

Appendix 7.1A –

Standard Provisions of EACSB Consultancy Agreements in NEC3 PSC Form

Standard Amendments to NEC3 PSC Standard Documents

NEC3 PSC Clause No.	Action	Details
50.3	Move and insert	move the third bullet point to become a new fourth bullet point and insert a new third bullet point as follows: "• the amounts to be paid to the <i>Consultant</i> as reimbursement and/or remuneration for recruitment, employment and management of Resident Site Staff in accordance with clause C2 of the <i>additional conditions of contract</i> and"

additional conditions of contract

**Recruitment,
Employment and
Management of
Resident Site
Staff**

C1

- (A) Where this contract or the Scope requires the *Consultant* to provide a part of the *services* in relation to recruitment, employment and management of Resident Site Staff (hereinafter referred to as “RSS” in this contract) under direct employment by the *Consultant*, the *Consultant* shall do so in accordance with clauses C1 and C2 of these *additional conditions of contract*, the Scope and the Schedule of Resident Site Staff Standards and Duties.
- (B) The *Consultant* shall be responsible for the acts, default and neglects of all RSS in connection with any works under this contract.
- (C) The *Consultant* shall comply with the procedures and arrangements for recruitment, employment, management, reimbursement and remuneration for its direct employment of RSS in accordance with the latest version of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent as at the deadline for submission of the Technical and Fee Proposals (hereinafter referred to as “RSS Management Handbook” in this contract). The RSS Management Handbook is posted on the website of the Development Bureau or equivalent under the heading “Standard Consultancy Documents” in the “Publications” section, and can be found in the following link or its update as advised by the *Employer’s Agent*:

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html

The RSS Management Handbook will be updated from time to time after the deadline for submission of the Technical and Fee Proposals when the existing works policies are modified. Changes to the arrangements on recruitment, employment, management, reimbursement and remuneration for direct employment of RSS by the *Consultant* in this contract or new arrangements introduced by the Development Bureau (Works

Branch) or equivalent before the Completion of this contract shall, subject to any instruction(s) by the *Employer's Agent* to the *Consultant*, be implemented by the *Consultant* from the date the changes or new arrangements take effect.

Reimbursement and Remuneration for the Consultant's Recruitment, Employment and Management of Resident Site Staff C2

- (A) The reimbursement and remuneration to the *Consultant* for such part of the *services* in relation to recruitment, employment and management of RSS shall be in accordance with this clause. For the avoidance of doubt, except as provided in this clause, no payment shall be made to the *Consultant* in respect of any part of the *services* in relation to recruitment, employment and management of RSS.

- (B) For the avoidance of doubt, the RSS on-cost and other reimbursable expenditures in relation to such part of the *services* in relation to recruitment, employment and management of RSS shall be excluded from the Prices and the Price for Services Provided to Date. Notwithstanding that the notional value for RSS on-cost, calculated on the basis of the *RSS on-cost rates* tendered by the *Consultant* in the Contract Data Part two (Section 2), was taken into account by the *Employer* in assessing the *Consultant's* Technical and Fee Proposals for this contract, the *Employer* has no obligation whatsoever to instruct any part of the *services* in relation to recruitment, employment and management of RSS. Notwithstanding that the actual RSS establishment size and composition determined in accordance with the Scope may deviate from the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal, any deviation between the actual RSS establishment size and composition determined in accordance with the Scope and the notional RSS establishment size and composition as stated in the Guidelines on Preparation of Fee Proposal shall not constitute a compensation event and the *Consultant* shall not be entitled to any payment or other compensation or relief of or attributable to the *Employer's* decision.

- (C) The *Consultant* shall be reimbursed for actual payment of salaries and fringe benefits of RSS, advertising costs for recruitment of RSS and expenses for specified training courses for RSS provided that:

- (i) the *Consultant* shall obtain the prior written acceptance of the *Employer’s Agent* on the proposals for the whole RSS establishment and its revisions in accordance with the Scope and the proposed reimbursement caps on salaries and fringe benefits for each RSS proposed to be employed in accordance with this clause prior to entering into any commitment to expenditure for which there is a provision for reimbursement in this clause;

- (ii) the total of the accumulated reimbursement applied and the estimated reimbursement to be applied for each calendar year shall not exceed the respective annual reimbursement ceiling (which is the aggregate total of various reimbursement caps on salary and fringe benefits of RSS, advertising costs for recruitment of RSS and expenses for specified training courses for RSS accepted by the *Employer’s Agent*); and

- (iii) the *Consultant* shall observe and comply with the conditions and mechanisms for determination of various reimbursement caps and reimbursement as stipulated in this clause.

