

APPENDIX 4.3 GUIDELINES ON THE PREPARATION OF BRIEFS FOR FEASIBILITY, INVESTIGATION, DESIGN AND CONSTRUCTION ASSIGNMENTS

The purpose of the Brief is to describe in detail the Assignment that the Consultants are to undertake. The form and content of briefs varies according to the particular assignment.

The Brief shall define clearly the scope, nature and timing of the services to be provided by the Consultants, the responsibilities they are to assume and all other requirements and constraints. It shall describe exactly what is to be achieved and what the output of the Assignment must be. Assumptions and methodology must be clearly defined.

It is in the interest of both the client and the Consultants that the Brief is sufficiently detailed and specific to enable the shortlisted consultants to properly estimate the resources necessary to carry out the Assignment and to quote competitive lump sum fees. It is important that the Brief is very clear as to the standard and level of service expected from the Consultants and that both the client and the shortlisted consultants have a clear and agreed understanding of the requirements. Any vagueness in the Brief will create potential for future dispute which may be detrimental to the progress of the project and must be avoided.

If there are specific aspects or parts of the Assignment that cannot be sufficiently well defined or over which there is much uncertainty at the time of preparing the Brief, then provision shall be made in the Schedule of Fees to exclude these works and services from the quoted lump sum fee and to remunerate the Consultants on a negotiated lump sum or time-charge basis. In particular, it should be noted that consultants cannot generally be expected to estimate reasonably in their fee proposals the extent of commitment and effort required for such services which should normally be treated as additional Services under Clause 5 of the Schedule of Fees.

The provisions of the Brief must be consistent with those of the General Conditions of Employment, Special Conditions of Employment (if any), Schedule of Fees and all other documents comprising the Agreement. Care should be taken that the Brief does not conflict with the General Conditions of Employment which must not be amended without obtaining legal advice from LAD(W), DEVB and endorsement of DEVB.

The Brief shall be prepared in consultation with all interested offices to whom it shall be circulated and whose input and where appropriate, agreement, shall be obtained. Also, if appropriate the Brief shall be submitted to the project steering or management group for formal agreement.

The Brief must be consistent with the requirements of the project as approved by the PWSC or other authority.

The Brief shall not be finalized until after the pre-submission meeting held with the shortlisted consultants.

The Brief shall be prepared in accordance with the directions and guidance given in the appropriate typical format. Different fonts are used in the typical formats of Brief to indicate the intention of the text, as follows :-

- (a) Words in bold font are mandatory unless otherwise indicated. These are mandatory clauses or headings which shall be included in the Brief unchanged, except with the prior approval of EACSB.
- (b) Words in normal font indicate sample clauses. These are not mandatory and shall be amended as necessary to suit the Assignment.
- (c) Words in *italics* are suggestions or instructions to aid preparation of the Brief. The exact content and wording to be used is left to the discretion of the writer of the Brief.

Consultancy Services involving EIA

Additional guidance on the preparation of Briefs promulgated originally in WBTC No. 17/98 as a result of the Environmental Impact Assessment Ordinance (EIA Ordinance) which came into operation on 1 April 1998, has basically been subsumed hereunder:

- (a) The attached Annex A includes sample clauses which indicate the services that the Consultants may be required to provide under a consultancy assignment as a result of the EIA Ordinance which came into operation on 1 April 1998. However, for each particular assignment the wording of the clauses shall be expanded and, where necessary, further clauses shall be added, to describe exactly and in as much detail as possible what is required.
- (b) The proponent department shall, in consultation with the Director of Environmental Protection if necessary, determine and state in the Brief whether the project is a designated project under the EIA Ordinance. In the case that the project is exempted from the provisions of the EIA Ordinance in accordance with section 9(2) and section 9(3) of the EIA Ordinance, this shall be stated in the Brief.

The Role of Consultants under the Land (Miscellaneous Provisions) Amendment Ordinance 2003 (LMPAO)

As stipulated in SETW's memo ref (00YMM-01-2) in ETWB(PS) 106/10 dated 20 January 2006, the clauses set out in Annex B should be included in the Brief for Design and Construction assignments to highlight the role of the Consultants under the LMPAO.

Management of Consultants' Performance

The clauses set out in Annex C relating to the management of consultants' performance should be included in the consultancy brief.

Computer Facilities of Consultants

The clauses set out in Annex D relating to computer facilities of consultants shall be included in the consultancy brief.

Sample Clauses (for Consultancy Services involving EIA)

- (1) Prepare a project profile as set out in the Technical Memorandum on Environmental Impact Assessment Process (under the Environmental Impact Assessment Ordinance (EIA Ordinance) S16) and advise and assist the Employer to apply to the Director of Environmental Protection (DEP) in accordance with the EIA Ordinance for an environmental impact assessment study brief or for approval to apply directly for an environmental permit.
- (2)¹ Conduct an environmental impact assessment (EIA) study and prepare an EIA report in accordance with the EIA study brief issued by the DEP and EIA Ordinance, and advise and assist the Employer in obtaining approval for the EIA report in accordance with the EIA Ordinance, including public consultation and presentation to the Advisory Council on the Environment if required.
- (3) Advise and assist the Employer in obtaining environmental permits for the Employer for **constructing/operating/decommissioning* the Project in accordance with the EIA Ordinance.
- (4) Liaise with the DEP or his representative to obtain variations of environmental permits for the Employer in accordance with the EIA Ordinance should there be any changes to the Project or to the environmental impact of the Project that would give rise to a need for variation of the conditions of the environmental permit. Where it is required by the DEP to submit an EIA report for the variations sought and the Director's Representative so instructs, the Consultants shall conduct an EIA study and prepare an EIA report for the variations sought in accordance with the EIA Ordinance. Payment for the cost of such study and report shall be on a time charge basis or by means of a negotiated lump sum fee.

