

## **APPENDIX 3.18 FEEDBACK AND DEBRIEFING TO UNSUCCESSFUL BIDDERS FOR CONSULTANCY AGREEMENTS**

1. This Appendix describes the requirements and procedures promulgated originally in ETWB TCW No. 42/2002 for departments to provide feedback to bidders including debriefing to unsuccessful bidders. The relevant paragraphs from the original circular are basically subsumed hereunder. This Appendix has also been updated to bring in line with the revised marking schemes for selection of consultants promulgated under DEVB TCW No. 2/2016 and the extended category of unsuccessful bidders allowed to lodge requests for debriefing for consultancy agreements under SDEV's memo ref. (02UH8-01-7) in DEVB(PS) 106/43 dated 12 July 2016.

### Effective Date

2. The above Circular has been effected on 1 February 2003. The arrangements stipulated in the Circular shall apply to the consultancy agreements for which the submission for approval of a shortlist is made to EACSB on or after 1 February 2003.

### Background

3. Past performance, experience and the quality of technical submissions have become significant aspects in the selection process of consultants. As such, it is considered necessary that the managing departments shall provide feedback to unsuccessful bidders to help improve their competitive performance in future bidding exercises.

### Policy

4. For a consultancy agreement with an awarded fee or fee ceiling above \$3 million, the managing department shall disclose to the bidders or, as the case may be, shortlisted/prequalified bidders, who have submitted conforming technical and fee proposals, the following information where applicable:

- (a) winning bid price;
- (b) the overall quality score of the winning bid (where applicable);
- (c) the highest score attained for each quality attribute in the exercise (where applicable); and
- (d) the bidder's own overall quality score and score for each quality attribute (where applicable).

5. The managing departments shall also notify the unsuccessful bidders in the following categories that they can lodge a request for a debriefing if considered beneficial:

Shortlisted but unsuccessful bidders for two-stage selection or unsuccessful bidders for one-stage selection, whose technical proposals have been completely assessed by the managing departments for consultancy agreements each of value exceeding the Quotation Limit as set out in section 220 of the Stores and Procurement Regulations (SPR 220).

#### Guidelines and Procedures

6. After the award of a consultancy agreement, the managing department shall provide the information in accordance with paragraph 4 to the bidders when notifying whether their bids have been accepted or not.

7. Where applicable, the unsuccessful bidders shall also be informed, pursuant to paragraph 5 above, that they can request for a debriefing session. Such request shall be raised within three weeks from the dates of the notification letter mentioned in paragraph 6 above. Late request will not be entertained. The request shall include a list of questions or issues that the unsuccessful bidder would like to have further feedback from the procuring department.

8. The unsuccessful bidders should be informed of the following ground rules for the debriefing:

- (a) the debriefing will be informal;
- (b) the bidders will be told the perceived strengths and weaknesses of their bidding submissions and their responses will be noted;
- (c) the merits of other bids, including the winning bid, will not be discussed;
- (d) the decision on the award of the consultancy agreement is final thus the debriefing session shall not be taken as a means or an opportunity for the bidder to lodge appeal or complaint against the bidding result of the consultancy agreement;
- (e) tape recording during the debriefing will not be allowed;
- (f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained, and
- (g) The bidder shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

9. It should make it clear to the bidders that the debriefing should not be used to change the choice of consultant nor to re-open the selection procedure.

10. Any request from an unsuccessful bidder who fails to expressly agree or refuses to be bound by the ground rules shall not be entertained. Sample letters to unsuccessful bidders for consultancy agreements are given in Annex B respectively.

11. Upon receipt of a request for debriefing, the managing department shall fix the date, time and place of the debriefing. Separate debriefing session shall be arranged for individual bidder. The debriefing shall be conducted by a team led by an officer of the rank of senior professional or above from the managing department. At least one member of the team should have been a member of the assessment panel or have assisted directly in evaluating the bidding documents. When preparing the consultancy brief at EOI stage, the managing department shall note that for a works contract managed by consultants, a senior staff member from the consultant's project team for the project concerned should also be included in the debriefing team. If it is envisaged that the consultant's staff shall be required to serve in any debriefing exercise, the requirement should be spelt out in the consultancy brief concerned. The managing department shall determine the team size and flexibility is allowed to assign different team members to conduct different debriefing sessions under the same works contract or consultancy agreement. To allow exchange of views in a casual manner, the bidder shall be requested to limit the number of representatives attending the debriefing to three.

