| **Clause** | | | **Remarks/Guidelines** |
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| **SCT 5 Contractors' joint venture** | | | |
| (1) | | Tenderers may submit their tender in the form of a joint venture provided they meet the conditions of participation below: | Ref.: ETWB TCW No. 50/2002,  ETWB memos ref. (019JP-01-4) in ETWB(W) 510/83/05 dated 2.11.2006,  ref. (01656-01-03) in ETWB(W) 510/83/05 dated 4.8.2006,  ref. (02VFJ-01-2) in DEVB(W) 510/83/05 dated 30.11.2016,  ref. (02VVW-01-1) in DEVB(W) 510/83/05 dated 24.1.2017,  ref. (03487-01-1) in DEVB(W) 510/83/05 dated 31.12.2019,  ref. DEVB(W) 510/83/05 dated 14.7.2020,  ref. DEVB(W) 510/83/05 dated 16.9.2020, and  ref. DEVB(W) 510/83/05 dated 26.3.2021  ETWB TCW No. 50/2002 stipulates that joint ventures shall be permitted to tender for contracts covered by the WTO GPA. For contracts not covered by the WTO GPA, departments may decide whether or not to allow joint ventures to tender. This Clause is to be used for tenders that allow joint ventures to participate. For tenders adopting open tendering procedures, project officers are advised to note the necessary amendments and to stipulate criteria on evaluation of technical capabilities or to consider using Stage 1 Screening. Please note that the amendments in curly brackets {} (or square brackets [] as the case may be) are only applicable to tenders with the estimated forecast total of the Prices / Estimated Total Expenditure / estimated Total Value for Tender Assessment (TVTA) equal to or greater than HK$2 billion. |
|  | | (a) the participants or shareholders in the joint venture collectively satisfy the qualification requirements; and |
|  | | (b) each participant or shareholder in the joint venture is technically capable for that part of the *service* it undertakes. |
| (2) | Where the tenderer is an unincorporated joint venture, it must:   1. subject to General Conditions of Tender Clause GCT 21 nominate a lead participant whose forecast value of works in the joint venture pursuant to sub-clause (4) below shall be more than that of any other participant in the joint venture. #[The lead participant must be a confirmed\* Group [ ] contractor in the List of Approved Contractors for Public Works for Buildings\* / Port Works\* / Roads and Drainage\* / Site Formation\*/ Waterworks\* (see Note 1)] / ##{ The lead participant must be either:   (i) a confirmed Group C (see Note 2) contractor in the List of Approved Contractors for Public Works for Buildings\* / Port Works\* / Roads and Drainage\* / Site Formation\* / Waterworks\* (“**the stated category**”) (see Note 1); or  (ii) a contractor who is not enlisted in any service category under the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works. In this case, there must be at least one participant in the joint venture who is a confirmed Group C (see Note 2) contractor in the stated category. The total percentage participation of participant(s) who is/are confirmed Group C (see Note 2) contractors included in the stated category must be at least 40% pursuant to sub-clause (4) below. The percentage participation of the lead participant shall be no more than 60%}; and   1. subject to General Conditions of Tender Clause GCT 25, submit to the *Service Manager* designate a Letter of Undertaking in the form set out in Appendix+ [*insert appropriate reference*] to these Special Conditions of Tender duly executed by all the participants of the unincorporated joint venture.   Failure to comply with this sub-clause by an unincorporated joint venture tenderer shall render its tender invalid. | | The submission required under sub-clause (2)(a) of this Clause is an essential submission and shall be mentioned in the GCT 21 on essential submissions.  Note 1: Insert the appropriate description in the event that the contract is invited from the List of Approved Suppliers of Materials and Specialist Contractors for Public Works. This clause is designed for inputting one service category only. If a project requires invitation of more than one service category in the List, DEVB and LAD(W) have to be consulted on the non-standard amendments.  \* Delete/Modify as appropriate.  # The words in square brackets [ ] are not applicable to open tendering.  ## The words in curly brackets { } are not applicable to open tendering and are only applicable to tenders with an estimated forecast total of the Prices / Estimated Total Expenditure / estimated TVTA equal to or greater than HK$2 billion and shall replace the words in square brackets [ ].  Note 2: In case the contract is invited from the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, amend the text “confirmed Group C” as appropriate.  + The form in Appendix B2 in ETWB memo ref. (01656-01-3) in ETWB(W) 510/83/05 dated 4 August 2006 shall be used. |
