



MEMO

From Secretary for Development
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Tel. No. 3509 8279
Fax No. 2905 1181
Email leunglhf@devb.gov.hk
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Environment, Transport and Works Bureau
Technical Circular (Works) No. 42/2002
Feedback and Debriefing to Unsuccessful Bidders
for Consultancy Agreements and Works Contracts

Extended Category of Unsuccessful Bidders Allowed to
Lodge Requests for Debriefing for Consultancy Agreements

The requirements and procedures for providing feedback and debriefing to unsuccessful bidders for consultancy agreements were promulgated in ETWB TC(W) No. 42/2002 and later subsumed in AACSB and EACSB Handbooks. Such feedback and debriefing arrangement is now extended to cover those unsuccessful bids for which the technical and fee assessment process may not have been completed. Paragraph 7(a) of the technical circular is hereby amended as follows:

- (a) Shortlisted but unsuccessful bidders for two-stage selection or unsuccessful bidders for one-stage selection, whose technical proposals have been completely assessed by the procuring departments for AACSB/EACSB consultancy agreements each of value exceeding the Quotation Limit set out in section 220 of the Stores and Procurement Regulations (SPR 220).
2. To facilitate the subsequent debriefing, the perceived strengths and weaknesses of each technical proposal discussed by the Assessment Panel should be recorded in the meeting minutes.
3. The amendments should take immediate effect on AACSB/EACSB consultancy agreements.
4. Secretaries of AACSB and EACSB are requested to update the relevant Handbooks accordingly.

5. Please bring this memo to the attention of the project officers who are responsible for managing consultancies. If you have any enquiry, please contact Mr. Benjamin K. H. CHAN, AS(WP)11, at Tel: 3509 8381 or email: benjaminkhchan@devb.gov.hk

(Francis L. K. LEUNG)
for Secretary for Development

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The Government of the Hong Kong Special Administrative Region

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香港花園道美利大廈



Environment, Transport
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Transport and Works Branch
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27 December 2002

Environment, Transport and Works Bureau
Technical Circular (Works) No. 42/2002

Feedback and Debriefing to Unsuccessful Bidders
for Consultancy Agreements and Works Contracts

Scope

This Circular applies to consultancies under the purview of Architectural and Associated Consultants Selection Board (AACSB) and Engineering and Associated Consultants Selection Board (EACSB), and to public works contracts. It promulgates the requirements and procedures for departments to provide feedback to bidders including debriefing to unsuccessful bidders.

Effective Date

2. This Circular shall take effect on 1 February 2003. The arrangements stipulated in this Circular shall apply to:

- (a) consultancy agreements for which the submission for approval of a shortlist is made to AACSB/EACSB on or after 1 February 2003; and
- (b) works contracts for which the invitation of tenders is gazetted on or after 1 February 2003 or the letter of invitation to tender is issued on or after 1 February 2003.

Effect on Existing Circulars

3. There is no effect on existing circulars.
4. This Circular should be read in conjunction with WBTC No. 22/2002, 23/2002 and 24/2002.

Background

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

Policy

6. For a consultancy agreement with an awarded fee or fee ceiling above \$1.3 million or a works contract with an awarded contract sum or total estimated expenditure above \$3 million, the procuring department shall disclose to the bidders or, as the case may be, shortlisted/prequalified bidders, who have submitted valid tenders or 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).

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

- (a) Shortlisted but unsuccessful bidders for a consultancy agreement with the awarded fee or fee ceiling over \$4 million whose technical and fee proposals have been completely assessed by the procuring department; and

- (b) Unsuccessful bidders for a works contract with the awarded contract sum or the total estimated expenditure of a contract (including Design and Build Contract) over \$100 million and the assessment of tenders involves the use of a marking scheme in accordance with WBTC 22/2002. To save manpower resources, unsuccessful bidders to be debriefed shall be limited to those who have submitted conforming tenders with tender sums lower than the awarded contract price, or whose tenders are amongst the four highest overall scores.

8. Pursuant to paragraph 7 above, debriefing need not be offered to the following contractors:

- (a) unsuccessful bidders for works contracts in which the assessment of tenders involves using the formula approach as governed in the WBTC No. 23/2002; and
- (b) bidders who failed in getting prequalified or shortlisted.

Guidelines and Procedures

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

10. Where applicable, the unsuccessful bidders shall also be informed, pursuant to paragraph 7(a) and 7(b) 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 9 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.

11. 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 or works contract 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 or the works contract;
- (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.

12. We should make it clear to the bidders that the debriefing should not be used to change the choice of contractor/consultant nor to re-open the selection procedure. In case if a bid challenge has been lodged to the award of the works contract under the World Trade Organisation Agreement on Government Procurement, the procuring department shall hold up the debriefing until the bid challenge is settled.

