the Brief, particularly the personal information collection statement (hereinafter referred to as "the Statement") in the form specified, and have given their consent to the Employer to disclose to any parties for the purposes as stated in the Statement without further reference to the Consultants or any of the sub-consultants, including any staff employed by them.

(C) The Consultants shall submit to the Director's Representative, when the information in sub-clause (A) are submitted, a signed declaration in a form prescribed or approved by the Director's Representative (a sample of which is attached in Appendix XX) to confirm that the information in sub-clause (A) submitted is true to the best of Consultants' knowledge and belief and is adherence to the staffing proposal made at the tender stage (or as subsequently updated to suit the latest development of the assignment) and to confirm that the Consultants and any of the sub-consultants, including all staff employed in the performance of the Services are aware of this SCE Clause [ ], the relevant part of the Brief, particularly the personal information collection statement concerned, and have given consent to the Employer to disclose to any parties for the purposes as stated in the Statement.

(D) The Consultants shall waive and forego their right, if any, to make any claims against the Employer for any losses, damages, costs, charges, liabilities, demands, proceedings and actions that may arise out of or in consequence of such disclosure by the Employer.

Sample Declaration Form by Consultants
on their compliance with requirements on the submission of manpower input
(to be attached to the manpower input submitted by the Consultants)

To: Director's Representative

Agreement No.: …….
Title: ……..

In accordance with the SCE Clause [ ]:

(1) We confirm that the information regarding manpower input deployed and/or to be deployed for this Agreement as indicated in the manning schedule updated as at end of [month] is true to the best of our knowledge and belief and is adherence to the staffing proposal made at the tender stage (or as subsequently updated to suit the latest development of the assignment).

(2) We further confirm that we and any of our sub-consultants, including any staff employed in the performance of the Services, are aware of this SCE Clause [ ], the relevant part of the Brief, particularly the personal information collection statement ("the Statement") concerned, and have given consent to the Employer to disclose to any parties for the purposes as stated in the Statement without further reference to us or any of our sub-consultants, including any staff employed.

(Name of the Consultants) ……..
(Name of the Signatory) ……..
(Position of the Signatory) ……..
(Date) ……..

APPENDIX 3.20L A WORKED EXAMPLE FOR DETERMINING OVERLOADING PERCENTAGE

Technical and Fee Proposals are received from Consultants W for Assignment A which adopts a total weighted manpower ratio of 4:2:1 for Partner/Director & Chief Professional : Senior Professional & Professional : Assistant Professional & Technical. After checking with the PWCRAR and seeking confirmation from the consultants on the overloading situation, the reduction factors for the "Adequacy of Professional and Technical Manpower Input" attributes in tender assessment are calculated as follows.

The tables shaded in grey are related to the manpower input of other concurrent tenders or on-going consultancies in the PWCRAR, and the computation carried out by the PWCRAR which will not be presented to the procuring departments.

Overloading due to on-going consultancies and concurrent tenders

The manning schedule submitted by Consultants W for Assignment A is shown in the table below.

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	1	-	1	-	1	-	1	-	1	-	1	-	6
S2	CP	-	0.5	-	0.5	-	0.5	-	0.5	-	0.5	-	0.5	3
S3	CP	0.5	-	0.5	-	0.5	-	0.5	-	0.5	-	0.5	-	3
	SP	2	2	2	2	2	2	2	2	2	2	2	2	24
S4	P	3	3	3	3	3	3	3	3	3	3	3	3	36
S5	P	3	3	3	3	3	3	3	3	3	3	3	3	36
S6	AP	3	3	3	3	3	3	3	3	3	3	3	3	36
S7	AP	3	3	3	3	3	3	3	3	3	3	3	3	36
S8	T	3	3	3	3	3	3	3	3	3	3	3	3	36
S9	T	3	3	3	3	3	3	3	3	3	3	3	3	36
S10	T	3	3	3	3	3	3	3	3	3	3	3	3	36

Table 1 - The manning schedule proposed by Consultants W for Assignment A

Based on the manning schedule in Table 1, the total weighted average manpower input proposed by Consultants W for Assignment A is 60 man-weeks as follows:

= (4 / 7) x (6 + 3 + 3) + (2 / 7) x (24 + 36 + 36) + (1 / 7) x (36 + 36 + 36 + 36 + 36)

= 60 man-weeks

The PWCRAR identifies that Consultants W have been working on one on-going consultancy and participating in four concurrent tenders (i.e. Tenders B, C, D and E). Among these four concurrent tenders, Tenders B and C are not paired with each other while Tenders D and E are paired with each other. There are four and five bids received under each of Tenders B and C and each of Tenders D and E respectively.

The manpower input of named professional staff of Consultants W in the on-going consultancy who have also been involved in Assignment A is recorded by the PWCRAR as below:

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	1	-	1	-	1	-	1	-	1	-	1	-	6
S2	CP	-	1	-	1	-	1	-	1	-	1	-	1	6
S3	SP	2	2	2	2	2	2	2	2	2	2	2	2	24
S4	P	2	2	2	2	2	2	2	2	2	2	2	2	24
S5	P	2	2	2	2	2	2	2	2	2	2	2	2	24

Table 2 - The manpower input of concerned named professional staff of Consultants W in the on-going consultancy

The manpower input of named professional staff of Consultants W in the concurrent Tenders B and C who have also been involved in Assignment A is recorded by the PWCRAR as below:

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	1	-	-	-	1	-	-	-	1	-	-	-	3
S2	CP	-	2	2	2	-	2	2	2	-	2	2	2	18
S3	SP	-	1	-	2	-	1	-	2	-	1	-	2	9
S4	P	1	1	1	1	1	1	1	1	1	1	1	1	12
S5	P	2	2	2	2	2	2	2	2	2	2	2	2	24

Table 3 - The manpower input of concerned named professional staff of Consultants W in the concurrent Tender B

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	-	-	1	-	-	-	1	-	-	-	1	-	3
S2	CP	2	-	-	-	2	-	-	-	2	-	-	-	6
S3	SP	-	2	-	1	-	2	-	1	-	1	-	1	8
S4	P	3	3	3	3	3	3	3	3	3	3	3	3	36
S5	P	2	2	2	2	2	2	2	2	2	2	2	2	24

Table 4 - The manpower input of concerned named professional staff of Consultants W in the concurrent Tender C

As there are four bids in each of concurrent Tenders B and C, the PWCRAR will divide the manpower input in Tables 3 and 4 by four individually and sum up to calculate the discounted manpower input in the concurrent tenders as shown in Table 5 below.

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	0.25	-	0.25	-	0.25	-	0.25	-	0.25	-	0.25	-	1.5
S2	CP	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	6
S3	SP	-	0.75	-	0.75	-	0.75	-	0.75	-	0.5	-	0.75	4.25
S4	P	1	1	1	1	1	1	1	1	1	1	1	1	12
S5	P	1	1	1	1	1	1	1	1	1	1	1	1	12

Table 5 - The discounted manpower input of the concerned named professional staff of Consultants W in the concurrent Tenders B and C

The manpower input of named professional of Consultants W in the two concurrent Tenders D and E who have also been involved in Assignment A as recorded by the PWCRAR is as below:

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	1	-	-	-	1	-	-	-	1	-	-	-	3
S2	CP	-	2	-	2	2	2	-	2	2	2	-	2	16
S3	SP	-	1	-	3	-	1	-	1	-	3	-	1	10
S4	P	1	1	1	1	1	1	1	1	1	1	1	1	12
S5	P	1	1	1	1	1	1	1	1	1	1	1	1	12

Table 6 - The manpower input of the concerned named professional staff of Consultants W in the concurrent Tender D

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	-	-	1	-	-	-	1	-	-	-	1	-	3
S2	CP	2	-	2	-	-	-	2	-	-	-	2	-	8
S3	SP	-	2	-	-	-	2	-	2	-	-	-	2	8
S4	P	1	1	1	1	1	1	1	1	1	1	1	1	12
S5	P	1	1	1	1	1	1	1	1	1	1	1	1	12

Table 7 - The manpower input of the concerned named professional staff of Consultants W in the concurrent Tender E

As there are 5 tenderers in each of the two paired tenders, the probability of the consultant winning at least one of the tenders is 0.36 (i.e. 1 – 4/5 x 4/5). The expected manpower input due to the paired tenders is taken as the average of the manpower input of Tenders D and E factored down by 0.36 as shown in Table 8 below.

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S1	PD	0.18	-	0.18	-	0.18	-	0.18	-	0.18	-	0.18	-	1.08
S2	CP	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	4.32
S3	SP	-	0.54	-	0.54	-	0.54	-	0.54	-	0.54	-	0.54	3.24
S4	P	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	4.32
S5	P	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	4.32

Table 8 - The expected manpower input due to paired Tenders D and E

Based on Tables 1, 2, 5 and 8, the PWCRAR will determine the overloading situation as follows. Procuring departments can obtain this information from the situation report downloaded from the PWCRAR.

Staff	Staff Category	No. of man-week per month												Total
		1	2	3	4	5	6	7	8	9	10	11	12	
S3	**CP&SP**	0.5	1.29	0.5	1.29	0.5	1.29	0.5	1.29	0.5	1.04	0.5	1.29	10.49
S4	**P**	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	28.32
S5	**P**	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	2.36	28.32

Table 9 - Named professional staff of Consultants W in Assignment A with overloading situation

As Staff S3 is found to be working under overloading situation, the weighting of CP will be used for its overloading assessment. Based on Table 9, the PWCRAR will calculate the weighted average overloading manpower input as 22.18 man-weeks and show the result in the situation report:

= (4 / 7) x 10.49 + (2 / 7) x (28.32 + 28.32)

= 22.18 man-weeks

Given the above, the PWCRAR will calculate the overloading percentage due to both on-going consultancy and the two concurrent tenders and show the result in the situation report:

= 22.18 / 60 x 100%

= 36.96% (i.e. ≥ 10%)

Hence, the procuring department shall apply a reduction factor of 0.75 (to be agreed by Assessment Panel) to the marks given to "Adequacy of Professional and Technical Manpower Input" attribute for Consultants W in Assignment A accordingly.

APPENDIX 3.20M SAMPLE REPORT OF OVERLOADING SITUATION DETAILS FOR TENDER ASSESSMENT

(to be updated from time to time)

RESTRICTED

Report Title: TEN-RPT-02 Overloading Situation Details For Tender Assessment
Report Generation Date: 08/05/2018
Selection criteria:
Department: THB
Agreement no.: CE 02/2018 (TEST)
Staff: All
Tenderer: THB Non-Listed Consultant 1
Agreement Title: CE 02/2018 (TEST) title
Tender closing Date: 01/03/2018
Anticipated Commencement Date: 20/03/2018
Anticipated Completion Date: 10/02/2019
Endorsement Status: Endorsed

Name	Staff Category	Consultant Name	Agreement No.	Agreement Status	No. of Bidders	Paired Tender	Mar 2018	Apr 2018	May 2018	Jun 2018	Jul 2018	Aug 2018	Sep 2018
Fiona Tan	Partners/Directors	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Reeta Chan	Chief Professional	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	2.00	2.00	2.00	2.00	2.00	2.00	2.00
	Chief Professional	THB Non-Listed Consultant 2	CE 04/2018 (T)	Implemented	N/A	N/A	1.50	1.50	1.50	1.50	1.50	1.50	1.50
David Wong	Chief Professional	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	2.00	2.00	2.00	2.00	2.00	2.00	2.00
	Chief Professional	THB Non-Listed Consultant 1	CE 01/2018 (CNPIS)	Implemented	N/A	N/A	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	Partners/Directors	THB Listed Consultant 1	CE 02/2018 (DM)	Implemented	N/A	N/A	0.50	0.50	0.50	0.50	0.50	0.50	0.50
	Other Technical Staff	THB Non-Listed Consultant 2	CE 04/2018 (T)	Implemented	N/A	N/A	1.00	1.00	1.00	1.00	1.00	1.00	1.00
	Partners/Directors	THB Listed Consultant 1	CE 05/2018 (DM)	Implemented	N/A	N/A	2.60	2.60	2.60	2.60	2.60	2.60	2.60

Page 1 : Other ongoing agreement(s) : Other tender(s) submitted : Exceeded 4.00 man-week when checking with ongoing agreements. : Exceeded 4.00 man-week when checking with ongoing agreements and agreements under tendering process.

RESTRICTED

RESTRICTED

Report Title: TEN-RPT-02 Overloading Situation Details For Tender Assessment
Report Generation Date: 08/05/2018
Selection criteria:
Department: THB
Agreement no.: CE 02/2018 (TEST)
Staff: All
Tenderer: THB Non-Listed Consultant 1
Agreement Title: CE 02/2018 (TEST) title
Tender closing Date: 01/03/2018
Anticipated Commencement Date: 20/03/2018
Anticipated Completion Date: 10/02/2019
Endorsement Status: Endorsed

Name	Staff Category	Consultant Name	Agreement No.	Agreement Status	No. of Bidders	Paired Tender	Oct 2018	Nov 2018	Dec 2018	Jan 2019	Feb 2019			Weighting	Manpower Input Total (man-week)	Overloaded Manpower Input (man-week)
Fiona Tam	Partners/Directors	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	1.00	1.00	1.00	1.00	1.00			0.40	12.00	0.00
Reeta Chan	Chief Professional	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	2.00	2.00	2.00	2.00	2.00			0.40	24.00	0.00
	Chief Professional	THB Non-Listed Consultant 2	CE 04/2018 (T)	Implemented	N/A	N/A	1.50	1.50	1.50	1.50	1.50					
David Wong	Chief Professional	THB Non-Listed Consultant 1	CE 02/2018 (TEST)	This Tender	N/A	N/A	2.00	2.00	2.00	2.00	2.00			0.40	24.00	15.70
	Chief Professional	THB Non-Listed Consultant 1	CE 01/2018 (CNPIS)	Implemented	N/A	N/A	0.00	0.00	0.00	0.00	0.00					
	Partners/Directors	THB Listed Consultant 1	CE 02/2018 (DM)	Implemented	N/A	N/A	0.00	0.00	0.00	0.00	0.00					
	Other Technical Staff	THB Non-Listed Consultant 2	CE 04/2018 (T)	Implemented	N/A	N/A	0.00	0.00	0.00	0.00	0.00					
	Partners/Directors	THB Listed Consultant 1	CE 05/2018 (DM)	Implemented	N/A	N/A	2.60	2.60	2.60	2.60	2.60					
Weighted Total:														24.00		6.28
Overall Overload %: 26.17%																

: Other ongoing agreement(s) : Other tender(s) submitted 5.50 : Exceeded 4.00 man-week when checking with ongoing agreements. 5.50 : Exceeded 4.00 man-week when checking with ongoing agreements and agreements under tendering process.

RESTRICTED

APPENDIX 3.21 SAMPLE PROVISIONS IN INVITATION LETTERS FOR EXPRESSION OF INTEREST (EOI) SUBMISSIONS AND TECHNICAL & FEE (T&F) PROPOSALS FOR PAIRING OF CONSULTANT SELECTION EXERCISES

X. Your attention is drawn to the following special requirements applicable to the consultant selection exercises for Agreement No. [*Please state the agreement no.*] entitled "[*Please state the agreement title*]" and Agreement No. [*Please state the agreement no.*] entitled "[*Please state the agreement title*]":

(i) where a consultant firm [Note 1] attains the highest combined score [Note 2] in the assessment of Technical and Fee Proposals in only one Agreement, the consultant firm may be awarded that Agreement;

(ii) where a consultant firm attains the highest combined score in the assessment of Technical and Fee Proposals in both Agreements:

(a) that consultant firm may be awarded not more than one of the two Agreements;

(b) the consultant firm(s) that attain(s) the second highest combined score in the assessment of Technical and Fee Proposals in any of the two Agreements may be considered for the award of that Agreement according to the principles set out in sub-clause (c) below; and

(c) in determining the combination of winners for awarding the Agreements, the scenario under which the total of the combined scores [Note 3] in the assessment of Technical and Fee Proposals is the highest will be considered as the basis for awarding the Agreements. If, however, there are two scenarios under which the total of the combined scores is the highest, the scenario under which the total of the consultancy fees [Note 4] is the least to the Employer will then be considered as the basis for awarding the Agreements. If, however, there are two scenarios under which the total of the combined scores is the highest and the total of the consultancy fees is the least to the Employer, the scenario under which the total of the technical scores [Note 5] is the highest will be considered as the basis for awarding the Agreements.

(iii) If you submit/have submitted Technical and Fee Proposals for both Agreements and subsequently withdraw/have withdrawn your submission for one of the Agreements,

your submissions shall not be considered further for both Agreements.

* Delete as appropriate.

Note 1: Provisions (i) to (ii) above also apply to joint ventures. A joint venture or a consultant firm that has any participation or shareholding in common with another joint venture or a consultant firm shall be regarded as being the same consultant firm for such joint venture(s) and consultant firm(s) for the purpose of consideration of provisions (i) to (ii) above.

Note 2: The combined score will be determined in accordance with paragraph 14 of Development Bureau Technical Circular (Works) No. 2/2016 and 5/2018.

Note 3: The total of the combined scores is the sum of (i) the highest combined score in one of the Agreements and (ii) the second highest combined score in the other Agreement.

Note 4: The consultancy fee will be determined in accordance with paragraph 21 of Development Bureau Technical Circular (Works) No. 2/2016 and 5/2018. The total of the consultancy fees is the sum of (i) the consultancy fee of the consultant with the highest combined score in one of the Agreements and (ii) the consultancy fee of the consultant with the second highest combined score in the other Agreement.

Note 5: The total of the technical scores is the sum of (i) the technical score of the consultant with the highest combined score in one of the Agreements and (ii) the technical score of the consultant with the second highest combined score in the other Agreement.

Remark:

(i) For two-stage consultants selection process, the project offices should replace a similar sentence in the invitation letters for EOI Submissions by the following sentence:

"...Based on the response received, normally [five] suitable firms will be shortlisted for submission of technical and fee proposals."

APPENDIX 4.1 STANDARD FORM OF MEMORANDUM OF AGREEMENT

(a) To be Signed by a Single Consultant

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT made the _____ day of _____ BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION of [1] _____ (hereinafter called "the Employer") of the one part and [2] _____ of [3] _____ (hereinafter called "the Consultants") of the other part

WHEREAS the Employer requires the Consultants to provide professional services in respect of _____ (hereinafter called "the Assignment") details of which are set out in the Brief annexed hereto

AND WHEREAS the Consultants have agreed to provide such services in accordance with the Brief, the General Conditions of Employment of Engineering and Associated Consultants and the Special Conditions of Employment (if any) annexed hereto (both of which are hereinafter referred to as "the Conditions"), and subject to the payment to them by the Employer of the fees and other payments set out in the Schedule of Fees annexed hereto

NOW THEREFORE IT IS AGREED AS FOLLOWS :-

1. This Agreement shall comprise :-

   (a) The Brief
   (b) The Conditions
   (c) The Schedule of Fees
   (d) Any relevant correspondence
   (e) Any additional matters

   all of which documents are annexed hereto and marked "Agreement No. "

2. The Director for the purposes of this Agreement shall be [4]

3. In consideration of the payments made at the times and in the manner set forth in the Agreement by the Employer, the Consultants hereby jointly and severally [5] undertake to perform and complete the said services subject to and in accordance with the Agreement.

IN WITNESS this Agreement has been executed as a deed on the date first above written

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
) *[Signature of the officer]** L.S.
.....)
[Name])
[Occupation])
[Address])

(a) SIGNED, SEALED and DELIVERED)
by [name of sole proprietor])
trading as [name of the Consultants])
in the presence of:)
) *[Signature of the sole proprietor]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(b) SIGNED, SEALED and DELIVERED by)
[name of partner] and)
[name of partner]^) *[Signature of the individual partner]** L.S.
being the partners of [name of the Consultants])
in the presence of:)
) *[Signature of the individual partner]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(c) Executed and delivered)
as a deed and the COMMON SEAL)
of [name of the Consultants])
was affixed in the presence of) *[Signature of the*
[ ] its [director(s) or) *director(s) etc]**
director and secretary or person(s))
authorized to sign the contract by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Common Seal

Or

(d) Executed and delivered)
as a deed)
by [name of the Consultants])
acting through)
[ ] (its sole director)) *[Signature of the*
or) *director(s) etc]**
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) SIGNED, SEALED and DELIVERED by)
[name of the Consultants] by [ ])
his/her/their** attorney under power of attorney)
dated [ ])
) *[Signature of the*
in the presence of:) *attorney]**
)
.....)
[Name])
[Occupation])
[Address])

L.
S.

NOTES: (for preparation of but not inclusion in the engrossment of the Memorandum of Agreement)

Case (a) is for use where the Consultants are a sole proprietor.

Case (b) is for use where the Consultants are a partnership.

Case (c) is for use where the Consultants are a company incorporated in Hong Kong and execute the deed with a Common Seal

Case (d) is for use where the Consultants are a company incorporated in Hong Kong and execute the deed without a Common Seal.

Case (e) is for use where the Consultants execute the deed under a power of attorney

1 Insert the address for service of documents.

2 Insert the name of the Consultants.

3 Insert the address of the Consultants

4 Insert the post title

5 Delete "jointly and severally" where cases (a), (c), (d) and (e) apply. Initial the deletion by the signatories of the Memorandum of Agreement.

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

(b) To be Signed by a Joint Venture of Consultants

MEMORANDUM OF AGREEMENT

"MEMORANDUM OF AGREEMENT made the _____ day of _____ BETWEEN **THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION** of [1] _____ of the first part ("the Employer") and[2] _____ of[3] _____ _____ of the second part and[2] _____ of[3] _____ _____ of the third part ("the Consultants") (*This may be appropriately expanded if there are more than two (2) Joint Venture partners*.), which parties of the second and third parts *(This should be correspondingly expanded if there are more than two (2) Joint Venture partners*.) trading as[4] _____ of[5] _____ _____ are jointly and severally bound to the Employer under the provisions of the Agreement."

WHEREAS:

A. The Employer requires the Consultants to provide professional services in respect of

("the Assignment") details of which are set out in the Brief annexed to this agreement.

B. The Consultants have agreed to provide professional services in accordance with the Brief, the General Conditions of Employment of Engineering and Associated Consultants and the Special Conditions of Employment (if any) collectively referred to in this Agreement as "the Conditions") annexed to this Agreement and subject to the payment to them by the Employer of the fees and other payments set out in the Schedule of Fees annexed to this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS :-

1. In this agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions except when the context otherwise requires.

2. This Agreement shall comprise :-
   (a) The Brief
   (b) The Conditions
   (c) The Schedule of Fees
   (d) Any relevant correspondence
   (e) Any additional matters

   all of which documents are annexed hereto marked "Agreement No. ".

3. The Director for the purposes of this Agreement shall be [6]

4. In consideration of the payments made at the times and in the manner set forth in the Agreement by the Employer, the Consultants hereby jointly and severally undertake to perform and complete the said services subject to and in accordance with the Agreement.

IN WITNESS this Agreement has been executed as a deed on the date first above written

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
) *[Signature of the officer]* *
) L.S.
.....)
[Name])
[Occupation])
[Address])

(a) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
in the presence of:)
) *[Signature of the participant]* *
) L.S.
.....)
[Name])
[Occupation])
[Address])

(b) #SIGNED, SEALED and DELIVERED) *[Signature of the individual partner]* *
By [name of partner] and [name of partner]^) L.S.
being the partners of [name of participant])
being a participant) *[Signature of the individual partner]* *
of the [name of the unincorporated joint venture]) L.S.
in the presence of:)
)
)
.....)
[Name])
[Occupation])
[Address])

Or

(c) #Executed and delivered)
as a deed and the COMMON SEAL)
of [name of participant] being a participant)
of the [name of the unincorporated joint venture]) *[Signature of the*
was affixed in the presence of) *director(s) etc]**
[ ] its [director(s) or)
director and secretary or person(s))
authorized to sign the contract by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Common Seal

Or

(d) #Executed and delivered)
as a deed)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
acting through) *[Signature of the*
[ ] (its sole director)) *director(s) etc]**
or)
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
by [ ])
his/her/its** attorney under power of attorney) *[Signature of the*
dated [ ]) *attorney]**
)
in the presence of:)
)
.....)
[Name])
[Occupation])
[Address])

L.S.

NOTES: (for preparation of but not inclusion in the engrossment of the Memorandum of Agreement)

Case (a) is for use where the joint venture participant is a sole proprietor.

Case (b) is for use where the joint venture participant is a partnership.

Case (c) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed with a Common Seal.

Case (d) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed without a Common Seal.

Case (e) is for use where the joint venture participant executes the deed under a power of attorney.

1 Insert the address for service of documents.

2 Insert the name of individual Joint Venture partner of the Joint Venture partnership.

3 Insert the address of individual Joint Venture partner.

4 Insert the name of the Joint Venture partnership.

5 Insert the address of the Joint Venture partnership.

6 Insert the post title.

\# Select the appropriate form or forms and REPEAT FOR EACH PARTICIPANT of the unincorporated joint venture.

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

APPENDIX 4.2 STANDARD FORM OF SCHEDULE OF FEES

AGREEMENT NO. _____

SCHEDULE OF FEES

Table of Contents

1. Definition
2. Basis of Fee
3. Interim Payment
4. Expenses
5. Payment for Additional Services
6. Reduction of Lump Sum Fees
7. Payment for Delays
8. Fees on Time Charge Basis
9. Charge Rates for Additional Services

*10. Resident Site Staff

[omit if no RSS will be employed]*

SCHEDULE OF FEES

Definition

1. 'approved' hereinunder means approved in writing by the Director's Representative before the cost, remuneration or expense is incurred.

Basis of Fee

2. (A) The remuneration of the Consultants for the performance of the Services (other than in respect of the Resident Site Staff)[+] shall be a Lump Sum of *HK$ _____, subject to the limitations, reservations and adjustments in Schedule of Fees Clauses 4, 5, 6 and 7 and price adjustments under sub-clause (B) of this Clause.

[+omit if no RSS will be employed]
[insert the value on Agreement signing]*

(B) (i) There shall be no price adjustment to the interim payments under Schedule of Fees Clause 3 until the first anniversary of the date on which this Agreement is due to commence. On the first and every subsequent anniversary (collectively referred as index update dates), a price adjustment factor equal to (L – B)/B shall be calculated. The interim payments under Schedule of Fees Clause 3 to be invoiced on or after the latest index update date but before the next index update date shall be multiplied by this factor to determine the price adjustment amounts.

B referred to above is the monthly Consumer Price Index (C) of the due date for commencement of this Agreement and L is the monthly Consumer Price Index (C) of the latest index update date.

(ii) "Consumer Price Index (C)" in this Schedule of Fees shall mean the Consumer Price Index (C) (October 2014 - September 2015 based) compiled by the Census and Statistics Department, and published monthly in the Hong Kong Monthly Digest of Statistics, or, in the event that the Index ceases to be compiled, such other Index as is, in the opinion of the Secretary for Development, substantially equivalent.

Interim Payment

3. Interim payments on account for the Lump Sum stipulated in sub-clause (A) of Schedule of Fees Clause 2 shall be made in such amounts and at such times as set out in the Payment Schedule below:

Payment Schedule

[Method of payment to be specified, i.e. % of completion, stages, milestones, and agreed by the AACSB/EACSB/DCSC].

Expenses

4. In addition to the Lump Sum stipulated in Schedule of Fees Clause 2, the Consultants shall be reimbursed by the Employer out-of-pocket expenses actually and properly incurred by them in respect of:

(i) the cost of approved small scale site investigation works or survey with laboratory and field tests and other special investigations;

(ii) the approved fees and expenses of specialists employed with the approval of the Director's Representative for inspection of works processes and the testing of work or plant and the testing and analysis of materials *[Delete if not appropriate]*;

(iii) the cost of approved provision of the following computer facilities *[Give the details/Delete if not appropriate];*

and *[To be specified]*

Payment for Additional Services

5. (A) Where the Consultants consider that they are entitled to payment for additional Services pursuant to General Conditions of Employment Clause 33, the Consultants shall advise the Director's Representative in writing of such claims before the Consultants commence performing the additional Services.

(B) The notice provision in sub-clause (A) of this Clause shall be a condition precedent to payment for additional Services.

(C) If the Director's Representative agrees the Consultants' entitlement notified under sub-clause (A) of this Clause, he shall attempt to agree with the Consultants a lump sum payment for the additional Services with a corresponding payment schedule.

(D) The lump sum payment shall be negotiated on the basis of the Director's Representative and the Consultants identifying which staff of the Consultants will be required to perform the additional Services and the estimated time required to complete the additional Services. The charge rates for calculating the lump sum payment shall be determined according to Schedule of Fees Clause 9.

(E) Where the staff or estimated time required to complete the additional Services cannot be identified and agreed, the additional Services will be paid on a time charge basis in accordance with Schedule of Fees Clause 8, subject to a fee cap set by the Director's Representative which should not be exceeded without his approval.

Reduction of Lump Sum Fees

6. Where the Director's Representative determines that there is a reduction in the Services pursuant to General Conditions of Employment Clause 34, then the Lump Sum stipulated in sub-clause (A) of Schedule of Fees Clause 2 shall be reduced by negotiation taking into account any financial commitment or obligation properly incurred by the Consultants in accordance with this Agreement.

Payment for Delays

7. Where the Director's Representative determines that the Consultants are entitled under General Conditions of Employment Clause 35 to payment in respect of any additional costs incurred as a result of the delays, such payment shall be determined by negotiation and shall be either a lump sum or on a time charge basis.

Fees on Time Charge Basis

8. (A) Where the Director's Representative agrees that the additional Services shall be paid on a time charge basis, sub-clauses (B) to (G) of this Clause shall apply.

(B) The payment for additional Services on a time charge basis shall be the sum of the multiplication of man-hours properly spent and the charge rates. The charge rates as determined according to Schedule of Fees Clause 9 shall be adopted.

(C) All staff proposed by the Consultants to perform the additional Services shall be subject to the agreement of the Director's Representative.

(D) Time spent by clerical staff shall not be chargeable.

(E) Time spent by partners and directors, chief professional, senior professional, professional, assistant professional and technical staff in approved travelling shall be chargeable.

(F) In addition to remuneration to be paid under sub-clause (B) of this Clause, the Consultants shall be reimbursed by the Employer all reasonable out-of-pocket expenses actually and properly incurred by them in respect of:

(i) printing, reproduction and purchase of all documents, drawings, maps, photographs and records;

(ii) overseas communications including facsimile transmissions, telephone calls, telegrams, telex and air freight for documents;

(iii) approved travelling and hotel expenses and other similar disbursements;

(iv) other items approved by the Director's Representative.

(G) The Consultants shall render monthly accounts, annexing copies of time sheets, in respect of fees on a time charge basis.

Charge Rates for Additional Services

9. (A) The all-inclusive hourly rates shall be as follows:

(i) Partners/Directors: at the rate of *HK$ _____ per hour.

(ii) Chief Professional Staff: at the rate of *HK$ _____ per hour.

(iii) Senior Professional Staff: at the rate of *HK$ _____ per hour.

(iv) Professional Staff: at the rate of *HK$ _____ per hour.

(v) Assistant Professional Staff: at the rate of *HK$ _____ per hour.

(vi) Technical Staff: at the rate of *HK$ _____ per hour.

wherein the minimum qualifications and experience requirements for the respective staff categories are set out at Annex A.

[Departments to modify/insert more categories of staff as appropriate.]

[Insert the values in the Agreement for signing.]*

(B) An adjusted notional value for additional Services shall be calculated by adding the totals of the multiplication of the all-inclusive hourly rates referred to in sub-clause (A) of this Clause and the respective notional man-hours for additional Services referred to in the Fee Proposal, which shall constitute the fee ceiling for the purposes of calculating payment for additional Services unless it exceeds 10% of the Consultants' Lump Sum offered for performing the Assignment and accepted by the Employer in which case the latter amount shall constitute the fee ceiling. For the avoidance of doubt, notwithstanding the above adjusted notional value for additional Services and fee ceiling, the Director's Representative has no obligation whatsoever to instruct any additional Services whether the estimated cumulative payment for additional Services before price adjustments under sub-clause (H) of this Clause exceeds the fee ceiling or not.

(C) The charge rates for additional Services shall be the all-inclusive hourly rates referred to in sub-clause (A) of this Clause for estimated cumulative payment for additional Services before price adjustments under sub-clause (H) of this Clause up to the fee ceiling subject to sub-clauses (D) to (G) of this Clause. The payment for additional Services shall be subject to price adjustments under sub-clause (H) of this Clause.

(D) Where the estimated cumulative payment for additional Services before price adjustments under sub-clause (H) of this Clause will exceed the fee ceiling, then the all-inclusive hourly rates referred to in sub-clause (A) of this Clause shall not apply for the calculation of payment for those additional Services straddling or exceeding the fee ceiling. New charge rates shall be agreed by negotiation based on the estimated time required to complete the additional Services, all-inclusive hourly rates referred to in sub-clause (A) of this Clause, and the prevailing market rates at the ordering of the additional Services for short term or part-time working with conversion to the price level of the date on which this Agreement is due to commence. Where such negotiation fails, the Director's Representative shall be at liberty to, among other options, not instruct the additional Services, or instruct a third party to perform the additional Services.

