

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

政府總部
發展局

香港花園道美利大廈



Development Bureau
Government Secretariat

Murray Building, Garden Road,
Hong Kong

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Development Bureau
Technical Circular (Works) No. 3/2011

Resident Site Staff Database

Scope

This Circular applies to consultancy agreements under the purview of the Architectural and Associated Consultants Selection Board (AACSB) and the Engineering and Associated Consultants Selection Board (EACSB) for which the Consultants are required to directly employ Resident Site Staff (RSS) to supervise construction works.

2. In this Circular, “conviction records” refer to those conviction records for offences under the Prevention of Bribery Ordinance (Cap 201) and the Theft Ordinance (Cap 210), the offence of conspiracy to defraud, and the offence of misconduct in public office. “Poor performance” refers to poor performance in connection with sub-standard work, poor integrity or matters of conduct. “Poor performance records” are records of such poor performance.

Effective Date

3. This Circular takes immediate effect.

Effect on Existing Circulars

4. This Circular supersedes ETWB TC(W) No. 14/2005 which is hereby cancelled.

5. This Circular shall be read in conjunction with DEVB TC(W) No. 4/2008, the AACSB Handbook, and the EACSB Handbook. In case of discrepancies, the provisions of this Circular shall prevail.

Background

6. Under the scheme of direct employment of Resident Site Staff (RSS) by Consultants, the Consultants are required as part of their services to recruit, employ and manage all the necessary RSS for public works site supervision. The Government reimburses the Consultants the actual payment made to the RSS subject to a ceiling. The Government also retains a right of disapproval of individuals recruited to any post or the candidates for recruitment if it is of the view that the person is in any respect unsuitable.

7. In view of the important role played by RSS in site supervision, the Independent Commission Against Corruption (ICAC) recommended that poor performance records and ICAC related conviction records of individuals, if any, should be taken into account for consideration of disapproval.

8. We conducted a review on the above mentioned provisions in consultation with ICAC. Based on the review findings, we have redefined the coverage of convictions and streamlined the procedures.

Policy

9. The Resident Site Staff Database (“the Database”) has been set up. DEVB is responsible for maintaining the Database based on the information provided by the Consultants (via the Director’s Representative) and the Housing Authority, and disseminating the update information to procuring departments and the Housing Authority. For this purpose, procuring departments and the Housing Authority should nominate a Departmental Liaison Officer (DLO), at senior professional rank or above, for liaison with DEVB.

10. Information on individuals to be kept in the Database shall include, where applicable, the following:

- (i) Name in English and Chinese
- (ii) Date of birth
- (iii) Identity card number (or passport number in case the RSS has no identity card)
- (iv) Post title of the RSS under the concerned consultancy agreement
- (v) Consultancy agreement number and title, and procuring department
- (vi) Date of termination of RSS employment contract
- (vii) All poor performance records of the RSS under his/her employment contract that has been terminated by the Consultants (of the Government or the Housing Authority) on the basis of poor performance as assessed by the Consultants. The Government will not edit or add comments to the

performance records/reports provided by the Consultants but will convert the documents by scanning them into electronic copies to facilitate transfer of information.

11. The poor performance records in the Database should be classified as "Restricted" information, and controlled in accordance with the Security Regulations. The information shall be used for the purpose of vetting Consultants' proposals for RSS employment only.

12. The information on poor performance records relating to an individual shall be removed from the Database and destroyed after a retention period of five years from the date of termination of RSS employment contract.

13. The Consultants should take all practicable steps to ensure that the poor performance records are accurate and fair, and assessment is based on solid evidence. Otherwise, the Consultants may be liable for defamation and/or negligent misstatement and the Government who disseminates such information may also be liable for defamation. The Consultants are encouraged to establish a transparent and fair performance appraisal system and build in an appeal mechanism in the system.

14. The streamlined procedures regarding the updating of the RSS Database and vetting of consultants' proposals for RSS employment are set out at **Annex**.

Implementation

15. The Special Conditions of Employment at **Appendix A** shall be included in all consultancy agreements under the purview of AACSB and EACSB for which the Technical and Fee Proposals have yet to be invited, and for which the Consultants are required to directly employ RSS to supervise construction works.

16. With immediate effect, the Consultants shall use the revised sample statement at **Appendix B** and the revised sample declaration form at **Appendix C**.



