



M E M O

<i>From</i>	Secretary for Development	<i>To</i>	Distribution
<i>Ref.</i>	<i>in</i> DEVB(PS) 106/43	<i>(Attn:</i>)
<i>Tel. No.</i>	3509 8337	<i>Your Ref.</i>	
<i>Fax No.</i>	2905 1181	<i>Dated</i>	<i>Fax No.</i>
<i>Date</i>	4 February 2019	<i>Total Pages</i>	3 + Encl.

**WBTC No. 23/2000 -
Computer Facilities in Consultancy Agreements;**

**WBTC No. 17/2001 -
Electronic Dissemination of Invitation Documents for Consultancies;**

**WBTC No. 31/2001 -
Electronic Submission of Consultancy Proposals on Removable Media;**

**ETWB TC(W) No. 26/2003 -
Post-completion Review on Major Consultancy Agreements
and Major Works Contracts under Public Works Programme;**

**ETWB TC(W) No. 30/2004 -
Consultancy Agreements – Retention of Documents and Inspection;**

**ETWB TC(W) No. 34/2004 -
Retention of Money Payable to Non-resident Consultants
for Settlement of Profits Tax in Consultancy Agreements; and**

**ETWB TC(W) No. 3/2005 -
Novation of Consultancy Agreements**

Subsumption under AACSB and EACSB Handbooks

_____ We enclose the summary of minor updates for subsumption of the subject technical circulars under AACSB and EACSB Handbooks for your information please.

2. Part of ETWB TC(W) No. 42/2002 “Feedback and Debriefing to Unsuccessful Bidders for Consultancy Agreements and Works Contracts” related to consultant selection exercises have also been subsumed under AACSB and EACSB Handbooks.

3. This memo takes effect on AACSB/EACSB consultancy agreements with Technical and Fee Proposals to be invited on or after 11 February 2019.
4. Secretaries of AACSB and EACSB are requested to update the AACSB and EACSB Handbooks accordingly.
5. Please bring this memo to the attention of all project officers who are responsible for management of consultancy agreements.
6. If you have any enquiry on the subject issue, please contact our Mr. Benjamin K. H. CHAN (Tel: 3509 8381 or email: benjaminkhchan@devb.gov.hk).

(Hortensia CHAN)
for Secretary for Development

Distribution

	<u>Fax No.</u>
DArchS	2810 7341
DCED	2246 8708
D of DS	2827 9477
DEMS	2890 7493
DHy	2714 5216
DWS	2824 0578

c.c.	Secretary, AACSB	3542 5400
	Secretary, EACSB	2762 8531
	C for T	2824 0433
	D of EP	2838 2155
	D of Lands	2868 4707
	D of Plan	2116 0755
	D of HA (Attn.: CE(Works))	2382 6380
	D of B	2868 0793
	DAFC	2311 3731
	EDB (Attn.: SA(SIW))	2127 4054
	STH (Attn.: CAS(AEPCO))	2522 2697

Review of Technical Circulars (Works) (TCWs) in relation to Consultancy Services
Summary of Minor Updates and Subsumption of Existing TCWs into AACSB/EACSB Handbook(s)