(E) The all-inclusive hourly rates referred to in sub-clause (A) of this Clause shall be regarded as rates applicable to additional Services requiring short term or part-time working. Where the additional Services requiring long term or full time continuous periods of working, then the all-inclusive hourly rates referred to in sub-clause (A) of this Clause shall not apply for the calculation of payment for those additional Services and new reduced charge rates shall be agreed by

negotiation based on the estimated time required to complete the additional Services, the all-inclusive hourly rates referred to in sub-clause (A) of this Clause, the staff rates in lump sum fee for the respective staff categories (which are equal to the total fee of the respective staff category / the total manpower input of the respective staff category), and the prevailing market rates at the ordering of the additional Services for long term or full time continuous periods of working with conversion to the price level of the date on which this Agreement is due to commence. Where such negotiation fails, the Director's Representative shall be at liberty to, among other options, not instruct the additional Services, or instruct a third party to perform the additional Services.

(F) Notwithstanding sub-clause (D) and (E) of this Clause, where the negotiations in sub-clause (D) and (E) of this Clause fail between the Director's Representative and the Consultants, the Director's Representative shall have the option of having the additional Services performed on the charge rates using the all-inclusive hourly rates referred to in sub-clause (A) of this Clause.

(G) In exceptional cases where, in the opinion of the Director's Representative, the additional Services would best be performed by a particular staff member of the Consultants and the use of the all-inclusive hourly rates referred to in sub-clause (A) of this Clause is considered not appropriate for such staff member, the Director's Representative may, by negotiation, agree with the Consultants a new charge rate for the particular staff member, even when the fee ceiling has not been exceeded.

(H) There shall be no price adjustment to the interim payments for the additional Services until the first anniversary of the date on which this Agreement is due to commence. On the first and every subsequent anniversary (collectively referred as index update dates), a price adjustment factor equal to (L - B)/B shall be calculated. The interim payments for the additional Services to be invoiced on or after the latest index update date but before the next index update date shall be multiplied by this factor to determine the price adjustment amounts.

B referred to above is the monthly Consumer Price Index (C) of the due date for commencement of this Agreement and L is the monthly Consumer Price Index (C) of the latest index update date.

*Resident Site Staff 10. (A) The RSS on-cost rates are:

Collective rank of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer	**RSS on-cost rate of each collective rank ($/man-month)**
^R1	
^R2	
^R3	
^R4	
^R5	
^R10	

(B) The details of the collective ranks of RSS directly employed by the Consultants or Government staff posted to the Consultants by the Employer are in Clause SCE YY [*Insert the clause no.*] of the Special Conditions of Employment.

[omit if no RSS will be employed]*
[^ Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department]

Annex A – Categories of Staff for the Services and Additional Services

Staff category	Minimum academic / professional qualifications	Minimum experience requirement
Partners/ Directors	Corporate member of an appropriate professional institution or equivalent **[A partner, or a company director who is a member of the Board with voting power at Board meetings]*	15 years relevant post-qualification experience (applicable to professional membership only)
Chief Professional	Corporate member of an appropriate professional institution or equivalent	12 years relevant post-qualification experience
	University degree or equivalent in an appropriate discipline for specialist trades, such as geology, transport, environmental science or other trades where appropriate professional institutions are not commonly in existence	17 years relevant post-qualification experience
Senior Professional	Corporate member of an appropriate professional institution or equivalent	5 years relevant post-qualification experience
	University degree or equivalent in an appropriate discipline for specialist trades, such as geology, transport, environmental science or other trades where appropriate professional institutions are not commonly in existence	10 years relevant post-qualification experience
Professional	Corporate member of an appropriate professional institution or equivalent	No additional requirement
	University degree or equivalent in an appropriate discipline for specialist trades, such as geology, transport, environmental science or other trades where appropriate professional institutions are not commonly in existence	5 years relevant post-qualification experience
Assistant Professional	University degree or equivalent in an appropriate discipline	No additional requirement
Technical	Diploma or Higher Certificate or equivalent in an appropriate discipline	No additional requirement

[To be deleted. The requirement shall be removed from the suggested minimum academic/professional qualification requirement for staff under Partners/ Directors category. However, project offices may consider including the requirement if needed to suit the specific requirement of the project.]*

APPENDIX 4.3 GUIDELINES ON THE PREPARATION OF BRIEFS FOR FEASIBILITY, INVESTIGATION, DESIGN AND CONSTRUCTION ASSIGNMENTS

The purpose of the Brief is to describe in detail the Assignment that the Consultants are to undertake. The form and content of briefs varies according to the particular assignment.

The Brief shall define clearly the scope, nature and timing of the services to be provided by the Consultants, the responsibilities they are to assume and all other requirements and constraints. It shall describe exactly what is to be achieved and what the output of the Assignment must be. Assumptions and methodology must be clearly defined.

It is in the interest of both the client and the Consultants that the Brief is sufficiently detailed and specific to enable the shortlisted consultants to properly estimate the resources necessary to carry out the Assignment and to quote competitive lump sum fees. It is important that the Brief is very clear as to the standard and level of service expected from the Consultants and that both the client and the shortlisted consultants have a clear and agreed understanding of the requirements. Any vagueness in the Brief will create potential for future dispute which may be detrimental to the progress of the project and must be avoided.

If there are specific aspects or parts of the Assignment that cannot be sufficiently well defined or over which there is much uncertainty at the time of preparing the Brief, then provision shall be made in the Schedule of Fees to exclude these works and services from the quoted lump sum fee and to remunerate the Consultants on a negotiated lump sum or time-charge basis. In particular, it should be noted that consultants cannot generally be expected to estimate reasonably in their fee proposals the extent of commitment and effort required for such services which should normally be treated as additional Services under Clause 5 of the Schedule of Fees.

The provisions of the Brief must be consistent with those of the General Conditions of Employment, Special Conditions of Employment (if any), Schedule of Fees and all other documents comprising the Agreement. Care should be taken that the Brief does not conflict with the General Conditions of Employment which must not be amended without obtaining legal advice from LAD(W), DEVB and endorsement of DEVB.

The Brief shall be prepared in consultation with all interested offices to whom it shall be circulated and whose input and where appropriate, agreement, shall be obtained. Also, if appropriate the Brief shall be submitted to the project steering or management group for formal agreement.

The Brief must be consistent with the requirements of the project as approved by the PWSC or other authority.

The Brief shall not be finalized until after the pre-submission meeting held with the shortlisted consultants.

The Brief shall be prepared in accordance with the directions and guidance given in the appropriate typical format. Different fonts are used in the typical formats of Brief to indicate the intention of the text, as follows :-

(a) Words in bold font are mandatory unless otherwise indicated. These are mandatory clauses or headings which shall be included in the Brief unchanged, except with the prior approval of EACSB.

(b) Words in normal font indicate sample clauses. These are not mandatory and shall be amended as necessary to suit the Assignment.

(c) Words in *italics* are suggestions or instructions to aid preparation of the Brief. The exact content and wording to be used is left to the discretion of the writer of the Brief.

Consultancy Services involving EIA

Additional guidance on the preparation of Briefs promulgated originally in WBTC No. 17/98 as a result of the Environmental Impact Assessment Ordinance (EIA Ordinance) which came into operation on 1 April 1998, has basically been subsumed hereunder:

(a) The attached Annex A includes sample clauses which indicate the services that the Consultants may be required to provide under a consultancy assignment as a result of the EIA Ordinance which came into operation on 1 April 1998. However, for each particular assignment the wording of the clauses shall be expanded and, where necessary, further clauses shall be added, to describe exactly and in as much detail as possible what is required.

(b) The proponent department shall, in consultation with the Director of Environmental Protection if necessary, determine and state in the Brief whether the project is a designated project under the EIA Ordinance. In the case that the project is exempted from the provisions of the EIA Ordinance in accordance with section 9(2) and section 9(3) of the EIA Ordinance, this shall be stated in the Brief.

The Role of Consultants under the Land (Miscellaneous Provisions) Amendment Ordinance 2003 (LMPAO)

As stipulated in SETW's memo ref (00YMM-01-2) in ETWB(PS) 106/10 dated 20 January 2006, the clauses set out in Annex B should be included in the Brief for Design and Construction assignments to highlight the role of the Consultants under the LMPAO.

Management of Consultants' Performance

The clauses set out in Annex C relating to the management of consultants' performance should be included in the consultancy brief.

Computer Facilities of Consultants

The clauses set out in Annex D relating to computer facilities of consultants shall be included in the consultancy brief.

Sample Clauses (for Consultancy Services involving EIA)

(1) Prepare a project profile as set out in the Technical Memorandum on Environmental Impact Assessment Process (under the Environmental Impact Assessment Ordinance (EIA Ordinance) S16) and advise and assist the Employer to apply to the Director of Environmental Protection (DEP) in accordance with the EIA Ordinance for an environmental impact assessment study brief or for approval to apply directly for an environmental permit.

(2)[1] Conduct an environmental impact assessment (EIA) study and prepare an EIA report in accordance with the EIA study brief issued by the DEP and EIA Ordinance, and advise and assist the Employer in obtaining approval for the EIA report in accordance with the EIA Ordinance, including public consultation and presentation to the Advisory Council on the Environment if required.

(3) Advise and assist the Employer in obtaining environmental permits for the Employer for **constructing/operating/decommissioning* the Project in accordance with the EIA Ordinance.

(4) Liaise with the DEP or his representative to obtain variations of environmental permits for the Employer in accordance with the EIA Ordinance should there be any changes to the Project or to the environmental impact of the Project that would give rise to a need for variation of the conditions of the environmental permit. Where it is required by the DEP to submit an EIA report for the variations sought and the Director's Representative so instructs, the Consultants shall conduct an EIA study and prepare an EIA report for the variations sought in accordance with the EIA Ordinance. Payment for the cost of such study and report shall be on a time charge basis or by means of a negotiated lump sum fee.

* Delete as appropriate

Note :

1. *Clause (1) may be included in a Preliminary Project Feasibility Study assignment where the Project has already been confirmed as a designated project under the EIA Ordinance.*

2. *Clauses (2) and (3) shall be included in a consultancy assignment when the Project has obtained a study brief from the DEP.*

3. *Clause (4) shall only be included in a consultancy assignment which involves construction stage for designated project.*

4. *Projects that have obtained DEP's approval to apply directly for an environmental permit(s) only need to include clause (3) and/or clause (4).*

---

[1] Project proponent should ensure that adequate number of copies of the EIA report has been specified in the section of "Deliverables" in the assignment.

Clauses Regarding the Role of the Consultants under the Land (Miscellaneous Provisions) Amendment Ordinance 2003 (LMPAO) for Incorporation into the Brief for a Design and Construction Assignment

The following clauses should be added to the Sub-section "Services to be provided by the Consultants – Construction Phase" of the Brief:

6.4.9* The Consultants shall nominate a professional acceptable to the Employer to be named as the contact person of the Employer in applications for excavation permits and, where applicable, emergency excavation permits pursuant to the requirements of the Land (Miscellaneous Provisions) Ordinance, Cap 28.

6.4.10* (1) The Consultants shall carry out all duties imposed upon the Employer under the Land (Miscellaneous Provisions) Ordinance, Cap 28 or under the conditions of the excavation permits and, where applicable, emergency excavation permits in so far as such duties have not been imposed only on the Contractor under the Ordinance or under the Contract.

(2) Notwithstanding Sub-clause (1), the Consultants shall not be liable to the Employer in respect of obligations stipulated under the following conditions of the excavation permits and, where applicable, emergency excavation permits:

(i) the condition stipulated in the excavation permits and, where applicable, the emergency excavation permits relating to the obligation and liability of the Permittee to indemnify the Government against all losses and claims for injury or damage to any person or property, nuisance, disruption or interference whatsoever which may arise out of or in consequence of the work of the Permittee, and against all claims, demands, proceedings, damages, costs, charges or expenses whatsoever in respect thereof or in relation thereto, and

(ii) the condition stipulated in the excavation permits and, where applicable, emergency excavation permits relating to the obligation and liability of the Permittee to make good or pay for any works as a result of or in consequence of the work of the Permittee.

(3) Sub-clause (2) above is without prejudice to Clause 22 of the General Conditions of Employment.

6.4.11* (1) The Consultants shall ensure that the Contractor complies with the permit conditions imposed by the Authority under the Land (Miscellaneous Provisions) Ordinance, Cap 28, including those conditions stipulated in the excavation permits to be observed by the Nominated Permittee or by both the Permittee and the Nominated Permittee and those stipulated in the excavation permits and, where applicable, emergency excavation permits to be observed by the Permittee but which the Contractor is required to comply with under the

Contract.

(2) In respect of permit conditions which are stipulated in the excavation permits and, where applicable, emergency excavation permits to be complied with by the Permittee but which are required to be complied with by the Contractor under the Contract, if notwithstanding Sub-clause (1) above the Contractor has failed to comply with these conditions, the Consultants shall take such actions so as to ensure that these conditions are complied with by the Employer in his capacity as the Permittee irrespective of whether these actions are required to be carried out by the Contractor under the Contract.

6.4.12* Clause 6.4.9* to Clause 6.4.11* above shall apply only with respect to excavation in street maintained by the Highways Department that requires excavation permits and, where applicable, emergency excavation permits under the Ordinance for execution of the Works.

6.4.13* The Consultants shall [engage a competent person #/ ensure that a competent person is engaged #] to supervise the excavation works on behalf of the Employer, maintain a documented system for supervising the excavation works and maintain a documented system to ensure that the Contractor complies with his duties in relation to excavation works. The attention of the Consultants is drawn to section 10T(5) and (6) of the Land (Miscellaneous Provisions) Ordinance, Cap 28.

*Note: (a) The Clause number marked with * above may be changed to suit individual assignment brief.*

(b) # Delete as appropriate, depending on whether the competent person is intended to be engaged by the Consultants or the Employer direct.

Annex C

Clauses for Management of Consultants' Performance

The following clauses should be added to the Section "Services to be provided by the Consultants" of the Brief :

6.X The Consultants shall take cognizance of and comply with relevant requirements of technical circulars and documents issued by the Government bureaux and departments including but not limited to the following:

(a) EACSB Handbook and other relevant EACSB circulars and circular memoranda;

(b) General/Technical circulars and other relevant circular memoranda issued by the Development Bureau;

(c) …..

6.Y The Consultants agree that the management and reporting of the Consultants' Performance under this Agreement shall be subject to the reporting and management mechanism set out in Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018 or its latest revision or replacement.

Annex D

Clauses for Computer Facilities of Consultants

The following clause should be added to the Section "Services to be provided by the Consultants" of the Brief:

6.X Except to the extent otherwise provided for in this Agreement, the Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under this Agreement. These computer facilities shall include but not limited to:

(a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;

(b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and

(c) IT training for staff employed by the Consultants.

APPENDIX 4.4 TYPICAL FORMAT OF THE BRIEF FOR A FEASIBILITY ASSIGNMENT

Agreement No.

BRIEF

1. **Introduction**

This Brief is to be read in conjunction with the Memorandum of Agreement, General Conditions of Employment for a Feasibility Assignment, Special Conditions of Employment and Schedule of Fees. For the avoidance of doubt but without prejudice to Clause 7 of the General Conditions of Employment, the performance of the Services specified herein shall be subject to Clause 22 of the General Conditions of Employment.

2. **Description of the Project**

Describe the Project of which this Assignment forms a part. Include relevant historical and general background and any significant events, milestones, policy decisions and other background that may have a bearing on the Assignment.

3. **Objectives of the Assignment**

This should follow logically on from section 2 and shall list what is to be achieved upon satisfactory completion of the Assignment.

4. **Description of the Assignment**

Describe the Assignment in complete detail. Make reference not only to what is included but also what is not included. This is particularly relevant where the scope of the Assignment is different from the scope of the Project described in section 2. Describe any interfaces between the Assignment and any other parts of the Project or other projects. Be as specific as possible.

5. **Deliverables**

Specify everything that is to be produced by the Consultants as part of the Assignment. For example, draft reports, final reports, working papers, programmes, estimates, progress and financial reports, design and other calculations, design certificates, minutes of meetings, drawings, plans, maps and models. Also specify the need to produce documents for the purposes of compliance with statutory procedures, government procedures and consultative procedures.

Specify the numbers of each item to be delivered, the scales for drawings, timing and frequency of delivery and any special requirements for production and method and form of presentation and storage.

Specify the need for the Consultants to draw to the Employer's attention any Deliverables that are under licence and any pre-existing copyright or patent on any Deliverables and any other restriction whatsoever affecting the Employer's use of the same and, if required by the Director's Representative, to establish the existence of any licence, copyright, patent or restriction.

6. **Services to be provided by the Consultants**

6.1 *Describe all the activities and procedures the Consultants are required to carry out in producing the Deliverables described in section 5. The following sample clauses provide an indication of the sort of activities and procedures that may be required for a Feasibility Assignment. However, for each particular assignment the wording of the clauses shall be expanded and, where necessary, further clauses shall be added, to describe exactly and in as much detail as possible what is required. If the Consultants are to carry out any detailed design work or to prepare or manage any substantial investigation, works or supply contracts as part of the Assignment,*

then appropriate clauses relating to such services must be included in the Brief. Guidance on appropriate clauses can be found in the typical formats of Brief for Investigation and for Design & Construction Assignments.

(a) Carry out or have carried out all necessary surveys, levels and soundings and make such investigations and inquiries as are necessary for the satisfactory completion of the Assignment. These shall include but shall not necessarily be limited to *[insert specific details of known requirements, if any]*.

(b) Prepare and submit a report to the Director's Representative on the results, findings and conclusions of the surveys, levels, soundings, investigations and inquiries carried out under clause (a).

(c) Direct and control the making or carrying out of boring tests, trial pits, test piles, models, soil investigations and other special investigations, prepare drawings specifications and documents and call for or assist the Employer in calling for tenders or otherwise placing orders for carrying out these works. These works shall include but shall not necessarily be limited to *(insert specific details of known requirements, if any). (Note, the Schedule of Fees provides for reimbursement of the Consultants in respect of these works).*

(d) Identify *[insert the number required]* alternative options for *[describe relevant aspect or part of the Assignment for which options are required]*.

(e) Draw to the attention of the Director's Representative the need to consider any legal implications and consequences arising out of or in relation to the Assignment and the alternative options.

(f) Identify any resumption, clearance and reprovisioning works that may be required and liaise with relevant bodies and assist with negotiations for the resumption, clearance and reprovisioning works.

(g) Identify all facilities, installations and existing rights that may be affected by the Assignment and alternative options.

(h) Prepare necessary land requirement plans showing the extent of land requirements for the Assignment and alternative options.

(i) Prepare an outline environmental impact assessment for the Assignment and alternative options.

(j) Prepare an outline landscaping assessment for the Assignment and alternative options.

(k) Prepare an order of cost of the Assignment and the alternative options, including the cost of reprovisioning and compensation.

(l) Advise the Director's Representative on the feasibility and practicability of the Assignment and alternative options.

(m) Consider in detail the economic, financial, technical, environmental, legal and social implications of the Assignment and alternative options and recommend to the Director's Representative an order of preference for the alternative options.

(n) Determine the extent of further ground investigations and surveys and further studies required to implement the recommended options.

(o) Identify whether the Design and Build type of contract is suitable for the implementation of the works of any part or the whole of the Assignment.

(p) Carry out Road Safety Audit for the Project in accordance with the requirements stipulated in the Transport Planning and Design Manual unless otherwise agreed by the Director's Representative. *[insert if the Project is new public road project or project with road construction carried out by government departments, where appropriate.]*

6.2 *Specify the method of reporting and the day-to-day administration of the Assignment. Highlight the timing of meetings and the need for progress reporting.*

6.3 *Identify the documents the Consultants must take cognizance of during the Assignment and highlight very important documents.*

6.4 *Identify other studies, projects or interface issues which the Consultants must take cognizance of during the Assignment.*

6.5 *Identify the bodies, departments, organisations, public utilities and persons with which the Consultants must consult, liaise and coordinate. Indicate the role or purpose of the consultation, liaison or coordination. Refer to the requirements of Clause 19 of the General Conditions of Employment.*

6.6 *Draw to the Consultants' attention any specific regulations or ordinances which the Consultants must take account of in providing the Services.*

6.7 *Specify any need for the Consultants to advise on the formulation and application of criteria for the identification, assessment, evaluation and adoption of options.*

6.8 The Consultants shall take cognizance of and comply with relevant requirements of technical circulars and documents issued by the Government bureaux and departments including but not limited to the following:

(a) EACSB Handbook and other relevant EACSB circulars and circular memoranda;

(b) General/Technical circulars and other relevant circular memoranda issued by the Development Bureau;

(c) …..

6.9 The Consultants agree that the management and reporting of the Consultants' Performance under this Agreement shall be subject to the reporting and management mechanism set out in Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018 or its latest revision or replacement.

6.10 Except to the extent otherwise provided for in this Agreement, the Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under this Agreement. These computer facilities shall include but not limited to:

(a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;

(b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and

(c) IT training for staff employed by the Consultants.

7. Response to Queries

The Consultants shall respond to queries under Clause 20 of the General Conditions of Employment raised prior to a date3 months after the final submission of the Deliverables required under the Agreement. Such date shall be confirmed in writing to the Consultants by the Director's Representative.

8. Programme of Implementation

8.1 *Specify the due date for commencement of the Agreement referred to in Clause 2 of the Schedule of Fees. The following clause is mandatory.*

The due date for commencement of the Agreement is *[must be filled in to facilitate pricing by the tenderers pursuant to SoF Clause 2]*.

8.2 *In order to enable consultants to properly estimate a Lump Sum for inclusion in their fee proposal, and to make the submissions comparable, it is necessary that key dates are identified in the Brief to the consultants. The key dates should be those dates the alteration of which will cause large changes in the consultants' resources input. Although precise information of the key dates may not be available to the writer of the Brief, he shall nevertheless insert the key dates based on his best estimation of events. After award of the Assignment, the key dates may be changed, upon proposal from the Consultants and agreement by the Director's Representative pursuant to Clause 26(A) of the General Conditions of Employment. It is also possible that these key dates may have to be altered during the course of the Assignment as things develop which may, or may not, depending on the circumstances, result in the need to negotiate with the Consultants for additional fees.*

Specify the required time table for the various phases of the Assignment, giving key dates and targets. Describe what is required in the Programme under Clause 26 of the General Conditions of Employment. The period specified for the submission of and response to the draft programme should be kept as short as practicable. The following sample Clause, amended to suit the Assignment, shall be included:

Pursuant to Clause 26(B) of the general Conditions of Employment, the Consultants shall submit the draft programme and revised draft programmes and the Directors Representative shall agree, or instruct, within the following periods:

Submission of the draft programme	:	Within 4 weeks of the date for commencement of the Agreement
Agreement of the draft programme	:	Within 4 weeks from receipt of the draft programme or instruction for submission of the revised draft programme
Submission of revised draft programme	:	Within 2 weeks from the instruction of the Director's Representative

The draft programme and revised draft programmes shall detail the activities to be carried out, target dates for particular tasks and any decision dates that may be required for the uninterrupted progress of the Assignment. The Consultants shall discuss with the Director's representative during the above periods to agree the timing of submission of reports, other documents and plans for each of the main elements of the Assignment, for inclusion in the draft programme and revised draft programme.

8.3 The key dates referred to in clause 8.2 of this Brief shall include but not be limited to:

(i) The date of submission of the Draft Report.

(ii) The date of submission of the Draft Final Report.

Where an ambiguity may arise as to the meaning of any key date included in this section, that key date should be clearly defined in the Brief to avoid ambiguity.

9. Progress Reports

The Consultants shall submit to the Director's Representative progress reports at _____ intervals on all aspects of the Services relating progress to the Programme referred to in clause 8 of this Brief. The reports shall include a list of those parts of the Services the execution of which is behind the Programme, together with proposals to expedite progress, so as to complete the work on time. The reports shall also include updated expenditure forecasts in accordance with clause 10 of this Brief.

10. Financial Management

At _____ intervals or at such other intervals as the Director's Representative may require, the Consultants shall submit a report on the current and forecast expenditure on the Assignment and the fees due to the Consultants, in a form to be agreed by the Director's Representative.

11. **Standards and Specifications**

The Consultants shall adopt the following *(insert details)* and such other technical & design standards and specifications as are in current use by the *(insert appropriate names)* Department(s) or, if non-existent, British Standard Codes of Practice and Specifications. Should instances arise for which suitable standards or specifications do not exist or for which the current standards or specifications appear to require modification or if by the adoption of current standards the Consultants would incur additional expenses not within reasonable contemplation, the Consultants shall submit recommendations on appropriate alternatives to the Director's Representative for agreement.

12. **Director's Representative**

The Director's Representative as defined in the General Conditions of Employment shall be the _____ *(usually specify the post of a D2 officer or above but not lower than D1)* or such other person as may be authorised by the Director in writing and notified to the Consultants. The Director's Representative may delegate any of the powers and functions vested in him to other officers. If the Consultants are dissatisfied with a decision or instruction of any such officer the matter shall be referred to the Director's Representative for a ruling.

During the course of the Agreement the Consultants shall report direct to the Director's Representative.

13. **Control of the Project and Assignment**

List the committees, conferences, boards, groups and other meetings which the Consultants shall attend, serve or report to, as required by the Director's Representative. The documents the Consultants shall produce in serving or reporting to these bodies e.g. meeting minutes and progress reports, shall be stated in section 5 - Deliverables.

14. **Information and Facilities Provided by the Employer**

All available information relevant to the Assignment will be provided to the Consultants. Relevant documents including reports, drawings and other background materials are listed in Appendix _____ to this Brief. The Consultants shall indicate for guidance those documents which they currently hold and those of which a copy may be needed, should the Assignment be awarded to them. A copy of each of the documents indicated as needed will be supplied free of charge by the Director's Representative on request from the Consultants, except those currently available from the Sales section of the Information Services Department. In the case of plans and drawings, one transparency and two prints of each plan or drawing shall be provided free of charge if requested by the Consultants.

15. **Consultants' Office and Staffing**

15.1 The Consultants shall maintain for the duration of this Agreement an office in Hong Kong under the control of the Project Director of the Consultants who shall be responsible for the Project. He shall have adequate authority and sufficient professional, technical and administrative support staff in all relevant disciplines to ensure progress to the satisfaction of the Director's Representative.

15.2 The Consultants shall provide the staff and manpower input in accordance with the Technical Proposal which was submitted with the Consultants' tender for this Assignment, or the quarterly manpower input updates as stated in sub-clause 6 below if available. The Director's Representative shall have the right to check the time-log record of the Consultants' staff deployed for the Assignment.

15.3 **If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative the time-log record of the staff deployed for the Assignment for the Director's Representative to check against the Technical Proposal, or the quarterly manpower input updates as stated in sub-clause 6 below if available.**

15.4 The Consultants' failure to adhere to their staffing proposal, in particular the employment of core personnel of the Consultants and their sub-consultants, thus causing an adverse impact on the performance of the Services, shall be duly reflected in the Employer's performance report on the Consultants.

15.5 If the Consultants are unable to maintain any of the core personnel specified in the Technical Proposal, the Consultants shall as soon as possible report this to the Director's Representative and propose, for the Director's Representative's approval, a revised personnel arrangement which is equivalent to or better than the existing personnel arrangement, in terms of qualifications, experience and competence.

15.6 **The Consultants shall follow the relevant requirements stipulated in Development Bureau Technical Circular (Works) No. 5/2018 or its latest revision or replacement and submit to the Director's Representative quarterly updates on the manpower input deployed and/or to be deployed by the Consultants under the Assignment for checking and monitoring with the use of Public Works Consultants Resources Allocation Register (PWCRAR) in accordance with the relevant mechanism mentioned in the same technical circular. The Consultants shall provide clarifications on the manpower input to the Director's Representative upon request.**

15.7 **The Consultants agree that the quarterly updates as mentioned in sub-clause 6 above would be inputted into the PWCRAR for purposes as mentioned in the personal information collection statement to be sent to the Consultants with the templates for the quarterly updates, which shall include but not limited to the following:**

- **(a) activities relating to the management of the status of the Consultant under the List of Consultants (the List) under the purview of the Engineering and Associated Consultants Selection Board (EACSB) of the Government, including any regulating actions against the Consultant such as downgrading, suspension or removal from the List;**
- **(b) activities relating to the award of consultancies including but not limited to the assessment of the Consultant's tenders for consultancies;**
- **(c) activities relating to management of consultancies including but not limited to the monitoring of manpower resources provided and the assessment of Consultant's performance; and**
- **(d) compilation of statistical report and diagnosis of problems with or concerning PWCRAR or the management of consultants to help the Government to improve.**

16. **Specialist and Sub-consultant Services**

16.1 The Consultants shall provide all specialist and sub-consultant services required for the satisfactory completion of the Assignment. No additional fees or expenses for the provision of such services rendered locally or overseas shall be payable by the Employer except as otherwise provided for in the Schedule of Fees.

16.2 Without derogating from the generality of clause 38(i) of the General Conditions of Employment, the Consultants shall, upon the award of this Agreement and save as otherwise agreed by the Director's Representative, appoint the sub-consultants as proposed in their Technical Proposal for the Assignment. The Director's Representative shall have the right to check the sub-consultancy agreements. If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative a certified copy of any or all of the sub-consultancy agreements.

17. **Surveys**

17.1 Two prints of topographical mapping at 1:1000, 1:5000 and 1:20000 scales prepared by the Survey and Mapping Office of the Lands Department, where available for the area covered by the Project of which the Assignment forms a part, can be obtained free of charge on application to the Director's Representative.

17.2 The Consultants may apply for the supply of the series of Digital Map products from Lands Department for the exclusive use of this Assignment free of charge. Applications should be made to the Director's Representative by completing and submitting the form "Undertakings by Consultant/Contractor on the Use of Digital Map from Land Information Centre" (SMF-0096) together with a list of the Digital Map product required. The Consultants are required to provide the storage media for the supply of the Digital Map product files unless Lands Department advises the otherwise.

17.3 All the mapping information provided shall be for the exclusive use of this Assignment. In using the Digital Map products supplied by Lands Department, the Consultant shall abide by the terms and conditions as stipulated in the undertaking form. Upon completion of the Assignment, the Consultant shall destroy immediately the supplied Digital Map products and confirm the destruction to Lands Department by completing and returning the form "Confirmation by Government's Consultant/Contractor on the Cessation of the Use of Digital Map from Land Information Centre" (SMF-0097) to the Director's Representative within two weeks upon completion of the Assignment.

17.4 All the lot boundary information provided is for identification of approximate location of lot only and is subject to amendments by the Lands Department without prior notice. The Consultants shall refer to the District Survey Offices of the Lands Department for the most up-to-date lot boundary information.

17.5 The Consultants shall be responsible for verifying the accuracy and, where necessary, updating all survey and mapping information provided. Unless otherwise provided for in the Assignment, all field survey work required for the proper execution of the Assignment shall be the duty of the Consultants in accordance with ____ *(list any special requirements).* A copy of field notes, field data and resultant plans arising from these surveys shall be handed over to the Director's Representative in hardcopy (paper, transparency and/ or microfilms) and MicroStation (DGN) file format upon completion of the Assignment. The accuracy as well as presentation of these surveys shall be of a standard agreed by the Director's Representative. After the Director's Representation has accepted the survey results, the Consultants shall forward a set of as-built survey plans in hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department.

17.6 The Consultant shall be responsible for submitting drawing computer files which shall be delivered on compact disc in MicroStation (DGN) file format unless otherwise specified by the Director's Representative. The survey drawings shall be in compliance with the CAD Standard for Works Project (CSWP) version 1.03.00 (or later versions as agreed by the Director's Representative) as posted on the Development Bureau's web-site and the Drafting Specification for Engineering Survey Rev 2.0 (or later versions as agreed by the Director's Representative) as posted on Civil Engineering and Development Department's web-site.

17.7 Appendix ____ specifies the division of responsibility for other surveying between the Consultants, the Lands Administration Office and Survey and Mapping Office as well as the relevant sub-offices at district level of the Lands Department. *(See Appendix A)*

18. **Insurance**

The amount of insurance cover to be maintained in accordance with Clause SCE *xx* *(the one set out in Appendix 4.17)* **of the Special Conditions of Employment shall be HONG KONG Dollars _____.** (*Please follow the procedures for the procurement of Professional Indemnity Insurance and the methodology for determining the amount of insurance cover given in DEVB TCW No. 9/2007 and state the assessed amount of the insurance cover in terms of the lump sum fee, subject to minimum and maximum values, as appropriate.*)

AGREEMENT NO.

Responsibility for Survey Work

The division of responsibility among the Consultants, the Lands Administration Office, and the Survey and Mapping Office of the Lands Department for surveying required in connection with the Assignment shall be as follows :-

	Task	Responsibility of
(1)	(a) Provision of basic horizontal and vertical survey control	Survey and Mapping Office (Consultants to download from www.geodetic.gov.hk)
	(b) Checking of given control point values and establishment of survey control net-work(s) based on survey control given vide (a)	Consultants
(2)	(a) Provision of topographic map (at 1:1000 or other standard scales relevant to the Assignment)	Survey and Mapping Office (excluding those specified as to be provided by the Consultants in the Assignment)
	(b) Provision of available Digital Map products relevant to the Assignment	Land Information Centre, Survey and Mapping Office
	(c) Updating and verification of accuracy of information supplied vide (a) and (b) as necessary in relation to the Assignment	Consultants
	(d) Carrying out detailed surveys for site investigation and for preparation of design and contract documents as necessary in relation to the Assignment	Consultants
(3)	Supply of existing cadastral plans and records and co-ordinate data	District Survey Office
(4)	Computation of detailed dimensioned layouts of roads, drainage and waterworks reserves, platforms, etc.	Consultants (checked and accepted by District Survey Office)
(5)	Determination of site/lot boundaries, calculation of areas, etc. in connection with the agreed dimensioned layouts	District Survey Office (in liaison with District Lands Office)
(6)	(a) Processing of resumption and surrender for privately owned land in Development Area	District Lands Office (in liaison with District Survey Office and Consultants)
	(b) Resumption and surrender plans and demarcation of lands to be resumed	District Survey Office (in liaison with District Lands Office and Consultants)

	Task	Responsibility of
(7)	(a) Setting-out of roads, drainage works, formation areas, etc.	Contractors (checked and accepted by Consultants, usually by resident site staff under their supervision.)
	(b) Initial site survey, and interim and final payment surveys	Consultants, usually by resident site staff under their supervision (joint survey with contractors or agreed survey with contractors)
(8)	Preparation of proposal plans for Government land allocations and other land grants relevant to the Assignment	District Survey Office (in liaison with District Lands Office)
(9)	Preparation of dimensioned plans and setting out of boundaries of sites and lots for Government land allocation and other land grants relevant to the Assignment	District Survey Office
(10)	As-built surveys (including records of positions and levels on all underground pipelines, etc.)	Consultants, usually by resident site staff under their supervision
(11)	Supply a set of as-built survey plans in both hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department	Consultants, usually by resident site staff under their supervision

Appendix 4.5 TYPICAL FORMAT OF THE BRIEF FOR AN INVESTIGATION ASSIGNMENT

Agreement No.

