



M E M O

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**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

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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>

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						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

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					(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

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		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

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						<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

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Environment, Transport
and Works Bureau
Government Secretariat

Murray Building, Garden Road,
Hong Kong

Ref. : ETWB(PS)106/43
Group : 2, 6

25 September 2003

Environment, Transport and Works Bureau **Technical Circular (Works) No. 26/2003**

Post-Completion Review on Major Consultancy Agreements **and Major Works Contracts under Public Works Programme**

Scope

This Circular introduces post-completion review on major consultancy agreements and major works contracts under the Public Works Programme (PWP).

Effective Date

2. This Circular takes immediate effect.

Effect on Existing Circulars

3. This Circular has no effect on existing Circulars.

Introduction and Background

4. To achieve value for money in the procurement of services for construction and engineering works and consultancy services, the delivery of the

product should be to the specified quality and standards. Moreover, the functional and user requirements should be met in a cost-effective and efficient manner. It is considered that a post-completion review which serves the following key purposes is a useful project management tool –

- (a) to measure the success or otherwise of a project in achieving its planned objectives on time, within budget and at the specified quality level;
- (b) to bring up the lessons learned, both good and bad, so that, where appropriate, these can be used to benefit future projects; and
- (c) to provide an opportunity to review the overall effectiveness of the procurement strategy and procedures in place in the light of project performance, so as to identify any necessary improvement areas.

5. The Construction Industry Review Committee was also of the view that such a review and experience sharing process would be conducive to continuous improvement in the performance of all parties involved and the development of long-term partnership, thus recommended in their Report of January 2001 the implementation of a post-completion review by Government.

Policy

6. A post-completion review shall be conducted upon the substantial completion of a major consultancy agreement or a major works contract on projects under the PWP. However, as the practice is new to Government departments, it is not appropriate to lay down a rigid definition for major projects or the minimum number of reviews to be undertaken by departments. Nonetheless, as a broad guideline, it is considered that post-completion reviews are generally not warranted for consultancy agreements and works contracts of a project which has a total cost less than \$500 million or of a project which does not involve complicated technical and management issues. Some suggested indicators of the involvement of complicated issues are provided in the Appendix for reference. Based on the above guidelines, departments could select agreements/contracts to be reviewed at their discretion.

7. Upon the completion of a post-completion review, the department shall prepare a report documenting all concerned issues, findings, conclusions and recommendations for future reference by the department. If the findings of a review

are considered useful to other departments/bureaux, the department may circulate the findings to other departments/bureaux for experience sharing purpose. Furthermore, if input has been offered or provided by any consultant or contractor or other service provider in the review, the report should also be copied to such service provider. Nevertheless, the report copied to a service provider may need to have the information or details of or on the other service providers blocked out.

Guidelines and Procedures of the Review

8. It is desirable that input from major project participants, including the service providers such as consultants and contractors, could be included in the review. Nevertheless, the participation of the service providers or any relevant party in the review is to be on a voluntary and good faith basis. More than one discussion session with the presence of different service providers may be conducted, if necessary. However, as consultancy assignments for feasibility studies or investigation may be completed long before the commencement of the works contract, departments shall consider if separate reviews for such feasibility study/investigation assignments are required taking into account the benefits of such reviews against the resources required.

9. The emphasis and objective of the review are to gain maximum benefit from the experience accrued, rather than to apportion blame, i.e. it is not intended to be an auditing exercise. Any observed shortfall in the procurement, contract management and practices, and monitoring of the performance of the consultants and contractors should however be critically reviewed and rectified to avoid repetition of the same mistakes in the future.

10. Guidance notes for the conducting of a post-completion review and the suggested issues to be examined in the review are given in the Appendix. Nonetheless, departments should determine the scope and details of the review to suit individual project.

(W S Chan)
Deputy Secretary for the Environment,
Transport and Works (Works) 2

Guidance Notes for the Post-Completion Review

(A) Introduction

A post-completion review is a means of recording experience, both success and failure, from past projects, so it can be used where appropriate to improve future projects by avoiding past mistakes and allowing good practices to be better understood by project staff.

In general terms, the review should consider –

- (a) project objectives in terms of cost, time and quality;
- (b) management;
- (c) organization;
- (d) systems and procedures;
- (e) suitability of the design, contract types and contract packaging; and
- (f) public reaction during construction and operation.

