

Sample Letter for Invitation of Technical and Fee Proposals
(For Two-stage Consultants Selection)
(For NEC3 PSC)

Dear Sirs,

[Insert Agreement No. & Title]

Invitation of Technical and Fee Proposals

I am pleased to invite you to submit Technical and Fee Proposals for bidding for Agreement No. **[Insert agreement no.]** “ **[Insert agreement title]**”. Please note that submissions are being invited on a non-commitment basis.

2. The following electronic documents for preparing your submission are included in the { attached DVD-ROM(s) / designated zip folder in the **[Insert location e.g. FTP Server]** accessible via the link provided in the invitation email dated **[Insert date of issue]** with password provided in a separate email }* and are listed in Schedule 2 to the attached Licence Conditions for Electronic Invitation Package (EIP) in Annex **[_]** to this letter. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2.

* Delete/amend as appropriate

- (i) This covering letter (with Annexes **[_]** to **[_]**);
- (ii) Memorandum of Agreement and its Schedule;
- (iii) *additional conditions of contract*;
- (iv) Schedule of Resident Site Staff Standards and Duties (if any);
- (v) Contract Data Part one;
- (vi) Proforma for Contract Data Part two (Sections 1 and 2);
- (vii) Proforma for Activity Schedule;
- (viii) Scope;
- (ix) Guidelines on Preparation of Technical Proposal;
- (x) Guidelines on Preparation of Fee Proposal;
- (xi) Proforma for Annexes A to E of Fee Proposal;
- (xii) List of Participating Consultants and Subconsultants (the term “Subconsultants” or “subconsultants” should include all individual academic institutions, specialists, advisors, experts and the like proposed to be externally engaged to Provide the Services under this contract, and all references to “Subconsultants” or “subconsultants” in this letter should be construed accordingly. Your attention is drawn in particular to the requirement to verify the list of your subconsultants and ensure its completeness as required in paragraph 11 below). For the avoidance of doubt, subject to your confirmation on the employment status, staff seconded from the consultant’s associated companies (subsidiaries, parent companies or subsidiaries of your parent company) not externally engaged as subconsultants shall be regarded as your own staff for the purpose of tender assessment, including the overloading checking of manpower input, for this contract;
- (xiii) Manning schedule template;
- (xiv) Personal information collection statement; and
- (xv) Other documents (please state).

3. You may make your submission in either electronic format or hard copy format, except that

the manning schedule should be submitted in both the prescribed electronic format and hard copy format. If part of the submission is made in both electronic and hard copy formats, the electronic format shall prevail over the corresponding hard copy format. If the manning schedule in the submission is made in hard copy format only, you shall provide the same manning schedule in the prescribed electronic format upon request by us. In such circumstance, the manning schedule in hard copy format in the submission made on or before the deadline specified in paragraph 4 below shall prevail. The documents for your proposal submitted in electronic format, including manning schedule and any part of the submission which you elect to submit so, shall be prepared and submitted in accordance with Annex **【_】** “Requirements for Submission of Proposal in Electronic Format” to this letter. Subject to the above, all submissions, whether submitted in electronic format or in hard copy format, will be evaluated on an equal basis.

4. If you wish to be considered for possible appointment to undertake this contract, you should submit your Technical and Fee Proposals by **12:00 noon on Friday, 【_】**. You should submit **【Insert number】** copies of your Technical Proposal to **【Insert post of public officer, project office and department】** at **【Insert address of project office】** and submit two copies of your Fee Proposal in a sealed envelope clearly indicating the consultants’ name and project reference to the EACSB Tender Box located at the reception on 15/F, Civil Engineering and Development Building, 101, Princess Margaret Road, Homantin, Kowloon for the attention of the Chairman of EACSB. Your Technical Proposal and Fee Proposal must be deposited in the respective locations as specified above on or before the submission deadline. If tropical cyclone signal No. 8 or above is hoisted, or a black rainstorm warning signal or “extreme conditions after super typhoons” announced by the Government is/are in force between 9:00 am and 12:00 noon on the above deadline, the deadline will be extended to 12:00 noon on the following working day. Saturday is not counted as a working day. **Late submission of Technical and/or Fee Proposal(s), and/or any Proposal(s) not deposited in the location(s) specified above, shall not be considered.** The Government reserves its right to notify you of any disqualification of your submission for any reason(s) after the completion of this consultant selection exercise where appropriate. *[Amend this paragraph for AACSB consultancies.]*

5. Your submission should be concise and accurate and should comply with the conditions as stipulated in the Guidelines on Preparation of Technical Proposal and the Guidelines on Preparation of Fee Proposal. Your attention is also drawn to the “Correction Rules for Tender Errors in Fee Proposal” in the Guidelines on Preparation of Fee Proposal. Your submission should comply with the following conditions:

- (i) Each consultant must provide information in the Technical Proposal on the manpower input for this contract. You are therefore required to state your proposed total manpower input under **【six】** categories of staff ¹, **【partners/directors, chief professional, senior professional, professional, assistant professional and technical staff】** in terms of man-weeks and include a manning schedule using the template provided, to show the manpower input of staff proposed in the Technical Proposal. **However, you should not provide any information in the Technical Proposal on prices or rates.** If there is any difference between your proposed total manpower input in the Technical Proposal and the total manpower input calculated from the monthly breakdown in the manning schedule, the total manpower input calculated from the monthly breakdown in the manning schedule shall prevail. We will seek confirmation from you to abide by the bid with the corrected total manpower input for bid assessment purpose and for management of the *Consultant* upon award of this contract.

¹ The qualification and experience requirements are attached at Contract Data Part one in Annex **【_】**. Only the qualification and experience obtained by the proposed staff on or before **【the closing date as stated in para. 4】** shall be counted.