BRIEF

1. Introduction

This Brief is to be read in conjunction with the Memorandum of Agreement, the General Conditions of Employment for an Investigation Assignment, Special Conditions of Employment and Schedule of Fees. For the avoidance of doubt but without prejudice to Clause 7 of the General Conditions of Employment, the performance of the Services specified herein shall be subject to Clause 22 of the General Conditions of Employment.

2. Description of the Project

Describe the Project of which this Assignment forms a part. Include relevant historical and general background and any significant events, milestones, policy decisions and other background that may have a bearing on the Assignment.

3. Objectives of the Assignment

This should follow logically on from section 2 and shall list what is to be achieved upon satisfactory completion of the Assignment.

4. Description of the Assignment

Describe the Assignment in complete detail. Make reference not only to what is included but also what is not included. This is particularly relevant where the scope of the Assignment is different from the scope of the Project described in section 2. Describe any interfaces between the Assignment and any other parts of the Project or other projects. Be as specific as possible.

5. Deliverables

Specify everything that is to be produced by the Consultants as part of the Assignment. For example, draft reports, final reports, working papers, programmes, estimates, progress and financial reports, design and other calculations, design certificates, minutes of meetings, drawings, plans, maps and models. Also specify the need to produce documents for the purposes of compliance with statutory procedures, government procedures and consultative procedures.

Specify the numbers of each item to be delivered, the scales for drawings, timing and frequency of delivery and any special requirements for production and method and form of presentation and storage.

Specify the need for the Consultants to draw to the Employer's attention any Deliverables that are under licence and any pre-existing copyright or patent on any Deliverables and any other restriction whatsoever affecting the Employer's use of the same and, if required by the Director's Representative, to establish the existence of any licence, copyright, patent or restriction.

6. Services to be provided by the Consultants

6.1 *Describe all the activities and procedures the Consultants are required to carry out in producing the Deliverables described in section 5. The following sample clauses provide an indication of the sort of activities and procedures that may be required for an Investigation Assignment. However, for each particular assignment the wording of the clauses shall be expanded and, where necessary, further clauses shall be added, to describe exactly and in as*

much detail as possible what is required. If the Consultants are to carry out any detailed design work or to prepare or manage any substantial investigation, works or supply contracts as part of the Assignment, then appropriate clauses relating to such services must be included in the Brief. Guidance on appropriate clauses can be found in the typical format of Brief for a Design and Construction Assignment.

(a) Carry out or have carried out all necessary surveys, levels and soundings and make such investigations and inquiries as are necessary for the satisfactory completion of the Assignment. These shall include but shall not necessarily be limited to *(insert specific details of known requirements, if any).*

(b) Prepare and submit a report to the Director's Representative on the results, findings and conclusions of the surveys, levels, soundings, investigations and inquiries carried out under clause (a).

(c) Direct and control the making or carrying out of boring tests, trial pits, test piles, models, soil investigations and other special investigations, prepare drawings specifications and documents and call for or assist the Employer in calling for tenders or otherwise placing orders for carrying out these works. These works shall include but shall not necessarily be limited to *(insert specific details of known requirements, if any) (Note, the Schedule of Fees provides for reimbursement of the Consultants in respect of these works).*

(d) Prepare and submit a report to the Director's Representative on the results, findings and conclusions of the tests, trials and investigations carried out under clause (c).

(e) Identify the need for any resumption, clearance and reprovisioning and liaise with relevant bodies and assist with negotiations for any resumption, clearance and reprovisioning that may be required.

(f) Identify all facilities, installations and existing rights that may be affected by the Assignment.

(g) Prepare necessary land requirement plans showing the extent of land requirements for the Assignment.

(h) Determine the extent of further ground investigations and surveys and further studies required for detailed design purposes.

(i) Prepare preliminary designs, plans, drawings, profiles, sections, specifications and calculations.

(j) Prepare a preliminary design for environmental mitigation measures.

(k) Prepare a sketch landscape design.

(l) Prepare all necessary documents for the Advisory Committee on the Appearance of Bridges and Associated Structures (ACABAS) submissions.

(m) Advise the Director's Representative on the types and forms of contract, including Design & Build, most suitable for the implementation of the works.

(n) Advise the Director's Representative on the number and scope of contracts for implementation of the works.

(o) Prepare estimates of the cost of works for the Assignment and the contracts including the cost of compensation and reprovisioning.

(p) Carry out Road Safety Audit for the Project in accordance with the requirements stipulated in the Transport Planning and Design Manual unless otherwise agreed by the Director's Representative. *[insert if the Project is new public road project or project with road construction carried out by government departments, where appropriate.]*

6.2 *Specify the method of reporting and the day-to-day administration of the Assignment. Highlight the timing of meetings and the need for progress reporting.*

6.3 *Identify the documents the Consultants must take cognizance of during the Assignment and highlight very important documents.*

6.4 *Identify other studies, projects or interface issues which the Consultants must take cognizance of during the Assignment.*

6.5 *Identify the bodies, departments, organisations, public utilities and persons with which the Consultants must consult, liaise and coordinate. Indicate the role or purpose of the consultation, liaison or coordination. Refer to the requirements of Clause 19 of the General Conditions of Employment.*

6.6 *Draw to the Consultants attention any specific regulations or ordinances which the Consultants must take account of in providing the Services.*

6.7 *Specify any need for the Consultants to advise on the formulation and application of criteria for the identification, assessment, evaluation and adoption of options.*

6.8 The Consultants shall take cognizance of and comply with relevant requirements of technical circulars and documents issued by the Government bureaux and departments including but not limited to the following:

(a) EACSB Handbook and other relevant EACSB circulars and circular memoranda;

(b) General/Technical circulars and other relevant circular memoranda issued by the Development Bureau;

(c) …..

6.9 The Consultants agree that the management and reporting of the Consultants' Performance under this Agreement shall be subject to the reporting and management mechanism set out in Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018 or its latest revision or replacement.

6.10 Except to the extent otherwise provided for in this Agreement, the Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under this Agreement. These computer facilities shall include but not limited to:

(a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;

(b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and

(c) IT training for staff employed by the Consultants.

7. Response to Queries

The Consultants shall respond to queries under Clause 20 of the General Conditions of Employment raised prior to a date3 months after the final submission of the Deliverables required under the Agreement. Such date shall be confirmed in writing to the Consultants by the Director's Representative.

8. Programme of Implementation

8.1 *Specify the due date for commencement of the Agreement referred to in Clause 2 of the Schedule of Fees. The following clause is mandatory.*

The due date for commencement of the Agreement is *[must be filled in to facilitate pricing by the tenderers pursuant to SoF Clause 2]*.

8.2 *In order to enable consultants to properly estimate a Lump Sum for inclusion in their fee proposal, and to make the submissions comparable, it is necessary that key dates are identified in the Brief to the consultants. The key dates should be those dates the alteration of which will cause large changes in the consultants' resources input. Although precise information of the key dates may not be available to the writer of the Brief, he shall nevertheless*

insert the key dates based on his best estimation of events. After award of the Assignment, the key dates may be changed, upon proposal from the Consultants and agreement by the Director's Representative pursuant to Clause 26(A) of the General Conditions of Employment. It is also possible that these key dates may have to be altered during the course of the Assignment as things develop which may, or may not, depending on the circumstances, result in the need to negotiate with the Consultants for additional fees.

Specify the required time table for the various phases of the Assignment, giving key dates and targets. Describe what is required in the Programme under Clause 26 of the General Conditions of Employment. The period specified for the submission of and response to the draft programme should be kept as short as practicable. The following sample Clause, amended to suit the Assignment, shall be included:

Pursuant to Clause 26(B) of the general Conditions of Employment, the Consultants shall submit the draft programme and revised draft programmes and the Directors Representative shall agree, or instruct, within the following periods:

Submission of the draft programme	:	Within 4 weeks of the date for commencement of the Agreement
Agreement of the draft programme	:	Within 4 weeks from receipt of the draft programme or instruction for submission of the revised draft programme
Submission of revised draft programme	:	Within 2 weeks from the instruction of the Director's Representative

The draft programme and revised draft programmes shall detail the activities to be carried out, target dates for particular tasks and any decision dates that may be required for the uninterrupted progress of the Assignment. The Consultants shall discuss with the Director's representative during the above periods to agree the timing of submission of reports, other documents and plans for each of the main elements of the Assignment, for inclusion in the draft programme and revised draft programme.

8.3 The key dates referred to in clause 8.2 of this Brief shall include but not be limited to:

(i) The date of submission of the Draft Report.

(ii) The date of submission of the Draft Final Report.

Where an ambiguity may arise as to the meaning of any key date included in this section, that key date should be clearly defined in the Brief to avoid ambiguity.

9. Progress Reports

The Consultants shall submit to the Director's Representative progress reports at _____ intervals on all aspects of the Services relating progress to the Programme referred to in clause 8 of this Brief. The reports shall include a list of those parts of the Services the execution of which is behind the Programme together with proposals to expedite progress, so as to complete the work on time. The reports shall also include updated expenditure forecasts in accordance with clause 10 of this Brief.

10. Financial Management

At _____ intervals or at such other intervals as the Director's Representative may require, the Consultants shall submit a report on the current and forecast expenditure on the Assignment and the fees due to the Consultants, in a form to be agreed by the Director's Representative.

11. **Standards and Specifications**

The Consultants shall adopt the following *(insert details)* and such other technical & design standards and specifications as are in current use by the *(insert appropriate names)* Department(s) or, if non-existent, British Standard Codes of Practice and Specifications. Should instances arise for which suitable standards or specifications do not exist or for which the current standards or specifications appear to require modification or if by the adoption of current standards the Consultants would incur additional expenses not within reasonable contemplation, the Consultants shall submit recommendations on appropriate alternatives to the Director's Representative for agreement.

12. **Variations and Other Commitments** *[Mandatory if the Assignment covers works contracts, the supervision of which is part of the Services]*

12.1 The value of a variation to the contract works or other expenditure commitment for the purposes of Clause 24 of the General Conditions of Employment is $800,000.

12.2 All variations to the contract works shall be covered by a variation order in a form to be agreed by the Director's Representative, except that no variation order will be required for increase or decrease in quantities arising from remeasurement of the items in the bills of quantities.

12.3 The Director's Representative shall advise the Consultants of his approval or otherwise under Clause 24 of the General Conditions of Employment within _____ days of submission. The reasons for non-approval, which may include insufficiency of supporting information provided with the submission, will be provided to the Consultants at the same time. If, because of the need for consultation or referral elsewhere, the Director's Representative is unable to give his decision within the period stated then he shall inform the Consultants immediately and advise them of when he will give his decision. Provided that, in any case, a different period can be applied by mutual agreement.

12.4 Under sub-clause (iii) of Clause 25 of the General Conditions of Employment, the Consultants shall report all claims to the Director's Representative within _____ days of their receipt. The Director's Representative shall provide the Employer's views to the Consultants within _____ days of receipt of the Consultants' principles of assessment of a claim.

12.5 Under sub-clause (iv) of Clause 25 of the General Conditions of Employment, the Consultants shall report all delays to the Director's Representative within _____ days of the delay being identified. The Director's Representative shall provide the Employer's views to the Consultants within ___ days of receipt of the Consultants' assessment of extension of time.

13. **Director's Representative**

The Director's Representative as defined in the General Conditions of Employment shall be the _____ *(usually specify the post of a D2 officer or above but not lower than D1)* or such other person as may be authorised by the Director in writing and notified to the Consultants. The Director's Representative may delegate any of the powers and functions vested in him to other officers. If the Consultants are dissatisfied with a decision or instruction of any such officer the matter shall be referred to the Director's Representative for a ruling.

During the course of the Agreement the Consultants shall report direct to the Director's Representative.

14. **Control of the Project and Assignment**

List the committees, conferences, boards, and other meetings which the Consultants shall attend, serve or report to, as required by the Director's Representative. The documents the Consultants shall produce in serving or reporting to these bodies eg. meeting minutes and progress reports shall be stated in section 5 - Deliverables.

15. **Information and Facilities Provided by the Employer**

All available information relevant to the Assignment will be provided to the Consultants. Relevant documents including reports, drawings and other background materials are listed in Appendix _____ to this Brief. The Consultants shall indicate for guidance those documents which they currently hold and those of which a copy may be needed, should the Assignment be awarded to them. A copy of each of the documents indicated as needed will be supplied free of charge by the Director's Representative on request from the Consultants, except those currently available from the Sales section of the Information Services Department. In the case of plans and drawings, one transparency and two prints of each plan or drawing shall be provided free of charge if requested by the Consultants.

16. **Consultants' Office and Staffing**

16.1 The Consultants shall maintain for the duration of this Agreement an office in Hong Kong under the control of the Project Director of the Consultants who shall be responsible for the Project. He shall have adequate authority and sufficient professional, technical and administrative support staff in all relevant disciplines to ensure progress to the satisfaction of the Director's Representative.

16.2 The Consultants shall provide the staff and manpower input in accordance with the Technical Proposal which was submitted with the Consultants' tender for this Assignment, or the quarterly manpower input updates as stated in sub-clause 6 below if available. The Director's Representative shall have the right to check the time-log record of the Consultants' staff deployed for the Assignment.

16.3 If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative the time-log record of the staff deployed for the Assignment for the Director's Representative to check against the Technical Proposal, or the quarterly manpower input updates as stated in sub-clause 6 below if available.

16.4 The Consultants' failure to adhere to their staffing proposal, in particular the employment of core personnel of the Consultants and their sub-consultants, thus causing an adverse impact on the performance of the Services, shall be duly reflected in the Employer's performance report on the Consultants.

16.5 If the Consultants are unable to maintain any of the core personnel specified in the Technical Proposal, the Consultants shall as soon as possible report this to the Director's Representative and propose, for the Director's Representative's approval, a revised personnel arrangement which is equivalent to or better than the existing personnel arrangement, in terms of qualifications, experience and competence.

16.6 The Consultants shall follow the relevant requirements stipulated in Development Bureau Technical Circular (Works) No. 5/2018 or its latest revision or replacement and submit to the Director's Representative quarterly updates on the manpower input deployed and/or to be deployed by the Consultants under the Assignment for checking and monitoring with the use of Public Works Consultants Resources Allocation Register (PWCRAR) in accordance with the relevant mechanism mentioned in the same technical circular. The Consultants shall provide clarifications on the manpower input to the Director's Representative upon request.

16.7 The Consultants agree that the quarterly updates as mentioned in sub-clause 6 above would be inputted into the PWCRAR for purposes as mentioned in the personal information collection statement to be sent to the Consultants with the templates for the quarterly updates, which shall include but not limited to the following:

- **(a) activities relating to the management of the status of the Consultant under the List of Consultants (the List) under the purview of the Engineering and Associated Consultants Selection Board (EACSB) of the Government, including any regulating actions against the Consultant such as downgrading, suspension or removal from the List;**
- **(b) activities relating to the award of consultancies including but not limited to the assessment of the Consultant's tenders for consultancies;**
- **(c) activities relating to management of consultancies including but not limited to the monitoring of manpower resources provided and the assessment of Consultant's performance; and**
- **(d) compilation of statistical report and diagnosis of problems with or concerning PWCRAR or the**

17. **Specialist and Sub-consultant Services**

17.1 The Consultants shall provide all specialist and sub-consultant services required for the satisfactory completion of the Assignment. No additional fees or expenses for the provision of such services rendered locally or overseas shall be payable by the Employer except as otherwise provided for in the Schedule of Fees.

17.2 Without derogating from the generality of clause 38(i) of the General Conditions of Employment, the Consultants shall, upon the award of this Agreement and save as otherwise agreed by the Director's Representative, appoint the sub-consultants as proposed in their Technical Proposal for the Assignment. The Director's Representative shall have the right to check the sub-consultancy agreements. If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative a certified copy of any or all of the sub-consultancy agreements.

18. **Surveys**

18.1 Two prints of topographical mapping at 1:1000, 1:5000 and 1:20000 scales prepared by the Survey and Mapping Office of the Lands Department, where available for the area covered by the Project for which the Assignment forms a part, can be obtained free of charge on application to the Director's Representative.

18.2 The Consultant may apply for the supply of the series of Digital Map products from Lands Department for the exclusive use of this Assignment free of charge. Applications should be made to the Director's Representative by completing and submitting the form "Undertakings by Consultant/Contractor on the Use of Digital Map from Land Information Centre" (SMF-0096) together with a list of the Digital Map products required. The Consultant is required to provide the storage media for the supply of the Digital Map product files unless Lands Department advises the otherwise.

18.3 All the mapping information provided shall be for the exclusive use of this Assignment. In using the Digital Map products supplied by Lands Department, the Consultant shall abide by the terms and conditions as stipulated in the undertaking form. Upon completion of the Assignment, the Consultant shall destroy immediately the supplied Digital Map products and confirm the destruction to Lands Department by completing and returning the form "Confirmation by Government's Consultant/Contractor on the Cessation of the Use of Digital Map from Land Information Centre" (SMF-0097) to the Director's Representative within two weeks upon completion of the Assignment.

18.4 All the lot boundary information provided is for identification of the approximate location of lot only and is subject to amendments by the Lands Department without prior notice. The Consultants shall refer to the District Survey Offices of the Lands Department for the most up-to-date lot boundary information.

18.5 The Consultants shall be responsible for verifying the accuracy and, where necessary, updating all survey and mapping information provided. Unless otherwise provided for in the Assignment, all field survey work required for the proper execution of the Assignment shall be the duty of the Consultants in accordance with ___ *(list any special requirements)*. A copy of field notes, field data and resultant plans arising from these surveys shall be handed over to the Director's Representative in hardcopy (paper, transparency and/ or microfilms) and MicroStation (DGN) file format upon completion of the Assignment. The accuracy as well as presentation of these surveys shall be of a standard agreed by the Director's Representative. After the Director's Representative has accepted the survey results, the Consultants shall forward a set of the as-built survey plans in hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department.

18.6 The Consultant shall be responsible for submitting drawing computer files which shall be delivered on compact disc in MicroStation (DGN) file format unless otherwise specified by the Director's Representative. The survey drawings shall be in compliance with the CAD Standard for Works Project (CSWP) version 1.03.00 (or later versions as agreed by the Director's Representative) as posted on the Development Bureau's web-site and the Drafting Specification for Engineering Survey Rev 2.0 (or later versions as agreed by the Director's Representative) as posted on Civil Engineering and Development Department's web-site.

18.7 Appendix ____ specifies the division of responsibility for other surveying between the Consultants, the Lands Administration Office and Survey and Mapping Office as well as the relevant sub-offices at district level of the Lands Department. *(See Appendix A)*

19. **Insurance**

The amount of insurance cover to be maintained in accordance with Clause SCE*xx* *(the one set out in Appendix 4.17)* **of the Special Conditions of Employment shall be HONG KONG Dollars _____.** (*Please follow the procedures for the procurement of Professional Indemnity Insurance and the methodology for determining the amount of insurance cover given in DEVB TCW No. 9/2007and state the assessed amount of the insurance cover in terms of the lump sum fee, subject to minimum and maximum values, as appropriate.*)

AGREEMENT NO.

Responsibility for Survey Work

The division of responsibility among the Consultants, the Lands Administration Office, and the Survey and Mapping Office of the Lands Department for surveying required in connection with the Assignment shall be as follows :-

	Task	Responsibility of
(1)	(a) Provision of basic horizontal and vertical survey control	Survey and Mapping Office (Consultants to download from www.geodetic.gov.hk)
	(b) Checking of given control point values and establishment of survey control net-work(s) based on survey control given vide (a)	Consultants
(2)	(a) Provision of topographic maps (at 1:1000 or other standard scales relevant to the Assignment)	Survey and Mapping Office (excluding those specified as to be provided by the Consultants in the Assignment)
	(b) Provision of available Digital Map products relevant to the Assignment	Land Information Centre, Survey and Mapping Office
	(c) Updating and verification of accuracy of information supplied vide (a) and (b) as necessary in relation to the Assignment	Consultants
	(d) Carrying out detailed surveys for site investigation and for preparation of design and contract documents as necessary in relation to the Assignment	Consultants
(3)	Supply of existing cadastral plans and records and co-ordinate data	District Survey Office
(4)	Computation of detailed dimensioned layouts of roads, drainage and waterworks reserves, platforms, etc.	Consultants (checked and accepted by District Survey Office)
(5)	Determination of site/lot boundaries, calculation of areas, etc. in connection with the agreed dimensioned layouts	District Survey Office (in liaison with District Lands Office)
(6)	(a) Processing of resumption and surrender for privately owned land in Development Area	District Lands Office (in liaison with District Survey Office and Consultants)
	(b) Resumption and surrender plans and demarcation of lands to be resumed	District Survey Office (in liaison with District Lands Office and Consultants)

	Task	Responsibility of
(7)	(a) Setting-out of roads, drainage works,	Contractors (checked and accepted by

	formation areas, etc.	Consultants, usually by resident site staff under their supervision.)
	(b) Initial site survey, and interim and final payment surveys	Consultants, usually by resident site staff under their supervision (joint survey with contractors or agreed survey with contractors)
(8)	Preparation of proposal plans for Government land allocations and other land grants relevant to the Assignment	District Survey Office (in liaison with District Lands Office)
(9)	Preparation of dimensioned plans and setting out of boundaries of sites and lots for Government land allocation and for other land grants relevant to the Assignment	District Survey Office
(10)	As-built surveys (including records of positions and levels on all underground pipelines, etc.)	Consultants, usually by resident site staff under their supervision.
(11)	Supply a set of as-built survey plans in both hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department	Consultants, usually by resident site staff under their supervision.

Appendix 4.6 **TYPICAL FORMAT OF THE BRIEF FOR A DESIGN AND CONSTRUCTION ASSIGNMENT**

Agreement No.

BRIEF

[Clauses for QSSP at Annex A should be incorporated.]

1. **Introduction**

This Brief is to be read in conjunction with the Memorandum of Agreement, the General Conditions of Employment for a Design and Construction Assignment, Special Conditions of Employment, Schedule of Fees and Schedule of Resident Site Staff standards and duties. For the avoidance of doubt but without prejudice to Clause 7 of the General Conditions of Employment, the performance of the Services specified herein shall be subject to Clause 22 of the General Conditions of Employment.

2. **Description of the Project**

Describe the Project of which this Assignment forms a part. Include relevant historical and general background and any significant events, milestones, policy decisions and other background that may have a bearing on the Assignment.

3. **Objectives of the Assignment**

This should follow logically on from section 2 and shall list what is to be achieved upon satisfactory completion of the Assignment.

4. **Description of the Assignment**

Describe the Assignment in complete detail. Make reference not only to what is included but also what is not included. This is particularly relevant where the scope of the Assignment is different from the scope of the Project described in section 2. Describe any interfaces between the Assignment and any other parts of the Project or other projects. Be as specific as possible.

5. **Deliverables**

Specify everything that is to be produced by the Consultants as part of the Assignment. For example, draft reports, final reports, working papers, programmes, estimates, progress and financial reports, design and other calculations, design certificates, minutes of meetings, drawings, plans, maps and models. Also specify the need to produce documents for the purposes of compliance with statutory procedures, government procedures and consultative procedures.

Specify the numbers of each item to be delivered, scales for drawings, timing and frequency of delivery and any special requirements for production and method and form of presentation and storage.

Specify the need for the Consultants to draw to the Employer's attention any Deliverables that are under licence and any pre-existing copyright or patent on any Deliverables and any other restriction whatsoever affecting the Employer's use of the same and, if required by the Director's Representative, to establish the existence of any licence, copyright, patent or restriction.

6. **Services to be provided by the Consultants**

6.1 Review Phase

6.1.1 *Specify whether the Consultants are to carry out a review of the work or report of an Investigation consultant and define clearly the desired scope of the review. A suggested clause is -*

Review the work carried out by the consultant for the investigation stage of the Project and the findings, conclusions and recommendations of the final report of the investigation stage *(identify clearly which consultancy and which report is to be the subject of the review).* The review shall focus on the following aspects *(specify exactly the scope of the review, including the extent of checking of any factual information such as soil surveys, materials tests or other surveys or factual investigations)*.

6.2 Design Phase

6.2.1 *Describe all the activities and procedures the Consultants are required to carry out during the Design phase in producing the Deliverables described in section 5. The following sample clauses provide an indication of the sort of activities and procedures that may be required. However, for each particular assignment the wording of the clauses shall be expanded and, where necessary, further clauses shall be added, to describe exactly and in as much detail as possible what is required.*

(a) Prepare a Design Memorandum which shall set out the standards governing the design of the works.

(b) Prepare detailed designs, specifications for works, drawings, dimensions, sections, plans with such design data, calculations and other information as may be required for the purpose of or in connection with the Assignment.

(c) Co-operate with the makers or suppliers of plant, if any, and take all necessary steps to obtain from them all details necessary for the timely completion of the Assignment.

(d) Liaise with relevant bodies and assist with negotiations for any reprovisioning works that may be required.

(e) Identify all facilities and installations affected by the Assignment.

(f) Prepare necessary land requirement plans showing the extent of land resumption for construction of works, borrow areas and dumping areas.

(g) Prepare all necessary documents for the Advisory Committee on the Appearance of Bridges and Associated Structures (ACABAS) submissions.

(h) Determine the extent of further ground investigations and surveys and further studies required to carry out the detailed design of the Assignment.

(i) Prepare all necessary documentation and reports on ground investigation and survey data together with interpretation of results.

(j) Prepare detailed designs for environmental mitigation measures.

(k) Prepare detailed landscape designs.

(l) Prepare estimates of the cost of the Assignment *(Specify the level of detail wanted and the requirements for updating)*.

(m) Prepare papers and briefing notes which will be required to consult and obtain the views of representatives of community groups and District Board members.

(n) Carry out Road Safety Audit for the Project in accordance with the requirements stipulated in the Transport Planning and Design Manual unless otherwise agreed by the Director's Representative. *[insert if the Project is new public road project or project with road construction carried out by government departments, where appropriate.]*

6.2.2 *Identify and describe any sub-phases and milestones in the Design phase.*

6.2.3 *Specify the consent from the Director's Representative on the design concept and other key design aspects for each sub-phase which the Consultants must obtain before proceeding to the next sub-phase.*

6.2.4 *Identify the documents the Consultants must take cognizance of during the Assignment.*

6.2.5 *Identify other studies or projects which the Consultants must take cognizance of during the Assignment.*

6.2.6 *Identify the bodies, departments, organisations and public utilities and persons with which the Consultants must consult, liaise and coordinate. Indicate the role or purpose of the consultation, liaison or coordination. Refer to the requirements of Clause 19 of the General Conditions of Employment.*

6.2.7 *Identify any regulations or ordinances of which it is particularly important that the Consultants take cognizance.*

6.2.8 *The Consultant shall follow the requirements stipulated in DEVB TC(W) No. 6/2020 and the BES(E) Guidelines to perform all tasks relating to the BES(E) assessment and design review for the Assignment. The tasks include but not limited to the following: -*

(i) Conduct the assessment (if required by the Director's Representative) in accordance with Section 4 of the BES(E) Guidelines;

(ii) Provide all relevant information and support to the Director's Representative for conducting independent assessment under Section 4 of the BES(E) Guidelines, and design review under Section 5 of the BES(E) Guidelines;

(iii) Discuss with independent assessment team (if required by the Director's Representative) under Section 4.2.5 of the BES(E) Guidelines to resolve any misunderstandings and diverted views on BES(E) assessments;

(iv) Attend meetings invited by the Design Review Committee (if any) under Section 5.2.3 of the BES(E) Guidelines and present the detailed design and BES(E) assessment; and

(v) Review the detailed design and carry out design revisions to address comments of the Design Review Committee if required by the Director's Representative.

6.3 Tender Phase

6.3.1 *Describe all the activities to be carried out and services to be provided by the Consultants to enable the Employer to invite tenders including any pre-qualification exercises if required or to otherwise place orders for the works.*

6.3.2 *Specify the requirement to adopt standard Government documents in the contract preparation and spell out the actions required from the Consultants for any departure from the standard. A standard clause is suggested as follows:-*

The General Conditions of Contract shall remain unaltered. Any necessary amendments required shall be by means of Special Conditions of Contract authorised in writing by the Director's Representative.

6.3.3 *Specify the Consultants' involvement and input required in the finalisation of land requirements for the Assignment and define the role of the Employer in the acquisition and clearance of land.*

6.3.4 *Specify the information required from the Consultants, such as estimates and programmes, to enable the Director's Representative to obtain authority to proceed with the works.*

6.3.5 *Specify the actions required from the Consultants regarding the ordering and purchasing of materials, plant, etc. necessary for the construction of the works but not supplied under the contracts for the works.*

6.3.6 *Specify the involvement of the Consultants in the calling of tenders for the works and, if applicable, in the pre-qualification process.*

6.3.7 *Specify the involvement of the Consultants in the assessment of tenders and, if applicable, in the pre-qualification process and their input in the making of tender recommendations.*

6.4 Construction Phase

Describe all the activities and procedures the Consultants are required to carry out during the Construction phase. The following sample clauses provide an indication of the sort of activities and procedures that must be covered. The clauses may be suitable as shown but should if necessary be expanded and other clauses added, to describe exactly and in as much detail as possible what is required for the particular assignment.

6.4.1 Prepare and provide contract documents for signature and record purposes.

6.4.2 Carry out the duties of the Engineer under the terms of the contracts (hereinunder in clause 6.4 of this Brief called works contracts) for the construction, completion, maintenance and supply of the works (hereinunder in clause 6.4 of this Brief called contract works) which shall be deemed to include the coordinating of works carried out by public utility companies and water and other authorities, bodies or persons for or in connection with or necessitated by the Assignment.

6.4.3 Supervise and direct the execution of the contract works rendered under the works contracts including the appointment and control of such resident site staff as may be approved by the Director's Representative.

6.4.4 Prepare all further designs, drawings, schedules, estimates and related things necessary for the completion of the contract works.

6.4.5 Prepare progress reports and estimates of expenditure for the works contracts during the progress of the contract works, as follows *(specify requirements)*.

6.4.6 Advise on, arrange where necessary and direct the inspection and testing of materials and plant supplied for the contract works.

6.4.7 Give three months' notice or as long a notice as possible up to three months to the Director's Representative of the intention to issue to a contractor a completion or taking-over certificate for the whole or part of the contract works under any works contract and upon issue of such certificate deliver to the Director's Representative such drawings, calculations and instructions as are necessary for the operation of the contract works.

6.4.8 After completion of the contract works under any of the works contracts and within a period to be agreed by the Director's Representative, prepare and deliver to the Director's Representative drawings showing in full detail the contract works and utilities works as actually carried out together with calculations and information necessary for the maintenance of the contract works and submit all records and accounts relating to the contract works.

6.5 The Consultants shall take cognizance of and comply with relevant requirements of technical circulars and documents issued by the Government bureaux and departments including but not limited to the following:

(a) EACSB Handbook and other relevant EACSB circulars and circular memoranda;

(b) General/Technical circulars and other relevant circular memoranda issued by the Development Bureau;

(c) …..

6.6 The Consultants agree that the management and reporting of the Consultants' Performance under this Agreement shall be subject to the reporting and management mechanism set out in Development Bureau Technical Circular (Works) Nos. 3/2016 and 5/2018 or its latest revision or replacement.

6.7 Except to the extent otherwise provided for in this Agreement, the Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under this Agreement. These computer facilities shall include but not limited to:

(a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;

(b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and

(c) IT training for staff employed by the Consultants.

7. **Programme of Implementation**

7.1 *Specify the due date for commencement of the Agreement referred to in Clause 2 of the Schedule of Fees. The following clause is mandatory.*

The due date for commencement of the Agreement is *[must be filled in to facilitate pricing by the tenderers pursuant to SoF Clause 2]*.

7.2 *In order to enable consultants to properly estimate a Lump Sum for inclusion in their fee proposal, and to make the submissions comparable, it is necessary that key dates are identified in the Brief to the consultants. The key dates should be those dates the alteration of which will cause large changes in the consultants' resources input. Although precise information of the key dates may not be available to the writer of the Brief, he shall nevertheless insert the key dates based on his best estimation of events. After award of the Assignment, the key dates may be changed, upon proposal from the Consultants and agreement by the Director's Representative pursuant to Clause 26(A) of the General Conditions of Employment. It is also possible that these key dates may have to be altered during the course of the Assignment as things develop which may, or may not, depending on the circumstances, result in the need to negotiate with the Consultants for additional fees.*

Specify the required time table for the various phases of the Assignment, giving key dates and targets. Describe what is required in the Programme under Clause 26 of the General Conditions of Employment. The period specified for the submission of and response to the draft programme should be kept as short as practicable. The following sample Clause, amended to suit the Assignment, shall be included:

Pursuant to Clause 26(B) of the general Conditions of Employment, the Consultants shall submit the draft programme and revised draft programmes and the Directors Representative shall agree, or instruct, within the following periods:

Submission of the draft programme	:	Within 4 weeks of the date for commencement of the Agreement
Agreement of the draft programme	:	Within 4 weeks from receipt of the draft programme or instruction for submission of the revised draft programme
Submission of revised draft programme	:	Within 2 weeks from the instruction of the Director's Representative

The draft programme and revised draft programmes shall detail the activities to be carried out, target dates for particular tasks and any decision dates that may be required for the uninterrupted progress of the Assignment. The Consultants shall discuss with the Director's representative during the above periods to agree the timing of submission of reports, other documents and plans for each of the main elements of the Assignment, for inclusion in the draft programme and revised draft programme.