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
1	23/2000	Computer Facilities in Consultancy Agreements	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	<p>(i) Procurement of Agreement Computing Services (ACS) via consultancy agreements is not common and other practical ways to procure relevant computing services, e.g. through OGCIO standing order agreement, are available. Therefore, procurement of ACS via consultancy agreements is no longer required.</p> <p>(ii) General computer items covered by lump sum in consultancy agreements should be updated.</p>	<p>Paragraph 18 to be amended as follow:-</p> <p>“Except to the extent otherwise provided for in consultancy agreements, consultants should be responsible for the cost of all computing facilities required by them for fulfilling the obligations under consultancy agreements. These facilities shall include :</p> <p>(a) office automation facilities commonly used by secretarial, clerical, administrative, technical or professional staff for the office functions;</p> <p>(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</p> <p>(c) IT training for staff employed by consultants.”</p>	<p>AACSB Handbook Update:</p> <p>(i) Section 5.9 (a)(iv);</p> <p>(ii) Appendix 5.2;</p> <p>(iii) Appendix 9 Clause 20.1</p> <p>(iv) Appendix 10 Clause 4 (A)(iv); and</p> <p>(v) Appendix 34 Annex 3 Attachment XIII Part II item 2.</p> <p>EACSB Handbook Update:</p> <p>(i) Section 4.12.;</p> <p>(ii) Appendix 4.3 amended and new Annex D to Appendix 4.3; and</p> <p>(iii) Non-staff charges items including computer facility removed in Appendix 3.13 Item D2.</p>
2	17/2001	Electronic Dissemination of Invitation Documents for Consultancies	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	<p>(i) Update latest compatible file formats for electronic dissemination;</p>	<p>Paragraph 9 of Annex 1:-</p> <p>Amend table under paragraph 9 as follows:</p> <p>(i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”;</p> <p>(ii) Delete “Rick Text Format”;</p> <p>(iii) Replace “Word 97” by “Word”;</p> <p>(iv) Replace “Excel 97” by “Excel”;</p> <p>(v) Add “Building Information Modeling (BIM)”;</p> <p>(vi) Replace editable file type of drawings to “Procurement Department to define and insert”;</p> <p>(vii) Add the following paragraph under the table: -</p> <p>“The data formats and associated versions of documents/files to be adopted in the EIP’s should adhere to the latest OGCIO Interoperability Framework which</p>	<p>AACSB Handbook Update:</p> <p>(i) Annex E of Appendix 8.3.</p> <p>EACSB Handbook Update:</p> <p>(i) Section 4.18;</p> <p>(ii) New Appendix to Section 4.18</p>

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
						can be downloaded from the OGCIO website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	
					(ii) Add DVD-ROM as a mean for dispatch of documents; and	Paragraphs 10, 12and 16(b) of Annex 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.	
					(iii) Rename ITSD to OGCIO.	Paragraphs 13(b) and 14 of Annex 1:- Replace “ITSD” by “OGCIO”.	
					(iv) Add reference for recognized digital signature certificate	Add new paragraph 15A as follows: “The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs ”	
3	31/2001	Electronic Submission of Consultancy Proposals on Removable Media	Y	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	(i) Update latest compatible file formats for electronic submission;	Paragraph 8(a) of Appendix 1:- Amend table under paragraph 8(a) as follows: (i) Replace “Adobe Acrobat” by “Portable Documents Format (PDF)”; (ii) Delete “Rick Text Format”; (iii) Replace “Word 97” by “Word”; (iv) Replace “Excel 97” by “Excel”; (v) Add “Building Information Modeling (BIM)”; (vi) Replace editable file type of drawings to “(Procurement Department to define and insert)” (vii) Add the following paragraph under the table: - “The data formats and associated versions of documents/files to be adopted in the EPP should adhere to the latest OGCIO Interoperability Framework which can be downloaded from the OGCIO website: https://www.ogcio.gov.hk/en/our_work/infrastructure/e_government/if/interoperability_framework.html	AACSB Handbook Update (i) Annex F of Appendix 8.3. EACSB Handbook Update: (i) Section 4.19; (ii) New Appendix to Section 4.19

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
					(ii) Add DVD-ROM as a mean for submission of documents;	<p>(i) Paragraph 18 of main text; paragraphs 2 to 6 of Appendix 1:- Add “/DVD-ROM” after “CD-ROM” and add “/DVD” after “CD”.</p> <p>(ii) Paragraph 2 of Appendix 1:- First sentence is replaced by “EPP shall be submitted on CD-ROM media complying with ISO 9660:1988 or DVD-ROM media to ISO 13346:1995 standards.”</p>	
					(iii) Delete the requirement for EACSB to release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department (as the ORIGINAL set of the document is to be submitted to the Managing Department direct in common practice).	<p>Paragraph 16 of main text:- Delete first sentence: “The AACSB and EACSB will release the ORIGINAL set of EPP on technical proposal or EOI to the Managing Department for evaluation.”</p>	
					(iv) Add reference for recognized digital signature certificate and organizational e-cert	<p>Add new paragraph 7A in Appendix 1 as follows: “The list of recognized certificates is available at OGCIO’s website: www.ogcio.gov.hk/en/regulation/eto/ca/rec_certs”</p>	
					(v) README file of EPP submission change to doc format	Amend README.rtf to README.doc in paragraphs 2 and 13 of Appendix 1, and replace “Rich Text Format” to “Word Format” in sentence 3 of paragraph 2 in Appendix 1.	
4	42/2002	Feedback and Debriefing to Unsuccessful Bidders for	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks.	N/A	N/A	N/A

