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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guidance given in relevant Works Branch Technical Circulars and Financial Circulars issued prior to June 1999, and it superseded EACSB Circulars issued prior to June 1999.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)<sup>3</sup>, 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:

<b>Weighted Total Manpower Input of the Proposal as compared to the Median Weighted Total Manpower Input</b>	<b>Proportion of full mark to be given</b>
$\geq 1.0$	1.0
$> 0.6$ and $< 1.0$	On sliding scale between 0.6 to 1.0
$\leq 0.6$	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:

<b>Degree of non-compliance in the opinion of the Assessment Panel</b>	<b>Mark shall be multiplied by (exact multiplier to be decided by the Panel)</b>
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
$\leq 0.5$	0
$> 0.5$ and $< 0.8$	On sliding scale between 0 and 10
$\geq 0.8$	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

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

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:

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

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:

- fee estimate/order of cost of project, summary of fees, **funding sources**;
- brief report on the Technical Proposals and order of assessment;
- 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**

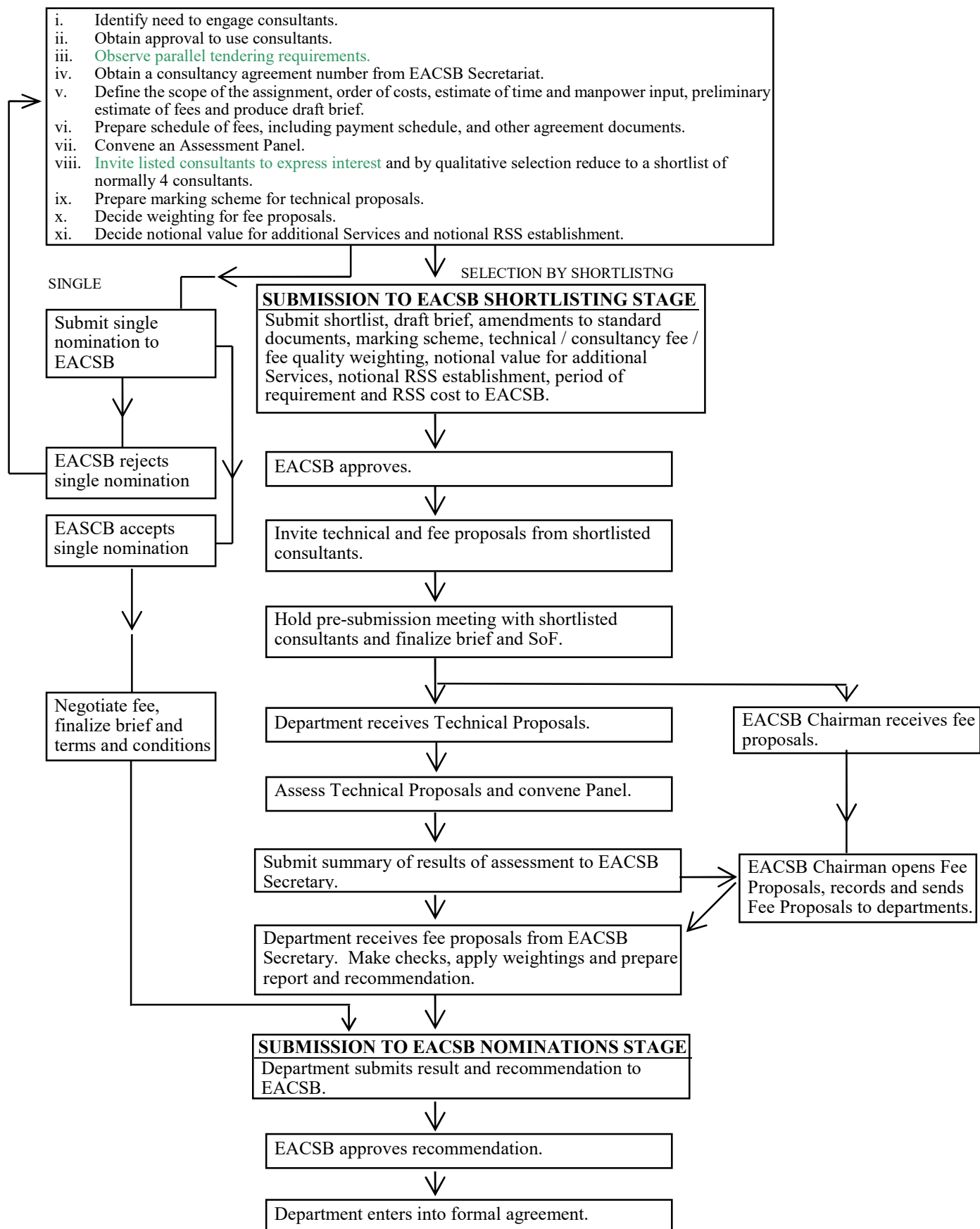


Figure 3.1



## **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 <sup>1</sup>		
	Normal	Complex	Complex with Multiple Project Sites Requiring Substantial Design and Associated Impact Assessments <sup>3</sup>
<b>Investigation/Design/Tender</b>	65%	70%	75%
<b>Construction/Commissioning/Finalisation<sup>2</sup></b>	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:



$$\text{Hourly Rate} = (M \times \text{ASC})/1680$$

"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 some way 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 D1 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**.