7.3 The key dates referred to in clause 7.2 of this Brief shall include but not be limited to:

(i) The date of submission of the review report, if required under clause 6.1 of this Brief;

(ii) The dates of submission of the contract documents for tendering of the works contracts;

(iii) The dates of return of tenders for the works contracts;

(iv) The dates of commencement of the works contracts;

(v) The dates of substantial completion of the works contracts;

(vi) The dates for the finalisation of the accounts of the works contracts.

The key dates shall be determined through the Brief writer's best estimation of events, including any possible extensions of time of works contracts. Where an ambiguity may arise as to the meaning of any key date included in this section, that key date should be clearly defined in the Brief to avoid ambiguity.

8. **Progress Reports**

The Consultants shall submit to the Director's Representative progress reports at _____ intervals on all aspects of the Services relating it to the Programme referred to in clause 7 of this Brief. The reports shall include a list of those parts of the Services the execution of which are behind the Programme together with proposals to expedite progress, so as to complete the work on time. The reports shall also include updated expenditure forecasts in accordance with clause 9 of this Brief.

9. **Financial Management**

At _____ intervals or at such other intervals as the Director's Representative may require, the Consultants shall submit a report on the current and the forecast expenditure on the various elements of the Project and the fees due to the Consultants, in a form to be agreed by the Director's Representative.

The Consultants shall closely monitor progress and expenditure on any works contracts and be alert to the possibility of the approved contract sum being exceeded. They shall advise the Director's Representative immediately if there is any likelihood of the approved contract sum being exceeded. To ensure sufficient time to obtain the necessary authorities and make funds available, the Consultants shall give the Director's Representative at least four months notice in writing of the need to increase the approved contract sum to meet contractual payments and shall provide the supporting information, except that if the need cannot be foreseen so far ahead, then the Consultants shall give as much notice as is possible in the circumstances. The following information shall be provided:-

(a) full details of the proposed net increase broken down into the following categories:-

(i) price fluctuation payment under the contract. An arithmetical derivation based on the projected percentage and the estimated final effective value of work done is required;

(ii) additional works and savings arising from the bills of quantities items and variation orders. Reasons shall be given for increases and decreases in the earlier estimates; and

(iii) claims from the contractors. These shall be the Consultants' estimates of the amounts which will be certified for payment.

(b) an assessment of increase in consultancy fees and site staff costs if the contract period is likely to be extended or additional site staff are required; and

(c) a revised projected monthly cash flow pattern of contract payments, consultancy fees and site costs.

10. **Standards and Specifications**

The Consultants shall adopt the following *(insert details)* and such other technical & design standards and specifications as are in current use by the *(insert appropriate names)* Department(s) or, if non-existent, British Standard Codes of Practice and Specifications. Should instances arise for which suitable standards or specifications do not exist or for which the current standards or specifications appear to require modifications or if by the adoption of current standards the Consultants would incur additional expenses not within reasonable contemplation, the Consultants shall submit recommendations on appropriate alternatives to the Director's Representative for agreement.

11. **Checking and Certification of the Design**

11.1 The Consultants shall comply with the requirements in Section 3.5, Chapter 4 of the Project Administration Handbook for Civil Engineering Works (2020 Edition)) or its subsequent updates and arrange the Checking Engineer to directly submit the “Design and Check Certificate” and, where applicable, the Design Checking Report to the Director's Representative.

11.2 The Consultants shall submit to the Director's Representative in accordance with clause 5 of this Brief, a full set of design calculations including a statement of the standards, procedures and codes of practice adopted. It shall be accompanied by a certificate that the design calculations have been checked by another qualified Checking

Engineer in the Consultants' employ and that the drawings are in accordance with the calculated designs. The standard form of `Design Certificate' set out in Appendix 4.7 of EACSB Handbook shall be used for this purpose wherever applicable.

12. **Variations and Other Commitments**

12.1 **The value of a variation to the contract works or other expenditure commitment for the purposes of Clause 24 of the General Conditions of Employment is $800,000.**

12.2 **All variations to the contract works shall be covered by a variation order in a form to be agreed by the Director's Representative, except that no variation order will be required for increase or decrease in quantities arising from remeasurement of the items in the bills of quantities.**

12.3 **The Director's Representative shall advise the Consultants of his approval or otherwise under Clause 24 of the General Conditions of Employment within _____ days of submission. The reasons for non-approval, which may include insufficiency of supporting information provided with the submission, will be provided to the Consultants at the same time. If, because of the need for consultation or referral elsewhere, the Director's Representative is unable to give his decision within the period stated then he shall inform the Consultants immediately and advise them of when he will give his decision. Provided that, in any case, a different period can be applied by mutual agreement.**

12.4 **Under sub-clause (iii) of Clause 25 of the General Conditions of Employment, the Consultants shall report all claims to the Director,s Representative within _____ days of their receipt. The Director's Representative shall provide the Employer's views to the Consultants within_____ days of receipt of the Consultants' principles of assessment of a claim.**

12.5 **Under sub-clause (iv) of Clause 25 of the General Conditions of Employment, the Consultants shall report all delays to the Director's Representative within _____ days of the delay being identified. The Director's Representative shall provide the Employer's views to the Consultants within _____ days of receipt of the Consultants' assessment of extension of time.**

13. **Resident Site Staff** *[Mandatory if it is intended to employ Resident Site Staff]*

13.1 The Consultants shall provide the service in relation to the proposal, review and maintenance of RSS establishment appropriate for site supervision and contract management of works contracts arising from the Services, as well as recruitment, employment and management of RSS in accordance with Sections 3.3, 5.1 to 5.12, 6.1 to 6.7 and associated appendixes of the RSS Management Handbook and the Schedule of Resident Site Staff Standards and Duties.

13.2 Sections 3.3, 5.1 to 5.12, 6.1 to 6.7 and associated appendixes of the RSS Management Handbook shall form a part of this Brief. The terms below in the RSS Management Handbook shall have the following respective meaning in this Agreement:

Term in the RSS Management Handbook	Meaning in this Agreement
the “Consultant”	the “Consultants”
the “managing department”	the “Director’s Representative”
“the consultancy agreement”	“this Agreement”

13.3 The Consultants shall verify the information provided by RSS, keep and submit the declarations, records and other documents as required in Clause SCE YY [*Insert the clause no.*] of the Special Conditions of Employment to the Director's Representative for such part of the Services in relation to recruitment, employment and management of RSS.

13.4 For works contracts and Design and Build contracts with estimated contract sum of over $500 million, at least one safety personnel with academic qualification and duties detailed in RSS management Handbook shall be included in the RSS establishment to act as safety advisor to the Engineer.

14. Director's Representative

The Director's Representative as defined in the General Conditions of Employment shall be the _____ *(usually specify the post of a D2 officer or above but not lower than D1)* or such other person as may be authorised by the Director in writing and notified to the Consultants. The Director's Representative may delegate any of the powers and functions vested in him to other officers. If the Consultants are dissatisfied with a decision or instruction of any such officer the matter shall be referred to the Director's Representative for a ruling.

During the course of the Agreement the Consultants shall report direct to the Director's Representative.

15. Control of the Project and Assignment

List the committees, conferences, boards and other meetings which the Consultants shall attend, serve or report to, as required by the Director's Representative. The documents the Consultants shall produce in serving or reporting to these bodies eg. meeting minutes and progress reports should be stated in section 5 - Deliverables.

16. Information and Facilities Provided by the Employer

All available information relevant to the Assignment will be provided to the Consultants. Relevant documents, reports, drawings and other background materials are listed in Appendix _____ to this Brief. The Consultants shall indicate for guidance those documents which they currently hold and those of which a copy may be needed, should the Assignment be awarded to them. A copy of each of the documents indicated as needed will be supplied free of charge by the Director's Representative on request from the Consultants, except those currently available from the Sales section of the Information Services Department. In the case of plans and drawings, one transparency and two prints of each plan or drawing shall be provided free of charge if requested by the Consultants.

17. Consultants' Office and Staffing

17.1 The Consultants shall maintain for the duration of this Agreement an office in Hong Kong under the control of the Project Director of the Consultants who shall be responsible for the Project. He shall have adequate authority and sufficient professional, technical and administrative support staff in all relevant disciplines to ensure progress to the satisfaction of the Director's Representative.

17.2 The Consultants shall provide the staff and manpower input in accordance with the Technical Proposal which was submitted with the Consultants' tender for this Assignment, or the quarterly manpower input updates as stated in sub-clause 6 below if available. The Director's Representative shall have the right to check the time-log record of the Consultants' staff deployed for the Assignment.

17.3 If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative the time-log record of the staff deployed for the Assignment for the Director's Representative to check against the Technical Proposal, or the quarterly manpower input updates as stated in sub-clause 6 below if available.

17.4 The Consultants' failure to adhere to their staffing proposal, in particular the employment of core personnel of the Consultants and their sub-consultants, thus causing an adverse impact on the performance of the Services, shall be duly reflected in the Employer's performance report on the Consultants.

17.5 If the Consultants are unable to maintain any of the core personnel specified in the Technical Proposal, the Consultants shall as soon as possible report this to the Director's Representative and propose, for the Director's Representative's approval, a revised personnel arrangement which is equivalent to or better than the existing personnel arrangement, in terms of qualifications, experience and competence.

17.6 The Consultants shall follow the relevant requirements stipulated in Development Bureau Technical Circular (Works) No. 5/2018 or its latest revision or replacement and submit to the Director's Representative quarterly updates on the manpower input deployed and/or to be deployed by the Consultants under the Assignment for checking and monitoring with the use of Public Works Consultants Resources Allocation Register (PWCRAR) in accordance with the relevant mechanism mentioned in the same technical circular. The Consultants shall provide clarifications on the manpower input to the Director's Representative upon request.

17.7 The Consultants agree that the quarterly updates as mentioned in sub-clause 6 above would be inputted into the PWCRAR for purposes as mentioned in the personal information collection statement to be sent to the Consultants with the templates for the quarterly updates, which shall include but not limited to the following:

(a) activities relating to the management of the status of the Consultant under the List of Consultants (the List) under the purview of the Engineering and Associated Consultants Selection Board (EACSB) of the Government, including any regulating actions against the Consultant such as downgrading, suspension or removal from the List;
(b) activities relating to the award of consultancies including but not limited to the assessment of the Consultant's tenders for consultancies;
(c) activities relating to management of consultancies including but not limited to the monitoring of manpower resources provided and the assessment of Consultant's performance; and
(d) compilation of statistical report and diagnosis of problems with or concerning PWCRAR or the management of consultants to help the Government to improve.

18. Specialist and Sub-consultant Services

18.1 The Consultants shall provide all specialist and sub-consultant services required for the satisfactory completion of the Assignment. No additional fees or expenses for provision of such services rendered locally or overseas shall be payable by the Employer except as otherwise provided for in the Schedule of Fees.

18.2 Without derogating from the generality of clause 38(i) of the General Conditions of Employment, the Consultants shall, upon the award of this Agreement and save as otherwise agreed by the Director's Representative, appoint the sub-consultants as proposed in their Technical Proposal for the Assignment. The Director's Representative shall have the right to check the sub-consultancy agreements. If the Director's Representative considers that the performance of the Consultants is not satisfactory due to inadequate staffing and manpower input allocated to the Assignment, the Consultants shall, upon the request of the Director's Representative, forthwith submit to the Director's Representative a certified copy of any or all of the sub-consultancy agreements.

19. Surveys

19.1 Two prints of topographical mapping at 1:1000, 1:5000 and 1:20000 scales prepared by the Survey and Mapping Office of the Lands Department, where available for the area covered by the Project for which the Assignment forms a part, can be obtained free of charge on application to the Director's Representative.

19.2 The Consultant may apply for the supply of the series of Digital Map products from Lands Department for the exclusive use of this Assignment free of charge. Applications should be made to the Director's Representative by completing and submitting the form "Undertakings by Consultant/Contractor on the Use of Digital Map from Land Information Centre" (SMF-0096) together with a list of the Digital Map products required. The Consultant is required to provide the storage media for the supply of the Digital Map product files unless Lands Department advises the otherwise.

19.3 All the mapping information provided shall be for the exclusive use of this Assignment. In using the Digital Map products supplied by Lands Department, the Consultant shall abide by the terms and conditions as stipulated in the undertaking form. Upon completion of the Assignment, the Consultant shall destroy immediately the supplied Digital Map products and confirm the destruction to Lands Department by completing and returning the form "Confirmation by Government's Consultant/Contractor on the Cessation of the Use of Digital Map from Land Information Centre" (SMF-0097) to the Director's Representative within two weeks upon completion of the Assignment.

19.4 All the lot boundary information provided is for identification of the approximate location of lot only and is subject to amendments by the Lands Department without prior notice. The Consultants shall refer to the District Survey Offices of the Lands Department for the most up-to-date lot boundary information.

19.5 The Consultants shall be responsible for verifying the accuracy and, where necessary, updating all survey and mapping information provided. Unless otherwise provided for in the Assignment, all field survey work required for the proper execution of the Assignment shall be the duty of the Consultants *(list any special requirements)* A copy of field notes, field data and resultant plans arising from these surveys shall be handed over to the Director's Representative in hardcopy (paper, transparency and/ or microfilms) and MicroStation (DGN) file format upon completion of the Assignment. The accuracy as well as presentation of these surveys should be of a standard agreed by the Director's Representative.

19.6 The Consultant shall be responsible for carrying out as-built surveys (including records of positions and levels on all underground pipelines, etc.) and submission of a set of as-built survey plans in both hardcopy and soft copy to the Director's Representative. The as-built drawings shall be submitted upon phase completion of the Project. The Consultant shall be responsible for submitting survey information which was presented in an acceptable professional standard and in an appropriate scale specified by the Director's Representative. A copy of field notes, field data and resultant plans arising from these surveys shall be handed over to the Director's Representative in hardcopy (paper, transparency and/or microfilms) and digital format upon completion. The Consultant is responsible to rectify and re-submit the corrected set of as-built survey plans if errors were found in any survey audits by the Director's Representative. After the Director's Representative has accepted the survey results, the Consultants shall forward a set of the as-built survey plans in hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department.

19.7 The Consultant shall be responsible for submitting drawing computer files which shall be delivered on compact disc in MicroStation (DGN) file format unless otherwise specified by the Director's Representative. The survey drawings shall be in compliance with the CAD Standard for Works Project (CSWP) version 1.03.00 (or later versions as agreed by the Director's Representative) as posted on the Development Bureau's web-site and the Drafting Specification for Engineering Survey Rev 2.0 (or later versions as agreed by the Director's Representative) as posted on Civil Engineering and Development Department's web-site.

19.8 To assure the provision of the required road inventory records for the asset management of the Highways Department, as-built surveys of those completed road(s) to be handed over to Highways Department for maintenance shall follow the engineering survey and geographical information system (GIS) requirements of as-built surveys of Highways Department.

19.9 The Consultants shall provide sets of as-built inventory records of completed road works in ArcGIS or other GIS format fully compatible with the Road Data Maintenance System of Highways Department and in accordance with the GIS Specifications for Engineering Surveys of Highways Department Rev. 1.0 (or later version as agreed between the Director's Representative and the Consultant/Contractor from time to time) as posted on Highways Department's web-site. A copy of the submission should also be provided to the Land Information Centre of the Survey and Mapping Office of the Lands Department.

19.10 Appendix ____ specifies the division of responsibility for other surveying between the Consultants, the Lands Administration Office and Survey and Mapping Office as well as the relevant sub-offices at district level of the Lands Department *(see Appendix A)*.

20. **Insurance**

The amount of insurance cover to be maintained in accordance with Clause SCE*xx* *(the one set out in Appendix 4.17)* **of the Special Conditions of Employment shall be HONG KONG Dollars_____.** (*Please follow the procedures for the procurement of Professional Indemnity Insurance and the methodology for determining the amount of insurance cover given in DEVB TCW No. 9/2007 and state the assessed amount of the insurance cover in terms of the lump sum fee, subject to minimum and maximum values, as appropriate.*)

AGREEMENT NO.

Responsibility for Survey Work

The division of responsibility among the Consultants, the Lands Administration Office, and the Survey and Mapping Office of the Lands Department for surveying required in connection with the Assignment shall be as follows :-

	Task	Responsibility of
(1)	(a) Provision of basic horizontal and vertical survey control	Survey and Mapping Office (Consultants to download from www.geodetic.gov.hk)
	(b) Checking of given control point values and establishment of survey control net-work(s) based on survey control given vide (a)	Consultants
(2)	(a) Provision of topographic maps (at 1:1000 or other standard scales relevant to the Assignment)	Survey and Mapping Office (excluding those specified as to be provided by the Consultants in the Assignment)
	(b) Provision of available Digital Map products relevant to the Assignment	Land Information Centre, Survey and Mapping Office
	(c) Updating and verification of accuracy of information supplied vide (a) and (b) as necessary in relation to the Assignment	Consultants
	(d) Carrying out detailed surveys for site investigation and for preparation of design and contract documents as necessary in relation to the Assignment	Consultants
(3)	Supply of existing cadastral plans and records and co-ordinate data	District Survey Office
(4)	Computation of detailed dimensioned layouts of roads, drainage and waterworks reserves, platforms, etc.	Consultants (checked and accepted by District Survey Office)
(5)	Determination of site/lot boundaries, calculation of areas, etc. in connection with the agreed dimensioned layouts	District Survey Office (in liaison with District Lands Office)

	Task	Responsibility of
(6)	(a) Processing of resumption and surrender for privately owned land in Development Area	District Lands Office (in liaison with District Survey Office and Consultants)
	(b) Resumption and surrender plans and demarcation of lands to be resumed	District Survey Office (in liaison with District Lands Office and Consultants)
(7)	(a) Setting-out of roads, drainage works, formation areas, etc.	Contractors (checked and accepted by Consultants, usually by resident site staff under their supervision.)
	(b) Initial site survey, and interim and final payment surveys	Consultants, usually by resident site staff under their supervision (joint survey with contractors or agreed survey with contractors)
(8)	Preparation of proposal plans for Government land allocations and other land grants relevant to the Assignment	District Survey Office (in liaison with District Lands Office)
(9)	Preparation of dimensioned plans and setting out of boundaries of sites and lots for Government land allocation and other land grants relevant to the Assignment	District Survey Office
(10)	As-built surveys on all completed phases of the Works (including records of positions and levels on all underground pipelines, etc.)	Consultants, usually by resident site staff under their supervision.
(11)	Submission of a set of as-built survey plans in hardcopy (paper, transparency and/or microfilms) and soft copy comply with the specifications to the Department submitted upon phase completion of the Works.	Consultants, usually by resident site staff under their supervision.
(12)	Supply a set of as-built survey plans in both hardcopy and softcopy to the Land Information Centre of the Survey and Mapping Office of the Lands Department	Consultants, usually by resident site staff under their supervision.
(13)	For as-built surveys of those completed road works to be handed over to Highways Department for maintenance, submission of a set of road inventory data in GIS format in compliance with the specifications to Highways Department. A copy of the submission should also be provided to the Land Information Centre of the Survey and Mapping Office of Lands Department.	Consultants, usually by resident site staff under their supervision.

Template with sample Clauses for incorporating the requirements of a Quality Site Supervision Plan (QSSP) into Assignment Brief

This Annex describes the requirements of QSSP promulgated originally in SETW's memo ref. ETWB(W)925/50/01 dated 29.1.2003. The relevant paragraphs are subsumed hereunder.

To address ICAC's concerns raised in the study of ICAC's Assignment No. 92/2001 – Site Supervision of Civil Engineering Contracts, representatives of works departments agreed, during the meeting held on 5.6.2002, to require consultants to implement a QSSP for consultant-managed construction projects.

The following is a template including sample clauses to be incorporated into the Brief of a Design and Construction Assignment or a Construction Assignment requiring the consultants to prepare and implement a QSSP. As the template only spells out the outline requirements, project officers should develop their Brief based on the template but with the clauses modified as appropriate to suit the actual needs of their projects.

4. **Description of the Assignment**

4.1 The Review Stage is to:

….

4.2 The Design Stage is to:

….

(xx) identify the critical construction activities and structural elements in the design that warrant the formulation of special site supervision requirements for such activities and structural elements;

….

5. **Deliverables**

5.1 The following is a list of more specific deliverables to be submitted by the Consultants and the timing of submissions. The Consultants should note that there are other more general reports or designs that need to be produced in order to fulfil their duties under this Assignment. The Consultants shall submit all deliverables to the Director's Representative (DR) and circulate to relevant parties in sufficient copies.

No.	Deliverable	Contents	No. of copies	Deadline for Submission
xx	Quality Site Supervision Plan (QSSP) (One for each works contract)	Refer to Clauses 6.1.x and 6.3.1(x)	n sets	p months from start of Design Stage (*departments may set separate deadlines for the Draft and the Final documents, e.g. the Draft QSSP to be submitted when*

				design of the project or the relevant contract is being finalized and the Final QSSP to be submitted together with the finalised tender drawings/documents)
xy.	Revised QSSP	Refer to Clause 6.5(xy)	q sets	Upon major modification of the QSSP during construction stage

Note: n, p and q to be specified by the project team

6. Services to be provided by the Consultants

6.1 General

….

6.1.x Upon completion of the detailed design, the Consultants are required to prepare a Quality Site Supervision Plan in accordance with clause 6.3.1(x) and their own quality management system. The Quality Site Supervision Plan and its execution shall be subject to Employer's technical audits. The consultants shall also review the Quality Site Supervision Plan with the site staff during the construction stage.

….

6.2 Review Stage

6.2.1 General

…..

(x) recommend a strategy for site supervision (*the consultants could be instructed to carry out this in conjunction with the recommendation on the construction staging and packaging of works contract, and the tendering strategy for letting out the works contract(s)*).

…

6.3 Design Stage

6.3.1 General

The Consultants shall provide the following services for the Design Stage:

….

(x) Submit a Quality Site Supervision Plan in line with the strategy of site supervision recommended in the Review Stage, and to include, but not limited to, the following details -

i. A detailed site supervision arrangement, including arrangements for supervision of construction activities that are required to be carried out outside the normal working hours of the site staff;

ii. A list of critical construction activities and structural elements that require special attention together with the associated supervision requirements for such items, where appropriate the level of supervision and the rank of staff who should perform the supervision of such items and/or sign the Request for Inspection Form (or a purposely made inspection form for a particular activity or test);

iii. If necessary, the consultants shall also specify for any critical construction activities, structural elements and particular aspects or details that should be noted by the inspection officer on the Request for Inspection Form for future reference;

iv. A guideline on the details of inspection to be recorded for specialist works or critical elements;

v. In case it is envisaged that construction or fabrication works will be carried out outside Hong Kong, the consultants shall formulate supervision requirements and inspection arrangement for such works. The consultants shall also prepared comprehensive guidelines to be followed by the RSS who need to conduct inspection outside Hong Kong. The guideline shall include the three minimum requirements as given below.

(a) In the event that production activities in a works contract are undertaken outside Hong Kong, the supervisory staff conducting inspections on the production sites outside Hong Kong shall, to the best of their knowledge, declare to the Engineer for the contract if the main contractor, the sub-contractor for the production activities, or any of their employees in his spouse, family member, or close relatives.

(b) Such inspection visits shall also be subject to the approval of the consultants. Where the contractor makes arrangement for transportation, accommodation and entertainment including meals, such arrangement shall be agreed to by the Engineer for the contract beforehand. Other than the agreed arrangement, supervisory staff shall not be allowed to receive any form of hospitality or entertainment from the contractor during such inspection visits.

(c) Should the supervisory staff incur reimbursement expenses in the course of inspection, all claims for reimbursement should all be made to the consultants in accordance with the prevailing rules and regulations for such. The Consultants will in turn seek reimbursement from the contractor where applicable. Under no circumstances should all the staff seek reimbursement direct from the contractor.

….

6.4 Tender Stage (The Consultants shall not proceed with the Tender Stage unless and until they have received the written instruction of the Director's Representative)

….

6.5 Construction Stage (The Consultants shall not proceed with the Construction Stage unless and until they have received the written instruction of the Director's Representative)

Upon receipt of instruction from the Director's Representative to proceed with the Construction Stage work for the whole or part of the Assignment., the Consultants shall carry out the duties listed below :-

….

(xx) provide training and refresher courses, including …….(*details shall be included by the project team to suit the project need*) to the site staff, the consultants shall also identify special training requirement regarding the supervision of critical construction activities and critical structural elements and provide the necessary training to the site staff;

(xy) At the commencement of works, review the Quality Site Supervision Plan (QSSP) (against the activities described by the Contractor in his Quality Plan prior to the execution of works if the contractor is required to submit it under the contract), and conduct regular reviews of the QSSP with site staff subsequently, and as the need arises, and make necessary updating and modification in order to suit the actual circumstances (*this may be carried out in conjunction with the review of the resident site staff manual giving details on authorities, duties, responsibilities and contract management and works supervision procedures for the guidance of all grades of the site establishment, if there are such requirements./practice in the departments*), and the consultants shall report in the monthly progress report the status of implementing the QSSP and any major modifications to it as result of a review. The consultants shall submit a revised QSSP to the DR if there is a major revision and as requested by the DR.

….

APPENDIX 4.7 STANDARD FORM OF DESIGN CERTIFICATE

DESIGN CERTIFICATE

Agreement No. & Title :

Project Title :

Contract No. & Title :

Consulting Engineer :

We certify that :

(i) Our design complies with the standards set out in the Agreement and with amendments agreed to by the Director's Representative.

(ii) All reasonable and professional skill, care and diligence have been exercised.

(iii) An independent check of the design calculations and contract documents has been undertaken and the design and contract documentation comply with the requirements of the Agreement.

Signed .....

Name.....
Partner/Director

Professional Qualifications.....

Date.....

APPENDIX 4.8 SAMPLE SUMMARY FOR REIMBURSABLE ITEMS UNDER CONSULTANCY ASSIGNMENTS

Consultancy Agreement No. CE

Summary of Reimbursable Items

Item	Details	Estimated cost	Expected Start Date	Expected Completion Date
Topographic Survey	to survey flood prone areas, and hydraulical structures (Clause *XX* of the Brief)	$0.4 million	10/2000	1/2001
Manhole and CCTV Survey	to collect information on the condition and structural integrity of the drainage system. (Clause *XX* of the Brief)	$0.6 million	10/2000	12/2000
Water Sampling and Testing	to detect illegal connections (Clause *XX* of the Brief)	$0.1 million	6/2000	12/2000

Total = $1.1 million

APPENDIX 4.9 SAMPLE REPORT ON TENDERS FOR REIMBURSABLE ITEMS UNDER CONSULTANCY ASSIGNMENTS

MEMO

From Head of Department	*To* Chairman, EACSB
Ref. () *in*	(*Attn.*: Secretary EACSB)
Tel. No.	*Your Ref.* *in*
Fax. No.	*dated* *Fax. No.*
Date	*Total Pages*

ENGINEERING & ASSOCIATED CONSULTANTS SELECTION BOARD

REPORT ON TENDERS FOR REIMBURSABLE ITEMS UNDER CONSULTANCY ASSIGNMENTS

Agreement No.:
Agreement Title:

Brief Description of Reimbursable Items

[*For supply tenders, give a brief description of the commodity required.*]

[*For works or service tenders, give a brief description of the scope of work and location of project.*]

[*Highlight any special tendering and contract requirements which have affected the tender recommendation.*]

Details of Tenders

[*State number of invitations issued and number of tenders received.*]

[*State whether the lowest tender is a competitive tender and list any tender as being non competitive (being 25% above the estimate).*]

[*Note any tenderer who has withdrawn..*]

[*List the tenderers in the form of a comparative statement showing the tendered sums quoted by the respective tenderers.*]

APPENDIX 4.10 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : INTEREST ON OVERDUE PAYMENT

(WBTC No. 8/2001 has been archived and its relevant requirements have generally been subsumed hereunder.)

Standard Special Conditions of Employment
Interest on Overdue Payment

Payment of accounts

S.C.E.1 Clause 31 of the General Conditions of Employment is deleted and replaced by the following:

31. (A) Except as provided for in sub-clause (B) of this Clause accounts of all money due from the Employer to the Consultants in accordance with this Agreement shall be paid within 28 days after receipt of the Consultants' invoice by the Director's Representative. In the event of failure by the Employer to make payment to the Consultants in compliance with the provisions of this Clause the Employer shall pay to the Consultants interest at one percent below the judgement debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from the date on which the same should have been made.

(B) If any item or part of an item of an account rendered by the Consultants is reasonably disputed or reasonably subject to question by the Employer, the Employer shall within 14 days after receipt of the invoice by the Director's Representative inform the Consultants in writing of all items under dispute or subject to question. Payment by the Employer of the remainder of that account shall not be withheld on such grounds and the provisions of sub-clause (A) of this Clause shall apply to such remainder.

APPENDIX 4.11 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT: APPROVAL OF MAJOR REVISIONS TO APPROVED DOCUMENTS AND REFERRAL AND REPORTING BY CONSULTANTS OF VARIATIONS, CLAIMS AND DELAY IN WORKS CONTRACTS

Scope

1. WBTC No. 22/2001 requires consultants for a design and construction assignment to obtain Director's Representative's written approval for major revisions to the already approved tender and contract documents. It also requires consultants to refer and report in writing to the Director's Representative details of all variations to contract works, claims for additional payment made by contractors, and delays to the progress of the contract works. WBTC No. 22/2001 has been archived and its requirements have generally been subsumed hereunder.

2. Examples of major revisions are changes in design that may affect the performance, operation or maintenance of a plant or installation, or alternative designs especially those aspects involving deviation from the industry standard engineering practice.

Policy

3. According to Clause 15 of the General Conditions of Employment for a [Investigation], Design and Construction Assignment (1997 Edition), documents prepared by the Consultant shall not be used for tendering purpose unless they have been approved by the Director's Representative. It is decided that after the approval, the Consultant shall also obtain the Director's Representative's written approval for any major revisions to these documents.

4. Separately, Clause 25 of the General Condition of Employment requires the Consultant to refer and report to the Director's Representative, details of variations to the contract works and claims for additional payment made by the Contractor. To enhance effectiveness, it is decided that such referral and reporting shall be made in writing.

5. The SCE given at Annex A to this Appendix shall be incorporated in consultancy documents of all consultancy agreements.

Special Conditions of Employment

Approval of Major Revisions to Approved Documents and Referral and Reporting by Consultants of Variations, Claims and Delay in Works Contracts

Approval of documents

S.C.E.1 Clause 15 of the General Conditions of Employment is deleted and replaced by the following:

15. (A) All drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by the Consultants for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the Director's Representative in writing.

(B) Any major revisions to such approved drawings, designs, plans, specifications, bills of quantities or other documents, matters or things shall not be used for any purposes unless they have been approved by the Director's Representative in writing.

(C) The Consultants shall, when so requested by the Director's Representative, submit in writing to him for his approval such drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by them as a direct requirement of the Assignment as he may specify or require.

(D) No such approval shall affect the responsibility of the Consultants in connection with the Services.

Referral of variations and claims

S.C.E.2 Clause 25 of the General Conditions of Employment is deleted and replaced by the following:

25. (A) Notwithstanding the requirements of Clause 24 the Consultants when acting as Engineer to any works contract shall:

(i) refer the details of every variation to the contract works, including the reasons for it and its estimated value, to the Director's Representative for information as soon as the variation is ordered;

(ii) as soon as the value of a variation to the contract works has been determined, refer the details of the evaluation to the Director's Representative for information;

(iii) report to the Director's Representative all claims for additional payment made by the contractor and, except for those solely in respect of agreement of rates, refer the principles underlying their assessment of each claim, to enable the Employer to provide his view of the matter

before the Consultants reach a decision; and

(iv) report to the Director's Representative all delays to the progress of the contract works and, except for those delays solely in respect of inclement weather conditions or the hoisting of storm signals, refer their assessment of grant of extension of time for completion, if any, to enable the Employer to provide his view of the matter before the Consultants reach a decision.

(B) The foregoing referrals and reporting to the Director's Representative shall be in writing.

APPENDIX 4.12 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : PROJECTS IMPLEMENTED IN PHASES

Scope

1. Works Bureau Technical Circular No. 18/2002 introduces a set of Special Conditions of Employment clauses for use in consultancy assignments, and which cover more than one phase of a project but the implementation of some of these phases has not been decided upon at the time when submissions for the consultancy services are invited. WBTC No. 18/2002 has been archived and its requirements have generally been subsumed hereunder.

Background

2. Many projects are delivered in phases such as investigation, design, tender and construction. Sometimes a single consultant may be awarded a consultancy agreement with more than one phase. However, the project may at a later stage have to be abandoned or temporarily withheld for some reasons, and in such event, the consultancy agreement has to be terminated or suspended after the completion of a certain phase. For instance, a design and construction assignment may have to be terminated after the completion of the design phase due to failure in securing the necessary financial resources for the tendering and construction phases.