12. Each debriefing session should be carefully planned with due regard to the weaknesses and strengths of the bidder. In general, discussion should be limited to the information submitted by the bidder without comparison with other submissions. Where practicable, the bidder should be informed frankly, honestly and tactfully of the weaknesses and strengths of his submission which shall be measured against established practices, general experience of the department or standards in the industry. Any information that would impede the law enforcement or otherwise be contrary to public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between consultants should not be released. The discussion during the debriefing should be limited to the issues/questions raised by the bidders as mentioned in paragraph 8 above. If necessary, some topics as suggested in Annex A for consultancy agreements can also be discussed. The departments shall also consider the appropriate level of details to be discussed. Nonetheless, care should be exercised to demonstrate that judgments are made only against the assessment criteria made known to the bidders. To facilitate the debriefing, the perceived strengths and weaknesses of each technical proposal discussed by the Assessment Panel should be recorded in the meeting minutes.

13. The debriefing should be conducted as an informal discussion, and not in writing. Nevertheless, the debriefing team should record the results and conclusions of the debriefings for internal reference in case follow-up actions are needed for improving the process of similar procurements and debriefings. Such notes shall not be sent to the bidder. The bidder is free to take notes for himself. However, request for records of the debriefing or agreement on any notes prepared by either party shall be refused. Tape recording by the bidder shall also be refused as it would hinder a free exchange of views between the parties and thus defeat the purpose of the debriefing.

### **Examples of Debriefing Topics for Consultancy Agreements**

1. Cost – discussion on the competitiveness of the consultant's proposed fee in general terms
2. Consultant's experience – where the experience of the consultant is judged to be less than adequate for the work proposed and reference should only made to projects named in the consultant's technical proposal
3. Response to the brief
4. Cost-effectiveness and sustainability
5. Methodology
6. Works programme
7. Innovation and creativity
8. Staffing
9. Consultant's past performance - reference could be made to the consultant's past performance in the past three years as reflected in the performance reports but comparison with other bidders in qualitative terms should be avoided.

### Sample Letter to Unsuccessful Consultants

(Consultant) .....

(Address) .....

.....

Dear Sirs,

Agreement No.: .....

Project Title: .....

Thank you for your proposals submitted for the above consultancy Agreement in response to my letter of (date) .

I regret that on this occasion you have not been selected for the award of the Agreement. A copy of the Summary of Technical and Fee Proposals with the assessment results from the Engineering and Associated Consultants Selection Board in respect of the proposal submitted by the shortlisted consultants is enclosed for your information.

In accordance with Appendix 3.18 of EACSB Handbook, we also provide the following information for your reference:

Description	Highest Value/Score	Your Score
Fee of the winning bid (where applicable)*		
Technical point of the winning bidder (where applicable)*		
Highest score attained for each assessment criteria in Technical Proposals submitted in this exercise (a) Consultant's experience (b) Response to brief (c) Approach to cost effectiveness and sustainability (d) Methodology and work programme (e) Innovation and creativity (f) Staffing (g) Past performance		

\* these two items could be deleted from the table if similar information has been given in the Summary as mentioned in the second paragraph above.

In accordance with Appendix 3.18 of EACSB Handbook, we will, at your request, conduct a debriefing in an informal manner with you or your representatives (no more than 3 persons). If you wish to have a debriefing, please lodge your request in writing within 3 weeks from the date of this letter. You are also required to state expressly in your request your agreement to abide by the conditions and ground rules stipulated in this letter. Your request will not be entertained if you fail to do so or refuse to abide by the conditions and ground rules. With a view to enabling us to better prepared for the debriefing session, you are requested to provide a list of specific items related to this selection of consultant exercise which you would like our feedback.

The debriefing session shall not be used as an opportunity for you to lodge appeal/complaint against the award of the consultancy agreement. You should also note that our decision on the award of the consultancy agreement is final and the debriefing cannot be used to change the choice of consultant nor to re-open the selection procedure. The main purpose of a debriefing session is for us to provide feedback to you on any shortcomings of your proposals to enable you to improve your competitive performance in future consultant selection exercises. Please note the following ground rules for the debriefing, if held:

- (a) the debriefing will be informal;
- (b) you will be told of the perceived strengths and weaknesses of your proposals and your responses will be noted;
- (c) the merits of other bids, including the winning bid, will not be discussed;
- (d) the debriefing is not to be taken as a means or an opportunity for you to lodge appeal or complaint against the bidding result;
- (e) tape recording during the debriefing will not be allowed;
- (f) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained; and
- (g) you shall not use the information obtained during the debriefing for any judicial or administrative proceedings.

Last but not least, your effort and care in formulating your proposals are very much appreciated.

Yours faithfully,

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**Note**

The 4<sup>th</sup> and 5<sup>th</sup> paragraphs shall be deleted if debriefing is not to be conducted