If you fail to confirm your agreement to abide by the bid with the total manpower input so corrected in writing by a specified deadline, your bid shall not be considered further for this consultant selection exercise.

- (ii) In addition, you are required to give a manning schedule (with adjusted staff rates and prices) in the Fee Proposal. The manning schedule (with adjusted staff rates and prices) should be included in the Fee Proposal only and not in the Technical Proposal.
- (iii) The tendered total of the Prices in the Contract Data Part two (Section 2) shall be equal to the total of the prices for all phases in the summary breakdown of the tendered total of the Prices in the Fee Proposal. The information/data, in particular, the manpower input in the Fee Proposal, shall tally with the Technical Proposal. Any discrepancy found in tendered total of the Prices shall be corrected according to the “Correction Rules for Tender Errors in Fee Proposal” in the Guidelines on Preparation of Fee Proposal.
- (iv) The *staff rates* { calculated in accordance with / stated in }* the Contract Data Part two (Section 2) could be different from the adjusted staff rates indicated in the manning schedule at sub-paragraph (ii) of this paragraph.

* Delete as appropriate for Options A or C

6. We shall not accept any Technical and Fee Proposals where:

- (i) the tendered total of the Prices is left blank in the Contract Data Part two (Section 2);
- (ii) the Fee Proposal or the consultant fails to comply with the relevant requirements as stipulated in this letter and/or the “Correction Rules for Tender Errors in Fee Proposal” in the Guidelines on Preparation of Fee Proposal; or
- (iii) the Technical Proposal contains any indication of prices or rates.

7. A central database, namely Public Works Consultants Resources Allocation Register (PWCRAR), has been developed to maintain the manpower input deployed and/or to be deployed by the consultants for the consultancies they are working on for monitoring purpose. The manpower input contained in your Technical and Fee Proposals for this contract will be input into the PWCRAR. By submission of the Technical and Fee Proposals, you are deemed to have given consent to the *Employer* to use any information on or in connection with the manpower input contained in your Technical and Fee Proposals and/or contained in any of your submissions to the *Employer* for other consultancies awarded to you or your subconsultants for purpose of tender assessment for this contract which is in connection with you, your subconsultants or staff employed.

8. You are required to confirm that you agree to abide by your Technical and Fee Proposals for a period of **【ninety (90)】** ***[Procuring department may set a longer validity period, depending on the nature and complexity of the consultancy agreement]*** days from the due date for submission of Technical and Fee Proposals and it shall remain binding upon you and may be accepted at any time before the expiration of that period.

9. The name of the consultant awarded this contract, the combined score and technical score awarded to each bidder, together with the tendered total of the Prices, adjusted notional value for compensation events, **【notional RSS on-cost charges】** ***[Insert if applicable]***, fee quality score, and manpower input proposed by each bidder where appropriate, will be made known to those, and only those, consultants making submissions and of which their Technical and Fee Proposals have

been completely assessed in the combined score assessment after the completion of this consultant selection exercise. You will be deemed to agree to the disclosure of the above-mentioned information of your bid to the other relevant bidders. I would also like to draw your particular attention to the requirements stipulated in Clause B11 of the *additional conditions of contract* regarding the disclosure of amount payable to the *Consultant* awarded this contract.

10. In the case of a submission in the joint name of two or more consultants, documentary proof of formal association for the purpose of undertaking this contract should be provided at the same time. Similar proof of agreement with firms, organizations or individuals who will act as your subconsultants should also be submitted.

11. A list of the names of all the shortlisted consultants and their subconsultants involved in this consultant selection exercise that have been submitted by individual consultants is enclosed for your information. You are required to verify the list of your subconsultants and ensure its completeness. If you wish to change the list of your subconsultant(s), whether by way of addition, replacement, removal or otherwise, your notification must be delivered to **【Insert post of public officer, project office and department】** at **【Insert address of project office】** by hand before 12:00 noon, **【_____】** ***[Procuring department should specify the exact date here, say at least five working days before the deadline for submission of the Technical and Fee Proposals].*** The proposed change of your subconsultant(s) will be assessed to see if your shortlist status will be adversely affected, and the Government is not obliged to accept any proposed change. Where appropriate and practicable, all the shortlisted consultants will be provided an updated list of the shortlisted consultants and their subconsultants (with the accepted change(s)) before the submission deadline as far as possible. **Late notification of the proposed change of your subconsultant(s) may result in disqualification of your submission because it may deprive the Assessment Panel of a proper chance to review how the proposed change will affect your shortlist status before the submission deadline.**

12a. Your attention is drawn to the bidding restrictions set out in Annex **【_】** to this letter. ***[Inclusion of Annex B as an Annex to this letter.]***

[Paragraph 12b shall not be included if Sections 3.1.1.2(a) and/or b) of the Guidelines attached to DEVB TC(W) No. 5/2018 (the “Guidelines”) are applicable.]

12b. If you propose to engage subconsultants for this contract to undertake sub-consulting services under the listed Service Categories or service discipline having a list of consultants maintained and published by the Government as shown in Annex **【_】** to this letter ***[Inclusion of Annex C as an Annex to this letter.]***, you must ensure that the subconsultants concerned have complied with bidding restrictions as set out in Annex **【_】** to this letter ***[Annex B as stated in paragraph 12a above.]*** **Failure to comply with this requirement will lead to disqualification of your Technical and Fee Proposals.**

[Paragraph 12c shall not be included if Sections 3.1.1.2(a) and/or (b) of the Guidelines are applicable.]