Sections 4.1 to 4.11 and associated appendixes of the RSS Management Handbook shall form a part of this clause. The terms below in the RSS Management Handbook shall have the following respective meaning in this contract:

Term in the RSS Management Handbook	Meaning in this contract
the “Consultant”	the “ <i>Consultant</i> ”
the “managing department”	the “ <i>Employer’s Agent</i> ”
“the consultancy agreement”	“this contract”

(D) The *Consultant* shall be remunerated RSS on-cost each month for such part of the *services* in respect of the recruitment, employment and management of RSS, subject to price adjustments under sub-clause (E) of this clause. The monthly amount shall be the sum of the products obtained by multiplying the number of man-months of RSS provided and managed in the month of the rank as described in Column A below by the respective *RSS on-cost rates* tendered by the *Consultant* in the Contract Data Part two (Section 2). Column B describes the collective ranks of RSS directly employed by the *Consultant* and Government staff posted to the *Consultant* by the *Employer* as appropriate. Unless stated otherwise, the *RSS on-cost rates* in the Contract Data Part two (Section 2) are all-inclusive in respect of such part of the *services* in relation to recruitment, employment and management of RSS.

	Column A - <u>Rank</u>	Column B - Collective <u>Rank</u>
RSS directly employed by the <i>Consultant</i>	PRE, CRE, CRA	R1
	SRE, SRE(E&M), SRE(G), SRA, SRLA, SRQS, SRLS	R2
	RE, RE(E&M), RE(G), RA, RLA, RQS, RLS, RCTO, RSIOW, RSCOW, RPSO, RPTO, RSIO	R3
	ARE, ARE(E&M), ARE(G), ARA, ARLA, ARQS,	R4

ARLS, RIOW,
 RAIOW, RSFO,
 RFOI, RSSO,
 RCOW, RACOW,
 RSTO, RSO, RTO,
 RIO, REO, RAEO,
 RAO, RSCO, RCO

RWSI, RWSII, R5
 RFOIL, RACO,
 RACO(LR), RCA,
 RPSII, Resident
 Artisan, Resident
 Chainman,
 Resident
 Laboratory
 Assistant

Government Staff posted to the <i>Consultant</i> by the <i>Employer</i> under Section 4.11 of the RSS Management Handbook	CEG, GEG, LSG, SEG	R10
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[Add or delete ranks and/or collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.]

(E) The *RSS on-cost rates* shall be subject to adjustment in accordance with NEC Clause X1.

(F) The *Consultant* shall prepare monthly forecasts of the estimated expenditure on reimbursement for such part of the *services* in relation to recruitment, employment and management of RSS, which will have been paid by the *Consultant* before the end of the following calendar month in accordance with Sub-clause (C) of this

clause and associated RSS on-cost in accordance with Sub-clauses (D) and (E) of this clause. Within the first five working days of each calendar month, the *Consultant* shall submit the forecast and application for payment for such reimbursement and RSS on-cost one calendar month in advance to the *Employer's Agent* if appropriate. An explanation of the changes made since the previous forecast is submitted with each forecast. The *Consultant* shall correct any incorrectly estimated amount of reimbursement and RSS on-cost in a later application for payment but no interest will be paid on the difference between the incorrectly estimated amount and the correct amount. Applications for payment shall be processed in accordance with NEC Clauses 50 and 51.

A reason for withholding processing of any application for reimbursement and RSS on-cost is that more information is needed in order to assess the *Consultant's* submissions fully. A reason for not accepting any application for reimbursement and RSS on-cost is that the *Consultant's* submission does not comply with clause C1 or C2 of these *additional conditions of contract* or the *service services* provided by the *Consultant* does not comply with the Scope where appropriate.