| (3) | Where the tenderer is an incorporated joint venture,   1. the shareholder who undertakes the largest share of forecast value of works, calculated pursuant to sub-clause (4) below, shall be referred to as “the major shareholder”. #[The major shareholder must be a confirmed\* Group [ ] contractor in the List of Approved Contractors for Public Works for Buildings\* / Port Works\* / Roads and Drainage\* / Site Formation\* / Waterworks\* (see Note 3)] / ##{The major shareholder must be either:   (i) a confirmed Group C (see Note 2) contractor in the List of Approved Contractors for Public Works for Buildings\* / Port Works\* / Roads and Drainage\* / Site Formation\* / Waterworks\* (“**the stated category**”) (see Note 3) ; or  (ii) a contractor who is not enlisted in any service category under the List of Approved Contractors for Public Works and the List of Approved Suppliers of Materials and Specialist Contractors for Public Works. In this case, there must be at least one shareholder in the joint venture who is confirmed Group C (see Note 2) contractor in the stated category. The total percentage participation of shareholder(s) who is/are confirmed Group C (see Note 2) contractor(s) in the stated category must be at least 40% pursuant to sub-clause (4) below. The percentage participation of the major shareholder shall be no more than 60%}; and   1. it shall, subject to General Conditions of Tender Clause GCT 25, submit to the *Service Manager* designate a Letter of Undertaking in the form set out in Appendix+ [*insert appropriate reference*] to these Special Conditions of Tender duly executed by all the shareholders of the incorporated joint venture.   Failure to comply with this sub-clause by an incorporated joint venture tenderer shall render its tender invalid. | | \* Delete as appropriate.  # The words in square brackets [ ] are not applicable to open tendering and shall be amended as appropriate for compatibility with sub-clause (4) regarding the determination of the major shareholder.  Note 3: Insert the same description as set out in sub-clause (2)(a) above.    ## The words in curly brackets { } are not applicable to open tendering and are only applicable to tenders with an estimated forecast total of the Prices / Estimated Total Expenditure / estimated TVTA equal to or greater than HK$2 billion. If applicable, they shall replace the words in square brackets [ ]. The words in curly brackets { } shall be amended as appropriate for compatibility with sub-clause (4) regarding the determination of the major shareholder.  + The form in Appendix B1 in ETWB memo ref. (01656-01-3) in ETWB(W) 510/83/05 dated 4 August 2006 shall be used. |
| (4)A | 1. Where the tenderer is a joint venture (whether incorporated or unincorporated), the tenderer shall, subject to General Conditions of Tender Clause GCT 21, submit with its tender the forecast value of works to be undertaken by each participant or shareholder in the joint venture in the JV Proforma, set out in Appendix [*insert appropriate reference*] to these Special Conditions of Tender (the “**JV Proforma**”). Failure of a tenderer to submit the forecast value of works in the JV Proforma on or before the close of tender shall render its tender invalid. 2. The percentage participation of each participant or shareholder in a joint venture shall be calculated by reference to the forecast value of works to be undertaken by such participant or shareholder against the \*forecast total of the Prices / \*Total Value for Tender Assessment (TVTA) stated in the JV Proforma or, if correction is required, by reference to the corrected forecast value of works and the corrected \*forecast total of the Prices / \*TVTA in the JV Proforma. In the event that the percentage participation stated elsewhere in the tenderer’s submission does not tally with one calculated from the JV Proforma, the latter shall prevail. 3. Each forecast value of works shall be inserted as a figure in the unit of Hong Kong dollar, otherwise the tender shall be rendered invalid. Any other descriptions, such as “jointly”, “fully integrated” etc. are not acceptable. 4. The tenderer shall not add any additional category of works to, or amend or delete any category of works in the list of categories set out in the JV Proforma. 5. The tenderer shall ensure that there are no uncategorised works. The value of those parts of the *service* that are not directly related to any category of works, e.g. preliminaries, personnel, insurance, safety etc., shall be distributed among the categories of works set out in the JV Proforma by the tenderer in such a way that the \*forecast total of the Prices / \*TVTA in the JV Proforma tallies with the “\*forecast total of the Prices / \*TVTA” inserted elsewhere in its tender e.g. the Grand Summary of the Schedule of Percentages, Form of Tender and Contract Data Part two. 6. The specific correction rules as more particularly set out in the JV Proforma apply to correction of discrepancies and errors as therein described. | | **Sub-clause (4)A** should be used for tenders **using the formula approach** for tender evaluation.  The submissions on the value of works forecasted to be undertaken by each participant or shareholder in the joint venture in the JV Proforma required under sub-clause (4)A of this Clause are essential submissions and shall be mentioned in the GCT 21 on essential submissions.  \* Delete as appropriate.  \* Delete as appropriate. |