12c. ***[Insert if applicable]*** For the avoidance of doubt, you are not obliged to engage only the consulting firms on the lists given in Annex **【_】** to this letter ***[Inclusion of Annex C – see Paragraph 12b above.]*** for solely undertaking the following services in this contract:

[This paragraph 12c can be inserted (i) when the contract comprises services outside the listed Service Categories or disciplines and the procuring department considers that the consultants may propose in the submission to engage subconsultants for undertaking such services, and/or (ii) when the procuring departments would like the consultants to engage subconsultants with

specialized knowledge, non-local experience and/or providing expert/innovative input, etc. Before inserting this paragraph, the procuring department shall check with the list management departments where appropriate or seek prior approval for deviation from bidding restrictions – See Sections 2.3.1(b) and Section 2.3.4 of the Guidelines.]

The Technical and Fee Proposals for this contract in respect of the subconsultants solely for the above services will be evaluated on an equal basis, whether the subconsultants are on the lists given in Annex 【_】 to this letter [*Inclusion of Annex C – see Paragraph 12b above.*] or not.

[Paragraph 12c shall be replaced by paragraphs 12c1 and 12c2 below if Section 3.1.1.2(c) of the Guidelines is applicable:

“12c1. For the avoidance of doubt, apart from the consulting firms on the lists given in Annex 【_】 to this letter [*Inclusion of Annex C – see Paragraph 12b above.*], you can also engage unlisted non-local consultants as subconsultants solely for undertaking any of the following sub-consulting services in this contract:

[Input the sub-consulting services]

The Technical and Fee Proposals for this contract in respect of the subconsultants solely for the above services will be evaluated on an equal basis, no matter whether the subconsultants are on the lists given in Annex 【_】 to this letter [*Inclusion of Annex C – see Paragraph 12b above.*] or not.

12c2. A consultant will be regarded as “non-local consultant” if :

- (i) the consultant is a natural person who, as at the closing date of the submission of Technical and Fee Proposals, is yet to obtain a working visa / entry permit issued by the Director of Immigration to stay in Hong Kong for the purpose of undertaking any of the sub-consulting services set out in paragraph 【12c1】 ; or
- (ii) the consultant is an entity which is not incorporated in Hong Kong under Companies Ordinance (Cap. 622) on the closing date of the submission of Technical and Fee Proposals; or
- (iii) if the consultant is an unincorporated association or firm whose participating parties or partners are all natural persons described in item (i) above of this paragraph.

In the event that you propose to engage an unlisted non-local subconsultant to perform any of the sub-consulting services listed in paragraph 【12c1】, you shall submit with your Technical Proposal declarations signed by each of such proposed subconsultants to declare the subconsultant’s non-local status. **Failure by a consultant to submit such declarations with its Technical Proposal and upon request will lead to disqualification of the consultant’s Technical and Fee Proposals.** A sample declaration letter is attached at Annex 【_】 of this letter [*Inclusion of Annex F as an Annex to this letter.*].”]

13. You are required to submit declaration for consultant’s resident status with your submission. Please refer to Annex 【_】 [*Include Annex A as an Annex to this letter*] for the provisions of retention of money payable to non-resident consultant for settlement of profits tax.

14. The Government has no objection:

- (a) to any consulting firm or its associate or associated person lodging one submission to act

as a consultant and concurrently proposing to act as a subconsultant to another bidding consulting firm in this consultant selection exercise; or

- (b) to different and unconnected consulting firms proposing to engage the same subconsultant(s) or its/their associate(s) or associated person(s) in this consultant selection exercise,

PROVIDED that:

- (i) all the relevant circumstances are disclosed in the submissions; and
- (ii) where any consulting firm or its associate or associated person lodges one submission to act as a consultant and concurrently proposes to act as a subconsultant of another consulting firm in the submission of that other consulting firm, the first-mentioned consulting firm or its associate or associated person shall confirm in its submissions as the consultant and as the subconsultant that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions; and
- (iii) where any consulting firm proposes to act as a subconsultant of more than one bidding consulting firms, it shall confirm in the submissions of all of those bidding consulting firms that no confidential information, confidentiality restrictions or restraints of trade or business have been contravened in lodging the submissions.

Therefore, you and your subconsultant(s) are required to confirm that no confidential information, confidentiality restrictions and restraints of trade or business have been contravened in lodging the submissions in which the main consultant and/or subconsultant may be in common or affiliated with the subconsultant of another bidder.

15. You are reminded of Government's policy on competitive selection. The Fee Proposal submitted should be your best price determined without reference to any other shortlisted consultants. **Failure to observe this condition may cause your submission to be disqualified.**

16. Subject to the Government's right to reject bids which are considered to have been priced unreasonably low, the selection of consultants will be determined on the basis of a combined score assessment of Technical and Fee Proposals in accordance with Development Bureau (DEVB) Technical Circular (Works) (TC(W)) Nos. 2/2016 and 5/2018 and their subsequent updates (if any). Your Technical and Fee Proposals will be construed as a bid for this contract and, unless under very special circumstances, there will be no fee negotiations.

17. The Government is not bound to accept any submission it may receive. In addition, the Government will reject bids which are considered to have been priced unreasonably low.

18. You are also reminded that, as a general policy, importation of labour from outside Hong Kong is not allowed by the Immigration Department, save that in some circumstances, the Director of Immigration may permit the importation of key management and technical personnel on a temporary basis.