(C S Wai)

Permanent Secretary for Development (Works)

Updating of the RSS Database and Vetting of Consultants' Proposals

Procedures for Updating the RSS Database and Dissemination of Information

1. DEVB will receive information from the following sources:
 - (i) Housing Authority;
 - (ii) Consultants via Director's Representatives and DLO.
2. For consultancy agreements under the purview of the AACSB and EACSB, the Consultants shall notify the Director's Representative in writing upon termination of RSS employment contract on the basis of poor performance. The Consultants shall notify the Director's Representative and submit a copy of the Performance Report upon completion of the appeal procedures, if any.
3. The Director's Representative shall in turn forward the information via DLO to DEVB under restricted cover.
4. Whenever there is addition, deletion or amendment to the records, DEVB will update the Database and send the updated information to DLO via confidential email or similar means.

Procedures for Vetting Consultants' Proposals for RSS Employment

5. The Director's Representative shall confirm with the DLO on the most updated information in the Database. The Director's Representative shall take account of the information in the Database and the declaration submitted by the RSS via the Consultants (paragraph 11 refers) in vetting the Consultants' proposals for RSS employment. Individuals with conviction records or poor performance records should not normally be accepted as RSS, unless the Director's Representative is personally satisfied that the individual is the most suitable person for the post, after due consideration of all relevant factors. Such consideration should be properly documented. The Director's Representative's decision shall be final.
6. If a Consultant's proposal for RSS employment is not approved, the Director's Representative shall advise the Consultants the reasons of the rejection. However, the performance records of the RSS should not be disclosed to the Consultants.

Flow Charts

7. The procedures for updating the RSS Database and transfer of information to procuring departments and the Housing Authority, and procedures for vetting Consultants' proposals for RSS employment are shown in the flow charts at **Appendix D**.

Special Conditions of Employment

8. The Special Conditions of Employment at **Appendix A** shall be included in all consultancy agreements under the purview of AACSB and EACSB for which the Consultants are required to directly employ RSS to supervise construction works.

9. The Consultants shall include a condition in RSS employment contracts that personal data and all poor performance records will be disclosed to the Government policy bureaux and departments and for the Government policy bureaux and departments' disclosure to the Housing Authority, in case the RSS employment contract is terminated on the basis of poor performance as assessed by the Consultants.

Statement Signifying Consent to Disclose Poor Performance Records

10. The Consultants shall require the RSS to sign a statement to signify consent for the Consultants' disclosure of their poor performance records to the Government policy bureaux and departments and for the Government policy bureaux and departments' disclosure to the Housing Authority. A sample statement is provided at **Appendix B**. Consultants shall not offer RSS employment contract to a person who does not agree to sign the statement. The submission of a statement signed by the RSS shall be a condition precedent for reimbursing the costs of the RSS to the Consultants.

Declaration of Conviction Records and Termination of RSS Employment Contract

11. The Consultants shall require the RSS to make a declaration of the information on termination of RSS employment contract and convictions for offences under the Prevention of Bribery Ordinance (Cap 201) and the Theft Ordinance (Cap 210), the offence of conspiracy to defraud and the offence of misconduct in public office, and to signify consent for the Consultants to disclose the information to the Government policy bureaux and departments. A sample declaration form is provided at **Appendix C**. Consultants shall not offer RSS employment contract to a person who does not agree to sign the declaration or give false information in the declaration of which the Consultant is aware.

12. The Consultants should seek their own independent legal advice on their rights and obligations in connection with their responsibilities under this Circular, in particular, the Personal Data (Privacy) Ordinance, Cap 486.

**Special Conditions of Employment
Relating to the Direct Employment of Resident Site Staff by Consultants**

The following clause shall be appended to the Special Conditions of Employment at Appendix D to DEVB TCW No. 4/2008.

Performance Record of Resident Site Staff S6 (A) The Consultants shall include a condition in Resident Site Staff employment contracts that all poor performance records of the Resident Site Staff employment contract whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance Records) will be collected and disclosed by the Consultants to Government policy bureaux and departments who shall disclose them to the Housing Authority in case the Resident Site Staff employment contract is terminated on the basis of poor performance whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance). The Poor Performance Records will be used for reference in vetting of Consultants' proposals for Resident Site Staff employment.

(B) The Consultants shall, on or before entering into an employment contract with the Resident Site Staff, require the Resident Site Staff to sign a statement (sample attached at Appendix B) to signify consent for the Consultants to disclose all their Poor Performance Records to Government policy bureaux and departments and for disclosure by Government policy bureaux and departments to the Housing Authority. The submission of a statement signed by the Resident Site Staff shall be a condition precedent for reimbursing the costs of the Resident Site Staff to the Consultants.

(C) The Consultants shall notify the Director's Representative in writing upon the termination of employment contract due to Poor Performance of the Resident Site Staff. The Consultants shall only notify the Director's Representative upon completion of the appeal procedures, if any. The information to be provided shall include name, date of birth and identity card number (or passport number in case the Resident Site Staff has no identity card) of the Resident Site Staff, date of termination of Resident Site Staff employment contract and all Poor Performance Records.