13. 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 works contracts and consultancy agreements are given in Appendices C and D respectively.

14. Upon receipt of a request for debriefing, the procuring 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 procuring 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. For a 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 procuring department shall determine the team size and flexibility is allowed to assign different team members to conduct different debriefing sessions under the same 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.

15. 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 contractors/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 11 above. If necessary, some topics as suggested in Appendices A and B for consultancy agreements and works contracts respectively 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.

16. 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.

Future Development

17. The proposed arrangement will be reviewed after implementation for about 1 year.

(W S Chan)
Deputy Secretary for the Environment,
Transport and Works (Transport and Works) W2

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
5. Methodology
6. Works programme
7. Staffing
8. 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.

Examples of Debriefing Topics for Works Contracts

1. Cost – discussion on the competitiveness of the contractor's tendered sum in general terms (prices and rates of other tenderers other than the awarded sum shall not be disclosed)
2. Contractor's experience
 - a. Relevant experience in contracts of similar type or size
 - b. Relevant local experience (if it is essential for the delivery of the project)
3. Contractor's past performance (technical)
 - a. Workmanship
 - b. Progress
 - c. Claims attitude
4. Contractor's past performance (general obligations)
 - a. Site safety
 - b. Environmental performance
 - c. Care of utilities and the general public
 - d. Compliance with other enactments
5. Contractor's resources
 - a. Managerial and technical staff
 - b. Plant and equipment
6. Contractor's technical ability
(this may include method statement, quality assurance plan, site safety policy, works programme, extent of subcontracting and control mechanisms for subcontractors etc.)

Sample Letter to Unsuccessful Tenderers

(Contractor)

(Address)

.....

Dear Sirs,

Contract No.:

Title:

Further to my letter of (Date), I regret to advise that your tender has not been accepted.

For the purpose of administration of the List of Approved Contractors for Public Works*/List of Approved Suppliers of Materials and Specialist Contractors for Public Works*, your tender is regarded as **

- ** a competitive tender
- ** a non-competitive tender as it is more than 25% above the average of tenders received for the contract
- ** an invalid tender because (describe briefly the reasons why it is considered invalid)

In accordance with Environmental, Transport and Works Bureau Technical Circular (Works) No. 42/2002, we provide the following information for your reference:

Description	Highest Value/Score	Your Score
Awarded contract sum [#]	\$	-
Technical score of the successful tender*		
Highest score attained for each quality attribute in tenders submitted in this exercise*		
(a) Contractor's experience		
(b) Contractor's past performance (technical)		
(c) Contractor's past performance (general obligation)		
(d) Contractor's resources		
(e) Contractor's technical ability		
(f) (add in any other items in the marking scheme)		

Legend

[#] For tender evaluated using the formula approach (WBTC No. 23/2003 refers), it is only required to give the awarded contract sum, the performance rating of the winning tenderer is **NOT** required to be made known.

* Delete where appropriate.

** Include whichever is relevant, if the tender is invalid, it is not necessary to state whether it is competitive or non-competitive.

In accordance with ETWB TCW No. 42/2002, 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 prepare for the debriefing session, you are requested to provide a list of specific items related to this tender exercise which you would like our feedback.

The debriefing session shall not be used as an opportunity to lodge appeal/complaint against the award of the works contract. You should also note that our decision on the award of the contract is final and the debriefing cannot be used to change the choice of contractor 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 tender so as to enable you to improve your competitive performance in future tender exercises. Please also 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 tender 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 in submitting the tender for this Contract is very much appreciated.

Yours faithfully,

(Designation of the Engineer for the Contract)

Note:

- ❖ In case of an invalid tender, the 3rd, 4th and 5th paragraphs should be deleted.
- ❖ The 4th and 5th paragraphs shall be deleted if a debriefing is not to be conducted
- ❖ In case of a consultants-managed contract, the 4th and 5th paragraphs shall be included in a separate letter to be sent by the procuring department.

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 (or, as the case may be, Architectural and Associated Consultants Selection Board) in respect of the proposal submitted by the shortlisted consultants is enclosed for your information.

In accordance with Environmental, Transport and Works Bureau Technical Circular (Works) No. 42/2002, 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		
(d) Methodology and work programme		
(e) 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 ETWC TCW No. 42/2002, 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;
- (e) the debriefing is not to be taken as a means or an opportunity for you to lodge appeal or complaint against the bidding result;
- (f) tape recording during the debriefing will not be allowed;
- (g) request for records of the debriefing or agreement on any notes prepared by either party will not be entertained; and
- (h) 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 4th and 5th paragraphs shall be deleted if debriefing is not to be conducted