19. You should indicate in your staffing proposal which of the proposed staff are *key people* (the term "*key people*" in this letter (including the Annexes and enclosures thereto) shall, for the purposes of construing DEVB TC(W) Nos. 2/2016 and 5/2018 and their subsequent updates (if any) and AACSB/EACSB* Handbook as amended from time to time, bear the same meaning as "Core Personnel" and "core personnel" in those documents) and the employment status (i.e. fulltime or not) at the time of bidding of each and every *key people* to be deployed by you or your

subconsultants in this contract. You should also indicate which *key people* will undertake the designations of the Project Manager, the Project Director and the 【 three 】 Team Leader(s) **[Procuring department shall amend it where appropriate to align with the Guidelines on Preparation of Technical Proposal.]** as required in the Guidelines on Preparation of Technical Proposal. You should produce undertaking signed by all non-fulltime *key people* (of yourself or your subconsultants) to confirm their involvement in the event that you are awarded this contract.
* Delete as appropriate

20. The documents listed in Clause 【 _ 】 of the Scope are considered necessary for the implementation of this contract. **[Insert if applicable, please refer to the-then SETW's memo ref (00WNL-02-4) in ETWB(PS) 106/11 dated 6.1.2006 for details: The consultant appointed in the early stage consultancy is one of the shortlisted consultants, but all the information which was made available to that consultant and all the advice which the consultant has provided and which is relevant to the procurement of this contract will be equally made available to all shortlisted consultants upon request.]** You may request to see the documents during the preparation of the submissions. Any documents which are on sale should be purchased by you.

21. **[Insert if RSS will be employed]** You are reminded that relevant sections of the Management Handbook for Direct Employment of Resident Site Staff by Consultants for Public Works Projects promulgated by the Development Bureau (Works Branch) or equivalent will form parts of the *additional conditions of contract* and the Scope of this contract. This Handbook can be found in the link below:

https://www.devb.gov.hk/en/publications_and_press_releases/publications/standard_consultancy_document/index.html

22. Documents of unsuccessful consulting firms will be destroyed three months after the date of execution of the Memorandum of Agreement for this contract.

[Paragraph 23 shall not be included if Sections 3.1.1.2(a) and/or (b) of the Guidelines are applicable.]

23. If subconsultants are to be employed, you are required to complete the table attached in Annex 【 _ 】 to this letter indicating, if any, the name of each proposed subconsultant, the scope of sub-consulting services to be undertaken by each listed and unlisted subconsultant to be employed, the relevant listed service category or discipline for which each subconsultant is to be employed and the corresponding list maintained and published by the Government (these items of information are collectively referred to this paragraph as “the subconsultants’ information”). **Failure to submit any item of the subconsultants’ information in the Technical Proposal, which makes the compliance check with the bidding restrictions as set out in Annex 【 _ 】 to this letter [Inclusion of Annex B - see paragraph 12a above.] in the respect of engagement of subconsultants unable to be conducted will lead to disqualification of consultant’s Technical and Fee Proposals.** If you have any enquiry on completing the table on whether the sub-consulting service to be undertaken by a subconsultant is within the scope of a particular listed service category or discipline and would like to seek clarification, your enquiry must be delivered to me by hand before 12:00 noon, 【 _____ 】 **[Procuring department should specify the exact date here, preferably same as the deadline of provision of list of queries for pre-submission meeting.]** The enquiry shall be sufficiently specific to facilitate the preparation of clarification. Late enquiry will not be entertained. **[Inclusion of Annex D as an Annex to this letter.]**

24. **[Insert if applicable: Please note that this invitation is made before the necessary funds for this contract have been approved. The Government reserves the right to cancel this**

consultant selection exercise for not having the necessary funds approved or for any other reason, in which case you will accordingly be notified.] It should be noted that the Government will not be responsible for the reimbursement of any cost incurred by you for the preparation of the submission.

25. Please note that a consultant who has requested for novation of consultancy agreements or contracts due to winding up of business pursuant to paragraph 6(ii) of ETWB TCW No. 3/2005 will not be awarded any further consultancies. Similarly, bids submitted by consultants who engage such a consultant as a subconsultant will not be considered. Nevertheless, consultants may propose a change of subconsultants if the deadline for notification of change has not been lapsed.

26. Notwithstanding anything to the contrary in this invitation, the Government reserves the right to disqualify a consultant in the bidding exercise on the grounds that the consultant, or any of the consultants of the joint venture in the case of submission made by a joint venture, has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or otherwise the disqualification is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.

[Paragraph 27 shall not be included for consultancies where the letter in Annex E has already been submitted by all consultants during the EOI stage.]

27. You shall submit a duly signed and witnessed letter in the form set out in Annex **【_】** ***[Inclusion of Annex E as an Annex to this letter is mandatory.]*** to this letter. The signatory to the letter shall be a person authorised to sign Government contracts/agreements on your behalf. **Failure to observe the requirement shall render all related submissions null and void and any such submission shall not be considered.**

28. Neither you nor any of your directors, employees, agents and Subconsultants shall offer or give any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the *Employer* in connection with this consultant selection exercise.

29. You are required to submit a duly signed declaration on anti-collusion at Annex **【_】** ***[Inclusion of Annex G as an Annex to this letter is mandatory.]*** together with your submission. The declaration should be signed by a person/persons authorized to sign tenders for and on your behalf. If you fail to comply with the requirements of this paragraph, your submission will be disqualified.

30. Any breach of or non-compliance with paragraph 28 and/or the anti-collusion undertaking shall result in:

- (i) disqualification of the submission; or**
- (ii) removal from the list of shortlisted consultants.**

31. By submitting your submission, you undertake to indemnify and keep indemnified the *Employer* against all losses, damages, costs and expenses arising out of or in relation to any breach of or non-compliance with paragraph 28 and/or the anti-collusion undertaking.

32. The rights of the *Employer* under paragraphs 30 and 31 are in addition to and without prejudice to any other rights or remedies it has or may have against you.