- (G) The *Consultant* shall keep and submit the following records to the *Employer's Agent* in each payment application for the estimated expenditure on reimbursement and RSS on-cost in the following calendar month pursuant to Sub-clause (F) of this clause:
- estimates and accounts of payments of such reimbursement and RSS on-cost;
 - proof that the payments have been made for the last payment application; and
 - other declarations and records as required in this clause and the Scope.

Scope

XX. Resident Site Staff

XX.1 The *Consultant* shall provide the service in relation to the proposal, review and maintenance of RSS establishment appropriate for site supervision and contract management of works contracts arising from the *services*, as well as recruitment, employment and management of RSS in accordance with Sections 3.3, 5.1 to 5.12, 6.1 to 6.7 and associated appendixes of the RSS Management Handbook and the Schedule of Resident Site Staff Standards and Duties.

XX.2 Sections 3.3, 5.1 to 5.12, 6.1 to 6.7 and associated appendixes of the RSS Management Handbook shall form a part of this Scope. The terms below in the RSS Management Handbook shall have the following respective meaning in this contract:

Term in the RSS Management Handbook	Meaning in this contract
the “Consultant”	the “ <i>Consultant</i> ”
the “managing department”	the “ <i>Employer’s Agent</i> ”
“the consultancy agreement”	“this contract”

XX.3 The *Consultant* shall verify the information provided by RSS, keep and submit the declarations, records and other documents as required in clause C2 of the *additional conditions of contract* to the *Employer’s Agent* for such part of the *services* in relation to recruitment, employment and management of RSS.

Contract Data Part two (Section 2)

**Reimbursement C2
and
Remuneration
for the
Consultant’s
Recruitment,
Employment
and
Management of
Resident Site
Staff**

- The *RSS on-cost rates* are:

Collective rank of RSS directly employed by the <i>Consultant</i> or Government staff posted to the <i>Consultant</i> by the <i>Employer</i>	<i>RSS on-cost rate</i> of each collective rank (\$/man-month)[#]
R1	
R2	
R3	
R4	
R5	
R10	

Remarks:

The *RSS on-cost rate* of each collective rank (except R10) shall ~~not~~ be ~~less than~~ within the range of 5% to 30% of the reference average RSS cost of the corresponding collective rank given in the table in paragraph [Insert number] of the Guidelines on Preparation of Fee Proposal and are subject to correction in accordance with DEVB TC(W) No. 5/2018 and paragraph [Insert number] of the Guidelines on Preparation of Fee Proposal.

[Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.]

- The details of the collective ranks of RSS directly employed by the *Consultant* or Government staff posted to the *Consultant* by the *Employer* are in clause C2 of the *additional conditions of contract*.

Guidelines on Preparation of Fee Proposal

Resident Site Staff

- ~~The consultant’s attention is drawn to the requirement to insert the “RSS on-cost rates” in respect of each category of staff collective rank specified in the Contract Data Part two (Section 2), which information is essential for bid assessment purpose and for payment/management of the *Consultant* upon award of this contract. The RSS on-cost rates (except for R10) shall be within the range of 5% to 30% of the reference average RSS cost of the corresponding collective rank. The reference average RSS cost for each collective rank can be found in paragraph [Insert number] below.~~ ~~If the consultant fails to put in any or all of the RSS on-cost rates (except for R10), the relevant rate(s) shall be corrected by deeming the same as 5% of the reference average RSS cost of the corresponding collective rank rounded up to the nearest cent. If any of the RSS on-cost rates (except for R10) the consultant entered is lower than 5% of the reference average RSS cost of the corresponding collective rank, the relevant rate(s) shall be corrected to 5% of the reference average RSS cost of the corresponding collective rank rounded up to the nearest cent. The reference average RSS cost for each collective rank can be found in paragraph [Insert number] below. If the consultant fails to put in the “RSS on-cost rate” for R10, the relevant rate shall be corrected by deeming the same as zero.~~
 - ~~(i) If the consultant fails to put in the RSS on-cost rates for any collective rank (except for R10) in the Contract Data Part two (Section 2), the relevant rate(s) shall be corrected by deeming the same as 5% of the reference average RSS cost of the corresponding collective rank rounded up to the nearest cent.~~
 - ~~(ii) If the RSS on-cost rates for any collective rank (except for R10) the consultant entered in the Contract Data Part two (Section 2) is lower than 5% of the reference average RSS cost of the corresponding collective rank, the relevant rate(s) shall be corrected to 5% of the reference average RSS cost of the corresponding collective rank rounded up to the nearest cent.~~
 - ~~(iii) If the RSS on-cost rates for any collective rank (except for R10) the consultant entered in the Contract Data Part two (Section 2) is higher than 30% of the reference average RSS cost of the corresponding collective rank, the relevant rate shall~~