3. In the current set of General Conditions of Employment, there are already provisions allowing the Employer to suspend or terminate a consultancy agreement at any time by the Director's Representative giving the consultants three months' notice in writing. These provisions may not be sufficient to satisfy the specific needs of some projects because the consultancy agreement will not be automatically suspended or terminated at the conclusion of a particular phase. The consultant may continue to provide services beyond the phase until he receives written notice of suspension or termination from the Director's Representative.

Policy

4. Though there are provisions in the General Conditions of Employment for suspension and termination of a consultancy agreement, it is considered that provisions for Phases Subject to Incorporation should also be required in consultancy agreements to cater for projects under the circumstances as mentioned in paragraph 2 above.

5. A “Phase Subject to Incorporation” means a phase designated in the consultancy Brief, the details of which are known, but the implementation of which has not been decided upon by the Director's Representative at the time the documents inviting submissions for consultancy services are issued, which may be incorporated into the Project on a later date.

6. The Phase(s) Subject to Incorporation should be clearly identified and specified in the consultancy Brief. The consultant should not commence and would not be paid for the services comprised within a Phase Subject to Incorporation without a written instruction to do so from the Director's Representative.

7. The document containing the time for instruction, commencement and completion of the Phase Subject to Incorporation should be referred to in the Memorandum of Agreement so as to make it clear that such timing form part of the Agreement as defined in clause 1 of the General Conditions of Employment.

8. Payment shall be made in accordance with the Schedule of Fees. The Schedule of Fees should be designed in such a way that payment for each phase can truly reflect the cost of Services for that phase.

Implementation

9. The standard Special Condition of Employment given at Annex A to this Appendix shall be included in documents for consultancy assignments covering more than one phase and the implementation of some of these phases has not been decided upon at the time the documents inviting submissions for consultancy services are issued.

Standard Special Conditions of Employment
Phases Subject to Incorporation Clause for Consultancy Agreement

Phases subject to incorporation S.C.E.1

(1) The provisions of this Special Condition of Employment shall apply to those Services identified in the Brief as Phases Subject to Incorporation.

(2) The General Conditions of Employment are amended as follows:

(a) by the addition of the following definition to Clause 1:

"Phase Subject to Incorporation" means a Phase designated in the Brief (the details of which are known, but the implementation of which has not been decided upon by the Director's Representative at the time the documents inviting submissions for consultancy services are issued) which may be incorporated into the Project pursuant to Subclause (3) of this Special Condition of Employment.

(b) Clause 27 of the General Conditions of Employment is amended by the addition of the words ", and shall also include the total fees of the Phases Subject to Incorporation, which shall be inclusive of all labour, material and expenses incurred in the performance of the Services and which shall not be payable unless an instruction is issued in accordance with Subclause (3) of the Special Condition of Employment" at the end.

(3) Without derogating from the generality of Clause 17 and 23 of the General Conditions of Employment, the Director's Representative may, within ____ days prior to/after the completion of the ____ Phase, instruct the Consultant in writing to proceed with the Services comprised within a Phase Subject to Incorporation.

[Alternative (3):

Without derogating from the generality of Clause 17 and 23 of the General Conditions of Employment, the Director's Representative may, within the relevant time stated in the documents inviting submissions for consultancy services (commencing from and including the date for commencement of the Consultancy Agreement), instruct the Consultant in writing to proceed with the Services comprised within a Phase Subject to Incorporation.]

(4) In the event that the Director's Representative issues an instruction in accordance with Subclause (3) of the Special Condition of Employment:

(a) the Consultant shall thereafter perform and complete the Services comprised within the relevant Phase Subject to Incorporation as part of the Project in accordance with the Agreement; the Consultant shall commence providing the Services for the Phase Subject to Incorporation upon receipt of the instruction and shall

complete that Phase within the time for completion of that Phase stated in the documents inviting submissions for consultancy services, or such extended time as may be approved by the Director's Representative. The time for completion commences from and includes the date for commencement of the Phase notified by the Director's Representative in accordance with Subclause (3) of this Special Condition of Employment.

(b) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had at all times formed part of the Project; and

(c) the fees for the Phases Subject to Incorporation shall be payable in accordance with Clause 27 of the General Conditions of Employment.

(5) In the event that the Director's Representative does not issue an instruction in accordance with Subclause (3) of this Special Condition of Employment:

(a) without prejudice to the provisions of Clause 17 and 23 of the General Conditions of Employment, the Consultant shall not thereafter be obliged to execute and complete the Services comprised within the relevant Phase Subject to Incorporation;

(b) the Consultant shall not be entitled to any payment or other compensation or relief in respect of or attributable to the relevant Phase Subject to Incorporation;

(c) the Agreement shall thereafter be construed in every way as if the relevant Phase Subject to Incorporation had not at any time formed part of the Agreement and all references thereto shall be of no effect;

(d) the Consultant shall review the Programme submitted pursuant to Clause 26 of the General Conditions of Employment and, if appropriate, revise and submit an amended or varied version of the same to the Director's Representative for approval under Clause 26(B) of the General Conditions of Employment;

(e) the Consultant shall review all drawings and other documents relating to its Services which have been submitted to the Director's Representative and if appropriate, revise and submit an amended or varied version of the same to the Director's Representative in accordance with Clause 15 of the General Conditions of Employment.

(6) The Consultant shall not commence the Services comprised within a Phase Subject to Incorporation without a written instruction to do so from the Director's Representative, pursuant to Subclause (3) of the Special Condition of Employment.

(7) For the avoidance of doubt, Phases Subject to Incorporation do not fall within the provisions of Clauses 33, 34 and 41 of the General Conditions of Employment.

Ref. Subclause Alternative (3) of S.C.E. 1

Sample Clause to be Included in Documents Inviting Submissions for Consultancy Services

Phases Subject to Incorporation:

	(i)	(ii)
Phase	**Time for Ordering Phases Subject to Incorporation** (commencing from and including the date for commencement of the Consultancy Agreement)	**Time for Completion of Phases Subject to Incorporation** (calculated from and including the date of commencement in column (i))
XXX	*yy* months	*zz* months

APPENDIX 4.13 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : CONFLICT OF INTEREST AND DEBARRING

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 18/2005 in respect of the conflict of interest and debarring. The relevant paragraphs from the original circular and updated by Appendix 4.1 of the Guidelines for the Implementation of the New Policy on Selection, Appointment and Management of Consultants under the purview of the Engineering and Associated Consultants Selection Board Revision No. 2 (October 2020) are basically subsumed hereunder.

Background

2. Requirements on the avoidance of conflicts of interest for officers and firms involved in Government procurement were originally set out in Financial Circular No. 9/2003. This circular was cancelled in January 2005, and the latest requirements are now stipulated in Chapter IA of Stores and Procurement Regulations (SPR). SPR 192 requires that procuring departments should include in the consultancy agreement a clause to oblige the selected consulting firm to report on situations which may give rise to conflict of interest and a clause to debar the selected consultants from participating in any subsequent exercise for the procurement of any goods and/or services arising out of or which was the very subject of the consultancy.

3. To achieve consistency, a standard Special Conditions of Employment (SCE) clause is prepared for use in consultancy agreements.

Policy

4. The **SCE** at Annex A shall be incorporated into all consultancy agreements.

5. Departments shall check that declarations forms (sample attached) submitted by consultants have been properly completed, and signed by an authorized person of the consultants whose specimen signature has been deposited with the Director's Representative. Nevertheless, checking of the arrangements between the consultants and their employees, agents, sub-consultants, and advisers is not normally required, unless irregularities are found or reported.

Annex A

Special Conditions of Employment Clause
Conflict of Interest and Debarring

SCE [ ] Clause 46 of the General Conditions of Employment is deleted and replaced by the following:

(A) On appointment and during the term of this Agreement and for [ ][1] months thereafter, the Consultants must declare any interest if it is considered to be in actual, apparent, potential or perceived conflict with the Services, including any interest or association the Consultants, their associated companies, their associates or associated persons or any of their sub-consultants may have with any contractors, suppliers, specialist contractors or sub-contractors. The Consultants shall during the term of this Agreement and for [ ] months thereafter forthwith notify the Employer in writing and keep the Employer notified of all or any facts which may reasonably be considered to give rise to a situation where the financial or other interest of the Consultants, their associated companies, their associates or associated persons or any of their sub-consultants, conflict or compete, or may conflict or compete, with the Consultants' duties to the Employer under this Agreement.

For purpose of this Clause 46 of the General Conditions of Employment, the "term of this Agreement" shall mean the period from appointment of the Consultants until completion of the Agreement, i.e. upon issue of the letter of completion of Agreement by the Employer.

(B) The Consultants shall not, and shall ensure that any of their associated companies, their associates or associated persons or any of their sub-consultants shall not, during the term of this Agreement and for [ ] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of any third party (other than in

[1] The duration of the restraint should be filled in by the procuring department taking into account the specific nature of the Services involved and the legitimate interests that the Government has to protect.

the proper performance of this Agreement), which touches, concerns or affects the Services or which may reasonably be seen to touch, concern or affect the Services, except with the prior written approval of the Director's Representative which approval shall not be unreasonably withheld.

(C) Without prejudice to the generality of sub-clause (B), the Consultants shall not (whether on their own or through their associated companies, associates or associated persons or in joint venture with others), and shall ensure that any of their sub-consultants shall not,

(i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;

(ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which the Consultants are providing a service arising out of or relating to this Agreement ;

(iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer.

In the event that the Consultants have advised on the preparation of the tender, including tender specifications and tender assessment, the Consultants undertake that under no circumstances will they bid, participate or be financially involved in that or related tender exercise.

The Consultants shall take all necessary steps to ensure that under no circumstances will their associated companies, associates, associated persons and sub-consultants participate or be financially involved in

the tender exercise referred to in the preceding sub-paragraphs.

(D) The Consultants shall render their advice or recommendations pursuant to this Agreement to the Employer on an impartial basis without giving favour to any particular product, services or equipment in which the Consultants have a commercial interest, including but not limited to those who engaged the Consultants in consulting services related to private works. The Consultants shall notify the Employer immediately and in writing and keep the Employer notified of any actual, apparent, potential or perceived conflict they or their associated companies, associates or associated persons or any of their sub-consultants may have in, or any association or connection they or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by the Consultants under this Agreement or any of third party with whom the Consultants have a commercial interest. The Consultants shall obtain from each and every one of their directors, employees, agents and sub-consultants who are involved in this Agreement a binding undertaking to observe this sub-clause.

(E) The Consultants shall require their directors, employees, agents and sub-consultants who are involved in this Agreement to declare in writing to the Consultants and keep the Consultants informed regularly of any actual, apparent, potential or perceived conflict between their personal/ financial interests and their duties in connection with this Agreement, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with the Consultants' duties to the Employer under this Agreement. In the event that such conflict is disclosed in a declaration, the Consultants shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed.

(F) The Consultants shall prohibit their directors and employees who are involved in this Agreement from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could give rise to any actual, apparent, potential

or perceived conflict between their personal/financial interests and their duties in connection with this Agreement. The Consultants shall require their agents and sub-consultants to impose similar restriction on their directors and employees by way of a contractual provision.

(G) The Consultants shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that their directors, employees, agents and sub-consultants who are involved in this Agreement are aware of the provisions under the aforesaid sub-clauses (B) to (F). Where the Consultants have obtained the written approval of the Director's Representative to appoint sub-consultants to undertake any part of the Services, the Consultants shall take all necessary steps to procure and ensure that the same covenants as in this Special Conditions of Employment Clause, mutatis mutandis, are imposed on the sub-consultants and shall take all necessary steps to enforce such covenants.

(H) In this Special Conditions of Employment Clause,

"associated company" or "associated companies" in relation to the Consultants means

any company which is the holding company or subsidiary company or sister company of the Consultants. A "sister company" means a company which belongs to the same holding company as the Consultants'.

"associate" or "associates" in relation to the Consultants means

(i) any partner of the Consultants; or

(ii) any company one or more of whose directors is in common with one or more of the directors of the Consultants.

"associate person" or "associated persons" in relation to the Consultant means

(i) any person who has control, directly or indirectly, over the Consultants; or

(ii) any person who is controlled, directly or indirectly, by the Consultants; or

(iii) any person who is controlled by, or has control over, a person at (i) or (ii) above.

"control" in relation to another person means holding office as a director or the power of a person to secure

(i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person; or

(ii) by virtue of powers conferred by any constitution, memorandum or articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other persons;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person.

"director" means any person occupying the position of director by whatever name called and without limitation a de facto or shadow director.

(I) The Consultants shall submit a signed declaration in the form prescribed in Appendix [ ] to these Special Conditions of Employment (with only such amendments thereto as may previously have been agreed in writing by the Employer) to confirm compliance with the provisions as stated in the above sub-clauses when demand is made for payment under this Agreement at a frequency, which shall not be more frequent than once per month, as specified by the Director's Representative. If the Consultants fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such

declaration is submitted and the Consultants shall not be entitled to interest in that period."

Appendix [ ]
(SCE [ ] refers)

Sample Declaration Form by Consultants
on their compliance with the conflict of interest avoidance and debarring requirements
(to be attached to the payment application submitted by the Consultants)

To: Director's Representative

Agreement No.: ……
Title: …….

In accordance with SCE Clause [ ], we confirm and declare that we have complied with the provisions stated therein. We further confirm and declare that we have taken action to ensure that our associated companies, associates or associated persons, sub-consultants, employees and agents are aware of the provisions therein stipulated including the following:

(a) our associated companies, associates or associated persons or any of our sub-consultants shall not, during the term of this Agreement and for [ ] months thereafter, undertake any services, tasks or jobs or do anything whatsoever for or on behalf of third party (other than in the proper performance of this Agreement), which touches, concerns or affects the Services or which may reasonably be seen to touch, concern or affect the Services, except with the prior written approval of the Director's Representative;

(b) our associated companies, associates or associated persons, and any of our sub-consultants shall not,

(i) undertake or compete for the role of a contractor or supplier or otherwise be involved as a shareholder of the contractor or supplier, in a subsequent procurement of any services and/or goods arising out of or relating to this Agreement;

(ii) undertake any services for a contractor (including acting as a sub-contractor) or supplier in respect of a contract between that contractor or supplier and the Employer for which we are providing a service arising out of or relating to this Agreement;

(iii) undertake any services for, including without limitation provision of advice to, a bidder bidding for a contract arising out of or relating to this Agreement,

except with the prior written approval of the Employer;

(c) we are under an obligation to render advice or recommendations pursuant to this Agreement to the Employer on an impartial basis without giving favour to any particular product, services or equipment in which we have a commercial interest or to any third party with whom we have a commercial interest, including but not limited to those who engaged us in consulting services related to private works. We also have an obligation to notify the Employer immediately and in writing and keep the Employer notified of any actual, apparent, potential or perceived conflict we or our associated companies, associates or associated persons or any of our sub-consultants may have in, or any association or connection we or the aforesaid persons may have with, any of the services, products or equipment proposed or recommended by us under this Agreement or any of third party with whom we have a commercial interest. Each and every one of our directors, employees, agents and sub-consultants who are involved in this Agreement have given a binding undertaking to observe the aforesaid;

(d) our directors, employees, agents and sub-consultants who are involved in the Agreement are required to declare in writing to us and keep us informed regularly any actual, apparent, or potential or perceived conflict between their personal/financial interests and their duties in connection with this Agreement, including all or any facts which may reasonably be considered to give rise to a situation which the financial interests of such persons, conflict or compete, or may conflict or compete, with our duties to the Employer under this Agreement. In the event that such conflict is disclosed in a declaration, we are under an obligation to forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict so disclosed; and

(e) our directors and employees who are involved in the Agreement are prohibited from engaging in any work or employment other than in the performance of this Agreement, with or without remuneration, which could create or potentially give rise to any actual, apparent, potential or perceived conflict between their personal/financial interests and their duties in connection with the Agreement. Our agents and sub-consultants are required to impose similar restriction on their directors and employees by way of a contractual provision.

(Name of the Consultants)	…….……..
(Name of the Signatory)	…….……..
(Position of the Signatory)	…….……..
(Date)	…….……..

APPENDIX 4.14 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : RETENTION OF DOCUMENTS AND INSPECTION

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 30/2004 in respect of retention of documents and inspection. The relevant paragraphs from the original circular are basically subsumed hereunder.

Background

2. Clause 12 of the General Conditions of Employment requires consultants to retain their records, measurement books, accounts and other information ("the documents") after completion of works contracts they are supervising. The main purpose is to ensure the preservation of documents to facilitate the assessment and resolution of outstanding claims, finalizing accounts and dealing with any residual dispute proceedings as well as for audit purposes. The appropriate retention period is to enable these processes to be completed and having due regard to the relevant limitation period applicable to the works contract which normally will be a minimum period of 12 years following completion.

3. It has been the past practice to retain all original documents. With the advancement of computing technology, original documents can now be scanned and stored in CD or DVD discs in the form of electronic image files with the original documents destroyed to reduce storage space and cost. Another benefit of using electronic storage is that multiple copies of the CD or DVD discs can be made and kept at minimal cost, with much lower risk of loss of information due to accidental damage compared with storing original documents.

Policy and Introduction of Special Conditions of Employment

4. Accordingly, given the advancement in technology in relation to the electronic storage of original documents, such storage is now supported and Clause 12 of the General Conditions of Employment is amended to provide for consultants to submit a storage and retrieval proposal as part of which permission may be sought for the electronic storage of original documents.

Storage and Retrieval Proposal

5. Pursuant to the Special Conditions of Employment appended in Annex A, the consultants are required to prepare a storage and retrieval proposal and submit it to the Director's Representative for approval.

6. The storage and retrieval proposal shall be prepared on the basis of the following matters and principles:

6.1 Documents generally

(a) The proposal shall include the intended list of documents to be retained.

(b) The volume of documents shall generally be kept to a minimum.

(c) Duplicate copies of documents and copies of documents that have been passed to the maintenance agencies and/or user departments may generally be destroyed.

(d) The documents to be retained shall depend on the type and nature of the individual project.

(e) The proposal shall state the location of the intended storage facilities.

(f) The proposal shall state the intended environmental conditions in which the documents are to be stored.

(g) The storage system shall allow for easy retrieval of documents in case of need.

(h) The proposal shall state the intended method of retrieval including the approximate time it will take to retrieve documents.

6.2 Storage of electronic copies of original documents

(a) In view of the benefits of electronic storage, the consultants are encouraged to propose the conversion of original documents to electronic copies and for the destruction of original documents.

(b) Generally approval for destruction of original documents will only be given after the completion of final account of the particular works contract.

(c) Where there are pending claims or disputes relating to a works contract, original documents should be retained until the outstanding claims or disputes are resolved.

(d) For works contracts where there are no known or anticipated unresolved claims or disputes, original copies generally may be destroyed after electronic copies have been prepared and retained.

(e) The original copies of all contract documents, supplemental agreements, warranties, bonds, insurance policies and contract drawings shall be retained as original documents.

(f) Scanning should be done carefully and meticulously and thoroughly indexed for subsequent retrieval and inspection.

(g) To ensure the evidential value of electronic copies, detailed records will be required vouching for the integrity of the electronic scanning and storage process including that:

(1) The documents scanned are properly identified.

(2) The date of scanning is recorded.

(3) The identity of the person responsible for scanning is recorded.

(4) The type of machine used for scanning is recorded.

(5) It is recorded that the original documents have been destroyed.

(6) Any affidavit required by the Evidence Ordinance or other ordinances is properly prepared and executed.

(7) The scanning effectively copies the documents including all handwritten annotations etc.

(8) Where the scanning is performed by a commercial provider that proper confidentiality undertakings are obtained.

(h) The documents shall be saved in CD or DVD discs and kept in a protective pocket. The CD or DVD discs shall be checked to be free from any contamination by computer virus. The discs shall be clearly labelled on the surfaces and the protective cases with the date of production, agreement number and title, and names of the managing department and consultants. The spines of the cases shall be marked with the agreement number.

(i) Documents shall be scanned and saved in Encapsulated PostScript Files (EPSF), Tag Image File Format (TIFF), Graphic Interchange File Format (GIF), Joint Photographic Experts Group (JPEG), or Acrobat format.

(j) As the documents to be scanned are as-built records, only write once read many CD and DVD recordable discs shall be used.

(k) Since CD and DVD discs have a definite life expectancy, the discs should be checked and backed up at intervals of not exceeding three years. The original set of media should always be used as the source for the back up unless they have become unreadable. High quality CD or DVD discs should be used to improve durability.

(l) In addition to the discs kept by the consultants, a duplicate set of all the discs shall be provided to the Employer.

6.3 Particular Requirements of the Director's Representative

In addition the consultants shall be subject to any particular requirements of the Director's Representatives with respect to the storage and retrieval of any particular documents in any works contract.

7. The Director's Representative shall have power to order amendment of or change to an approved storage proposal. The consultants are entitled to additional payment if such instruction is issued.

Finalization of Consultants' Fee and Reporting Procedures

8. The continued obligations of the consultants regarding document storage and retrieval should not prevent:

(a) the payment of the consultants' fee under the consultancy agreement, nor

(b) the issuing of the Final Report on the consultants' performance.

Application to Consultancy Agreements before the effect of ETWB TCW No. 30/2004 on 21 September 2004

9. Whilst the new Special Conditions of Employment Clause 12 does not apply to consultants engaged under consultancy agreements before the effect of the Circular, those consultants may nevertheless be invited to submit proposals for the implementation of storage and retrieval of documents. Such an invitation should be in writing and should state that the consultants are not entitled to claim or receive any fee or other payment either for preparing such proposal or implementing such proposal if accepted.

Annex A

Special Conditions of Employment Clause

Retention of Documents and Inspection

SCE ( ) Clause 12 of the General Conditions of Employment is deleted and replaced by the following:

(A) For a period of 12 years [1] commencing from the date of substantial completion of any works contract or ground investigation contract (and where there are multiple sections for completion of the works, then the date of the last of such sections substantially completed and for the purposes of this Clauses referred to as the "date of substantial completion"), supervision of which is part of the Services, the Consultants shall store records, files, measurement books, accounts and other information (for the purposes of this Clause called the "documents") however generated and whether generated by or received by the Consultants in respect of each works contract or ground investigation contract, in accordance with the approved storage and retrieval proposal as referred to in sub-clause (B) of this Clause.

(B) The Consultants shall before the date of substantial completion submit a storage and retrieval proposal to the Director's Representative for approval. The proposal may be approved by the Director's Representative with or without conditions. On approval the Consultants shall subject to this Clause deal with the documents in strict accordance with the approved storage and retrieval proposal.

(C) The Consultants shall give assistance to public officers authorized by the Employer to locate, retrieve, inspect or copy such documents and shall answer queries or supply information reasonably requested by such officers on the concerned documents.

(D) Upon the expiry of and notwithstanding the 12 years period, the Consultants shall first obtain the written consent of the Employer before destroying any of the documents. If so instructed by the Employer, the Consultants shall deliver any or all of such documents to the Employer's designated store.

[1] "12 years" is a minimum period. Departments may set a longer period to suit their own requirements. In such cases, the period of "12 years" in sub-clauses (D) and (F) should also be amended to tally.

(E) The Consultants shall notify the Employer immediately in case of any accidents or incidents leading to the loss or damage of any of the documents. The Consultants shall also inspect the documents at regular intervals of not exceeding three years to ensure that they are in good condition and shall report to the Employer promptly in case of any sign of deterioration.

(F) The Employer may before the expiry of the 12 years period request that any of the documents be transferred from the Consultants to the Employer's designated store.

(G) Notwithstanding sub-clause (A) to (F) of this Clause the Consultants may propose from time to time the destruction of certain documents or classes of documents and the Employer may consent to such destruction, such consent to be in writing.

(H) The Director's Representative shall have power to order the amendment of or change to the approved storage proposal. Should the Director's Representative order such amendment or change the Consultants are entitled to be reimbursed any increase in the cost of storage.

(I) For the avoidance of doubt, the Consultants' fee covers all of the obligations set out in this Clause, except instructions issued under sub-clause (H) of this Clause.

APPENDIX 4.15 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : RETENTION OF MONEY PAYABLE TO NON-RESIDENT CONSULTANTS FOR SETTLEMENT OF PROFITS TAX IN CONSULTANCY AGREEMENTS

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 34/2004 to set out tax withholding provisions for consultancy agreements. The relevant paragraphs from the original circular are basically subsumed hereunder.

Background

2. The need for inclusion of Special Conditions of Employment in consultancy agreements to enable the Government to withhold sufficient amount of money from fees payable to non-resident consultants for settlement of profits tax chargeable to them stems from a value-for-money audit conducted by the Audit Commission.

3. In paragraph 4.13 of its Report No. 39, October 2002, the Audit Commission considers that, in the absence of statutory power for deducting money from payments other than those made to non-resident entertainers or sportsmen, Government departments need to include special terms in the contracts entered into with non-residents to enable departments to withhold a sufficient amount of money for payment of the tax due by the non-residents.

Policy

4. It shall be included in consultancy agreements for engaging non-resident consultants (unincorporated or incorporated businesses), a provision for withholding money out of payments made to them, for the settlement of profits tax chargeable on the fee.

5. The procuring departments shall withhold a percentage of the fees payable to the consultants according to the SCE set out in Annex C for settlement of any profits tax that may be chargeable on the fees due to the non-resident consultants.

6. The procuring departments shall make timely reports to the Inland Revenue Department (IRD) on all payments made to non-resident consultants. The procedures set out in Annex A shall be followed.

7. IRD will issue notices of assessment to the non-resident consultants direct. As there are secrecy provisions in the Inland Revenue Ordinance, unless the procuring department is appointed as the authorized representative of the non-resident consultants, IRD cannot disclose information on the tax affairs of the non-resident consultants to the procuring department.

8. For the avoidance of ambiguity, the tax withholding requirement applies to non-resident main consultants only, but not non-resident sub-consultants who do not have direct contractual relationships with the Government.

Implementation

9. Consultants bidding for consultancy agreements shall be asked to declare in their bids whether they are Hong Kong residents or not. The standard clauses set out in Annex B shall be included in invitation letters for consultancy proposals.

10. The Special Conditions of Employment set out in Annex C shall be incorporated in consultancy agreements.

Procedures to be Followed in the Retention of Money Payable to Non-resident Consultants for Settlement of Profits Tax

(1) Retention provision to be included in consultancy agreements

Departments should include in the consultancy agreements a provision (i.e. SCE clause set out in Annex C) for withholding money out of payments made to non-resident consultants (unincorporated or incorporated businesses) in respect of services rendered in Hong Kong.

(2) Timing for withholding money

The procuring department should withhold money in accordance with the provision stipulated in the above paragraph upon each payment to the non-resident consultants.

(3) Calculation of the amount to be withheld for tax payment

The amount of tax withheld should be calculated on the **gross fee** payable (exclusive of any reimbursement of expenses, if any). Please refer to the website of the Inland Revenue Department (www.ird.gov.hk) for the details of latest profits tax rates.

(4) Notification to IRD

A written notification should be given to IRD under the employer's return reference of the procuring department **within one month** from the end of the consultancy agreement together with a transfer voucher or cheque for the money withheld. The following particulars in relation to the non-resident consultants should be given in the notification:

(a) Full name of the non-resident consultants;

(b) Correspondence address and contact telephone number in Hong Kong;

(c) Overseas correspondence address;

(d) Type of services rendered;

(e) Consultancy fee and consultancy period;

(f) Total payments (net of money withheld for tax payment purposes) made in the

fiscal year ended 31 March;

(g) Amount of money withheld for settlement of profits tax liability of the non-resident consultants.

To facilitate reporting of the above information to IRD, the standard memo form set out in the Attachment may be used. Similar format or summary statement containing the above particulars of the non-resident consultants is also acceptable.

In addition, in the case that the consultancy agreement spans over more than one year and there are progress payments made at different stages of completion of the consultancy agreement, departments should, within one month after the end of the fiscal year, give IRD notification together with a transfer voucher or cheque for the money withheld for that year. Notification of final payment upon completion of the consultancy agreement should be made as advised at the beginning of this section.

(5) Notification by IRD to the Non-residents

The money retained and sent to IRD by the departments will be applied in settlement of the profits tax liability of the non-resident consultants. Notice(s) of assessment and notification(s) of the settlement of tax liabilities will be sent by IRD to the non-residents direct.

(6) Further enquiry

Enquiries should be made to the Assessors of Group A, Inland Revenue Department, Unit 2 at 2594 2061 or 2594 2276.

M E M O

From		*To*	
Ref.	( ) *in*	*(Attn:*	*)*
Tel. No.		*Your Ref.*	*in*
Fax No.		*Dated*	*Fax No.*
Date		*Total Pages*	

Money Withheld for Payment of Profits Tax
Non-resident Consultants

Please be informed that the following non-resident consultants received payments from our department in respect of services provided in Hong Kong. Details are as follows:

(a) Full name of the non-resident consultants	
(b) Correspondence address and contact telephone number in Hong Kong	
(c) Overseas correspondence address	
(d) Type of services rendered	
(e) Consultancy fee and consultancy period	
(f) Total payments (net of money withheld for tax payment purposes) made in the fiscal year ended 31 March	

(g) Amount of money withheld for payment of profits tax liability of the non-resident consultants	

2. Transfer voucher/cheque * No. _____ in the amount of HK$ _____, being money withheld for settlement of profits tax liability of the non-resident consultants, is attached for your action.

3. For further enquiry, please contact the responsible officer _____ at telephone number _____ .

( )
for

Additional Clauses to be Included in Invitation Letters for Consultancy Proposals

Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (For the details of the current profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.

Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, should they be awarded the consultancy, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

"Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

Consultants shall declare their resident status or the sole proprietor's resident status in their consultancy proposals. If the Consultants are

unincorporated joint venture or partnership, the Consultants must declare the resident status of each and every participant or partner thereof. A sample declaration letter is at [Annex xxx].

Sample Declaration Letter

Agreement No. [XX]

[Agreement Title]

To: The Government of the HKSAR

[1] We declare that we are Hong Kong Resident / Non-resident [please delete where inappropriate] having regard to the definition of "Non-resident" in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

[2]We declare that our sole proprietor is a Hong Kong Resident / Non-resident [please delete where inappropriate] having regard to the definition of "Non-resident" in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

[3] We declare that the participants/partners of the Consultants' unincorporated joint venture/partnership are all Hong Kong Residents having regard to the definition of "Non-resident" in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

[4]We declare that the following participants/partners in the Consultants' unincorporated joint venture/partnership are Non-resident(s) having regard to the definition of "Non-

[1] For use where the Consultants are an incorporated company.
[2] For use where the Consultants are sole proprietorship.
[3] For use where the Consultants are an unincorporated joint venture or partnership and all the participants/partners are Hong Kong Residents.
[4] For use where the Consultants are an unincorporated joint venture or partnership and some but not all the participants/partners are Hong Kong Residents.

resident" in Clause [yy] of the Invitation Letter for consultancy proposal in respect of the Project, and the rest of the participants/partners are Hong Kong Residents:

1.

2.

3.

.

.

.

Name of Consultants: _____

Signature of Person authorised to sign the Proposal: _____

Name in block letters_____
Telephone number: _____

Date: _____

Standard Special Conditions of Employment

SCE ( ) - Tax Withholding

(1) Where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident (whether as declared in the consultancy proposals or as subsequently notified to or found out by the Government), the Government shall withhold a percentage equivalent to the prevailing Hong Kong profits tax rate applicable to unincorporated and incorporated business at the time the Services are rendered (For the details of the current profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.

(2) The Consultants acknowledge and consent that in the event that the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.

(3) The Consultants shall notify the Director's Representative immediately whenever there is any change during the currency of the Agreement in their resident status or the sole proprietor's resident status or, where the Consultants are unincorporated joint venture or partnership, in any one of the participants' or partners' resident status, from that declared in the consultancy proposals.

(4) "Non-resident" means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.

APPENDIX 4.16 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : ADAPTION TO NEW ARBITRATION ORDINANCE

(The revised SCE for Adaption to New Arbitration Ordinance, as promulgated in SDEV's memorandum ref. (02BYW-01-2) in DEVB(W) 505/17/01 dated 27.5.2011 and amended in SDEV's memorandum ref. DEVB(W) 510/10/01 dated 4.12.2014, have been subsumed hereunder. The revised SCE should be adopted for consultancy agreements for which Technical and Fee Proposals are invited on or after 1 January 2015.)

Revised SCE XA

General Conditions of Employment Clause 44 is deleted and replaced by the following:

" **44.** *(A) / (1) If any dispute or difference of any kind whatsoever shall arise between the Employer and the *Consultants / Consultant in connection with or arising out of this Agreement, either party shall be entitled to refer the dispute or difference to the Director and the partner or director of the *Consultants / Consultant, who shall meet within 21 days of such matter being referred to them.

*(B) / (2) If the dispute or difference cannot be resolved within 2 months of a meeting under sub-clause *(A) / (1) of this Clause or upon written agreement that the dispute or difference cannot be resolved, either the Employer or the *Consultants / Consultant may at any time thereafter request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof for the time being in force.

*(C) / (3) If the matter cannot be resolved by mediation, or if either the Employer or the Consultants do not wish the matter to be referred to mediation then either the Employer or the *Consultants / Consultant may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any such reference to arbitration shall be made within 90 days of either the refusal to mediate, or the failure of the mediation.

*(D) / (4) (i) Subject to paragraphs (ii) and (iii) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall

apply to any arbitration instituted in accordance with this Clause.

(ii) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(iii) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

" 20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

(a) are necessary for implementation or enforcement;

(b) are required by the parties' auditors or for some other legitimate business reason;

(c) are required by any order of the courts of Hong Kong or other judicial tribunal;

(d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds

to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration. "

*(E) / (5) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.

