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Group : 1, 5

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Works Bureau Technical Circular No. 15/2002

**Contract Advisers and
Technical Audits on Works Contracts**

Scope

This Circular defines the role and duties of Contract Advisers and provides guidelines on the follow-up actions to be taken by works departments in response to the findings of technical audits on works contracts as well as the reporting systems of these findings and follow-up actions.

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular supersedes WBTC No. 14/99.

Contract Advisory Unit

4. Each works department shall have at least one Contract Advisory Unit headed by a Contract Adviser appointed at senior professional level:

- (a) to carry out technical audits on all works contracts, including term contracts and those contracts supervised by consultants, for which his/her Department or Office is responsible (see para. 6);

- (b) to provide advice on tendering and contractual matters and related procedures (see para. 6);
- (c) to advise and assist in resolving contractual disputes (see para. 6); and
- (d) to liaise with Legal Advisory Division/WB and D of J on contractual matters (see para. 19).

Duties

5. Technical Audits on Works Contracts

- (a) To carry out spot checks of selected tender documents for compliance with written policies and procedures (note that the responsibility for ensuring that documents have been correctly prepared rests with the project office);
- (b) to carry out technical audits at various stages of the contract for compliance with written policies, procedures and instructions; including administration of the contract, site records, measurements, payments, claims and the valuation of variations;
- (c) to carry out technical audits of selected contract final accounts, including where possible, spot remeasurement checks against "as constructed" drawings;
- (d) to report to the Head or Deputy Head of Department, or equivalent, where procedures, instructions or specifications appear inconsistent with policy, or approved standards, or could result in unnecessary expenditure; and
- (e) to ensure that, as far as possible, at least 50% of their Unit's combined staff time is spent on technical audits on works contracts.

6. Advisory

- (a) To provide an advisory service to the Department or Office on tender and contract procedures and other documentation, including the preparation of bills of quantities;
- (b) to advise¹ on claims, variations and other contractual matters; and
- (c) to advise² and assist in resolving contractual disputes, e.g. mediation and arbitration (see para. 21).

7. Other duties

- (a) To carry out independent checks on any matters as directed by the Head or Deputy Head of Department, or equivalent;
- (b) to research and report on specific issues;
- (c) to keep under review contractual procedures, standards and instructions so as to ensure consistency with other departments;
- (d) to attend meetings or participate in working groups on contractual or procedural matters as required by the Head or Deputy Head of Department, or equivalent; and
- (e) to carry out any other duties assigned by the Head or Deputy Head of Department, or equivalent.

¹ *The project office should deal with all matters related to the contract and shall only seek advice from the Contract Adviser when he has genuine doubts. When seeking such advice he shall inform the Contract Adviser of such doubts and the particular issues including those background facts on which he requires advice.*

² *The project office should be responsible for the overall co-ordination of arbitration or mediation procedures and attend meetings and the hearing. Contract Advisers shall provide advice and assistance, and attend meetings where deemed necessary.*

Technical Audit Guidelines

8. Technical Audit procedures should follow guidelines set out in the Technical Audit Manual issued by WB which are based on sound audit practice.

Activity Reports and Audit Reports on Technical Audits

9. Each Contract Adviser should submit quarterly Activity Reports on technical audits to his Head or Deputy Head of Department, or equivalent, with copies to WB. Such reports are to show the technical audits carried out during the previous quarter, the proportion of time spent on technical audits, and a programme for the next quarter.

10. Individual technical audit reports should be submitted to the Head or Deputy Head of Department, or equivalent, copied to the relevant Division/Unit heads and WB. The Head or Deputy Head of Department, or equivalent should determine the follow-up actions required and ensure their proper implementations.

Implementation of Follow-up Actions

11. Works departments should critically review the audit findings and take follow-up actions with a view to rectifying the non-compliance and avoiding recurrence. If frequently repeated non-compliances are identified, the cases should be thoroughly investigated and necessary remedial measures should be considered to address any shortcoming identified.

12. For cases where defaulting parties are clearly identified, works departments should seriously consider establishing sanction against the defaulting parties, e.g. reflecting the cases in the contractors' or the consultants' performance reports, or taking appropriate disciplinary actions against the personnel involved, as the case may be. Appropriate sanctions can serve as deterrence to future foul play.

13. When audit findings identify areas for improvement necessitating changes of existing policies, such findings should be brought to the attention of WB by an officer at D2 level or above. If the areas for improvement are of common interest to other departments, the initiating department should keep the departments informed of the proposed improvements.

Reporting of Follow-up Actions to Works Bureau

14. Works departments should submit review reports to WB annually on the technical audits on works contracts carried out in each calendar year, reaching WB before the first working day in March of the following calendar year. The review reports should include, inter alia, the conclusions of the annual review, common non-compliances identified and also the follow-up actions taken. If the follow-up actions have not yet been completed at the time of reporting, their programme and progress should also be provided. For cases where defaulting parties are clearly identified, the sanctions taken should also be included in the report. If no sanction has been taken for such cases, works departments should state in the report the reasons why not.

Contract Advisers' Meeting

15. The Contract Advisers of all works departments shall meet at regular intervals to discuss contractual or procedural issues or problems as may be raised by any members, or referred to the meeting for consideration. A representative of Housing Department may attend these meetings. The minutes of such meetings shall be circulated to WB, Directors in the works group of departments and the Secretary, Conditions of Contract Committee. The meeting shall be chaired by a Contract Adviser, traditionally the most senior Contract Adviser, elected by the members. The Chairman should report the major discussions to the Conditions of Contract Committee.

16. Any issue raised which has obvious legal and/or policy implications should be referred to LAD/WB and/or WB for advice, comment, or direction.

17. If Contract Advisers consider that a Works Bureau Technical Circular is warranted, or that an existing circular needs to be reviewed, this should be conveyed to the Secretary, Conditions of Contract Committee.

18. Where appropriate, the Chairman, Conditions of Contract Committee, may refer matters to the Contract Advisers' Meeting for consideration.

Liaison with Legal Advisory Division, Works Bureau

19. Correspondence between Offices or Departments and LAD/WB and D of J should normally be issued through the relevant Contract Adviser where such correspondence concerns contractual matters. The project professional shall prepare a draft request for advice to be sought from LAD/WB and D of J for vetting and forwarding by the Contract Adviser.

20. If any issue has limited or no legal implications, Contract Advisers may decide on the best course of action without reference to LAD/WB and D of J.

Notification of Disputes

21. Any reference to arbitration or request for mediation shall be promptly notified to the relevant Contract Adviser.

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