| (4)B | 1. Where the tenderer is a joint venture (whether incorporated or unincorporated), the tenderer shall, subject to General Conditions of Tender Clause GCT 21, submit with its tender (i) the proposed percentage participation of each participant or shareholder in the Technical Submission Envelope; and (ii) the forecast value of works to be undertaken by each participant or shareholder in the joint venture in the JV Proforma set out in Appendix [*insert appropriate reference*] to these Special Conditions of Tender (the “**JV Proforma**”) in the Tender Price Documents Envelope. Failure of a tenderer to submit the proposed percentage participation or the forecast value of works in the JV Proforma on or before the close of tender shall render its tender invalid. 2. The proposed percentage participation shall be used for technical assessment. After completion of the technical assessment, the “Tender Price Documents” shall be opened. If the proposed percentage participation submitted in the Technical Documents Envelope does not tally with the proposed percentage participation calculated as detailed in sub-clause (4)(c) below, the latter shall prevail. In this case, it should be regarded as error of form and the technical score shall be adjusted using the corrected percentage participation so calculated instead the proposed percentage participation. 3. The percentage participation of each participant or shareholder in a joint venture shall be calculated by reference to the forecast value of works to be undertaken by such participant or shareholder against the \*forecast total of the Prices / \*TVTA stated in the JV Proforma or, if correction is required, by reference to the corrected forecast value of works and the corrected \*forecast total of the Prices / \*TVTA in the JV Proforma. 4. Each forecast value of works shall be inserted as a figure in the unit of Hong Kong dollar, otherwise the tender shall be rendered invalid. Any other descriptions, such as “jointly”, “fully integrated” etc. are not acceptable. 5. The tenderer shall not add any additional category of works to, or amend or delete any category of works in the list of categories set out in the JV Proforma. 6. The tenderer shall ensure that there are no uncategorised works. The value of those parts of the *service* that are not directly related to any category of works, e.g. preliminaries, personnel, insurance, safety etc., shall be distributed among the categories of works set out in the JV Proforma by the tenderer in such a way that the \*forecast total of the Prices / \*TVTA in the JV Proforma tallies with the “\*forecast total of the Prices / \*TVTA” inserted elsewhere in its tender e.g. the Grand Summary of the Schedule of Percentages, Form of Tender and Contract Data Part two. 7. The specific correction rules as more particularly set out in the JV Proforma apply to correction of discrepancies and errors as therein described. | | **Sub-clause (4)B** should be used for tenders **using the marking scheme** approach for tender evaluation.  The submissions on the proposed percentage participation and value of works forecasted to be undertaken by each participant or shareholder required under sub-clause (4)B of this Clause are essential submissions and shall be mentioned in GCT 21 on essential submissions.  This JV Proforma submission requirement should be listed under GCT 4(1)(c). The proposed percentage participation should be listed under GCT 4(1)(e).  \* Delete as appropriate.  \* Delete as appropriate. |
| (5) | (See Note 4) Without prejudice to any other General Conditions of Tender and Special Conditions of Tender, the lead participant or major shareholder in a joint venture will be considered as technically capable of undertaking the part of the *service* as required under sub-clause (1)(b) of this Clause, if:  (a)(i) the lead participant or major shareholder is a contractor listed in the category and group in the List of Approved Contractors for Public Works (see Note 5) as required by sub-clause (2)(a) of this Clause; and  (ii) the number of contracts to be held and the forecast value of works to be undertaken by the lead participant or major shareholder does not exceed the number and/or value of contracts or works that may be undertaken by a contractor listed in the same category and group as required by sub-clause (2)(a) of this Clause, the details of which are set out in the Contractor Management Handbook “CMH” published by the Development Bureau. ##[; or  (b)(i) the lead participant or major