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
		Consultancy Agreements & Works Contracts		- Remove TCW from active list after clearance of relevant implication on administration of works contracts.			
5	26/2003	Post-completion Review on Major Consultancy Agreements and Major Works Contracts under Public Works Programme	N	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	AACSB Handbook Update (i) Section 11.5
6	30/2004	Consultancy Agreements - Retention of Documents and Inspection	N	- Core parts of TCW have already been subsumed in AACSB and EACSB Handbooks. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks.	N/A	N/A	N/A
7	34/2004	Retention of Money Payable to Non-resident Consultants for Settlement of Profits Tax in Consultancy Agreements	Y	- Core parts of TCW have already been subsumed in EACSB Handbook. - Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with some minor updates).	Update the text in accordance with the latest tier of Profit Tax.	(i) Item (3) of Appendix A is replaced as follow: (3) Calculation of the amount to be withheld for tax payment The amount of tax withheld should be calculated on the gross fee payable (exclusive of any reimbursement of expenses, if any). Please refer to the website of the Inland Revenue Department (www.ird.gov.hk) for the details of latest profit tax rates. (ii) The first sentence of the first paragraph of Appendix B is replaced as follow:	AACSB Handbook Update: (i) Section 5.17 (ii) Annex K of Appendix 5.1 (iii) SCE 18 in Appendix 29 (iv) Annex 3 to Appendix 34 EACSB Handbook Update: (i) Appendix 4.15

Index	TCW No.	TCW Title	TCW Updates Required	Recommendation / Remarks	Reason for TCW Update	Relevant Section of Original TCW to be Updated (Key updates highlighted in red in below column)	Relevant Section of AACSB/EACSB Handbook to be Updated for Subsumption of TCW
						<p>“Please note that where the Consultants are non-resident corporation or, where the Consultants are unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, the Government shall withhold a percentage equivalent to the prevailing Hong Kong Special Administrative Region (hereinafter referred to as Hong Kong) profits tax rate applicable to unincorporated and incorporated business at the time the services are rendered (For the details of the current profits tax rates, please refer to the website of the Inland Revenue Department www.ird.gov.hk) of any fee payable to the Consultants, whether by way of lump sum, instalments or discounted payments, but exclusive of any reimbursement of expenses, if any, in respect of the Services performed/provided in Hong Kong for the settlement of Hong Kong profits tax chargeable on the fee. ...”</p>	
8	3/2005	Novation of Consultancy Agreement	Yes	- Remove TCW from active list with subsumption of TCW into AACSB and EACSB Handbooks (together with general update).	Revise signature format for execution of agreement in accordance with the latest Company Ordinance	Revise signature formats of Novation Agreement in Appendices A, B and C .	<p>AACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix 21.3</p> <p>EACSB Handbook update:</p> <p>(i) Revise Section 9.5</p> <p>(ii) New appendix to Section 9.5</p>

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
環境運輸及工務局
工務科
香港花園道美利大廈



Environment, Transport
and Works Bureau
Government Secretariat
Works Branch
Murray Building, Garden Road,
Hong Kong

Ref : ETWB(PS)106/11
Group : 6

21 September 2004

Environment, Transport and Works Bureau
Technical Circular (Works) No. 30/2004

Consultancy Agreements - Retention of Documents and Inspection

Scope

This Circular applies to consultancy agreements under the jurisdiction of the Architectural and Associated Consultants Selection Board (AACSB) and the Engineering and Associated Consultants Selection Board (EACSB), of which supervision of the construction of the works is part of the consultancy services.

Effective Date

2. This Circular takes immediate effect. The Special Condition of Employment set out in the Appendix shall be incorporated in all consultancy agreements for which the submission for approval of a shortlist has not been made to AACSB or EACSB.