33. To resolve queries and to ensure that the shortlisted consultants are fully aware of the requirements of this contract, and of the requirements for the Technical Proposal and Fee Proposal, a pre-submission meeting is scheduled as follows:- ***[Insert details of the pre-submission meeting below]***

Date:

Time:

Venue:

34. Representatives from each shortlisted consultants should be restricted to not more than **【two (2)】*****[Insert number]***. Please provide me with the details (name and post) of your representative(s), together with a list of queries that you prepare to ask in the pre-submission meeting by 12:00 noon on **【_____】** ***[Insert date]***.

35. Please note that the Scope and the Proforma for Activity Schedule will be finalized following the pre-submission meeting. I will then write to you again providing you with the finalized documents after the pre-submission meeting.

36. If you require further details, please contact **【_____】** at telephone **【_____】** .

37. Please acknowledge receipt of this letter and the enclosures by signing and returning the reply slip at Annex **【_】** to this letter.

Yours faithfully,

()

Encl.

c.c.

Secretary, AACSB*/EACSB* – with the Contract Data Part two (Sections 1 and 2) together with the names of all the shortlisted consultants and their subconsultants

[Insert if applicable: Secretary, DCSC – with the Contract Data Part two (Sections 1 and 2) together with the names of all the shortlisted consultants and their subconsultants]

Note :

Relevant requirements of the DEVB TC(W) and circular memoranda should also be incorporated as appropriate.

**Annex [] to the Invitation Letter - Retention of Money Payable to
Non-resident Consultant for Settlement of Profits Tax**

- (1) Please note that where the *Consultant* is non-resident corporation or, where the *Consultant* is 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 amount payable to the *Consultant*, 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. Any balance representing the excess of prices so withheld in the basis period of the year of assessment over the *Consultant's* tax liability for that year will be returned to the *Consultant* without interest within a reasonable time upon final determination and settlement of their tax liabilities.
- (2) Where the *Consultant* is non-resident corporation or, where the *Consultant* is unincorporated joint venture or partnership or sole proprietorship, any one of the participants or partners or the sole proprietor is a non-resident, should he be awarded this contract, such data (including but not limited to their names, nature of engagement, contract period, prices and rates, correspondence address (both local and overseas) and the amount of tax withheld) will be notified/provided to the Inland Revenue Department for tax assessment and collection purposes.
- (3) “Non-resident” means in the case of an individual, one who maintains a place of abode outside Hong Kong; and in the case of a corporation, one which is not incorporated in Hong Kong.
- (4) You are required to declare your resident status in your Technical Proposal. If you are an unincorporated joint venture or a partnership, you must declare the resident status of each and every participant or partner thereof. A sample declaration letter is attached at the Appendix to this Annex.

Sample Declaration Letter

Agreement No. [XX]

[Agreement Title]

To: The Government of the HKSAR

² We declare that we are Hong Kong Resident / Non-resident *[please delete where inappropriate]* having regard to the definition of “Non-resident” in paragraph [X] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

³ We declare that our sole proprietor is a Hong Kong Resident / Non-resident *[please delete where inappropriate]* having regard to the definition of “Non-resident” in paragraph [X] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

⁴ We declare that the participants / partners of the unincorporated joint venture / partnership are all Hong Kong Residents having regard to the definition of “Non-resident” in paragraph [X] of the Invitation Letter for consultancy proposal in respect of the Project.

Or

⁵ We declare that the following participants / partners in the Consultants’ unincorporated joint venture / partnership are Non-resident(s) having regard to the definition of “Non-resident” in paragraph [X] of the Invitation Letter for consultancy proposal in respect of the Project, and the rest of the participants / partners are Hong Kong Residents:

- 1.
- 2.

² For use where the Consultant is an incorporated company

³ For use where the Consultant is sole proprietorship

⁴ For use where the Consultant is an unincorporated joint venture or partnership and all the participants / partners are Hong Kong Residents

⁵ For use where the Consultant is an unincorporated joint venture or partnership and some but not all the participants / partners are Hong Kong Residents

3.

Name of Consultant: _____

Signature of Person authorised to
sign the Proposal: _____

Name in block letters: _____

Telephone number: _____

Date: _____

Annex [] to the Invitation Letter for Technical and Fee Proposals –

Bidding Restrictions

[Amend for AACSB consultancies if necessary.]

1. If a Technical and Fee Proposal (“T&F Proposal”) is made by a joint venture, the bidding restrictions stipulated in Section 2.3 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the “Guidelines”) in respect of engagement of joint venture shall be complied with. Any T&F Proposal made by a joint venture that does not comply with Section 2.3 of the Guidelines will not be considered.
2. If a joint venture is formed by listed consultants with one or more unlisted consultants, it must ensure (i) the same participants were proposed in the earlier Expression of Interest (“EOI”) submission; (ii) all the unlisted consultants have made applications for inclusion on the List of Consultant of EACSB (the “List”) under the appropriate Service Category on or before the submission of the EOI; and (iii) such applications have been approved by EACSB on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date. Otherwise, the T&F Proposal submitted by the concerned joint venture will not be considered.
3. The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its subconsultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ *[Refer to Annex C to this sample invitation letter]* to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the consultant’s T&F Proposal.
- 4.1 Save as provided in paragraph 4.3(b) below:-
 - (a) If the consultant proposes one or more subconsultants to undertake sub-consulting service under the listed Service Category maintained by EACSB, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of subconsultant shall be complied with. That is to say that the consultant shall propose to engage subconsultant(s) with the listed status in Group _____ or lower under the relevant Service Category with three Groups and /or in Group _____ or lower under the relevant Service Category with two Groups maintained by EACSB for the sub-consulting service concerned. *[Procuring department shall input the appropriate Group Number(s) as determined in accordance with Section 2.3.1(b) of the Guidelines.]*

(b) Failure by a consultant to comply with the requirements in paragraph 4.1(a) above will lead to disqualification of the consultant's T&F Proposal unless (i) the unlisted subconsultant proposed has made an application for inclusion on the List under the appropriate Service Category on or before the submission of the EOI; and (ii) an approval from EACSB for inclusion of the unlisted subconsultant on the List is obtained on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date.

