



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

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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 OGCI 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 OGCI 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>

Ref. : WB (CS) 1/2/5

Group : 6, 17

1 August 2000

Works Bureau Technical Circular No. 23/2000

Computer Facilities in Consultancy Agreements

Scope

1. This Technical Circular advises on the policy for the procurement of computing facilities in the consultancy agreements awarded through Engineering and Associated Consultants Selections Board (EACSB) and Architectural and Associated Consultants Selected Board (AACSB).
2. The provisions in paragraphs 10 to 17 covering what computing facilities may be procured through consultancy agreements and what are the consultants' responsibilities in providing computing facilities shall be applicable to all applications to EACSB and AACSB. The Secretary for the Treasury has agreed to these provisions.
3. The provisions for the internal regulations covering for the procurement of computing services through consultancies shall be applicable to the departments under Works Bureau. The Director of Information Technology Services has agreed to the provisions in paragraphs 23 and 24.

Effective Date

4. This circular takes immediate effect.

Effects on Existing Circulars

5. This circular supersedes Works Bureau Technical Circular (WBTC) No. 20/91 – Computer Facilities in Consultancy Agreements.

Related Circulars

6. This circular is not related to any other technical circulars. However, the following documentations are relevant:-
 - (a) Handbook on Selection, Appointment and Administration of Engineering and Associated Consultants published by EACSB, ("EACSB Handbook");
 - (b) Handbook on Selection, Appointment and Administration of Architectural and Associated Consultants published by AACSB, ("AACSB Handbook"); and
 - (c) Information Technology and Broadcasting Bureau (ITBB) Circular No. 1/99 – Computerization.
7. If there are discrepancies between the provisions of this circular and those of the EACSB Handbook and AACSB Handbook, the provisions of this circular should prevail.

Definition

8. In this circular, unless the context otherwise requires-

"Agreement Computing Services" (or "ACS") means the following types of services procured through consultancy agreements-

- (i) system analysis and design;
- (ii) application development;
- (iii) development of scientific, engineering, planning and other types of mathematical models and simulations;
- (iv) installation, testing and commissioning of computer systems;
- (v) application development and maintenance; and
- (vi) system operation support;

"Approving Officer" means an officer at D2 rank or above;

"Departmental Computer Services Unit" (or "DCSU") means the functional unit in the department tasked to oversee IT matters;

"Project Officer" means the staff responsible for managing a consultancy;

"Reimbursable Item", assumes the same definitions as in the respective handbooks for EACSB and AACSB. For convenience, it is reproduced here as *"any contract, irrespective of value for the supply of a service or equipment for which the consultant is*

reimbursed by Government after having first made payment to the contractor/supplier from his own funds".

Background

9. In December 1991, we issued WBTC No. 20/91 to make provisions for computing facilities associated with consultancy agreements. As it has been in operation for nearly 10 years, we need to update its provisions as follows:-
 - (a) clarifying the computing facilities that may be procured through consultancies;
 - (b) making more detailed provisions on the internal procedures for the approval of procurement proposals; and
 - (c) abrogating the procurement of computing facilities through Reimbursable Items.

Policy on Procurement Issues

10. Consultancy agreements awarded through EACSB and AACSB may include procurement of ACS, where the delivery of ACS would involve substantial professional input from the engineering or architectural perspectives.
11. In processing consultancies involving ACS, the selection boards may consider whether other arrangements are more appropriate for procuring the proposed computing services. For instance, if it is unlikely that the management consultants will possess the necessary IT expertise, it may be more appropriate to procure the required computing services through a separate contract based on the business requirements identified by the management consultants.
12. In so far as possible, ACS should be paid as part of the lump sum fee. The requirements for ACS should be adequately defined in the consultancy agreements so that consultants can realistically price their services.
13. ACS that cannot be adequately defined in consultancy agreements or are ordered as variations may be paid as negotiated lump sum or time charges in accordance with the relevant provisions of:-
 - (a) "EACSB Handbook"; or
 - (b) "AACSB Handbook".
14. The payment of ACS through time charges should be avoided as far as possible and the use of time charges should be fully justified.
15. For the avoidance of doubts, both EACSB and AACSB will NOT deal with consultancy agreements which include procurement of:-