Effect on Existing Circulars

3. This Circular should be read in conjunction with WBTC No. 16/95, WBTC No. 16A/95, ETWB TCW No. 38/2002, ETWB TCW No. 19/2004, and the AACSB/EACSB Handbooks. In case of discrepancies or inconsistencies

between this Circular and the Circulars and Handbooks referred to, the provisions of this Circular shall prevail.

Background

4. Clause 12 of the General Conditions of Employment requires consultants to retain their records, measurement books, accounts and other information (“the documents”) after completion of works contracts they are supervising. The main purpose is to ensure the preservation of documents to facilitate the assessment and resolution of outstanding claims, finalizing accounts and dealing with any residual dispute proceedings as well as for audit purposes. The appropriate retention period is to enable these processes to be completed and having due regard to the relevant limitation period applicable to the works contract which normally will be a minimum period of 12 years following completion.

5. It has been the past practice to retain all original documents. With the advancement of computing technology, original documents can now be scanned and stored in CD or DVD discs in the form of electronic image files with the original documents destroyed to reduce storage space and cost. Another benefit of using electronic storage is that multiple copies of the CD or DVD discs can be made and kept at minimal cost, with much lower risk of loss of information due to accidental damage compared with storing original documents.

Policy and Introduction of Special Condition of Employment

6. Accordingly, given the advancement in technology in relation to the electronic storage of original documents, such storage is now supported and Clause 12 of the General Conditions of Employment is amended to provide for consultants to submit a storage and retrieval proposal as part of which permission may be sought for the electronic storage of original documents.

Storage and Retrieval Proposal

7. Pursuant to the Special Condition of Employment appended to this Circular, the consultants are required to prepare a storage and retrieval proposal and submit it to the Director’s Representative for approval.

8. The storage and retrieval proposal shall be prepared on the basis of the following matters and principles:

8.1 Documents generally

- (a) The proposal shall include the intended list of documents to be retained.
- (b) The volume of documents shall generally be kept to a minimum.
- (c) Duplicate copies of documents and copies of documents that have been passed to the maintenance agencies and/or user departments may generally be destroyed.
- (d) The documents to be retained shall depend on the type and nature of the individual project.
- (e) The proposal shall state the location of the intended storage facilities.
- (f) The proposal shall state the intended environmental conditions in which the documents are to be stored.
- (g) The storage system shall allow for easy retrieval of documents in case of need.
- (h) The proposal shall state the intended method of retrieval including the approximate time it will take to retrieve documents.

8.2 Storage of electronic copies of original documents

- (a) In view of the benefits of electronic storage, the consultants are encouraged to propose the conversion of original documents to electronic copies and for the destruction of original documents.
- (b) Generally approval for destruction of original documents will only be given after the completion of final account of the particular works contract.
- (c) Where there are pending claims or disputes relating to a works contract, original documents should be retained until the outstanding claims or disputes are resolved.
- (d) For works contracts where there are no known or anticipated unresolved claims or disputes, original copies generally may be destroyed after electronic copies have been prepared and retained.
- (e) The original copies of all contract documents, supplemental agreements, warranties, bonds, insurance policies and contract drawings shall be retained as original documents.

- (f) Scanning should be done carefully and meticulously and thoroughly indexed for subsequent retrieval and inspection.
- (g) To ensure the evidential value of electronic copies, detailed records will be required vouching for the integrity of the electronic scanning and storage process including that:
 - (1) The documents scanned are properly identified.
 - (2) The date of scanning is recorded.
 - (3) The identity of the person responsible for scanning is recorded.
 - (4) The type of machine used for scanning is recorded.
 - (5) It is recorded that the original documents have been destroyed.
 - (6) Any affidavit required by the Evidence Ordinance or other ordinances is properly prepared and executed.
 - (7) The scanning effectively copies the documents including all handwritten annotations etc.
 - (8) Where the scanning is performed by a commercial provider that proper confidentiality undertakings are obtained.
- (h) The documents shall be saved in CD or DVD discs and kept in a protective pocket. The CD or DVD discs shall be checked to be free from any contamination by computer virus. The discs shall be clearly labelled on the surfaces and the protective cases with the date of production, agreement number and title, and names of the managing department and consultants. The spines of the cases shall be marked with the agreement number.
- (i) Documents shall be scanned and saved in Encapsulated PostScript Files (EPSF), Tag Image File Format (TIFF), Graphic Interchange File Format (GIF), Joint Photographic Experts Group (JPEG), or Acrobat format.
- (j) As the documents to be scanned are as-built records, only write once read many CD and DVD recordable discs shall be used.
- (k) Since CD and DVD discs have a definite life expectancy, the discs should be checked and backed up at intervals of not exceeding three years. The original set of media should always be used as the source for the back up unless they have become

unreadable. High quality CD or DVD discs should be used to improve durability.