(c) In the event the approval of EACSB, in the consultant's assessment, is unlikely to be obtained on or before the deadline as mentioned in paragraph 4.1(b) above and the consultant shall either remove the unlisted sub-consultant or replace the unlisted subconsultant with a listed subconsultant. In either case, the consultant shall deliver a notification of change of subconsultant ("**Notification**") to the project office before deadline for change of subconsultant as more particularly stated in paragraph [XX] of the invitation letter of T&F Proposal, or if this has been extended, the extended date. Late submission of the Notification will not be accepted.

4.2 Save as provided in paragraph 4.3(b) below:-

(a) If the consultant proposes one or more subconsultants to undertake sub-consulting service under the listed service discipline/categories maintained by Architectural and Associated Consultants Selection Board (AACSB) **【**and/or (*Procuring department shall add relevant lists to align with the restrictive list provided in the invitation letter*) **】**, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of subconsultant shall be complied with. The consultant shall engage subconsultant(s) with the listed status for the relevant service discipline/category maintained by AACSB **【**and/or (*Procuring department shall add relevant lists to align with the restrictive list provided*) **】** for the sub-consulting service concerned.

(b) Failure by a consultant to comply with the requirement in paragraph 4.2(a) above will lead to disqualification of the consultant's T&F Proposal.

4.3 (a) If the consultant proposes one or more subconsultants to undertake sub-consulting service not under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2, the consultant may engage any subconsultant(s) even if they are not listed under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2.

(b) If the consultant proposes to engage an individual as a subconsultant to undertake the sub-consulting service in his or her own name, the engagement of such subconsultant is not subject to the requirements in paragraphs 4.1 and 4.2 above. In the event that the consultant is awarded the consultancy, the consultant shall produce an undertaking signed by such

subconsultant to confirm that: (i) the subconsultant is an individual undertaking the sub-consulting service in his or her own name; (ii) the subconsultant will not contract out all or any part of the sub-consulting service to any parties; and (iii) the subconsultant, if replaced, will not take part in the same sub-consulting service for any other subconsultants to be subsequently engaged by the consultant.

5. If a consultant who submitted the T&F Proposal has teamed up with a subconsultant who is no longer eligible for award of the consultancy after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment by referring the eligibility status as at the closing date for submission of T&F Proposal. If the consultant concerned attains the highest combined score, the consultant concerned may still be eligible for award of this contract.

[For consultancies if Sections 3.1.1.2(a) and/or (b) of the Guidelines are applicable.]

1. Subject to paragraph 2 below, a Technical and Fee Proposal (“T&F Proposal”) shall not be considered unless it is submitted by a consultant listed in Annex [] ***[Insert appropriate Annex number]*** of the invitation letter.
2. If the T&F Proposal is submitted by a joint venture, it must ensure that the same participants were proposed in the earlier Expression of Interest (“EOI”) submission. The joint venture’s T&F Proposal shall not be considered if it fails to comply with this requirement.
3. If the consultant proposes one or more subconsultants to undertake sub-consulting services under the listed service categories maintained by Engineering and Associated Consultants Selection Board (“EACSB”) and/or Architectural and Associated Consultants Selection Board (“AACSB”), the consultant may engage any subconsultants even if they are not listed under the relevant service categories maintained by EACSB or AACSB, as the case may be, provided that
 - (i) the subconsultants are not suspended from bidding for EACSB consultancy agreements and/or AACSB consultancy agreements in the service categories relevant to the sub-consulting services to be undertaken; and
 - (ii) the subconsultants are not subject to a debarment period from re-admission after removal from the lists of EACSB and/or AACSB for the service categories relevant to the sub-consulting services to be undertaken

on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date. Failure to comply with this requirement will lead to

disqualification of the consultant's T&F Proposal.

4. If a consultant who submits the T&F Proposal has proposed to engage a subconsultant who has been suspended from bidding for either EACSB consultancy agreements in one or more service categories within the purview of the EACSB or AACSB consultancy agreements in one or more service categories within the purview of the AACSB, and/or who has been subject to a debarment period from re-admission after removal from the lists of EACSB and/or AACSB after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment based on the said subconsultant's status as at the closing date for submission of T&F Proposal. If the consultant concerned attains the highest combined score, the consultant concerned may still be eligible for award of this contract.

[For consultancies if Section 3.1.1.2(c) of the Guidelines is applicable.]

1. If a Technical and Fee Proposal ("T&F Proposal") is made by a joint venture, the bidding restrictions stipulated in Section 2.3 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the "Guidelines") in respect of engagement of joint venture shall be complied with. Any T&F Proposal made by a joint venture that does not comply with Section 2.3 of the Guidelines will not be considered.
 2. If a joint venture is formed by listed consultants with one or more unlisted consultants, it must ensure (i) the same participants were proposed in the earlier Expression of Interest ("EOI") submission; (ii) all the unlisted consultants have made applications for inclusion on the List of Consultant of EACSB (the "List") under the appropriate Service Category on or before the submission of the EOI; and (iii) such applications have been approved by EACSB on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date. Otherwise, the T&F Proposal submitted by the concerned joint venture will not be considered.
 3. The consultant must ensure that at the time of submission of T&F Proposal, the consultant itself and its subconsultants proposed to undertake sub-consulting service under listed Service Category maintained by EACSB or service disciplines under a list of consultants maintained and published by the Government shown in Annex ____ **[Refer to Annex C to this sample invitation letter]** to the invitation letter are eligible for bidding under the proposed service category in the relevant list. Failure to comply with this requirement will lead to disqualification of the consultant's T&F Proposal.
- 4.1 Save as provided in paragraphs 4.3(b) and 4.4 below:-
- (a) If the consultant proposes one or more subconsultants to undertake sub-consulting service

under the listed Service Category maintained by EACSB, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of subconsultant shall be complied with. That is to say that the consultant shall propose to engage subconsultant(s) with the listed status in Group _____ or lower under the relevant Service Category with three Groups and /or in Group _____ or lower under the relevant Service Category with two Groups maintained by EACSB for the sub-consulting service concerned. ***[Procuring department shall input the appropriate Group Number(s) as determined in accordance with Section 2.3.1(b) of the Guidelines.]***

