

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.

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.