* Delete as appropriate

Note :

1. *Clause (1) may be included in a Preliminary Project Feasibility Study assignment where the Project has already been confirmed as a designated project under the EIA Ordinance.*
2. *Clauses (2) and (3) shall be included in a consultancy assignment when the Project has obtained a study brief from the DEP.*
3. *Clause (4) shall only be included in a consultancy assignment which involves construction stage for designated project.*
4. *Projects that have obtained DEP's approval to apply directly for an environmental permit(s) only need to include clause (3) and/or clause (4).*

¹ Project proponent should ensure that adequate number of copies of the EIA report has been specified in the section of "Deliverables" in the assignment.

**Clauses Regarding the Role of the Consultants under
the Land (Miscellaneous Provisions) Amendment Ordinance 2003 (LMPAO)
for Incorporation into the Brief for a Design and Construction Assignment**

The following clauses should be added to the Sub-section “Services to be provided by the Consultants – Construction Phase” of the Brief:

- 6.4.9* The Consultants shall nominate a professional acceptable to the Employer to be named as the contact person of the Employer in applications for excavation permits and, where applicable, emergency excavation permits pursuant to the requirements of the Land (Miscellaneous Provisions) Ordinance, Cap 28.
- 6.4.10* (1) The Consultants shall carry out all duties imposed upon the Employer under the Land (Miscellaneous Provisions) Ordinance, Cap 28 or under the conditions of the excavation permits and, where applicable, emergency excavation permits in so far as such duties have not been imposed only on the Contractor under the Ordinance or under the Contract.
- (2) Notwithstanding Sub-clause (1), the Consultants shall not be liable to the Employer in respect of obligations stipulated under the following conditions of the excavation permits and, where applicable, emergency excavation permits:
- (i) the condition stipulated in the excavation permits and, where applicable, the emergency excavation permits relating to the obligation and liability of the Permittee to indemnify the Government against all losses and claims for injury or damage to any person or property, nuisance, disruption or interference whatsoever which may arise out of or in consequence of the work of the Permittee, and against all claims, demands, proceedings, damages, costs, charges or expenses whatsoever in respect thereof or in relation thereto, and
- (ii) the condition stipulated in the excavation permits and, where applicable, emergency excavation permits relating to the obligation and liability of the Permittee to make good or pay for any works as a result of or in consequence of the work of the Permittee.
- (3) Sub-clause (2) above is without prejudice to Clause 22 of the General Conditions of Employment.
- 6.4.11* (1) The Consultants shall ensure that the Contractor complies with the permit conditions imposed by the Authority under the Land (Miscellaneous Provisions) Ordinance, Cap 28, including those conditions stipulated in the excavation permits to be observed by the Nominated Permittee or by both the Permittee and the Nominated Permittee and those stipulated in the excavation permits and, where applicable, emergency excavation permits to be observed by the Permittee but which the Contractor is required to comply with under the

Contract.

- (2) In respect of permit conditions which are stipulated in the excavation permits and, where applicable, emergency excavation permits to be complied with by the Permittee but which are required to be complied with by the Contractor under the Contract, if notwithstanding Sub-clause (1) above the Contractor has failed to comply with these conditions, the Consultants shall take such actions so as to ensure that these conditions are complied with by the Employer in his capacity as the Permittee irrespective of whether these actions are required to be carried out by the Contractor under the Contract.

6.4.12* Clause 6.4.9* to Clause 6.4.11* above shall apply only with respect to excavation in street maintained by the Highways Department that requires excavation permits and, where applicable, emergency excavation permits under the Ordinance for execution of the Works.

6.4.13* The Consultants shall [engage a competent person #/ ensure that a competent person is engaged #] to supervise the excavation works on behalf of the Employer, maintain a documented system for supervising the excavation works and maintain a documented system to ensure that the Contractor complies with his duties in relation to excavation works. The attention of the Consultants is drawn to section 10T(5) and (6) of the Land (Miscellaneous Provisions) Ordinance, Cap 28.

*Note: (a) The Clause number marked with * above may be changed to suit individual assignment brief.*

(b) # Delete as appropriate, depending on whether the competent person is intended to be engaged by the Consultants or the Employer direct.

Clauses for Management of Consultants' Performance

The following clauses should be added to the Section “Services to be provided by the Consultants” of the Brief :

6.X The Consultants shall take cognizance of and comply with relevant requirements of technical circulars and documents issued by the Government bureaux and departments including but not limited to the following:

- (a) EACSB Handbook and other relevant EACSB circulars and circular memoranda;
- (b) General/Technical circulars and other relevant circular memoranda issued by the Development Bureau;
- (c)

6.Y The Consultants agree that the management and reporting of the Consultants' Performance under this Agreement shall be subject to the reporting and management mechanism set out in Development Bureau Technical Circular (Works) Nos. 3/2016 **and 5/2018** or its latest revision or replacement.

Clauses for Computer Facilities of Consultants

The following clause should be added to the Section “Services to be provided by the Consultants” of the Brief:

6.X Except to the extent otherwise provided for in this Agreement, the Consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under this Agreement. These computer facilities shall include but not limited to:

- (a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;
- (b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographical information systems, or other professional systems (such as, but not limited to, Electronic Document Management System, Building Information Modelling, Project Management System) as the case may be; and
- (c) IT training for staff employed by the Consultants.