(b) Failure by a consultant to comply with the requirements in paragraph 4.1(a) above will lead to disqualification of the consultant's T&F Proposal unless (i) the unlisted subconsultant proposed has made an application for inclusion on the List under the appropriate Service Category on or before the submission of the EOI; and (ii) an approval from EACSB for inclusion of the unlisted subconsultant on the List is obtained on or before the date set for the close of submission of T&F Proposal, or if this has been extended, the extended date.

(c) In the event the approval of EACSB, in the consultant's assessment, is unlikely to be obtained on or before the deadline as mentioned in paragraph 4.1(b) above and the consultant shall either remove the unlisted subconsultant or replace the unlisted subconsultant with a listed subconsultant. In either case, the consultant shall deliver a notification of change of subconsultant ("**Notification**") to the project office before deadline for change of subconsultant as more particularly stated in paragraph [XX] of the invitation letter of T&F Proposal, or if this has been extended, the extended date. Late submission of the Notification will not be accepted.

4.2 Save as provided in paragraphs 4.3(b) and 4.4 below:-

(a) If the consultant proposes one or more subconsultants to undertake sub-consulting service under the listed service discipline/categories maintained by Architectural and Associated Consultants Selection Board (AACSB) **【and/or (*Procuring department shall add relevant lists to align with the restrictive list provided in the invitation letter*)** **】**, the bidding restrictions stipulated in Section 2.3.1(b) of the Guidelines in respect of engagement of subconsultant shall be complied with. The consultant shall engage subconsultant(s) with the listed status for the relevant service discipline/category maintained by AACSB **【and/or (*Procuring department shall add relevant lists to align with the restrictive list provided*)** **】** for the sub-consulting service concerned.

(b) Failure by a consultant to comply with the requirement in paragraph 4.2(a) above will lead to disqualification of the consultant's T&F Proposal.

4.3 (a) If the consultant proposes one or more subconsultants to undertake sub-consulting service not under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2, the consultant may engage any subconsultant(s) even if they are not listed under the listed service discipline/categories as mentioned in paragraphs 4.1 and 4.2.

(b) If the consultant proposes to engage an individual as a subconsultant to undertake the sub-consulting service in his or her own name, the engagement of such subconsultant is not subject to the requirements in paragraphs 4.1 and 4.2 above. In the event that the consultant is awarded the consultancy, the consultant shall produce an undertaking signed by such subconsultant to confirm that: (i) the subconsultant is an individual undertaking the sub-consulting service in his or her own name; (ii) the subconsultant will not contract out all or any part of the sub-consulting service to any parties and; (iii) the subconsultant, if replaced, will not take part in the same sub-consulting service for any other subconsultants to be subsequently engaged by the consultant.

4.4 In the event that the consultant proposes to engage unlisted non-local consultants as subconsultants solely for undertaking any of the following sub-consulting services in this contract:

[Input the sub-consulting services]

the engagement of such subconsultants is not subject to the requirements as mentioned in paragraphs 4.1 and 4.2 above. A consultant will be regarded as “non-local consultant” if: (i) the consultant is a natural person who, as at the closing date of the submission of T&F Proposal, is yet to obtain a working visa / entry permit issued by the Director of Immigration to stay in Hong Kong for the purpose of undertaking any of the sub-consulting services set out above; or (ii) the consultant is an entity which is not incorporated in Hong Kong under Companies Ordinance (Cap. 622) on the closing date of the submission of T&F Proposal; or (iii) if the consultant is an unincorporated association or firm whose participating parties or partners are all natural persons described in item (i) above of this paragraph. In the event that the consultant proposes to engage an unlisted non-local subconsultant to perform any of the sub-consulting services listed above, the consultant shall submit with its Technical Proposal declarations signed by each of such proposed subconsultants to declare the subconsultant’s non-local status. Failure by a consultant to submit such declarations with its Technical Proposal and upon request will lead to disqualification of the consultant’s T&F Proposal.

5. If a consultant who submitted the T&F Proposal has teamed up with a subconsultant who is no longer eligible for award of the consultancy after the closing date for submission of T&F Proposal, the Assessment Panel may continue the assessment by referring the eligibility status

as at the closing date for submission of T&F Proposal. If the consultant concerned attains the highest combined score, the consultant concerned may still be eligible for award of this contract.

**Annex [_] to the Invitation Letter –
Listed Service Category or Listed Service Discipline
Maintained and Published by the Government**
*[This Annex shall not be included if Sections 3.1.1.2(a) and/or (b)
of the Guidelines are applicable].*

[Insert Agreement No. & Title]

1. All listed Service Categories maintained by The Engineering and Associated Consultants Selection Board (“EACSB”); *[Mandatory to be included]*
2. All listed Service Categories maintained by The Architectural and Associated Consultants Selection Board (“AACSB”); *[Mandatory to be included]*
3. *[Procuring departments to add relevant lists which are of restrictive nature];*
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____

Note:

- (a) If the consultant proposes to engage one or more subconsultants for this contract, the consultant shall comply with the relevant bidding restrictions stipulated in Annex B to the invitation letter and Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the “Guidelines”).
- (b) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a subconsultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

N.B

Procuring departments shall add relevant lists above to suit the specific natures of projects where appropriate.