*(F) / (6) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force. "

* *Delete as appropriate.*

Appendix 4.17 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : PROFESSIONAL INDEMNITY INSURANCE

SCE ( ) Professional Indemnity Insurance

General Conditions of Employment Clause 47 is deleted and replaced by the following:

(1) Without limiting their obligations and responsibilities nor their liability to indemnify the Employer under Clause 22, the Consultants shall effect and maintain with well established insurers of repute, professional indemnity insurance for a minimum amount [ ] in respect of their obligations in relation to the Services or any part thereof, for any one occurrence or series of occurrences arising out of any one event, or each and every claim, from the date of commencement of this Agreement until [ ] years from the date of notification of completion in writing issued by the Director's Representative (hereinafter referred to in this Clause as the "requisite period"). The professional indemnity insurance shall be effected with an insurer or insurers acceptable to the Employer. The Consultants shall immediately inform the Employer in writing if such insurance ceases to be available at reasonable commercial rates or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.

(2) If the insurance policy is project specific, the maximum deductible/excess allowed under the policy shall not exceed 20% of the minimum amount required under sub-clause (1) of this Clause.

(3) (a) If (i) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:

(A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) of this Clause; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) of this Clause; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim

under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) of this Clause.

(b) If (i) the insurance policy contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:

(A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) this Clause; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) of this Clause; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) of this Clause.

(4) The Consultants shall provide to the Employer within 60 days from the date of commencement of this Agreement and thereafter, in the case where the insurance policy does not cover the entire requisite period, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:

(i) an undertaking that the current insurance policy complies with the terms in this Clause in Form [ ] in Appendix [ ] to these General Conditions of Employment; and

(ii) a certified copy of the full insurance policy for the approval of the Employer unless the Consultants can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Consultants shall provide a certificate in Form [ ] in Appendix [ ] to these General Conditions of Employment issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.

(5) If the Consultants shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and

pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of Special Conditions of Employment Clause [ ][1] and/or to recover such amount as a debt due from the Consultants.

(6) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

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[1] Insert the number of the following Special Condition of Employment relating to setting off money due to the Government from defaulting Consultants promulgated in SETW's memo of 2 June 2003, ref. (59) in ETWB(PS) 106/11 Pt 19:

"SCE [ ]

(1) All damages, losses, costs, expenses, debts or sums for which the Consultants are liable to the Employer under any provision of this Agreement may be deducted by the Employer from monies due to the Consultants under this Agreement and the Employer shall have the power to recover any balance not so deducted from monies due to the Consultants under any other Government consultancy agreement between the Employer and the Consultants.

(2) All damages, losses, costs, expenses, debts or sums for which the Consultants are liable to the Employer under any provision of any other Government consultancy agreement between the Consultants and the Employer may be deducted by the Employer from monies due to the Consultants under this Agreement."

Appendix 4.18 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE

Contracts (Rights of Third Parties) Ordinance

SCE( )

(1) Nothing in this Agreement confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap.623) to enforce any term of the Agreement.

(2) This Special Condition of Employment shall only be applicable if this Agreement is awarded on or after the commencement date of the Contracts (Rights of Third Parties) Ordinance (Cap. 623).

Notes Sub-clause (2) will not be required for Technical and Fee Proposals invited on or after the commencement date (i.e. 1.1.2016) of Cap. 623, or for Technical and Fee Proposals invited before such commencement date but with a submission deadline on or after such commencement date.

APPENDIX 4.19 STANDARD SPECIAL CONDITIONS OF EMPLOYMENT : REQUIREMENTS OF ISO 9000 CERTIFICATION

1. In accordance with WBTC No. 13/2001, consultants and contractors are required to obtain certification of their quality management systems in accordance with ISO 9001:2000 standard (subsequently updated as ISO 9001:2008 standard in DEVB's memo [ref. (025B1) in DEVB(W)520/83/01] dated 26 January 2010). Following the publication of ISO 9001:2015 standard on 15 September 2015, any existing certificates issued to ISO 9001:2008 shall no longer be valid three years after publication of the new standard, i.e. by 15 September 2018.

2. In view of the above, the Government will only accept ISO 9001: 2015 certificates on or after 15 September 2018.

Background

3. New contract provisions, which supersede the revised Appendix B as promulgated in DEVB's memo of 26 January 2010, are provided for immediate implementation.

Policy

4. The **SCE** at Annex A shall be incorporated into all consultancy agreements.

Annex A

Special Conditions of Employment Clause
Requirement of ISO 9000 Certification

SCE 1 [Non-certified consultants]

(1) Within three months of the award of this Agreement, the Consultant shall book with a certification body acceptable to the Employer, the date of audit for the ISO ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking. If the Consultant is a joint venture, the certification audit referred to in this sub-clause shall mean that of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the expression of interest/consultancy proposal*.

(2) Notwithstanding any other provision of this Agreement, compliance with sub-clause (1) of this Clause shall be a condition precedent to the Consultant's entitlement to any payment or any further payment as the case may be under this Agreement.

(3) Sub-clauses (1) and (2) of this Clause are not applicable if the Consultant or, where the Consultant is a joint venture, its specified participant or shareholder has already obtained ISO 9001:2015 certification on or before the date of the award of this Agreement.

SCE 2 [Scope of Certification]

(1) Within three months of the award of this Agreement, the Consultant shall apply to the relevant certification body for revision of its current scope of ISO 9001:2015 certification to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. If the Consultant is a joint venture, the ISO 9001: 2015 certification referred to in this sub-clause shall mean the certification of the participant or shareholder whose quality system shall be implemented by the joint venture as specified in the declaration submitted with the expression of interest/consultancy proposal*.

(2) Notwithstanding any other provision of this Agreement, compliance with sub-clause (1) of this Clause shall be a condition precedent to the Consultant's entitlement to any

payment or any further payment as the case may be under this Agreement.

(3) Sub-clauses (1) and (2) of this Clause are not applicable if:

(a) site activities service is not required to be provided by the Consultant under this Agreement; or

(b) the scope of ISO 9001:2015 certification of the Consultant or, where the Consultant is a joint venture, its specified participant or shareholder has already been revised by the relevant certification body to cover site activities service on or before the date of the award of this Agreement.

* Delete whichever inappropriate

APPENDIX 4.20 ELECTRONIC DISSEMINATION OF INVITATION DOCUMENTS FOR CONSULTANCIES

1. This Appendix describes procedures promulgated originally in WBTC No. 17/2001 for electronic dissemination of documents issued for inviting Expressions of Interest (EOI), and Technical and Fee Proposals for consultancies under the purview of the Engineering and Associated Consultants Selection Board (EACSB). The relevant paragraphs from the original circular are basically subsumed hereunder.

Definitions

2. In this Appendix, unless the context otherwise requires-

(a) "Addendum" means a set of Invitation Documents that amends a previous set of Invitation Documents;

(b) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance satisfying the requirements stipulated in section 6 of that Ordinance. "Digitally Sign" should be interpreted accordingly;

(c) "Electronic Invitation Package" (or "EIP") means a collection of electronic files containing-

(i) the Invitation Documents issued for an Invitation; or

(ii) the Invitation Documents issued for an Addendum;

(d) "Invitation" means an invitation for-

(i) EOIs issued in accordance with the EACSB Handbook;

(ii) Technical and Fee Proposals issued in accordance with the EACSB Handbook;

(e) "Invited Consultant" means a consultant included in the longlist for EOI or the shortlist for Technical and Fee Proposals;

(f) "Invitation Document" means-

(i) a document issued in accordance with the EACSB Handbook to the Invited Consultants for preparing EOIs;

(ii) a document issued in accordance with the EACSB Handbook to the Invited Consultants for preparing Technical and Fee Proposals;

(iii) a revised version of the document in (i) or (ii);

(iv) a covering letter issuing an Invitation;

(v) a covering letter issuing an Addendum; or

(vi) a document containing the supporting information for using the electronic versions of the documents in (i) to (v), in particular the settings for viewing, editing, and printing;

(g) "Managing Department" means the department responsible for managing a consultancy under the purview of the EACSB.

Background

3. E-procurement is one of Government's major initiatives for bolstering the competitiveness of our economy. Having made significant progress in the electronic tendering of public works contracts, Development Bureau (formerly Works Bureau) decides to embark on the e-procurement of consultancies under the purview of the EACSB.

4. The scheme will bring several benefits to the Government and the consulting industry. Firstly, it will streamline the exchange of documents in the consultant selection process. Secondly, submissions in electronic format will save the cost of preparing bulky documents in hard copies. Thirdly, consultants may use new IT techniques in presenting their ideas thus helping the industry to become more innovative.

5. To bring e-procurement of consultancy services to fruition, Works Bureau formed a Working Group on E-procurement of Consultancy Services. The working group recommended implementing e-procurement in three phases. The first phase is the electronic dissemination of Invitation Documents. The second phase is the electronic submission of EOI's, and Technical and Fee Proposals on removable media. The final phase is the making of these submissions through the Internet.

6. This Appendix describes the procedures for electronic dissemination of Invitation Documents. The procedures for electronic submission will be described in Appendix 4.21.

Policy

7. The Managing Department for a consultancy should issue the Invitation Documents to the Invited Consultants in electronic format on EIP's prepared and dispatched in accordance with the manner and format in Annex 1.

8. An EIP should be issued for-

(a) an Invitations for EOI's, or Technical and Fee Proposals; or

(b) an Addendum amending the Invitation Documents previously issued.

9. The hard copies of the covering letters issuing Invitations and Addenda (EXCLUDING any enclosures) should also be sent to the Invited Consultants through normal mail. The existing practice of signing hard copies of these letters should continue.

10. A consultant who encounters problems in using an EIP may request the Managing Department to provide print-outs of the EIP contents. The Managing Departments should prepare the requested print-outs using the Image Files defined in paragraph 7(b) of Annex 1 for collection by the consultant.

Electronic Invitation Package

Purpose

1. This annex defines the manner and format for preparing and dispatching EIP's.

Contents

2. The EIP for an Invitation should include the electronic documents containing-

   (a) the covering letter for the Invitation;

   (b) the documents issued in accordance with the EACSB Handbook for the Invitation;

   (c) the supporting information for using the documents in the EIP, in particular the settings for viewing, editing, and printing.

3. The EIP for an Addendum should include the electronic documents containing-

   (a) the covering letter for the Addendum;

   (b) the revised Invitation Documents issued with the Addendum; and

   (c) the supporting information for using the documents in the EIP, in particular the settings for viewing, editing, and printing.

4. EIP's should not contain contents subject to the copyrights of non-government organizations.

Reference

5. Each EIP should be identified by a unique reference number consisting of the following fields-

   (a) Standard prefix - which consists of the letters "EIP";

   (b) Agreement number - which is the agreement number assigned by the selection boards for the consultancy;

(c) Stage of consultant selection - which is one of the following abbreviations-

(i) "EOI" for Expression of Interest; and

(ii) "T&F" for Technical and Fee Proposals;

(d) Serial number - which is to be assigned as follows-

(i) EIP for an Invitation - 0; and

(ii) EIP for an addendum - sequence number of the addendum

6. The following examples illustrate the conventions in paragraph 5 above-

Description	EIP Reference
EIP issued with the invitation for Expression of Interest for Agreement No. CE 30/2001	EIP-CE 30/2001-EOI-0
EIP issued with 2nd Addendum amending the documents issued for inviting Expression of Interest for Agreement No. CE 30/2001	EIP-CE 30/2001-EOI-2
EIP issued with the invitation for Technical and Fee Proposals for Agreement No. CE 30/2001	EIP-CE 30/2001-T&F-0
EIP issued with 1st Addendum amending the documents issued for inviting Technical and Fee Proposals for Agreement No. CE 30/2001	EIP-CE 30/2001-T&F-1

File Types

7. The contents of each document in an EIP should be hosted in two files-

(a) Editable File – which is in file formats that are editable by mainstream computer applications for office automation and computer-aided drafting; and

(b) Image File – which is in file formats that capture the printed image of the document.

8. Editable Files facilitate data re-use in preparing consultancy submissions. Image Files are not editable. However, they are less susceptible than Editable Files to loss of fidelity in data exchange and will therefore be useful

references if there are doubts on the proper settings for viewing, editing, and printing Editable Files.

File Formats

9. The data formats for the various types of documents/files in EIP's should be as follows:-

Type of File	Editable File	Image File
Text documents	Word Excel (for tabular information)	Portable Document Format (PDF)
Scanned text documents	Not applicable	PDF
Drawings	*(Procurement Department to define and insert)*	PDF
Building Information Modeling (BIM)	*(Procurement Department to define and insert)*	PDF
Scanned drawings	Not applicable	PDF

The data formats and associated versions of documents/files to be adopted in EIP's should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website: -

https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html

Dispatch of EIP's

10. EIP's should be dispatched to the Invited Consultants as follows-

Stage	Total file size of EIP	Mode of dispatch
Expression of Interest	Not exceeding 4MB	Internet e-mail to e-mail addresses of consultants
	Exceeding 4MB	CD-ROM's/DVD-ROM's enclosed with covering letters issuing Invitations or Addenda
Technical and Fee Proposals	All sizes	CD-ROM's/DVD-ROM's enclosed with covering letters issuing Invitations or Addenda. (See paragraphs 13 and 14 below on the use of Internet e-mail.)

11. SPR 420(a) provides that all communications regarding the selection of consultants, from the time a shortlist is proposed until an agreement is executed, must be classified as RESTRICTED (CONTRACT). This classification should therefore apply to EIP's issued for Technical and Fee

Proposals. The RESTRICTED classification does not, however, apply to EIP's issued for EOI's because the shortlist will not be proposed until the completion of the EOI exercise.

12. As EIP's issued for Technical and Fee Proposals are RESTRICTED, the EIP files should be named in accordance with Security Regulations (SR) 373. Furthermore, CD-ROM's/DVD-ROM's hosting these EIP's should be transmitted in enclosures that complies with the requirements of SR 213(d).

13. If they so wish, Managing Departments may also dispatch an EIP for Technical and Fee Proposals through Internet e-mail under the following conditions-

(a) The total size of the package does not exceed 4MB;

(b) The EIP is dispatched in accordance with SR 368 using an e-mail system approved by OGCIO in accordance with SR 369;

(c) ALL shortlisted consultants elected to use Internet e-mail; AND

(d) ALL shortlisted consultants can supply digital certificates that may be used with the Managing Departments' e-mail systems for sending RESTRICTED documents.

14. Managing Departments that intend to use Internet e-mail should seek OGCIO's advice on the matters mentioned in paragraphs 13(b) and 13(d).

Digital signature

15. For the purpose of authentication, all files in an EIP should be Digitally Signed by the officer who signs the hard copies of the covering letters issuing Invitations or Addenda. The list of recognized certificates is available at OGCIO's website:

www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs

Licence conditions

16. The use of EIP's should be subject to the licence conditions in Annex 2. Managing Departments should issue the licence conditions together with EIP's as follows-

(a) EIP's issued through e-mail

(i) The soft copy of the licence conditions should be attached to the e-mail message;

(ii) The following words should be included in the message text-

"The electronic documents for preparing your submission are attached to this message and are listed in Schedule 2 to the attached file [insert file name of the document containing the licence conditions] containing the licence conditions for using these documents. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2."

(b) EIP's issued on CD-ROM/DVD-ROM

(i) The hard copy of the licence conditions should be attached to the covering letter issuing Invitations or Addenda;

(ii) The soft copy of the licence conditions should be included in the CD-ROM/DVD-ROM;

(iii) The following words should be added to the covering letter-

"The electronic documents for preparing your submission are included in the attached CD-ROM/DVD-ROM and are listed in Schedule 2 to the attached licence conditions for using these documents. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2."

Licence Conditions
for Electronic Invitation Packages

EIP Reference[1]	
Issue Date[2]	
Addendum No.[3]	

1. This set of conditions may be cited as "Licence Conditions for Electronic Invitation Packages".

2. In these conditions, unless the context otherwise requires-

   (a) "EACSB Handbook" means the Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants published by the Engineering and Associated Consultant Selection Board;

   (b) "Editable File" means a file listed under the column "Editable File" in Schedule 1)a)i)(2) hereto containing the editable version of the Invitation Document listed on the same row under the column "Invitation Document". "Editable" in the previous sentence means editable using mainstream computer applications for office automation and computer-aided drafting;

   (c) "Electronic Invitation Package" (or "EIP") means the electronic files in Schedule 1)a)i)(2) hereto;

   (d) "Employer" means the Government of the Hong Kong Special Administrative Region;

   (e) "Image File" means a file listed under the column "Image File" in Schedule 1)a)i)(2) hereto containing the printed image of the Invitation Document listed on the same row under the column "Invitation Document";

   (f) "Invitation" means the invitation in Schedule 1)a)i)(1) hereto;

[1] To be assigned by the Managing Department in accordance with paragraph 5 of Annex 1.
[2] Insert date of covering letter.
[3] This row should be deleted if inappropriate.

(g) "Invitation Document" means a document listed under the column "Invitation Document" in Schedule 1)a)i)(2) hereto;

(h) "Licensee" means the person who uses the EIP and includes, if the person acts on behalf of another person, that other person;

(i) "Relevant File" means an electronic file that-

(i) is derived from duplication of any files in the EIP; or

(ii) contains any contents extracted from any files in the EIP;

(j) "Submission" means a submission that may be made by the Licensee in response to the Invitation;

(k) "Submission Closing Date" means the closing date for the Submission stipulated in Schedule 1)a)i)(1) hereto;

(l) "Triggering Event" means one of the following events-

(i) The Licensee does not make a Submission by the Submission Closing Date;

(ii) The Licensee withdraws his Submission;

(iii) The Licensee receives a written notice from the Employer advising that-

(1) he is not included in the list of consultants to be invited to submit Technical and Fee Proposals in accordance with the EACSB Handbook; or

(2) he is not selected as consultant for the consultancy agreement in Schedule 1)a)i)(1) hereto.

3. Words importing the singular only also include the plural and vice versa where the context requires. Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.

4. Subject to the provisions hereof, the Employer grants the Licensee, free of charge, a non-exclusive and revocable licence for using the EIP solely for the purpose of preparing the Submission. The Licensee shall not use the EIP for

any other purpose. Save as aforesaid, all other rights in the EIP are reserved by the Employer.

5. Insofar as it is necessary for the purpose of preparing the Submission by the Licensee, the Licensee may license its agents, consultants or other persons appointed by him as sub-licensees to use the EIP, subject to the following conditions-

(a) The Licensee shall obtain from each sub-licensee an undertaking in writing that the sub-licensee shall not use the EIP for any purpose other than for the purpose of preparing the Submission;

(b) The Licensee shall be liable to the Employer for the breach of the undertaking referred to in sub-clause (a) of this Clause by the sub-licensees as if the breach were committed by the Licensee; and

(c) The Licensee shall not grant any sub-licensee the right to license other parties to use the EIP.

6. The licence for using the EIP shall expire within seven working days of the occurrence of a Triggering Event. On or before the expiration date of the licence, the Licensee shall-

(a) either destroy the Relevant Files in his possession or retain them as archives; and

(b) ensure that all sub-licensees have either destroyed the Relevant Files in their possession or retained these files for archive purpose.

7. Any files kept as archives pursuant to Clause 6 shall not be used for any other purposes.

8. The contents of the Editable File and Image File of an Invitation Document are intended to be identical. If there are discrepancies, the Image File shall prevail.

9. The Licensee hereby indemnifies the Employer against all losses, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Employer whether direct or consequential arising from a breach or breaches of any of the conditions herein contained.

Schedule (1) - Invitation[4]

Agreement No.	
Agreement Title	
Department	
Type of submission [5]	
Submission Closing Date	

[4] To be completed by department
[5] Expression of Interest or Technical and Fee Proposal

Schedule (2) – Electronic Invitation Package[6]

Invitation Document	Version No.[7]	Image File[8]	Editable File[8]

[6] To be completed by the Managing Department.
[7] Number for identifying the version of an Invitation Document
[8] Insert file name.

APPENDIX 4.21 ELECTRONIC SUBMISSION OF CONSULTANCY PROPOSALS ON REMOVABLE MEDIA

1. This Appendix describes procedures promulgated originally in WBTC No. 31/2001 for electronic submission of Expressions of Interest, and Technical and Fee Proposals for consultancies under the purview of the Engineering and Associated Consultants Selection Board (EACSB). The relevant paragraphs from the original circular are basically subsumed hereunder.

Definitions

2. In this Appendix, unless the context otherwise requires-

(a) "Consultant" means a consultant included in the longlist for EOI or the shortlist for T&F.

(b) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.

(c) "EOI" means the Expression of Interest.

(d) "Electronic Invitation Package" (or "EIP") means a collection of electronic files containing

(i) the Invitation Documents issued for an Invitation; or

(ii) the Invitation Addendum.

(e) "Electronic Proposal Package" (or "EPP") means a collection of electronic files containing the EOI or T&F submitted for an Invitation.

(f) "Invitation" means an invitation for EOI's or T&F issued in accordance with the EACSB Handbook.

(g) “Invitation Addendum” means a set of documents and its attachments issued before the submission closing date and time to amend the invitation documents.

(h) "Invitation Documents" means the documents issued for inviting submission of EOI or T&F, including

(i) the invitation to submit EOI or T&F and other documents issued together with it; and

(ii) Invitation Addenda.

(i) "Managing Department" means the department responsible for managing a consultancy under the purview of the EACSB.

(j) "Organisational e-Cert" means a digital certificate issued under the name of an organisation by a recognised certification authority as defined under section 2 of the Electronic Transactions Ordinance (Cap. 553).

(k) "T&F" means the technical proposal and fee proposal.

Background

3. As outlined in WBTC no. 17/2001, the e-procurement of consultancy services is implemented in two phases as agreed by the Working Group on E-Procurement of Consultancy Services.

4. The first phase which is the electronic dissemination of invitation document was implemented on 17 September 2001 through the promulgation of the WBTC no. 17/2001.

5. The second phase which is the electronic submission of EOI's and T&F's on removable media is covered in WBTC No. 31/2001 and subsumed in this Appendix.

Policy

Invitation for EOI or T&F

6. All proposals, whether in the form of EPP or hard copy format, shall be checked and assessed on an equal basis. The Managing Department shall include the following paragraph in the invitation letter for EOI or T&F:-

> "You may make your submission in either electronic format or hard copy format. If part of the submission is made in both electronic and hard copy formats, the electronic format shall prevail over the corresponding hard copy format. If you elect to make your submission in electronic format, the

documents for your proposal shall be prepared and submitted in accordance with Annex [&][1]- Requirements for Submission of Proposal in Electronic Format. All proposals, whether submitted in electronic format or in hard copy format, will be evaluated on an equal basis."

7. The "Requirements for Submission of Proposal in Electronic Format" in Annex 1 shall be attached to the invitation letter.

Preparation and Submission of EOI or T&F

8. Consultants who elect to submit their proposal in electronic format shall prepare the EPP in accordance with the "Requirements for Submission of Proposal in Electronic Format" in Annex 1.

9. All electronic files contained in the EPP shall be Digitally Signed by the Consultant. Organisational e-Cert used for the purpose of applying Digital Signatures shall be issued under the name of the Consultant and shall be valid as at the submission closing date and time for the EOI or T&F.

10. Consultants shall package the EPP and submit the proposal in accordance with the instructions contained in the invitation letter.

Handling of EPP

11. The EACSB will release the EPP on fee proposal to the Managing Department for evaluation upon completion of the technical assessment.

Assessment of EOI and T&F

12. For documents for fee proposal, two sets of printouts shall be submitted together with the EPP. For documents for technical proposal or expression of interest, printouts may optionally be submitted together with the EPP. All printouts shall be clearly stamped “PRINTOUT” and duly signed by the Consultant. The signed printouts shall not be used for assessment unless there are problems in using the files in the EPP.

13. Managing Departments should preserve the contents of the EPP. No alteration to the electronic files of the submissions is allowed. To avoid any inadvertent changes or damage made to the EPP, the following measures shall be adopted in handling the EPP –

(a) CD-ROM/DVD-ROM drive which is NOT capable of writing or re-writing data on CD/DVD media shall always be used to read the EPP.

(b) A Duplicate CD-ROM/DVD-ROM copies of the EPP shall be made and used for the purpose of proposal evaluation. The original EPP shall not be used as far as possible.

14. Managing Departments should check the validity of electronic files submitted in the EPP as follows-

(a) All files have been Digitally Signed by the Consultant.

(b) The Digital Signatures are generated by an Organisational e-Cert of the Consultant.

(c) The Organisational e-Cert corresponding to the Digital Signatures is valid as at the submission closing date and time for the EOI or T&F.

The list of recognized certificates is available at OGCIO's website:
www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs

15. If an electronic file in the EPP cannot be opened properly for viewing and printing by following the Consultant's instructions given in the EPP, that file shall be deemed as missing from the EPP unless a signed printout of that file has been included in the submission . The Consultant shall be notified in writing that –

(a) an electronic file is deemed as missing from the EPP if the file cannot be opened properly by following the Consultant's instructions given in his EPP; or

(b) a signed printout of an electronic file submitted by the Consultant will be used for evaluation notwithstanding that the electronic file cannot be opened properly by following the Consultant's instructions given in the EPP.

Preparation of Consultancy Agreement

16. The consultancy agreement shall be prepared using the printouts of the required documents contained in the EIP and/or EPP, and the signed printouts of the submission only

if the corresponding electronic files cannot be opened properly, in accordance with the EACSB handbook.

17. . The retention and destruction of EPP's shall be handled in the same manner as proposals submitted in hard copy.

Annex [&][2]

Requirements for Submission of Proposal in Electronic Format

The following requirements apply if the proposal is made in electronic format.

1. In this Annex, unless the context otherwise requires-

   (a) "Digital Signature" means a digital signature as defined in section 2 of the Electronic Transactions Ordinance (Cap. 553) satisfying the requirements stipulated in section 6 of that Ordinance. "Digitally Signed" should be interpreted accordingly.

   (b) "Editable File" means an electronic file which is stored in file formats that are editable using mainstream computer applications for office automation and computer-aided drafting.

   (c) "Image File" means an electronic file which is stored in file formats that capture the printed image of the document.

   (d) "Electronic Proposal Package" (or "EPP") means the collection of the electronic files containing the proposal submitted for this invitation.

   (e) "Organisational e-Cert" means a digital certificate issued under the name of an organisation by a recognised certification authority as defined under section 2 of the Electronic Transactions Ordinance (Cap. 553).

2. EPP shall be submitted on CD-ROM media complying with ISO 9660:1988 or DVD-ROM media to ISO 13346:1995 standards. All CD-ROMs/DVD-ROMs should be clearly labelled or marked to indicate the agreement number, the name of the consultant, and the disk number if more than one CD-ROM/DVD-ROM is submitted. Each CD-ROM/DVD-ROM shall have a "README.doc" file in the root directory prepared in Word Format and Digitally Signed. This file shall contain at least the following information:

   (a) general guidance on the use of the electronic files in the EPP (e.g. the file naming convention, directory structure of the CD-ROM/DVD-ROM, software name and version for viewing the file);

(b) a list of all documents submitted in the EPP with the following information-

(i) brief description of the contents of the document; and

(ii) disk number (if the submission contains more than one CD-ROM/DVD-ROM) and filename with full path information for the Editable File and/or the Image File;

(c) information on the proper setting for viewing, editing, and printing the electronic files, including, without limitations-

(i) the printer to be used for printing the files;

(ii) the paper sizes;

(iii) requirements for special fonts; and

(iv) any special printing instructions;

(d) detailed instructions for viewing other type of electronic information or visualisation not covered in paragraph 8 of this Annex.

3. EPP shall be submitted in duplicate. The original and duplicate set of EPP shall be clearly stamped "ORIGINAL" and "DUPLICATE" respectively on the CD-ROM/DVD-ROM labels.

4. The write once type CD/DVD media shall be used for the preparation of EPP. For the avoidance of doubt, re-writable CD/DVD media shall not be used. The CD-ROM/DVD-ROM shall be logically closed such that no subsequent change can be made to the EPP.

5. CD-ROM/DVD-ROM shall be properly packed and protected to avoid physical damage during the submission process.

6. If the invitation requires the submission of fee proposal and technical proposal, EPP shall be split into two parts, which shall be stored and submitted in separate

CD-ROMs/DVD-ROMs. One set of CD-ROMs/DVD-ROMs, clearly marked "Fee Proposal", shall contain documents as specified in the Guidance for the Preparation of Fee Proposal and shall be submitted in the "Fee Proposal" envelope. The other set of CD-ROMs/DVD-ROMs, clearly marked "Technical Proposal", shall contain the documents as specified in the Guidance for the Preparation of Technical Proposal and shall be submitted in the "Technical Proposal" envelope.

7. All electronic files in the EPP shall be Digitally Signed. Organisational e-Cert issued under the name of the Consultant shall be used for the purpose of applying digital signatures. The Organisational e-Cert corresponding to the Digital Signatures must be valid as at the submission closing date and time for the expression of interest or the technical proposal and fee proposal.

8. (a) The following data formats shall be used for preparing documents in electronic form:-

Type of Document	Editable File	Image File
Text documents	Word	Portable Document Format (PDF)
Schedules (except the manning schedule) or documents in tabular form	Excel; Word	PDF
Drawings	*(Procurement Department to define and insert)*	PDF
Building Information Modeling (BIM)	*(Procurement Department to define and insert)*	PDF
Other types of documents, including scanned documents or scanned drawings	Not Applicable	PDF
Manning schedule	ISO/IEC 29500:2008 format (.xlsx)	PDF

The data formats and associated versions of documents/files to be adopted in the EPP should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website: -.

https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html

(b) If more than one file format are specified, files need to be provided in one of the specified formats only.

(c) Files prepared in the above format shall not be compressed using file compression programmes and shall not contain any computer instructions, including but not limited to,

(i) computer viruses; and

(ii) macros, scripts and fields that depend on the execution environment and the execution of which will cause changes to the electronic file itself or the information system displaying the electronic record.

9. Electronic files may be submitted in Editable File format or in Image File format or in both type of formats, except that the manning schedule shall be submitted in Editable File format. If both type of formats are submitted, the contents of Editable File and Image File of a document should be identical. If there are discrepancies, the Image File shall prevail.

10. As the conversion of drawing files to PDF format may slightly distort the scale of the drawing elements, line scales in both horizontal and vertical directions should be included in drawings files to enable correction factors to be made to compensate for distortion.

11. For documents for fee proposal, two sets of printouts shall be submitted together with the EPP. For the manning schedule in the technical proposal, printout shall be submitted for each Assessment Panel member together with the EPP. For documents for technical proposal (except the manning schedule) or expression of interest, printouts may optionally be submitted together with the EPP. All printouts shall be clearly stamped “PRINTOUT” and duly signed by the Consultant. The signed printouts shall not be used for assessment unless there are problems in using the files in the EPP.

12. If other type of electronic information, for example, visualisation or modelling, not covered in paragraph 8 above is submitted with the proposal, software necessary for viewing the information shall be supplied with the submission. The software provided must be free of virus and can be run in mainstream PC

under Windows operating environment. Necessary licence to use the software must be provided free of charge to the Government for viewing the information. Detailed instructions on setup, usage and removal of the software provided must be included in the submission.

13. Electronic file including the README.doc of the EPP submission shall be deemed as missing from the EPP if that electronic file cannot be opened properly or does not comply with paragraph 7 and/or paragraph 8(b), unless the hard copy of that file has been submitted in the submission.

APPENDIX 5.1 SAMPLE HOURLY RATE CHARGE CALCULATION SHEET

Agreement No. & Title

Consultant

C.V. No. Name

ROLE

(1) STATUS (a) Single
(b) Married + children (incl. ages)

Salary

Annual Salary .....

Bonus .....

Employer's Pension Contribution..... _____

Gross Annual Earnings (Annual Salary Cost ASC)

(1) Hourly Rate at (M x ASC/1,680) HK$ (A)

Expenses

(2) Education Allowance..... HK$

Medical Insurance..... HK$

Workers Compensation Insurance ..... HK$

Accommodation..... HK$

Passages ..... HK$

Gross Annual Expenses ..... HK$

Hourly Rate (GAE divided by 1,680) HK$ (B)

Total Hourly Charge (A + B) HK$

Notes : (1) (a) & (b) delete whichever does not apply

(2) incl. school passages for overseas where applicable

APPENDIX 5.2 CONSULTANTS REMUNERATION – FEES BASED ON A PERCENTAGE BASIS (Applicable only to certain old ongoing agreements)

1. BACKGROUND

1.1 This Appendix describes the fee adjustment measures promulgated originally in Lands and Works Branch Technical Circular Nos. 9/84 and 2/85 (both subsumed and suitably adapted hereunder), but no longer applicable to new assignments since July 1989.

1.2 Fees for the investigation, design and construction stage services in respect of engineering projects under certain old but still ongoing consultancy agreements are calculated as a percentage of the cost of the works according to a fixed scale of percentage charges. The validity of such a scale relies on the assumption that there is a constant relationship between the cost of the works and the cost of the consultant in providing the service. However, the general trend is for the cost of works to rise substantially when the construction industry is booming and to fall dramatically during recession. Set against this, consultants' operating costs tend to rise steadily irrespective of these factors.

1.3 This Appendix sets out the measures to counter the effect that large and rapid variations in the level of tender prices have on consultants' fees which are calculated as a percentage of the cost of the works, viz. :-

(a) a Consultants Remuneration Index (CRI) designed to take account of the overall trend in the level of tender prices and Consulting Engineer's operating costs; and

(b) provision to make further adjustments in the cost of the works where Uncharacteristic Tenders are accepted which are lower or higher than the level expected from the prevailing conditions which the Consultants Remuneration Index is designed to counter.