- be corrected to 30% of the reference average RSS cost of the corresponding collective rank rounded up to the nearest cent.
- (iv) If the consultant fails to put in the RSS on-cost rate for R10 in the Contract Data Part two (Section 2), the relevant rate shall be corrected by deeming the same as zero.

~~The~~ [Insert government department] will seek confirmation from the consultant to abide by the bid with the relevant rate(s) so corrected for bid assessment purpose and for payment/management of the *Consultant* upon award of this contract. If the consultant confirms his agreement to abide by the bid with the rate(s) ~~so proposed and/or~~ corrected, the combined score assessment of Technical and Fee Proposals would then be continued in the prescribed manner in accordance with DEVB TC(W) Nos. 2/2016 and ~~No.~~ 5/2018 and their subsequent updates (if any) on the basis of the proposed prices and/or rates with such rate(s) so corrected and confirmed. If the consultant fails to confirm his agreement to abide by the bid with the rate(s) so ~~proposed and/or~~ corrected in writing by a specified deadline, **the consultant’s submissions shall not be considered further in the consultants selection exercise.**

- The reference average RSS costs and notional numbers of man-months of collective ranks of Resident Site Staff (“RSS”) directly employed by the *Consultant* or Government staff posted to the *Consultant* by the *Employer* are listed in the table below. The *RSS on-cost rates* in the Contract Data Part two (Section 2) will be applied with the notional numbers of man-months to arrive at the “notional RSS on-cost charges” to be used for purpose of the combined score assessment of Technical and Fee Proposals by adopting DEVB TC(W) Nos. 2/2016 and 5/2018 and their subsequent updates (if any).

Collective rank of RSS directly employed by the <i>Consultant</i> or Government staff posted to the <i>Consultant</i> by the <i>Employer</i>	Reference average RSS cost (HK\$/man-month)	Notional number of man-months of each collective rank (man-month) <i>[To be inserted by managing department before invitation of</i>
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		<i>Technical and Fee Proposals]</i>
R1	<i>[Insert by project team]</i>	
R2	<i>[Insert by project team]</i>	
R3	<i>[Insert by project team]</i>	
R4	<i>[Insert by project team]</i>	
R5	<i>[Insert by project team]</i>	
R10 <i>(Please provide the further breakdown of notional number of man-months for Government staff to be posted for “Design Training” and “Site Training” if appropriate)</i>		

[Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.]

- The notional RSS establishment is given in **Attachment A**.
- The details of the collective ranks of RSS directly employed by the *Consultant* or Government staff posted to the *Consultant* by the *Employer* are in clause C2 of the *additional conditions of contract*.

Attachment A – Notional RSS Establishment

(I) Rank	(II) Posts in notional RSS establishment	(III) Number in notional RSS establishment	(IV) Notional number of man-months	(V) Collective rank of RSS directly employed by the <i>Consultant</i> or Government staff posted to the <i>Consultant</i> by the <i>Employer</i>
				R1
			(sub-total =)	
				R2
			(sub-total =)	
				R3
			(sub-total =)	
				R4
			(sub-total =)	
				R5
			(sub-total =)	
				R10
			(sub-total =)	

[Add or delete collective ranks as may be necessary to suit the need of the consultancy agreement by the managing department.]

Invitation Letter for Technical and Fee Proposals

XX You are reminded that relevant sections of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent will form parts of the *additional conditions of contract* and the Scope of this contract. This Handbook can be found in the link below:

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html