- (a) any computing equipment through consultancy agreements; and
 - (b) any computing services and equipment through Reimbursable Items.
- 16. Further to the provisions of paragraph 15, if computing equipment is required to serve the deliverables of ACS, the equipment should be procured in accordance with the provisions of the Stores and Procurement Regulations. Departments may include, in the consultancy agreements, the consultants' support in handling the procurement procedures.
- 17. Paragraph 15 does not apply to consultancies with invitations for expressions of interest issued before this circular takes effect.

Computing Facilities of Consultants

- 18. 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 should include:-
 - (a) office automation facilities commonly used by secretarial, clerical, administrative or professional staff for the office functions;
 - (b) technical computing facilities used by professional and technical staff for computer-aided drafting, computer-aided design and geographic information systems, or other professional systems as the case may be; and
 - (c) IT training for staff employed by consultants.

Policy on Technical Issues

Interface with other systems

- 19. If the deliverables of ACS will interface with other computer systems, the consultancy agreement should make suitable provisions to ensure that the compatibility and security issues will be properly addressed.

Openness of proposed systems

- 20. The deliverables of ACS should adopt industrial-standard applications and data interfaces to facilitate data interoperability and exchange. In so far as possible, departments should avoid technical options that will lock the Government into any particular consultants, contractors, equipment vendors, technologies or products.

Y2K compliance

21. To ensure Y2K compliance of the deliverables of ACS, departments should incorporate the clauses prescribed in Annex 1 in the Special Conditions of Employment and the study brief.

Approval of ACS

22. If a Project Officer proposes ACS, he/she should seek the approval in accordance with the procedures in Annex 2 before starting the consultant selection process.
23. In processing proposals for ACS, the DCSU should consult Information Technology Services Department (ITSD) whenever necessary. ITSD will comment on the technical aspects including:-
- (a) compliance with government wide IT policy, standards, security practices and guidelines; and
 - (b) compatibility between the proposed system and other computer systems.
24. Furthermore, the DCSU should seek ITSD's endorsement of the technical proposal for interfaces with the following types of systems:-
- (a) systems of other Government departments and non-Government organizations; and
 - (b) Administrative Systems of the department.

Enquiries

25. Enquiries on this circular may be made to Computer Services Unit of Works Bureau at fax no. 2905 1181 or e-mail address csu@wb.gov.hk.

(W. S. Chan)
Deputy Secretary (Works Policy)

Annex 1
Year 2000 Warranty for Deliverables of Consultancies

Special Conditions of Employment

- A. For the purpose of this Special Condition of Employment-
- (a) "Computing Deliverables" means the Deliverables enumerated in Clause **__ of the Study Brief;
 - (b) "Commencement Date" means the date on which the Computing Deliverables are in production;
 - (c) "End Date" means a date **__ calendar years from the approval of the last Deliverable for the Assignment.
- B. The Consultants shall warrant that the Computing Deliverables are Year 2000 compliant as specified in clause **__ of the Study Brief. The period of the warranty (the "warranty period") shall commence on the Commencement Date and shall subsist until the End Date.
- C. Notwithstanding any provisions of the General Conditions of Employment, the Consultants shall during the warranty period and upon a notice regarding Year 2000 non-compliance given by the Employer promptly carry out necessary work to the Computing Deliverables so as to render the Computing Deliverables Year 2000 compliant. If the Consultants shall fail to carry out rectification work to render the Computing Deliverables Year 2000 compliant promptly, the Employer shall be entitled to engage his employees or agents or other consultants or contractors to carry out such work. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work carried out shall be recoverable by the Employer from the Consultants.
- D. The liability of the Consultants under this Special Condition of Employment shall not in any way be affected by an independent inquiry or investigation into the Year 2000 compliance of the Computing Deliverables or any matter related thereto whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
- E. For the avoidance of doubt, the Consultants shall indemnify and keep indemnified the Employer against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of this Special Condition of Employment.
- * - *delete inappropriate term*
 - ** - *provide details to suit the specific contract*

Sample clause for Study Brief

A. The Computing Deliverables shall be Year 2000 compliant meaning that neither their performance nor functionality will be affected by dates prior to, during and after Year 2000.