1.4 The adjustment of Percentage Scale Fee using CRI has subsequently been replaced by another system of inflation index, as promulgated in L&WB TC No. 9/89 effected on 1 July 1989, by the application of an index known as Civil Engineering Works Index (CEWI) (see **Appendix 5.3**).

2. CONSULTANTS REMUNERATION INDEX

2.1 Introduction

2.1.1 The Consultants Remuneration Index (CRI) has been developed as a means of adjusting the cost of works on which consulting engineers fees are calculated. Being a function of the Gross Domestic Product Deflator (GDP Deflator) which reflects the fluctuations in consulting engineer's operating cost from quarter to quarter and the Tender Price Index (TPI) for public building projects which reflects the fluctuations in tender prices from quarter to quarter, it links consulting engineers' fees to the prevailing conditions. A base of 100 points has been selected representing an equitable remuneration to

consulting engineers when the remuneration is based on the scales of fees currently in use. The Secretary, EACSB issues from time to time the CRI to departments who still have such old ongoing consultancy agreements. For information, the index from the 3rd quarter of 1982 to 4th quarter of 1983 are as follows :-

	Period	CRI
1982	3rd quarter	102
	4th quarter	105
1983	1st quarter	118
	2nd quarter	118
	3rd quarter	115
	4th quarter	113

2.1.2 A resume of the basic principles and compilation of the CRI is included at **Annex A** for information.

2.2 Application

2.2.1 For those old ongoing engineering Investigation, Design & Construction (IDC) agreements for which the CRI adjustment method [No longer applicable since July 1989] has been adopted, the adjustment is in particular applicable to:

(a) all new arrangements then in conjunction with anti-inflation measures which provide for design stage fees to be based on the Net Cost of the Works.

(b) all existing agreements then where the consulting engineers have so requested.

2.2.2 (omitted)

2.2.3 (omitted)

2.2.4 (omitted)

2.3 Operation

2.3.1 Where applicable, the CRI is intended to adjust the cost of works of individual contracts for the purpose of fee calculation and shall operate as follows :-

(a) (omitted)

(b) on all cost of works as a percentage addition or deduction after all other additions or deductions on the cost of works provided under the agreement have been applied.

(c) the CRI shall correspond to the quarter during which tenders for the contract have been received.

(d) no adjustment will be made if the CRI lies between 95 and 105 points. The cost of works shall be adjusted upwards by 1% for every point that the index rises

above 105 points and shall be adjusted downwards by 1% for every point that the index drops below 95 points.

2.3.2 (standard clause omitted)

3. UNCHARACTERISTIC TENDERS

3.1 It has been recognized that if an uncharacteristically low tender is to be accepted, consultant's fees might be reduced to a level at which they could no longer provide an adequate service during the Construction Stage.

3.2 In certain agreements where such an uncharacteristically low tender has been accepted, an upward adjustment to the cost of works for the purpose of fee calculation might have been negotiated.

3.3 On rare occasions, Government might have accepted a tender which is uncharacteristically high (e.g. when time pressures precluded re-tendering). In such an instance, consultants might be over-remunerated for the effort they put into the works and a downward adjustment to the cost of works for the purpose of fee calculation might have been negotiated.

3.4 (standard clause omitted)

3.5 Procedures for dealing with uncharacteristically low tenders

3.5.1 Application

3.5.1(a) For the purpose of fee calculation, upward adjustments to the cost of works of uncharacteristically low tenders might be applicable to contracts as approved by the EACSB and signed on or after 1st July 1982 [No longer applicable since July 1989].

3.5.2 Operation

3.5.2(a) When a consultant considers that the accepted tender is uncharacteristically low, he may submit his justification to the Director's Representative for an initial upward adjustment in the cost of the works for the purpose of calculating interim fee. The justification shall be fully argued in the consultant's submission. For guidance, the following criteria (which are not exhaustive) may be used singularly or collectively :-

(i) by the statistical analysis at **Annex B**,

(ii) by visual inspection of a graph of all tenders received for the contract as at **Annex C**,

(iii) from a comparison with the Engineer's estimate.

3.5.2(b) The upward adjustment of the tender price will establish a "floor value" for the contract and should be determined through methods described in paragraph 3.5.2(a) above and be submitted to the EACSB for approval. If an upward adjustment is approved by the

EACSB the difference between the accepted tender and the approved "floor value" should be expressed as a percentage increase and interim fees for the design stage should be based on the estimated final contract sum enhanced by the percentage. Similarly, interim fees for the construction stage should be based on the cost of the completed works to date enhanced by the same percentage. However, as the contract proceeds the validity of the original assessment of the "floor value" should be checked in the light of variations or any other changes and if considered necessary a revised "floor value" and percentage adjustment should be submitted to the EACSB for approval.

3.5.2(c) On completion of the contract when all claims have been assessed and the final contract sum is known, the Director's Representative should review whether the final cost is valid for the purpose of calculating final fees. If the final contract sum is not considered uncharacteristically low for the works executed, the final fees shall be based on the actual cost of the works in accordance with the provisions of the agreement. If the final contract sum is still considered uncharacteristically low and warrants an upward adjustment for the purpose of calculating final fees, a further submission shall be made to the EACSB reassessing the "floor value" in line with para. 3.5.2(a) above. (It should be noted that where the cost of the works exceeds the tendered sum as a result of increased quantities on remeasurement or variations priced at rates comparable with tendered rates, the original "floor value" and percentage adjustment will remain valid.)

3.5.2(d) Attention is drawn to the fact that contracts initially assessed as being uncharacteristically low are likely to give rise to legalistic claims and pressure to agree high rates for extra works. In reviewing the validity of the "floor value" for the purpose of calculating interim or final fees, the Director's Representative should take account of the magnitude of the claims settlement and the cost of extra works in relation to the resources expended by the consultant in dealing with these matters. (i.e. The payment to the contractor may be large while the Consultant's effort is small and vice versa).

3.6 Procedures for dealing with uncharacteristically high tenders

3.6.1 Application

3.6.1(a) Similar to those for dealing with uncharacteristically low tenders, downward adjustments to the cost of works of uncharacteristically high tenders might be applicable to contracts as approved by the EACSB and signed on or after 1st July 1982.

3.6.2 Operation

3.6.2(a) On the rare occasion when an uncharacteristically high tender has to be accepted, the Director's Representative shall have initiated action with the consultants to agree on a downward adjustment to the cost of works for the purpose of calculating fees. The adjustment shall operate on similar lines to those outlined in para. 3.5 for dealing with uncharacteristically low tenders. The arrangements negotiated with the consultants shall be submitted to the EACSB for approval.

4. ADJUSTMENT FOR BOTH CRI AND UNCHARACTERISTIC TENDERS

4.1. In cases where adjustment is to be made for both circumstances, the percentage adjustment in respect of the uncharacteristic tender must be made first as agreed by the EACSB, after which the agreed price will be further adjusted in respect of the rise or fall of the Consultants Remuneration Index.

4.2 It follows that the total adjustment finally to be applied to the tendered price is the product, and not the sum, of the two percentage adjustments.

CONSULTANTS REMUNERATION INDEX

1. Basic principles and assumptions

For certain old existing consultancies, consulting engineers are to be remunerated through scales of fees for provision of service in respect of design and supervision of projects. The underlying assumption of those scales is that there is a relationship between the cost of construction of the works and the consulting engineers' cost for designing and supervising works. In the situation where the cost of works fluctuates widely in relation to the cost of design and supervision, an adjustment to the cost of works through a Consultants Remuneration Index (CRI), which is basically a ratio of relative changes to the cost of design and supervision and relative changes to the cost of construction of works, will be necessary. The CRI adjustment attempts to take account of the movements of tender prices due to boom and recession conditions.

2. Compliance

The CRI is derived from the factor of $\frac{\text{(Gross Domestic Product Deflator)}}{\text{(Tender Price Index)}}$ expressed as a percentage and normalised to a base of 100 points. For those agreements concerned, the Gross Domestic Product Deflator (GDP Deflator) published by the Census & Statistics Department is considered a good indicator of the cost of operating a consulting engineer's office for provision of service in respect of engineering projects. The Tender Price Index (TPI) for public building projects published in the Quarterly Economic Report of the Economic Services Branch is considered to reflect reasonably well the trend in the cost of engineering construction. The average of CRI over the 32 quarters from 3rd quarter of 1975 to 2nd quarter of 1983 has been taken as the datum of 100 points.

The Consultants Remuneration Index is compiled as follows :

- An Apparent CRI is obtained by expressing the factor $\frac{\text{(GDP Deflator)}}{\text{(TPI)}}$ as a percentage.

APPARENT CRI

YEAR	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER
1975	-	-	85	84
1976	79	80	83	84
1977	77	74	71	64
1978	65	64	60	59
1979	56	53	53	50
1980	50	49	49	47
1981	48	48	53	53
1982	57	57	65	67
1983	75	75	(73)	(72)

Number of Index 32
Sum of Index 2034
Average of Index 63.56
(73) & (72) - These figures not included in the calculation of the datum.

- The Apparent CRI is then normalised taking the average of the 32 quarters (63.56) as the datum at 100 points.

CONSULTANTS REMUNERATION INDEX

YEAR	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER
1975	-	-	134	132
1976	124	126	131	132
1977	121	116	112	101
1978	102	101	94	93
1979	88	83	83	79
1980	79	77	77	74
1981	76	76	83	83
1982	90	90	102	105
1983	118	118	(115)	(113)

Number of Index 32
Average of Index 100
(115) & (113) - These figures not included in the calculation of the datum.

At each step of calculation, the figures are rounded off to the nearest integer.

STATISTICAL EVALUATION OF UNCHARACTERISTICALLY LOW TENDERS

An initial evaluation of whether a low tender is considered uncharacteristically low may be performed by carrying out the following statistical analysis.

(i) Determine the arithmetic mean $\bar{x}$ of all tenders received.

$$\bar{x} = \frac{\sum x_i}{n}$$

Where n is the number of tenders and x_i is the individual tender price for which $i = 1$ to n.

(ii) Determine the standard deviation $\bar{\sigma}$ of all tenders received.

$$\bar{\sigma} = \sqrt{\frac{\sum (x_i - \bar{x})^2}{n}}$$

(iii) Determine the Characteristic Factor (CF) for the accepted tender at a price p.

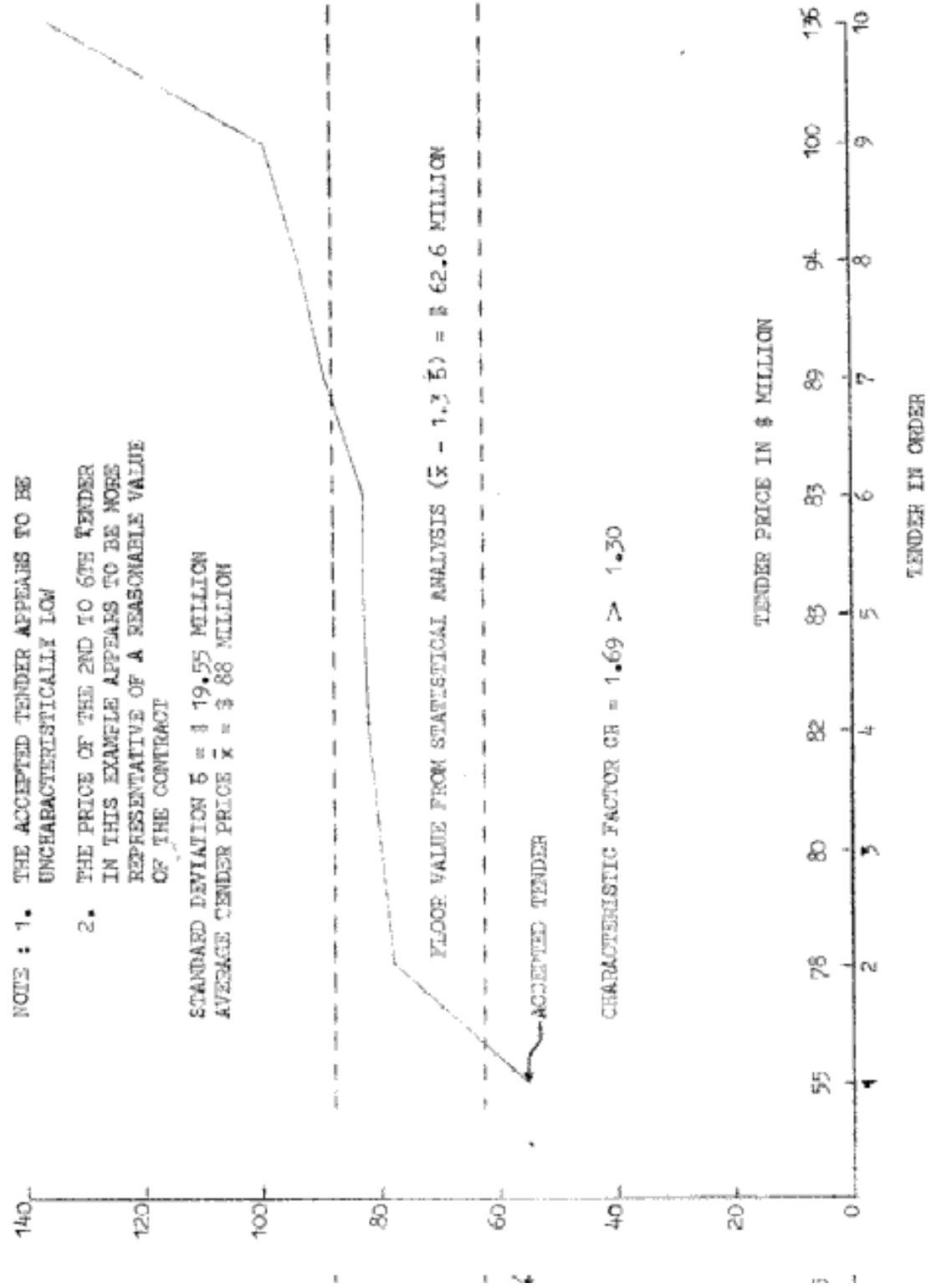
$$CF = \frac{\bar{x} - p}{\bar{\sigma}}$$

An uncharacteristically low tender can initially be identified as one having a CF greater than 1.3 but other considerations may influence the final decision regarding whether any adjustment is required for fee calculation purposes.

By similar reasoning, an initial "floor value" for the contract can be determined through the expression :-

Initial "floor value" of the contract = $(\bar{x} - 1.36)$

GRAPHIC ANALYSIS OF ALL TENDERS
RECEIVED FOR THE CONTRACT



APPENDIX 5.3 ADJUSTMENT OF CONSULTANTS' REMUNERATION BY THE CIVIL ENGINEERING WORKS INDEX (Applicable only to certain old ongoing agreements)

Introduction

This Appendix describes the fee adjustment measures promulgated originally in L&WB TC No. 9/89 and WBTC No. 9/90, but no longer used in new assignments since May 1991, to compensate the eroding effects of inflation on consultants' fees which are calculated as a percentage of the Cost of Works. The relevant paragraphs from the original circulars are basically subsumed hereunder, without updating or extension of the relevant data quoted in the circular, in order to retain the background and requirements for reference. The measures shall not be used in new assignments.

Civil Engineering Works Index

2. The Civil Engineering works Index (CEWI) has been developed as a means of relating the costs of civil engineering works at current prices to those at 1980 when the current standard Scale of Percentage Fees (**Annex A**) was first established. The CEWI is based on the labour index and various materials costs indices published monthly by the Census & Statistics Department. The weighting factors used for compiling the CEWI are based on a comprehensive review of over 350 civil engineering works contracts during the period 1984-1987 from the then Civil Engineering Services Department, Water Supplies Department, Housing Department, Highways Department and former Territory Development Department. A list of the weighting factors adopted and the values the CEWI calculated for the period since 1980 are given at **Annex B**.

The CEWI Remuneration Method

3. The CEWI remuneration method involves the following procedures :-

(a) The Net Cost of the Works for any construction contract should be deflated by the ratio of the Civil Engineering Works Index (CEWI) in 1980 to the CEWI at the close of tenders for that contract. The Net Cost of any part of the Works for which tenders have not yet closed should be deflated by multiplying the latest estimate of the Net Cost of that part of the Works by the ratio of the 1980 CEWI to the CEWI at the time of the latest estimate.

(b) The deflated Net Cost of the Works obtained by summing the deflated Net Costs of the various parts of the Works should then be used to obtain the overall fee percentage from the Scale of Percentage Fees, which should then be applied to the Cost of the works, Net Cost of the Works and Adjusted Net Cost of the Works to calculate the fees due.

(c) The additional fee on the reinforced concrete portion and on the structural metalwork portion of the Works may also be calculated in the same manner.

4. A worked example of the CEWI remuneration method is at **Annex C**.

Application

5. The CEWI remuneration method applies to those old engineering Investigation, Design & Construction (IDC) agreements signed on or after 1 July 1989 [No longer applicable since May 1991].

6. This method also applies to the following types of certain old IDC agreements signed before 1 July 1989, subject to mutual agreement between the consultants and Government:

(i) Single-contract agreements where the closing date of tender is on or after 1 July 1989.

(ii) Multi-contract agreements where the closing dates of tender of all contracts in the agreement are on or after 1 July 1989.

(iii) Individual "phases" of a multi-contract agreement where there are provisions for the calculation of fees for each "phase" of the work and that the closing dates of tender of all contracts for that phase are on or after 1 JULY 1989.

7. The CEWI remuneration method and the method for dealing with uncharacteristic tenders as described in the following paragraphs shall be applied as a package in the existing agreements described in Para. 6 above.

The Method for Adjustment to Uncharacteristic Tenders

8. For the purpose of calculating fees, adjustment to an uncharacteristic tender can be made as follow :-

(1) Inspect the corrected tender prices for a contract and exclude those tenders which do not meet contract provisions,

(2) Calculate the average tender price ($\overline{p}$) and the standard deviation (σ) of the tender prices based on the corrected tender prices,

(3) Calculate the characteristic factor, CF(T), of the accepted tender based on the corrected tender price of the accepted tender *(p(t))*.

(4) If CF(T) $>$ 1.922, then the accepted tender is considered as uncharacteristically low. Then CF is taken as 1.922 for calculation of the adjusted tender price in (6) below.

(5) If CF(T) $<$ 0.612, then the accepted tender is considered as uncharacteristically high. Then CF is taken as 0.612 for calculation of the adjusted tender price in (6) below.

(6) For an uncharacteristic tender identified by (4) or (5) above, Adjusted tender price (p) = Average tender price ($\overline{p}$) - CF × standard deviation (σ),

(7) Adjustment factor = Adjusted tender price (p)/Accepted tender price (p(t)),

(8) Adjusted Cost of Works = Adjustment factor × Cost of Works.

The mathematical derivation of the Characteristic Factor (CF(T)) for the accepted tender and worked examples illustrating the application of the proposed method to uncharacteristically low and high tenders can be found at **Annexes D, E and F**.

Application

9. The method for adjustment to uncharacteristic tenders applies to the relevant engineering Investigation, Design and Construction (IDC) agreements signed on or after 1 July 1989 [No longer applicable since May 1991].

10. Subject to mutual agreement between Government and the consultants, the method also applies to some old agreements for those contracts whose tender closing date is on or after 1 July 1989. The above method and the remuneration method using the Civil Engineering Works Index shall be applied as a package in those relevant existing agreements.

11. Some old agreements have adopted another type of method for dealing with uncharacteristic tender as promulgated originally in LWBTC Nos. 9/84 and 2/85. This another type of method is described at **Appendix 5.2** for reference.

Annex A

Scale of Percentage Fees

Table 1

Buildings, Civil Engineering, Electrical and Mechanical works

Cost of Works				Fees			
				11.5% of the Cost of Works			
	Up	to	$200,000	$23,000	+9.2%	bal. over	$200,000
From	$200,000	to	$500,000	$50,600	+8.05%	"	$500,000
	$500,000	to	$800,000	$74,750	+6.9%	"	$800,000
	$800,000	to	$1,500,000	$123,050	+6.325%	"	$1,500,000
	$1,500,000	to	$3,500,000	$249,550	+5.75%	"	$3,500,000
	$3,500,000	to	$7,000,000	$450,800	+5.175%	"	$7,000,000
	$7,000,000	to	$12,000,000	$709,550	+4.8875%	"	$12,000,000
	$12,000,000	to	$20,000,000	$1,100,550	+4.6%	"	$20,000,000
	$20,000,000	to	$100,000,000	$4,780,550	+4.3125%	"	$100,000,000
Over	$100,000,000						

Table 2

Additional Fee on the Reinforced Concrete Portion of the Works

Cost of the Reinforced Concrete Portion of the Works				Additional Fees			
Under	$4,000,000				4.025% of the cost of the Reinforced Concrete Portion of the works		
From	$4,000,000	to	$6,000,000	$161,000	+2.875%	bal. over	$4,000,000
	$6,000,000	to	$8,000,000	$218,500	+2.3%	"	$6,000,000
Over	$8,000,000			$264,500	+1.725%	"	$8,000,000

Table 3

Additional fee on the Structural Metalwork Portion of the Works

For structural metalwork, the additional fee shall be one half of that for reinforced concrete, as calculated from Table 2 above.

Annex B

Weighting factors and list of CEWI since 1980

Labour and Material Index	Weighting Factors
Labour	0.42064
Aggregates	0.05133
Bitumen	0.03286
Bricks	0.02503
Diesel fuel	0.10026
High tensile steel bars 10 mm - 40 mm	0.10297
Light structural steel	0.03524
Round mild steel bars 20 mm and above	0.02689
Round mild steel bars 16 mm and above	0.03120
Portland Cement (Ordinary)	0.11065
Timber	0.06293

Weighting factors and list of CEWI since 1980 (Cont'd)

Year	Quarter	Civil Engineering Works Index (CEWI)
1980	Annual	100
1981	1st Quarter	105.0
	2nd Quarter	108.2
	3rd Quarter	109.4
	4th Quarter	111.8
1982	1st Quarter	114.5
	2nd Quarter	115.4
	3rd Quarter	115.9
	4th Quarter	117.8
1983	1st Quarter	119.4
	2nd Quarter	121.6
	3rd Quarter	124.9
	4th Quarter	132.6
1984	1st Quarter	133.0
	2nd Quarter	133.8
	3rd Quarter	134.3
	4th Quarter	133.9
1985	1st Quarter	133.9
	2nd Quarter	133.9
	3rd Quarter	133.0
	4th Quarter	133.2
1986	1st Quarter	135.8
	2nd Quarter	134.5
	3rd Quarter	134.1
	4th Quarter	136.5
1987	1st Quarter	141.7
	2nd Quarter	144.7
	3rd Quarter	153.4
	4th Quarter	164.8
1987	1st Quarter	172.9
	2nd Quarter	174.9
	3rd Quarter	180.5
	4th Quarter	188.7

Worked example of application of the CEWI remuneration method

1. A project consists of three contracts :

(i) Contract No. 1 has been completed. There has been a delay of over 90 days between the substantial completion of design/contract stage and closing date of tender and an adjustment factor of say 0.95 to the Net Cost of Works for calculation of the Design Stage Fee is obtained from the standard Adjustment Clause.
(ii) Contract No. 2 is on-going.
(iii) Contract No. 3 has not been tendered.
(iv) For all three contracts, it is assumed that adjustments in respect of uncharacteristic tenders need not be made.

Contract No.	Estimated Cost of Works	Tender Sum	Final Contract Sum	Total PFA*	CEWI** at tender closing date	Current CEWI**
1	Contract completed	Contract completed	$105M	$10M	133.2	164.8
2***	$68M	$69M	Not known	Not known	141.7	164.8
3	$30M	Not known	Not known	Not known	Not known	164.8

Notes:- * PFA is price fluctuation adjustments in the contract
** CEWI is the Civil Engineering Works Index and base CEWI at 1980 is 100.0. Current CEWI is taken as that at 1987 4th Quarter which is 164.8
*** For Contract No. 2, updated estimated cost of works (including estimated PFA of $ M and variation of $1M) = $75M

Equivalent Fee Percentage Calculation

Contract No. 1

Cost of works including price fluctuation adjustments = $105M
Cost of Works excluding price fluctuation adjustments = $105M-$10M
= $95M
Deflated cost of works at 1980 = $95M*100/133.2

Contract No. 2

Updated estimate of Cost of Works (excluding estimated PFA of $ M) = $75M-$5M
= $70M
Deflated cost of works at 1980 = $70M*100/141.7
= $49.4M

Worked example of application of the CEWI remuneration method (Cont'd)

Contract No. 3

Estimated Cost of Works = $30M
Deflated cost of works at 1980 = $30M*100/164.8
= $18.2M

For all 3 contracts, total deflated cost of works = $71.3M+$49.4M+$18.2M
= $138.9M

Based on total deflated cost of works at 1980, consultant fee may be obtained from the 1980 Scale of Fees at Annex A

Consultant Fee at 1980 = $4,780,550 + 4.3125% * ($138.9M - $100M)
= $6,458,113

Equivalent fee percentage = $6,458,113/$138.9M * 100%
= 4.649%

Consultant Fee Calculations

For all three contracts, assume that the negotiated fee percentage for the design stage is 47% and for the construction stage is 28%.

The estimated completion percentages of each contract are as follows :-

	Contract No. 1	Contract No. 2	Contract No. 3
Design Stage	100%	100%	30%
Construction Stage	100%	40%	0%

Contract No. 1

As stated in para. l(i) above, an adjustment factor of 0.95 is applicable to the Net Cost of Works for calculation of the Design Stage Fee,

Adjusted Cost of Works = 0.95 * ($105M - $10M) = $90.25M
Design Stage Fee = 4.649% * $90.25M * 100% * 47% = $1,971,990
Construction Stage Fee = 4.649% * $105M * 100% * 28% = $1,366,806
Total Fee for interim payment for Contract No. 1 = $3,338,796

Worked example of application of the CEWI remuneration method (Cont'd)

Contract No. 2

Updated estimate of Cost of Works (excluding estimated PFA of 5M)		= $75M - $5M = $70M
Design Stage Fee	= 4.649% * $70M * 100% * 47%	= $1,529,521
Construction Stage Fee	= 4.649% * $75M * 40% * 28%	= $ 390,516
Total Fee for interim payment for Contract No. 2		= $1,920,037

Contract No. 3

Estimated Cost of Works	= $30M
Design Stage Fee	= $ 196,653
As the contract has not been tendered,	
Total Fee for interim payment for Contract No. 3	= $ 196,653

The fees calculated above are for interim payments only. When the Final Contract Sum and Price Fluctuation Adjustments (if any) for Contracts No. 2 and 3 are known, the equivalent fee percentage and hence the total consultant fee for all three contracts should be re-calculated in the same manner as shown above and final adjustments to payments to consultants should then be made.

Mathematical Derivation of Characteristic Factor (CF(T)) for Accepted Tender

Number of tenders received	n
Individual tender price	$p(i);\ i=1,\ldots,n$
Accepted tender price	$p(t)$
Average tender price	$\bar{p} = \dfrac{\sum p(i)}{n}$
Standard deviation	$\sigma = \sqrt{\dfrac{\sum (p(i) - \bar{p})^2}{n}}$
Characteristic factor for accepted tender	$\text{CF(T)} = \dfrac{\bar{p} - p(t)}{\sigma}$

Worked Example for Adjusting Uncharacteristically Low Tender

Data

Tender prices for a contract are as follows :-
$41.377 M, $46.257 M, $46.400 M, $48.245 M, $48.312M,
$48.942 M, $49.804 M, $50.350 M, $51.685 M, $52.232M,
$54.081 M

Accepted tender price	p(t)	= $41.377 M
Average tender price	$\overline{p}$	= $48.877 M
Standard deviation	σ	= $3.301 M
Characteristic factor of accepted tender	CF(T)	= ($48.877-$41.337)M / $3.301 M = 2.284

Procedure

(1) CF(T) = 2.284 > 1.922 (Refer to Para. 8(4) of Appendix 5.3)

Therefore, it is an uncharacteristically low tender

i.e. CF = 1.922

(2) Adjusted tender price (p) = Average tender price ($\overline{p}$)

- CF × standard deviation (σ)

= $(48.877 - 1.922 × 3.301) M

= $42.533 M

(3) Adjusted factor = Adjusted tender prices (p) / Accepted tender price (p(t))

= $42.533 M/$41.337 M

= 1.029

(4) Adjusted Cost of Works = Adjustment factor × Cost of Works

= **1.029 × Cost of Works**

Worked Example for Adjusting Uncharacteristically High Tender

Data

Tender prices for a contract are as follows :-

$135.399M, $143.246M, $146.083M, $147.153M, $158.000M, $179.101M, $189.538M

Accepted tender price	p(t)	= $147.153 M
Average tender price	$\bar{p}$	= $156.931 M
Standard deviation	σ	= $18.594 M
Characteristic factor of accepted tender	CF(T)	= ($156.931-$147.153)M / $18.594 M = 0.526

Procedure

(1) CF(T) = 0.526 < 0.612 (Refer to Para. 8(5) of Appendix 5.3)

Therefore, it is an uncharacteristically high tender

i.e. CF = 0.612

(2) Adjusted tender price (p) = Average tender price ($\bar{p}$)

- CF × standard deviation (σ)

= $(156.931 - 0.612 × 18.594) M

= $145.522 M

(3) Adjusted factor = Adjusted tender prices (p) / Accepted tender price (p(t))

= $145.522 M/$147.153 M

= 0.989

(4) Adjusted Cost of Works = Adjustment factor × Cost of Works

= **0.989 × Cost of Works**

APPENDIX 7.1 SAMPLE LETTER TO SUCCESSFUL CONSULTANT

Date

Dear Sirs,

Agreement No. CE XX/XX

I wish to inform you that based on your Technical and Fee Proposals, you have been selected for the award of the above Agreement.

Please find enclosed the following set of the draft Agreement documents for your reference :-

(a) Memorandum of Agreement;
(b) Brief;
(c) General Conditions of Employment;
(d) Special Conditions of Employment; and
(e) Schedule of Fees.

I should be grateful if you would confirm in writing your agreement to the draft Agreement documents, or let me have your proposed amendments, if any.

Upon your confirmation, your authorised representatives are requested to come to my office at __(time)__ on __(date)__ for the purpose of executing the Agreement. You are now required to confirm to me the names of your representatives who will sign and witness the Agreement on behalf of your Company.

You are also required to submit documentary proof of the following to me before entering into the Agreement :-

(a) requirements for a limited liability company to enter into the Agreement, ie. the majority of the voting power in meetings of the company shall be held by directors who are consulting engineers (or equivalent professionals of associated professions);

(b) insurance cover as stipulated in Clause __ of the _____ Conditions of Employment (*please specify)*; and

(c) authority of your nominated representatives to sign the Agreement on your behalf.

You are reminded of the following obligations :-

(a) Prevention of Bribery as stipulated in Clause __ of the _____ Conditions of Employment (*please specify)*;

(b) Confidentiality as stipulated in Clause __ of the _____ Conditions of Employment (*please specify*); and

(c) Conflict of Interest and debarring as stipulated in Clause __ of the _____ Conditions of Employment (*please specify*).

A copy of the Summary of Technical and Fee Proposals with the assessment results is also enclosed for your information.

Yours faithfully,

( )

c.c. Secretary, Consultants Review Committee of the Department

APPENDIX 8.1 GENERAL RANGE OF DOCUMENTS FOR CONSULTANCY AGREEMENTS

1. General Conditions of Contract (list various types and editions).
2. Articles of Agreement (list various types).
3. Standard Special Conditions of Contract.
4. Model Arbitration Rules.
5. General Specifications (list various editions).
6. Standard Methods of Measurement (list various types and editions).
7. Project Administration Handbook (list volumes).
8. Standard Drawings.
9. Technical Circulars (list separately).
10. Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants.
11. Practice Notes .
12. Departmental or Office Instructions, Circulars or Guidance Notes (list separately).
13. Financial and General Circulars (list separately).
14. Stores and Procurement Regulations.
15. Civil Service Regulations (list sections specifically relevant).
16. Government Forms (list separately).
17. Construction Standard(s).
18. Emergency Manual(s).
19. Special Reports, Publications, Memoirs (list separately).

[NOTE : These are general guidelines only, and the Project Officer should indicate the specific documents appropriate to each consultancy.]

APPENDIX 8.2 CHANGE OF CORE PERSONNEL IN THE CONSULTING TEAM

The procedures promulgated via SDEV's memorandum ref. DEVB(PS) 106/42 dated 14 January 2013 are appended below:

In view of the significant input by core personnel of the consultant's team and the impact of their leaving the team, the consultant should report as soon as possible to the Director's Representative (DR) when a core personnel such as the project manager, partner in charge, project director, or specialist, needs to be changed and propose for the DR's approval a revised arrangement. Prior to approving a consultant's proposal for changes of core personnel, the DR shall prepare a submission stating clearly that he is satisfied that the core personnel leaving the company is due to genuine and unavoidable grounds, and the revised staffing arrangement is equivalent to or better than the person(s) in the original Technical Proposal of the consultant, in terms of qualifications, experience, and competence. An assessment/comparison of the core personnel involved should be done by using the proforma at Annex A. The following approval procedure shall be followed by departments when dealing with proposed change of core personnel in the consulting team in respect of the following cases:

(a) <u>For cases of core personnel leaving the company (including retirement and resignation) or leaving the post and duties for a prolonged period due to family or medical reasons.</u>

A D2 (or above) officer assigned by the Head of Department (HoD) shall consider the submission and, if deemed appropriate, give an approval for the application.

(b) <u>For all other cases</u>

The DR shall forward the submission to a D2 (or above) officer, who shall consider the submission and make a recommendation to the HoD. Then the HoD may personally give an approval for the application.