shareholder is NOT listed in the category and group in the List of Approved Contractors for Public Works as required by sub-clause (2)(a) of this Clause; and  (ii) it has completed, in the capacity of main contractor, two contracts each of a value equal to or greater than the limit on the values of contract or works that may be undertaken by a Group C (probationary) contractor in the same category as required by sub-clause (2)(a) of this Clause as set out in the CMH, within the last 7 years before the original date set for the close of tender. If such a contract was completed by a joint venture, only the part of the contract completed by the lead participant or major shareholder in that joint venture shall be accredited and calculated in accordance with its share of works by value.  For the purpose of sub-clause (5)(b)(ii) of this Clause, only the number of contract(s) and their respective contract value(s) concerning works falling within the same category on the List as required by sub-clause (2)(a) of this Clause shall be assessed. Experience gained in contracts overseas (government or non-government) will be counted. The joint venture tenderer shall, subject to General Condition of Tender Clause GCT 25, submit to the *Service Manager* designate documentary evidence, in the form of a certificate of completion and articles of agreement and the like to the satisfaction of the *Service Manager* designate, supporting the job experience of its lead participant or major shareholder.] | | DEVB’s memo ref. DEVB(W) 510/83/05 dated 14.7.2020  Note 4: Sub-clause (5) is not needed for open tendering. Project officer must state specific criteria needed to assess technical capabilities in open tendering to suit specific contract needs or to adopt Stage 1 Screening.  Note 5: Insert the List of Approved Suppliers of Materials and Suppliers of Materials and Specialist Contractors for Public Works as necessary.  ## The words in square brackets [ ] are only applicable to tenders with an estimated forecast total of the Prices / estimated Total Value for Tender Assessment (TVTA) equal to or greater than HK$2 billion. |
| (6) | (See Note 6) Without prejudice to any other General Conditions of Tender and Special Conditions of Tender, a participant or shareholder in a joint venture (other than the lead participant or major shareholder to which sub-clause (5) above applies) will be considered as technically capable of undertaking the part of the *service* as required under sub-clause (1)(b) of this Clause, if:  (a)(i) the participant or shareholder is a contractor listed in the same category and group in the List of Approved Contractors for Public Works (see Note 7) as required by sub-clause (2)(a) of this Clause; and  (ii) the number of contracts to be held and the forecast value of works to be undertaken by the participant or shareholder does not exceed the number and/or value of contracts or works that may be undertaken by a contractor listed in the same category and group as required by sub-clause (2)(a) of this Clause, the details of which are set out in the CMH published by the Development Bureau. For the purpose of the application of this sub-clause, probationary contractors will be treated in the same manner as confirmed contractors and the limits on the number and/or value of contracts or works that may be undertaken by probationary contractors as set out in the CMH will not apply; or  (b)(i) the participant or shareholder in the joint venture is a contractor included in the List of Approved Contractors for Public Works or the List of Approved Suppliers of Materials and Specialist Contractors for Public Works, whichever is applicable, (“the List”) other than the same category and group as required by sub-clause (2)(a) of this Clause; and  (ii) the category of works to be undertaken by the participant or shareholder as set out in the JV Proforma is of the same category of the List in which the participant or shareholder is included; and  (iii) the number of contracts to be held and the forecast value of works to be undertaken by the participant or shareholder does not exceed the number and/or value of contracts or works that may be undertaken by a contractor listed in the same category and group in which the participant or shareholder is included, the details of which are set out in the Contractor Management Handbook “CMH” published by the Development Bureau. For the purpose of the application of this sub-clause, probationary contractors will be treated in the same manner as confirmed contractors and the limits on the number and/or value of contracts or works that may be undertaken by probationary contractors as set out in the CMH will not apply; or  (c) the participant or shareholder in the joint venture is NOT a contractor included in the List for the category of works it proposes to undertake, and it satisfies the minimum experience criteria set out in the CMH for direct entry