B. Without affecting the generality of paragraph A above, the Computing Deliverables shall satisfy the following requirements with respect to Year 2000 compliance-

- (a) No value of current date shall cause any interruption in operation;
- (b) Date-based functionality shall behave consistently for dates prior to, during and after Year 2000;
- (c) In all interfaces and data storage, the century in any date shall be specified either explicitly or by unambiguous algorithms or inferring rules; and
- (d) Year 2000 shall be recognized as a leap year.

Annex 2

Approval of Agreement Computing Services

1. Scope

- 1.1. This annex describes the procedures for approving ACS.
- 1.2. The procedures can be divided into the following main stages:-
 - (a) preparation of proposal for ACS;
 - (b) assessment of proposal by DCSU; and
 - (c) approval of proposal by Approving Officer.

2. Proposal for ACS

2.1. Overview

- 2.1.1. If a Project Officer proposes to procure ACS, he/she should prepare a proposal in accordance with the following framework:-
 - (a) Scope of the consultancy;
 - (b) Description of ACS - itemized description of the deliverables of the ACS including the functions of the various deliverables;
 - (c) Proposed computing equipment – the proposed computing facilities that will be procured outside the consultancy agreements for running, deploying, and using the deliverables of the ACS;
 - (d) Interface with other systems

This section should describe the interfaces between the deliverables of the ACS and other systems of the department, other Government departments and non-Government organizations. The provisions in the consultancy agreement for dealing with compatibility and security issues for system interfaces should be highlighted;
 - (e) Openness of deliverables - measures for ensuring that the deliverables of ACS will satisfy the requirement for openness stipulated in paragraphs 20 of the WBTC;
 - (f) Cost estimates and funding
 - (i) funding source for the ACS and the proposed computing equipment;
 - (ii) estimate of the efforts and cost for the ACS;

- (iii) parts of the ACS that will be paid as time charges, the amount of such time charges and justifications for adopting time charges; and
 - (iv) estimated cost of the proposed computing equipment;
- (g) Risks
 - (i) risks that may affect the delivery of the ACS on time and within budget; and
 - (ii) preventive measures for averting these risks and the contingency measures for mitigating their effects;
- (h) Recurrent implications
 - (i) the recurrent staff resources for maintenance and support of the deliverables of the ACS and proposed computing equipment;
 - (ii) the recurrent financial resources for maintenance and support; and
 - (iii) the sources of the recurrent staff and financial resources.
- (i) Relevant parts of the draft consultancy agreement

The consultancy agreement should adequately define the requirements for the ACS to enable the consultants to realistically price for the services. The agreement should also define the deliverables of the ACS including any system, application and user documentations and source codes.

3. Assessment of Proposal by DCSU

3.1. Upon receiving proposals for ACS, DCSU's should assess the proposal and make recommendation to the Approving Officer. The assessment should include:-

- (a) checking compliance with departmental IT policies, standards and guidelines;
- (b) assessing, in so far as possible, whether the ACS is technically feasible;
- (c) assessing whether the requirements of the ACS is adequately defined in the study brief so that consultants can realistically price for the services;
- (d) consulting with ITSD if there are doubts on government wide IT policies, standards and guidelines;
- (e) seeking ITSD's endorsement of interfaces with other computer systems enumerated in paragraph 24 of the WBTC; and

- (f) consulting with WB if there are doubts on WB or PLB's IT policies, standards and guidelines.

4. Approval of Proposal

- 4.1. Upon receiving the DCSU's recommendation, the Approving Officer should decide whether the proposal should be approved.

Subsumed