If the consultant's proposal for a change of core personnel is not accepted, the consultant shall either adhere to their original staffing proposal or submit another proposal to the procuring department for consideration.

Departments shall be required to submit annual return on approved cases.

This proforma should be completed and appended to the submission to a D2 Officer or above / the Head of Department

Proposal for Change of Core Personnel in Consulting Team

Assessment/Comparison of the Core Personnel

Agreement No . : _____
Position of Core Personnel : _____
Proposed Date of Change : _____

	Core Personnel in the original Technical Proposal of the consultant	Proposed Replacement
Name of Personnel		
Academic Qualifications		
Professional Qualifications		
Years of Relevant Experience		
Other Remarks (See Note 1)		

Note 1
In addition to direct comparison of academic & professional qualifications and years of relevant experience, please demonstrate in the "Other Remarks" row that the revised staffing arrangement is equivalent or better than the person(s) in the original Technical Proposal of the consultant.

APPENDIX 9.1 NOVATION OF CONSULTANCY AGREEMENTS

1. This Appendix describes procedures promulgated originally in ETWB TC(W) No. 3/2005 for novation of consultancy agreements. The procedures apply to consultancy agreements under the jurisdiction of the Engineering and Associated Consultants Selection Board (EACSB). The relevant paragraphs from the original circular are basically subsumed hereunder.

Background

2. The practice and procedures on dealing with requests for novation of consultancy agreements have been reviewed. To allow flexibility for a consultant intending to wind up his business to make an orderly and planned exit, it is decided that in such a situation novation of some but not all on-going consultancy agreements of the consultant should be permitted, subject to the condition set out in paragraph 3(ii) below. However, the consultant shall not be invited to bid for or be awarded any further consultancies.

Policy

3. Novation of consultancy agreements is allowed under one of the following circumstances:

(i) A consultant is going to change or has changed from a partnership or sole-proprietorship to a limited liability company. The obligations, liabilities and benefits under the existing consultancy agreements will be transferred to the new company. Under this scenario, novation must cover all on-going consultancy agreements.

(ii) A consultant is being wound up, will soon cease to carry on business or is intending to wind up his business and is thus unable to perform some or all of the consultancy agreements. The Government on balance agrees to a novation instead of terminating the consultancy agreements. In the case of a consultant intending to wind up his business and proposing novation of only some but not all of his consultancy agreements, the consultant shall provide an on-demand performance bond by a bank or an insurance company covering the remaining consultancy agreements. The amount of the performance bond shall be determined by the procuring department, taking account of the outgoing consultant's liabilities such as liabilities for breach of

agreement or outstanding liabilities, and total value of outstanding fees for those consultancy agreements not to be novated.

4. It has to be satisfied that the new consultant(s) taking over the consultancy agreements has the capability (especially the consultant's experience and staffing aspects) to undertake the consultancy agreements and bear all the responsibilities under the consultancy agreements.

5. If the proposed new consultant is a limited liability company, the majority of directors who have the voting power in meetings of the company must be consulting engineers (or equivalent professionals of associated professions). The proposed new consultant shall be required to submit documentary proof.

6. The proposed new consultant shall be required to declare any involvement or interest which is in real or apparent conflict with the duties to be performed for the consultancy agreement(s), particularly any interest or association that the new consultant may have with any contractor, supplier, specialist contractor or sub-contractor.

7. Other than the circumstances mentioned in paragraph 3, any transfer of a consultant's benefits and obligations under consultancy agreements with the Government to a third party, including a sister company, a holding company or a subsidiary company having a separate legal status, will not be permitted. This is to uphold the principle of open and fair competition as the selection of a consultant is based on the combined assessment of the technical and fee proposals submitted by the shortlisted consultants. The technical capability and quality of service provided by the third party may not be the same as the selected consultant. If the third party were to submit the technical and fee proposals in place for the selected consultant, the third party might not have been shortlisted or selected.

8. Novation of consultancy agreements is not required if only the company name of a consultant is changed. The change does not affect the legal status, or any of the rights or obligations of the consultant

Procedures

9. Upon receipt of a request from the Consultant for novation of any existing consultancy agreements, the department should forward the request to the Secretary of the relevant Consultants Selection Board (the Secretary).

10. The Secretary will then obtain from the Consultant:

(i) Details of the new consultant(s), including a copy of its Business Registration Certificate, the Certificate of Incorporation, Quality Management System Certificate and the Memorandum & Articles of Association (or similar documents in the case of overseas consultants).

(ii) Details of the consultancy agreements to be novated.

(iii) Any special features involved such as departures from the standard novation agreement forms shown at **Annexes A** and **B**. The department should ensure that any changes to the standard novation agreement form shall be agreed with the Legal Advisory Division (Works) of the Environment, Transport and Works Bureau.

11. The Secretary will then circulate to all concerned departments for their agreement to the proposed novation.

12. If only one department is involved in the novation process, the department will follow up all issues related to the novation.

13. In the event that two or more departments are involved in the novation process, the Secretary will facilitate as a coordinator between the concerned departments, and the outgoing and new consultants. The department which holds the greatest outstanding consultancy fee (including additional Services already ordered) for those consultancy agreements requiring novation will be responsible for the logistical arrangement for the novation procedures including the checking of documents on authorized signatories, preparation of standardized novation agreement forms, and where applicable arranging venue for signing of novation agreements.

14. Separate novation agreements should be drawn up to cover consultancy agreements for and signed by the individual departments. All novation agreements covering all consultancy agreements to be novated should be signed on the same date.

15. Sufficient copies of originally signed novation agreements should be prepared, one each to be retained by the concerned departments, the outgoing consultant and the new consultant. Certified true copies of the novation agreement should be sent to the Secretary and the Director of Audit within three working days from the date of execution.

16. In the case of a consultant intending to wind up his business and proposing novation of only some but not all of his consultancy agreements, the procuring department shall obtain from the consultant an on-demand performance bond as set out in paragraph 6(ii), using the form provided at **Annex C**.

17. The Secretary will notify the concerned departments upon receiving request for novation from a consultant. A consultant who has requested for novation of consultancy agreements under paragraph 3(ii) shall not be invited to bid for or be awarded any further consultancies. Similarly, bids submitted by consultants who engage such a consultant as a sub-consultant should not be considered. Nevertheless, the consultants may propose a change of sub-consultants if the deadline for notification of change has not been lapsed. For clarity, such requirements should be set out in the invitation letters for consultancy proposals.

18. The consultant shall be removed from the EACSB Consultants' Service Directory and other relevant lists/directories maintained by the departments. Reinstatement to the lists/directories shall not be allowed even if the consultant decides afterwards not to wind up for whatever reasons.

19. Departments should also notify the concerned agencies (such as MTRC of the proposed novation if they have consultancies entrusted to these agencies, which have been awarded to the outgoing consultant.

Novation Agreement

20. A novation agreement is a tripartite agreement entered into by the Employer (Government), the Consultant (outgoing consultant) and a third party (new consultant), whereby the Consultant is released from and the third party assumes all the Consultant's obligations and rights under the stated consultancy agreement. The two standard forms of novation agreement are shown at **Annexes A** and **B**. More than one consultancy agreements may be included in a novation agreement. All three parties should normally execute the novation agreement for all these consultancy agreements on the same date.

Insurance and Other Checks

21. Where insurance is required for a consultancy agreement and if the consultancy agreement is to be novated then an insurance policy must be provided by the third party, in the contractually required form, prior to the execution of the novation agreement.

Effect on Consultants' Performance Record

22. With the exception of cases mentioned in paragraph 3(ii), the past performance records of the outgoing consultant will be regarded as the performance of the new consultant in the consideration of its future bids for Government consultancies and such past performance records will include, among others, the performance reports, performance index, and conviction records of offences under the Immigration Ordinance (CAP. 115), Employment Ordinance (CAP. 57), Water Pollution Control Ordinance (CAP. 358), Waste Disposal Ordinance (CAP. 354), Dumping at Sea Ordinance (CAP. 466), Air Pollution Control Ordinance (CAP. 311), Ozone Layer Protection Ordinance (CAP. 403), Noise Control Ordinance (CAP. 400), Environmental Impact Assessment Ordinance (CAP. 499), and other ordinances.

Novation Agreement

THIS AGREEMENT is made on the day of (month and year)

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINSTRATIVE REGION (hereinafter called the "Employer")

of the first part, and

[Insert name of Company A] whose registered office is at [ ] (hereinafter called the "Consultant") of the second part and

[Insert name of Company B] whose registered office is at [ ] (hereinafter called the "New Consultant") of the third part.

WHEREAS:-

(a) The Employer and the Consultant have entered into (an) agreement(s) including supplementary agreement(s) thereto if any (hereinafter called the "Consultancy Agreement(s)") for the provision of certain services and the execution of certain works described and known as

[GIVE DETAILS OF EACH CONSULTANCY AGREEMENT TO BE NOVATED, GIVING CONSULTANCY AGREEMENT NUMBER, DATE AND TITLE] [, and as set out in the Schedule to this Agreement][#]

upon the terms, conditions and covenants therein specified.

(b) The Consultant wishes to be released and discharged from the Consultancy Agreement(s) and the Employer has agreed to release and discharge the Consultant upon the terms of the New Consultant's agreement to perform the Consultancy Agreement(s) and to be bound by the terms of the Consultancy Agreement(s) in place of the Consultant.

[#] The details of the agreements may be presented in a separate schedule.

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. The Consultant hereby agrees to transfer absolutely to the New Consultant the Consultancy Agreement(s) and the full benefit thereof and all remedies for enforcing the same and the New Consultant undertakes to be bound by and observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Consultant to be observed, performed and satisfied in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the New Consultant undertakes to assume all liabilities and to satisfy all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s).

2. The Employer hereby releases and discharges the Consultant from the further performance of the Consultancy Agreement(s) and from all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s) and accepts the liability of the New Consultant to perform the Consultancy Agreement(s) in lieu of the liability of the Consultant.

3. The New Consultant hereby covenants with the Employer to fulfil and discharge the terms, conditions and covenants of the Consultancy Agreement(s) in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the Employer hereby covenants with the New Consultant to be bound to the New Consultant to observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Employer to be observed and performed and hereby acknowledges that the New Consultant is entitled to the full benefit of the Consultancy Agreement(s).

IN WITNESS whereof this Agreement has been executed as a deed on the date first above written.

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
) *[Signature of the officer]** L.S.
.....)
[Name])
[Occupation])
[Address])

(a) SIGNED, SEALED and DELIVERED)
by [name of sole proprietor])
trading as [name of the Consultant])
in the presence of:)
) *[Signature of the sole proprietor]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(b) SIGNED, SEALED and DELIVERED by)
[name of partner] and)
[name of partner]^) *[Signature of the individual partner]** L.S.
being the partners of [name of the Consultant])
in the presence of:)
) *[Signature of the individual partner]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(c) Executed and delivered)
as a deed and the COMMON SEAL)
of [name of the Consultant])
was affixed in the presence of) *[Signature of the*
[ ] its [director(s) or) *director(s) etc]** Common Seal
director and secretary or person(s))
authorized to sign the Consultancy Agreement by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(d) Executed and delivered)
as a deed)
by [name of the Consultant])
acting through)
[ ] (its sole director)) *[Signature of the*
or) *director(s) etc]**
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) SIGNED, SEALED and DELIVERED by)
[name of the Consultant] by [ ])
his/her/their** attorney under power of attorney)
dated [ ])
) *[Signature of the*
in the presence of:) *attorney]** L.S.
)
.....)
[Name])
[Occupation])
[Address])

NOTES: (for preparation of but not inclusion in the engrossment of the Novation Agreement)

Case (a) is for use where the Consultant is a sole proprietor.

Case (b) is for use where the Consultant is a partnership.

Case (c) is for use where the Consultant is a company incorporated in Hong Kong and execute the deed with a Common Seal.

Case (d) is for use where the Consultant is a company incorporated in Hong Kong and execute the deed without a Common Seal.

Case (e) is for use where the Consultant executes the deed under a power of attorney

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

Novation Agreement for Unincorporated Joint Venture

THIS AGREEMENT is made on the day of (month and year)

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINSTRATIVE REGION (hereinafter called the "Employer")

of the first part, and

[Insert name of Company A] whose registered office is at [ ] and

[Repeat the names and registered offices of the other participants of the unincorporated joint venture] (together trading as [insert the name of the unincorporated joint venture] and hereinafter referred to collectively as the "Consultant") of the second part, and

[Insert name of Company B] whose registered office is at [ ] and

[Repeat the names and registered offices of the other participants of the new unincorporated joint venture] (together trading as [insert name of the new unincorporated joint venture] and hereinafter referred to collectively as the "New Consultant") of the third part.

WHEREAS:-

(a) The Employer and the Consultant have entered into (an) agreement(s) including any supplementary agreement(s) thereto if any (hereinafter called the "Consultancy Agreement(s)") for the provision of certain services and the execution of certain works described and known as

[GIVE DETAILS OF EACH CONSULTANCY AGREEMENT TO BE NOVATED, GIVING CONSULTANCY AGREEMENT NUMBER, DATE AND TITLE] [, and as set out in the Schedule to this Agreement,][#]

[#] The details of the agreements may be presented in a separate schedule.

upon the terms, conditions and covenants therein specified.

(b) The Consultant wishes to be released and discharged from the Consultancy Agreement(s) and the Employer has agreed to release and discharge the Consultant upon the terms of the New Consultant's agreement to perform the Consultancy Agreement(s) and to be bound by the terms of the Consultancy Agreement(s) in place of the Consultant.

NOW IT IS HEREBY AGREED AS FOLLOWS: -

1. The Consultant hereby agrees to transfer absolutely to the New Consultant the Consultancy Agreement(s) and the full benefit thereof and all remedies for enforcing the same and the New Consultant undertakes to be bound by and observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Consultant to be observed, performed and satisfied in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the New Consultant undertakes to assume all liabilities and to satisfy all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s).

2. The Employer hereby releases and discharges the Consultant from the further performance of the Consultancy Agreement(s) and from all claims and demands whatsoever arising out of or in respect of the Consultancy Agreement(s) and accepts the liability of the New Consultant to perform the Consultancy Agreement(s) in lieu of the liability of the Consultant.

3. The New Consultant hereby covenants with the Employer to fulfil and discharge the terms, conditions and covenants of the Consultancy Agreement(s) in every way as if the New Consultant were named a party to the Consultancy Agreement(s) in substitution for the Consultant and the Employer hereby covenants with the New Consultant to be bound to the New Consultant to observe and perform the terms, conditions and covenants of the Consultancy Agreement(s) on the part of the Employer to be observed and performed and hereby acknowledges that the New Consultant is entitled to the full benefit of the Consultancy Agreement(s).

4. Each of [_____, _____ and _____][+] agrees to be jointly and severally bound by the terms of the Consultancy Agreement(s).

5. Each of [_____, _____ and _____][Ω] agrees to be jointly and severally bound by the terms of this Agreement and the terms of the Consultancy Agreement(s) as novated by this Agreement.

[+] Insert the names of the participants comprising the Consultant.
[Ω] Insert the names of the participants comprising the new Consultant.

IN WITNESS whereof this Agreement has been executed as a deed on the date first above written.

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of:)
) *[Signature of the officer]** L.S.
.....)
[Name])
[Occupation])
[Address])

(a) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
in the presence of:)
) *[Signature of the participant]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(b) #SIGNED, SEALED and DELIVERED) *[Signature of the individual partner]** L.S.
By [name of partner] and [name of partner]^)
being the partners of [name of participant])
being a participant) *[Signature of the individual partner]** L.S.
of the [name of the unincorporated joint venture])
in the presence of:)
)
)
.....)
[Name])
[Occupation])
[Address])
Or

(c) #Executed and delivered)
as a deed and the COMMON SEAL)
of [name of participant] being a participant)
of the [name of the unincorporated joint venture]) *[Signature of the*
was affixed in the presence of) *director(s) etc]**
[ ] its [director(s) or)
director and secretary or person(s))
authorized to sign the Consultancy Agreement by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Common Seal

Or

(d) #Executed and delivered)
as a deed)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
acting through) *[Signature of the*
[ ] (its sole director)) *director(s) etc]**
or)
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
by [ ])
his/her/its** attorney under power of attorney) *[Signature of the attorney]** L.S.
dated [ ])
)
in the presence of:)
)
.....)
[Name])
[Occupation])
[Address])

NOTES: (for preparation of but not inclusion in the engrossment of the Novation Agreement)

Case (a) is for use where the joint venture participant is a sole proprietor.

Case (b) is for use where the joint venture participant is a partnership.

Case (c) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed with a Common Seal.

Case (d) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed without a Common Seal.

Case (e) is for use where the joint venture participant executes the deed under a power of attorney.

\# Select the appropriate form or forms and REPEAT FOR EACH PARTICIPANT of the unincorporated joint venture.

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

On-demand Performance Bond

GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

BOND

BY THIS BOND dated the day of [ ]

We [insert name of Consultant] whose registered office is at [ ]
(the "Consultant") and [ ]
whose registered office or place of business is at]
(the "Surety") are irrevocable and unconditionally bound to the Government of the Hong Kong Special Administrative Region (together with its successors and assigns, the "Employer") in the sum of [ ] (the "Bonded Sum") for payment of which sum the Consultant and Surety bind themselves their successors and assigns jointly and severally in accordance with the provisions of this Bond.

WHEREAS

(A) The Employer and the Consultant have entered into a number of consultancy agreements ("Agreements"), namely, [details of the consultancy agreements].

(B) The Consultant wishes to assign some of the Agreements, namely, [details of the consultancy agreements to be novated] by way of novation to another person but to continue to perform the other Agreements, namely, [details of the consultancy agreements to be performed by the Consultant].

(C) The Employer agrees to the novation of some of the Agreements referred to in Recital B above subject to the terms of the novation agreement and to the condition that the Consultant obtaining the guarantee of a surety to be bound unto the Employer for the performance of the other Agreements referred to in Recital B above by the Consultant.

NOW THE TERMS AND CONDITIONS of this Bond are:-

1. Where applicable, words and expressions used in this Bond shall have the meaning assigned to them in the Agreements.

2. The Surety shall upon demand made by the Employer in writing from time to time or at any time and without proof or conditions or contestation of any conditions on the Employer pay to the Employer the sum or sums mentioned in the said demand up to the amount of the Bonded Sum. For all intent and purposes, the parties hereto acknowledge and agree that this bond is an on-demand bond and shall be construed accordingly.

3. The liability of the Surety under this Bond shall remain in full force and effect and shall not be affected or discharged in any way by and the Surety hereby waives notice of:-

   (a) any suspension of any of the consultancy, variation to or amendment of the Agreements (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Consultant's obligations under the Agreements;

   (b) the termination of the Agreements or of the engagement of the Consultant under the Agreements resulting from default by the Consultant under the Agreements;

   (c) any forbearance or waiver of any right of action or remedy the Employer may have against the Consultant or negligence by the Employer in enforcing any such right of action or remedy;

   (d) any other bond, security or guarantee held or obtained by the Employer for any of the obligations of the Consultant under the Agreements or any release or waiver thereof;

   (e) any act or omission of the Consultant pursuant to any other arrangements with the Surety;

   (f) the issue of any certificate of completion in respect of part of the consultancy;

   (g) the issue of any certificate of achievement of any stage, if any.

4. The liability of the Surety under this Bond shall cease on whichever of the following events first occurs;-

(a) payment by the Surety of the Bonded Sum in full to the Employer; or

(b) acceptance by the Employer of all the works and deliverables to be carried out by the Consultant as specified in the Agreement as assigned.

5. The Employer shall be entitled to assign the benefit of this Bond at any time without the consent of the Surety or the Consultant being required.

6. All documents arising out of or in connection with this Bond shall be served:

(a) upon the Employer at [ ], marked for the attention of [ ];

(b) upon the Surety at [ ] Hong Kong. [Note 1].

7. The Employer and the Surety may change their respective nominated addresses for service of documents to another address in Hong Kong but only by prior written notice to each other. All demands and notices must be in writing.

8. This Bond shall be governed by and construed according to the laws for the time being in force in Hong Kong and the Surety agrees to submit to the non-exclusive jurisdiction of the courts of Hong Kong.

9. In this Bond, "Hong Kong" means the Hong Kong Special Administrative Region.

IN WITNESS whereof this Bond has been executed as a Agreement on the date first above written.

(a) #SIGNED, SEALED and DELIVERED)
by [name of sole proprietor])
trading as [name of the Consultant])
in the presence of:)
) *[Signature of the sole proprietor]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(b) #SIGNED, SEALED and DELIVERED by)
[name of partner] and)
[name of partner]^) *[Signature of the individual partner]** L.S.
being the partners of [name of the Consultant])
in the presence of:)
) *[Signature of the individual partner]** L.S.
.....)
[Name])
[Occupation])
[Address])

Or

(c) #Executed and delivered)
as a deed and the COMMON SEAL)
of [name of the Consultant/Surety])
was affixed in the presence of) *[Signature of the director(s) etc]** Common Seal
[ ] its [director(s) or)
director and secretary or person(s))
authorized to sign the Consultancy Agreement by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(d) #Executed and delivered)
as a deed)
by [name of the Consultant/Surety])
acting through)
[ ] (its sole director)) *[Signature of the director(s) etc]**
or)
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(e) #SIGNED, SEALED and DELIVERED by)
[name of the Consultant/Surety] by [ ])
his/her/their** attorney under power of attorney)
dated [ ])
) *[Signature of the attorney]** L.S.
in the presence of:)
)
.....)
[Name])
[Occupation])
[Address])

Or

(f) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
in the presence of:)
) *[Signature of the participant]** L.S.
)
.....)
[Name])
[Occupation])
[Address])

Or

(g) #SIGNED, SEALED and DELIVERED)
By [name of partner] and [name of partner]^)
being the partners of [name of participant])
being a participant)
of the [name of the unincorporated joint venture])
in the presence of:)
)
)
.....)
[Name])
[Occupation])
[Address])

*[Signature of the individual partner]**

*[Signature of the individual partner]**

L.S.

L.S.

Or

(h) #Executed and delivered)
as a deed and the COMMON SEAL)
of [name of participant] being a participant)
of the [name of the unincorporated joint venture])
was affixed in the presence of)
[ ] its [director(s) or)
director and secretary or person(s))
authorized to sign the Consultancy Agreement by its)
board of directors]**)
in the presence of a witness:)
)
.....)
[Name])
[Occupation])
[Address])

*[Signature of the director(s) etc]**

Common Seal

Or

(i) #Executed and delivered)
as a deed)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
acting through)
[ ] (its sole director))
or)
[ ] and [ ] (its directors))
or)
[ ] (its director) and)
[ ] (its company secretary)**)
)
in the presence of a witness:)
)
.....)
[Name])

*[Signature of the director(s) etc]**

[Occupation])
[Address])

Or

(j) #SIGNED, SEALED and DELIVERED)
by [name of participant] being a participant)
of the [name of the unincorporated joint venture])
by [ ])
his/her/its** attorney under power of attorney) *[Signature of the*
dated [ ]) *attorney]** L.S.
)
in the presence of:)
)
.....)
[Name])
[Occupation])
[Address])

NOTES: (for preparation of but not inclusion in the engrossment of this performance bond)

Case (a) is for use where the Consultant is a sole proprietor.

Case (b) is for use where the Consultant is a partnership.

Case (c) is for use where the Consultant/Surety is a company incorporated in Hong Kong and execute the deed with a Common Seal

Case (d) is for use where the Consultant/Surety is a company incorporated in Hong Kong and execute the deed without a Common Seal.

Case (e) is for use where the Consultant/Surety executes the deed under a power of attorney

Case (f) is for use where the joint venture participant is a sole proprietor.

Case (g) is for use where the joint venture participant is a partnership.

Case (h) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed with a Common Seal.

Case (i) is for use where the joint venture participant is a company incorporated in Hong Kong and executes the deed without a Common Seal.

Case (j) is for use where the joint venture participant executes the deed under a power of attorney.

* The italic parts are not part of the execution clause. They are for guidance or information only.

** Select the correct expression for use. If none is applicable, insert an appropriate expression.

^ The deed shall be executed by all the partners. Add more names if required.

Select the appropriate form or forms and repeat for the Consultant, each participant of the unincorporated joint venture of the Consultant and Surety.

APPENDIX 11.1 SPECIMEN LETTER OF COMPLETION (GCE FORM)

Date

Dear Sir/Madam,

Consultancy Agreement No. [Insert Agreement No.]
[Insert Agreement Title]

I wish to notify you that I have been satisfied on xxx** that you have completed the services as defined in the Brief with the exception of those outstanding services listed in the schedule attached to this letter which you have agreed to complete as soon as possible.

I wish to remind you, however, that certain obligations in the Agreement, extend beyond the completion of the said services and draw your attention particularly to the following clauses in the General Conditions of Employment (GCE) and the Special Conditions of Employment (SCE)*:

- GCE Clause 9 (as amended by SCE Clause XX) - Confidentiality
- GCE Clause 12 (as amended by SCE Clause XX) - Retention of Documents and audit inspection
- GCE Clause 21 (as amended by SCE Clause XX) - Exclusive ownership
- GCE Clause 22 - Care and Diligence
- GCE Clause 32 - Rendering of accounts
- GCE Clause 36(B) - Liability of Consultants for acts, default and neglects of resident site staff*
- GCE Clause 39 - Liability of Consultants for acts and default of sub-consultants
- GCE Clause 44 (as amended by SCE Clause XX) - Settlement of disputes
- GCE Clause 47 (as amended by SCE Clause XX) – Insurance

The provisions listed out above are not exhaustive. This letter shall not affect any provision in the Agreement that the parties intend to apply beyond completion of the services as defined in the Brief and any other term that by its nature is intended to apply beyond completion of the services as defined in the Brief.

This letter shall be without prejudice to any claim (whether current or future) or right of the Employer under the Agreement.

Please acknowledge receipt and agreement to this letter.

Yours faithfully,

( )
Director's Representative

c.c. Secretary, EACSB
Director of Audit

* Amend as appropriate

** The date of completion notified to the Consultants should be consistent with the completion date as reported in the CNPIS (i.e. the Consultant's Final Performance Report).

APPENDIX 11.2 POST-COMPLETION REVIEW ON MAJOR CONSULTANCY AGREEMENTS UNDER PUBLIC WORKS PROGRAMME

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 26/2003 in respect of post-completion review on major consultancy agreements. The relevant paragraphs from the original circular are basically subsumed hereunder.

Introduction and Background

2. To achieve value for money in the procurement of services for construction and engineering works and consultancy services, the delivery of the product should be to the specified quality and standards. Moreover, the functional and user requirements should be met in a cost-effective and efficient manner. It is considered that a post-completion review which serves the following key purposes is a useful project management tool –

(a) to measure the success or otherwise of a project in achieving its planned objectives on time, within budget and at the specified quality level;

(b) to bring up the lessons learned, both good and bad, so that, where appropriate, these can be used to benefit future projects; and

(c) to provide an opportunity to review the overall effectiveness of the procurement strategy and procedures in place in the light of project performance, so as to identify any necessary improvement areas.

3. The Construction Industry Review Committee was also of the view that such a review and experience sharing process would be conducive to continuous improvement in the performance of all parties involved and the development of long-term partnership, thus recommended in their Report of January 2001 the implementation of a post-completion review by Government.

Policy

4. A post-completion review shall be conducted upon the substantial completion of a major consultancy agreement or a major works contract on projects under the PWP. However, as the practice is new to Government departments, it is not appropriate to lay down a rigid definition for major projects or the minimum number of reviews to be

undertaken by departments. Nonetheless, as a broad guideline, it is considered that post-completion reviews are generally not warranted for consultancy agreements and works contracts of a project which has a total cost less than $500 million or of a project which does not involve complicated technical and management issues. Some suggested indicators of the involvement of complicated issues are provided in the Appendix for reference. Based on the above guidelines, departments could select agreements/contracts to be reviewed at their discretion.

5. Upon the completion of a post-completion review, the department shall prepare a report documenting all concerned issues, findings, conclusions and recommendations for future reference by the department. If the findings of a review are considered useful to other departments/bureaux, the department may circulate the findings to other departments/bureaux for experience sharing purpose. Furthermore, if input has been offered or provided by any consultant or contractor or other service provider in the review, the report should also be copied to such service provider. Nevertheless, the report copied to a service provider may need to have the information or details of or on the other service providers blocked out.

Guidelines and Procedures of the Review

6. It is desirable that input from major project participants, including the service providers such as consultants and contractors, could be included in the review. Nevertheless, the participation of the service providers or any relevant party in the review is to be on a voluntary and good faith basis. More than one discussion session with the presence of different service providers may be conducted, if necessary. However, as consultancy assignments for feasibility studies or investigation may be completed long before the commencement of the works contract, departments shall consider if separate reviews for such feasibility study/investigation assignments are required taking into account the benefits of such reviews against the resources required.

7. The emphasis and objective of the review are to gain maximum benefit from the experience accrued, rather than to apportion blame, i.e. it is not intended to be an auditing exercise. Any observed shortfall in the procurement, contract management and practices, and monitoring of the performance of the consultants and contractors should however be critically reviewed and rectified to avoid repetition of the same mistakes in the future.

8. Guidance notes for the conducting of a post-completion review and the suggested issues to be examined in the review are given in the Annex A. Nonetheless, departments should determine the scope and details of the review to suit individual project.

Guidance Notes for the Post-Completion Review

(A) Introduction

A post-completion review is a means of recording experience, both success and failure, from past projects, so it can be used where appropriate to improve future projects by avoiding past mistakes and allowing good practices to be better understood by project staff.

In general terms, the review should consider –

(a) project objectives in terms of cost, time and quality;
(b) management;
(c) organization;
(d) systems and procedures;
(e) suitability of the design, contract types and contract packaging; and
(f) public reaction during construction and operation.

Departments may consider conducting a single post-completion review examining aspects in both the consultancy agreement and works contracts together.

(B) On what type of projects should a Post-Completion Review be conducted

It is considered that the post-completion review (being a new initiative and there is also a need to optimize the benefits against resources to be deployed) need not be conducted for consultancy agreements and works contracts of a project which has a total cost less than $500 million or of a project which does not involve complicated technical and management issues. Indicators that a project involves complicated issues may include the following:

(a) project involving a variation item costing substantial amount, say over $1 million;
(b) project involving a claim of a substantial sum, say over $1 million;
(c) project involving design or construction method not commonly used in Hong Kong; and

(d) project involving incidents that attract public attention.

(C) Who and what should be involved in a Post-Completion Review

A post-completion review should be led by the officer in charge of the project (normally at senior professional level or above) and he or she should solicit input from the client and other project participants (such as the consultants, contractors and subcontractors) as appropriate. The department should also determine the depth of the review, taking into account the issues to be examined, and consider if assistance from legal advisor or technical specialists should be sought. Consideration should also be given to inviting project officers who have left the project team to provide input.

A post-completion review may involve both a document review and discussion sessions with the presence of different project participants. Due to the different concerns of different project participants, it may be necessary to have more than one discussion session with different party in order to facilitate better collection of views and exchange of ideas.

(D) When should the Post-Completion Review be carried out

A post-completion review should be carried out within a reasonable period, say 6 months, after the substantial completion of a consultancy agreement or a works contract. However, in case there are on-going disputes with the service providers, it may be more appropriate to defer the review until the disputes are settled or the review may have to be carried out without the participation of the service provider concerned. For a project that comprises a number of contracts/consultancy agreements, the project office may elect, in view of the benefit of an overall review, to conduct a single review upon the substantial completion of the last contract.

(E) The review

The project office could determine issues to be examined in a post-completion and some suggestions are given below:

(a) pre-contract arrangements/procedures;
(b) contract administration system/arrangements;
(c) adequacy and suitability of specifications/brief;
(d) programme/cost/variation control measures;
(e) management of consultant's/contractor's performance;
(f) management and control in relation to subcontractors/subconsultants;
(g) procedures in relation to the management of quality, safety and environmental aspects and traffic management issues;
(h) contract documents;
(i) acceptance, testing and commissioning system/procedures;
(j) quality/performance of service providers;
(k) organization of consultants/contractors/other service providers;
(l) management/handling of public complaints;
(m) adequacy of contract period/study period.

Departments are also suggested to develop performance indicators to facilitate the review and develop after reviewing the projects, suitable benchmarks of project performance. The relevant indicators and benchmarks for the following aspects of performance or any other appropriate one should be developed:

(a) Cost performance - say by comparing the final out-turn prices as against the initial estimates and tender prices;
(b) programme performance – say by comparing the actual project delivery as against the planned programme; and
(c) staffing performance – say by comparing the adequacy of the level of staffing assigned to the project against any established departmental guidelines.

Established benchmarks should also be subject to review from time to time.

Although the post-completion review is essentially for exploring areas where improvement could be made, it is not expected that consensual views among the client and service providers on all issues examined could be made nor solutions to all problems revealed could be formulated. Nonetheless, the review itself is part of a process of enhancing awareness among the participants in the problematic areas thus would actuate improvement as a natural outcome in the long-term.

(F) Views of the users may be included

If the timing of the post-completion review allows, the view of the users, and management/maintenance parties in the following areas or any others proposed by the users may be included in the review -

(a) an assessment of whether user requirements have been met, such that they would be better ascertained and conveyed to designers in future;

(b) an assessment of the costs in use as against the planned operating cost, and how the planned efficiency and effectiveness of the equipment and facilities compare with those as built; and

(c) any recommendations that the users may wish to make to improve value for money performance of future projects, e.g. facilities which are in fact unnecessary for most users can be omitted from future projects.

The department may also consider, if resources is available, conducting a separate review with the users and management/maintenance parties at a later time, say one year, after they take over the project.