

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:

<u>Service Category</u>	<u>List Management Department</u>
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 $\pm 10\%$. 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-consultants¹

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.