**Annex [_] to the Invitation Letter –
Table of Listed and Unlisted Subconsultants and
Scope of Sub-consulting Services to be undertaken**
*[This Annex shall not be included if Sections 3.1.1.2(a) and/or (b)
of the Guidelines are applicable].*

[Insert Agreement No. & Title]

Name of Subconsultant	Listed Service Category or Discipline ^(Note a)	Corresponding List maintained and published by the Government ^(Note a)	Scope of Sub-consulting Services to be undertaken ^(Notes b to d)
e.g. Company A	Traffic and Transport Category	The Engineering and Associated Consultants Selection Board (“EACSB”)	Traffic study and planning
	Architectural Category	The Architectural and Associated Consultants Selection Board (“AACSB”)	Architectural aesthetic design

Note:

- (a) If the proposed subconsultant is unlisted, please mark “Nil”.
- (b) If the consultant proposes to engage one or more subconsultants for this contract, the consultant shall comply with the relevant bidding restrictions stipulated in Annex B to the invitation letter and Section 2.3.1 of the Guidelines attached to DEVB TC(W) No. 5/2018 (the Guidelines).
- (c) If the consultant has any enquiry on whether the sub-consulting service to be undertaken by a subconsultant is within the scope of a particular listed service category or discipline, the consultant may seek clarification from procuring departments as stated in the invitation letter.

Annex [] to the Invitation Letter – National Security

To: The Government of the Hong Kong Special Administrative Region ("**Government**")

Date: _____

Dear Sir/Madam,

Consultancy Agreement No. []

[Agreement Title]

Letter of Confirmation for Compliance with National Security

1. *[I/We], [(Name of the consultant) of (Address of the consultant)]¹, refer to *[my/our] submission for the above contract.
2. *[I/We] confirm that, before *[I/we] sign this letter, *[I/we] have read and fully understand this letter and paragraphs [*insert appropriate reference*] in the invitation letter.
3. *[I/We], represent and warrant that *[I/we], have not engaged, *[am/are] not engaging and will not engage in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.
4. *[I/We] shall indemnify and keep indemnified the Government against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred.

Signed for and on behalf of [name of the consultant] by

[name and position of the signatory]²: _____

Name of Witness: _____

Signature of Witness: _____

Occupation: _____

* Modify/Delete as appropriate.

- ¹ Where the consultant comprises two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.
- ² Where the consultant comprises two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorised to sign Government contracts on behalf of that person or as the case may be company.

**Annex [] to the Invitation Letter –
Sample Declaration Letter**

Agreement No. [XX]

[Agreement Title]

To: The Government of the HKSAR

We declare that we are non-local having regard to the definition of “Non-local” in Clause [12c2] of the Invitation Letter for the subject contract.

Name of Subconsultant: _____

Signature of person authorised to sign the declaration letter: _____

Name in block letters _____

Telephone number: _____

Date: _____

Annex [_] to the Invitation Letter – Letter of Anti-collusion Undertaking

To: The Government of the Hong Kong Special Administrative Region (“Government”)

Date: _____

Dear Sir/Madam,

Agreement No.:

Title:

Letter of Anti-collusion Undertaking

[I/We]*, [**【Name of the consultant】** of **【Address of the consultant】**]¹, refer to [my/our] Technical and Fee Proposals for this contract.

[I/We]* confirm that, before [I/we]* sign this letter, [I/we]* have read and fully understand this letter.

[I/We]* represent and warrant that in relation to the Technical and Fee Proposals for this contract:

- (i) [I/We]*, other than the Excepted Communications referred to in the last paragraph of this letter, have not communicated and will not communicate to any person other than the *Employer* the amount of the proposed prices in the Fee Proposal or any part thereof until [I/we]* have been notified by the *Employer* of the outcome of the bidding exercise;
- (ii) [I/We]* have not fixed and will not fix the amount of the proposed prices in the Fee Proposal or any part thereof by arrangement with any person;
- (iii) [I/We]* have not made and will not make any arrangement with any person as to whether [I/we]* or that other person will or will not submit Technical and Fee Proposals; and
- (iv) [I/We]* have not otherwise colluded and will not otherwise collude with any person in any manner whatsoever in the bidding process.

[I/We]* shall indemnify and keep indemnified the *Employer* against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations and/or warranties above, including but not limited to damages for delay, costs and expenses of re-tendering and other costs incurred.

In this letter, the expression “Excepted Communications” means [my/our]* communications in strict confidence with:

- (i) [my/our]* own insurers or brokers to obtain an insurance quotation for computation of the proposed prices in the Fee Proposal;;
- (ii) [my/our]* Subconsultants to solicit their assistance in preparation of the Technical and Fee Proposals; and
- (iii) [my/our]* bankers in relation to financial resources for this contract.

Signed for and on behalf of [name of the consultant]

By [name and position of the signatory]²:

Name of Witness:

Signature of Witness:

Occupation:

Remarks:

* Delete as appropriate.

1. Where the consultant comprise two or more persons or companies acting in partnership, joint venture or otherwise, this part in square brackets should be expanded to include the respective names and addresses of such persons or as the case may be companies.

2. Where the consultants comprise two or more persons or companies acting in partnership, joint venture or otherwise, all such persons or as the case may be companies must sign. The signatory for each of such persons or companies shall be a person authorized to sign Government contracts on behalf of that person or as the case may be company.