- (l) In addition to the discs kept by the consultants, a duplicate set of all the discs shall be provided to the Employer.

8.3 Particular Requirements of the Director's Representative

In addition the consultants shall be subject to any particular requirements of the Director's Representatives with respect to the storage and retrieval of any particular documents in any works contract.

9. The Director's Representative shall have power to order amendment of or change to an approved storage proposal. The consultants are entitled to additional payment if such instruction is issued.

Finalization of Consultants' Fee and Reporting Procedures

10. The continued obligations of the consultants regarding document storage and retrieval should not prevent:

- (a) the payment of the consultants' fee under the consultancy agreement, nor
- (b) the issuing of the Final Report on the consultants' performance.

Application to Existing Consultancy Agreements

11. Whilst the new Special Condition of Employment Clause 12 does not apply to consultants engaged under existing consultancy agreements, those consultants may nevertheless be invited to submit proposals for the implementation of storage and retrieval of documents. Such an invitation should be in writing and should state that the consultants are not entitled to claim or receive any fee or other payment either for preparing such proposal or implementing such proposal if accepted.

(C S Wai)
Deputy Secretary for the Environment,
Transport and Works (Works) 2

Special Condition of Employment Clause

Retention of Documents and Inspection

SCE () Clause 12 of the General Conditions of Employment is deleted and replaced by the following:

- (A) For a period of 12 years¹ commencing from the date of substantial completion of any works contract or ground investigation contract (and where there are multiple sections for completion of the works, then the date of the last of such sections substantially completed and for the purposes of this Clause referred to as the “date of substantial completion”), supervision of which is part of the Services, the Consultants shall store records, files, measurement books, accounts and other information (for the purposes of this Clause called the “documents”) however generated and whether generated by or received by the Consultants in respect of each works contract or ground investigation contract, in accordance with the approved storage and retrieval proposal as referred to in sub-clause (B) of this Clause.
- (B) The Consultants shall before the date of substantial completion submit a storage and retrieval proposal to the Director’s Representative for approval. The proposal may be approved by the Director’s Representative with or without conditions. On approval the Consultants shall subject to this Clause deal with the documents in strict accordance with the approved storage and retrieval proposal.
- (C) The Consultants shall give assistance to public officers authorized by the Employer to locate, retrieve, inspect or copy such documents and shall answer queries or supply information reasonably requested by such officers on the concerned documents.
- (D) Upon the expiry of and notwithstanding the 12 years period, the Consultants shall first obtain the written consent of the Employer before destroying any of the documents. If so instructed by the Employer, the Consultants shall deliver any or all of such documents to the Employer’s designated store.

¹ “12 years” is a minimum period. Departments may set a longer period to suit their own requirements. In such cases, the period of “12 years” in sub-clauses (D) and (F) should also be amended to tally.

- (E) The Consultants shall notify the Employer immediately in case of any accidents or incidents leading to the loss or damage of any of the documents. The Consultants shall also inspect the documents at regular intervals of not exceeding three years to ensure that they are in good condition and shall report to the Employer promptly in case of any sign of deterioration.
- (F) The Employer may before the expiry of the 12 years period request that any of the documents be transferred from the Consultants to the Employer's designated store.
- (G) Notwithstanding sub-clause (A) to (F) of this Clause the Consultants may propose from time to time the destruction of certain documents or classes of documents and the Employer may consent to such destruction, such consent to be in writing.
- (H) The Director's Representative shall have power to order the amendment of or change to the approved storage proposal. Should the Director's Representative order such amendment or change the Consultants are entitled to be reimbursed any increase in the cost of storage.
- (I) For the avoidance of doubt, the Consultants' fee covers all of the obligations set out in this Clause, except instructions issued under sub-clause (H) of this Clause.