to the respective category, group and, if applicable, class on the List for the category and forecast value of works it proposed to undertake either on a probationary status, or as a confirmed contractor if the category of works concerned has no probationary status; or  (d) the participant or shareholder is a contractor included in the List for the category of works it proposes to undertake and this participant or shareholder wishes to take up works in excess of the limits of the category and group in which it is listed in, and it satisfies the minimum experience criteria set out in the CMH for promoting to the respective group for the forecast value of works it proposed to undertake, either on a probationary status, or as a confirmed contractor if the category of works concerned has no probationary status; or^  (e) (See Note 8) the participant or shareholder in the joint venture, irrespective of whether it is a contractor included in the List, wishes to take up “trenchless replacement and rehabilitation works” under this contract. Since such works does not fall within any of the category on the List, it should for the purpose of assessment of technical capability be regarded as falling within the “Waterworks” category of the List. The participant or shareholder shall satisfy sub-clauses (6)(a), (6)(b) or (6)(c) in respect of the “Waterworks” category as appropriate. The experience gained in “trenchless replacement and rehabilitation works” shall be regarded as mainlaying experience for the purpose of this sub-clause.  For the purpose of sub-clauses (6)(c) and (6)(d) of this Clause, only the number of contract(s) and their respective contract value(s) concerning works falling within the same category of works on the List the participant or shareholder proposed to undertake shall be assessed. Experience gained in contracts overseas (government or non-government) will be counted. The joint venture tenderer shall, subject to General Condition of Tender Clause GCT 25, submit to the *Service Manager* designate documentary evidence, in the form of a certificate of completion and articles of agreement and the like to the satisfaction of the *Service Manager* designate, supporting the job experience of its participants or shareholders. | | DEVB’s memo ref. DEVB(W) 510/83/05 dated 14.7.2020  Note 6: Sub-clause (6) is not needed for open tendering. Project officer must state specific criteria needed to assess technical capabilities in open tendering to suit specific contract needs or to adopt Stage 1 Screening.  Note 7: Insert the List of Approved Suppliers of Materials and Specialist Contractors for Public Works as necessary.  ^ Delete “; or” if (e) is not used and end the sentence with “.”.  Note 8: Where there are specific works in a contract of which there is no exact match in the List, such as “trenchless replacement and rehabilitation works” in a water supplies or drainage contract, the project officer shall, upon consultation with the Managing Department of the relevant category, determine and state the assessment criteria in this sub-clause. Otherwise this sub-clause is not necessary. Sub-clause (e) is provided here as an example.  The submissions required under sub-clauses (6)(c), (6)(d) and, if applicable, sub-clause (6)(e) of this Clause are not essential submissions and shall be mentioned in Clause GCT 25 on Submission of further information. |
| (7) | Not used | |  |
| (8) | No tenderer is permitted to submit more than one tender for each contract. For the purpose of this Clause, a tenderer who submits a tender on its own behalf and as a participant or shareholder of a joint venture or as a participant or shareholder of more than one joint venture in response to a tender exercise shall be regarded as having submitted more than one tender. Tenders submitted from a tenderer on its own behalf who is found to be in breach of this sub-clause or from a joint venture or joint ventures in which any participant or shareholder is found to be in breach of this sub-clause shall not be considered.  For the purpose of this sub-clause:-  (i) A holding company and its subsidiaries are considered as one and the same tenderer. The existence of a holding-subsidiary relationship shall be determined as at the date set for the close of tender, or if this has been extended, the extended date, and in accordance with the provisions in Sections 13 to 15 of the Companies Ordinance (Cap. 622); and  (ii) An entity (including but not limited to sole proprietorship, partnership and limited company) and its related parties as defined in sub-clause (2A) of GCT 29 are considered as one and the same tenderer.  For the avoidance of doubt, if two or more shareholders or participants in the same joint venture tenderer have a holding-subsidiary relationship or they are related, they shall not be regarded as having submitted more than one tender. | | DEVB memo ref. DEVB(W) 510/83/05 dated 16.9.2020 |