Departments may consider conducting a single post-completion review examining aspects in both the consultancy agreement and works contracts together.

(B) On what type of projects should a Post-Completion Review be conducted

It is considered that the post-completion review (being a new initiative and there is also a need to optimize the benefits against resources to be deployed) need not be conducted for consultancy agreements and works contracts of a project which has a total cost less than \$500 million or of a project which does not involve complicated technical and management issues. Indicators that a project involves complicated issues may include the following:

- (a) project involving a variation item costing substantial amount, say over \$1 million;

- (b) project involving a claim of a substantial sum, say over \$1 million;
- (c) project involving design or construction method not commonly used in Hong Kong; and
- (d) project involving incidents that attract public attention.

(C) Who and what should be involved in a Post-Completion Review

A post-completion review should be led by the officer in charge of the project (normally at senior professional level or above) and he or she should solicit input from the client and other project participants (such as the consultants, contractors and subcontractors) as appropriate. The department should also determine the depth of the review, taking into account the issues to be examined, and consider if assistance from legal advisor or technical specialists should be sought. Consideration should also be given to inviting project officers who have left the project team to provide input.

A post-completion review may involve both a document review and discussion sessions with the presence of different project participants. Due to the different concerns of different project participants, it may be necessary to have more than one discussion session with different party in order to facilitate better collection of views and exchange of ideas.

(D) When should the Post-Completion Review be carried out

A post-completion review should be carried out within a reasonable period, say 6 months, after the substantial completion of a consultancy agreement or a works contract. However, in case there are on-going disputes with the service providers, it may be more appropriate to defer the review until the disputes are settled or the review may have to be carried out without the participation of the service provider concerned. For a project that comprises a number of contracts/consultancy agreements, the project office may elect, in view of the benefit of an overall review, to conduct a single review upon the substantial completion of the last contract.

(E) The review

The project office could determine issues to be examined in a post-completion and some suggestions are given below:

- (a) pre-contract arrangements/procedures;
- (b) contract administration system/arrangements;
- (c) adequacy and suitability of specifications/brief;
- (d) programme/cost/variation control measures;
- (e) management of consultant's/contractor's performance;
- (f) management and control in relation to subcontractors/subconsultants;
- (g) procedures in relation to the management of quality, safety and environmental aspects and traffic management issues;
- (h) contract documents;
- (i) acceptance, testing and commissioning system/procedures;
- (j) quality/performance of service providers;
- (k) organization of consultants/contractors/other service providers;
- (l) management/handling of public complaints;
- (m) adequacy of contract period/study period.

Departments are also suggested to develop performance indicators to facilitate the review and develop after reviewing the projects, suitable benchmarks of project performance. The relevant indicators and benchmarks for the following aspects of performance or any other appropriate one should be developed:

- (a) Cost performance - say by comparing the final out-turn prices as against the initial estimates and tender prices;
- (b) programme performance – say by comparing the actual project delivery as against the planned programme; and
- (c) staffing performance – say by comparing the adequacy of the level of staffing assigned to the project against any established departmental guidelines.

Established benchmarks should also be subject to review from time to time.

Although the post-completion review is essentially for exploring areas where improvement could be made, it is not expected that consensual views among the client and service providers on all issues examined could

be made nor solutions to all problems revealed could be formulated. Nonetheless, the review itself is part of a process of enhancing awareness among the participants in the problematic areas thus would actuate improvement as a natural outcome in the long-term.

(F) Views of the users may be included

If the timing of the post-completion review allows, the view of the users, and management/maintenance parties in the following areas or any others proposed by the users may be included in the review -

- (a) an assessment of whether user requirements have been met, such that they would be better ascertained and conveyed to designers in future;
- (b) an assessment of the costs in use as against the planned operating cost, and how the planned efficiency and effectiveness of the equipment and facilities compare with those as built; and
- (c) any recommendations that the users may wish to make to improve value for money performance of future projects, e.g. facilities which are in fact unnecessary for most users can be omitted from future projects.

The department may also consider, if resources is available, conducting a separate review with the users and management/maintenance parties at a later time, say one year, after they take over the project.