(D) The Consultants should take all practicable steps to ensure that the Poor Performance Records are accurate and fair and the assessment is based on solid evidence.

(E) The Consultants should ensure that the provisions of the Personal Data (Privacy) Ordinance, Cap 486 are fully complied with in the collection of the personal data of the Resident Site Staff and the disclosure of such data to Government policy bureaux and departments and for disclosure by the Government policy bureaux and departments to the Housing Authority.

(F) The Consultants should also inform the appraising officers concerned of the arrangements set out in this special condition.

Submission of
Declaration

S7 (A) The Consultants shall, before entering into an employment contract with the prospective Resident Site Staff, require the prospective Resident Site Staff to submit a declaration (sample attached at Appendix C) to declare whether or not the prospective Resident Site Staff has been convicted of offences under the Prevention of Bribery Ordinance, Cap 201 and the Theft Ordinance, Cap 210, the offence of conspiracy to defraud, and the offence of misconduct in public office, and whether or not he/she has been terminated for employment as a Resident Site Staff. Such submission by the prospective Resident Site Staff shall be a condition precedent for employment.

(B) The Consultants shall make clear to the prospective Resident Site Staff that the information contained in the declaration shall be disclosed to Government policy bureaux and departments and obtain the consent of the prospective Resident Site Staff.

(C) The Consultants shall submit the declaration made by the prospective Resident Site Staff to the Director's Representative at least one week prior to offering employment to the prospective Resident Site Staff. The information in the declaration shall be taken into account in considering whether the Consultants' proposal for the Resident Site Staff employment should be approved.

(D) The Consultants shall terminate the employment of the Resident Site Staff who has given false information in the declaration or is convicted of offences under the Prevention of Bribery Ordinance, Cap 201 and the Theft Ordinance, Cap 210, the offence of conspiracy to defraud, and the offence of misconduct in public office, during employment. Such provision for termination should be included in the employment contract of the Resident Site Staff.

**Sample Statement to be Signed by Resident Site Staff
Signifying Consent for the Consultants to Disclose Poor Performance Records
to the Government and the Housing Authority**

To : (the Consultants) (“the Company”)

I understand that for the purpose of ensuring the quality of site supervision of public works/housing projects, the Company shall prepare and collect poor performance records whether due to sub-standard work, poor integrity or matters of conduct (hereinafter referred to as Poor Performance Records) of the Resident Site Staff and disclose the Poor Performance Records to Government policy bureaux and departments and for the Government policy bureaux and departments’ disclosure to the Housing Authority.

I hereby consent to the Company’s disclosure of my personal data including name, date of birth, identity card (or passport) number, and all Poor Performance Records to Government policy bureaux and departments and for the Government policy bureaux and departments’ disclosure to the Housing Authority in case this employment contract is terminated on the basis of poor performance whether due to sub-standard work, poor integrity or matters of conduct as assessed by the Company.

Name (of Resident Site Staff) : _____
Identity Card/Passport No. : _____
Signature : _____
Date : _____

Sample Declaration of Convictions for Offences and Information on Termination of Resident Site Staff Employment Contract

To: (the Consultants) (“the Company”)

In consideration of your processing my application for the post of Resident Site Staff:

I hereby declare that I have not been convicted of any offence(s)[@] for the period ____ to ____* / I have been convicted of an offence(s)[@] for the period ____ to ____*#, details are as follows:

| Offence [@] | Date of Conviction | Details |
|----------------------|--------------------|---------|
| | | |

I hereby further declare that I have not been terminated for employment as a Resident Site Staff for the period ____ to ____* by any company, corporation or partnership / I have been terminated for employment as a Resident Site Staff for the period ____ to ____*# by a company, corporation or partnership, details are as follows:

| Reason(s) for Termination | Date of Termination | Name/Address of Employer | Details |
|---------------------------|---------------------|--------------------------|---------|
| | | | |

I hereby declare that the information contained in this declaration is true, accurate and complete to the best of my knowledge. I understand that if any information is untrue, inaccurate or incomplete, I may be subject to criminal investigation and prosecution, and the Company may terminate my employment as Resident Site Staff.

I understand that for the purpose of ensuring the quality of site supervision of public works projects, the above information will be disclosed by the Company to Government policy bureaux and departments.

I hereby consent to the Company’s disclosure of my personal data including my name, date of birth, identity card (or passport) number, and all of the above information to Government policy bureaux and departments to enable them to assess my eligibility for the post of Resident Site Staff.

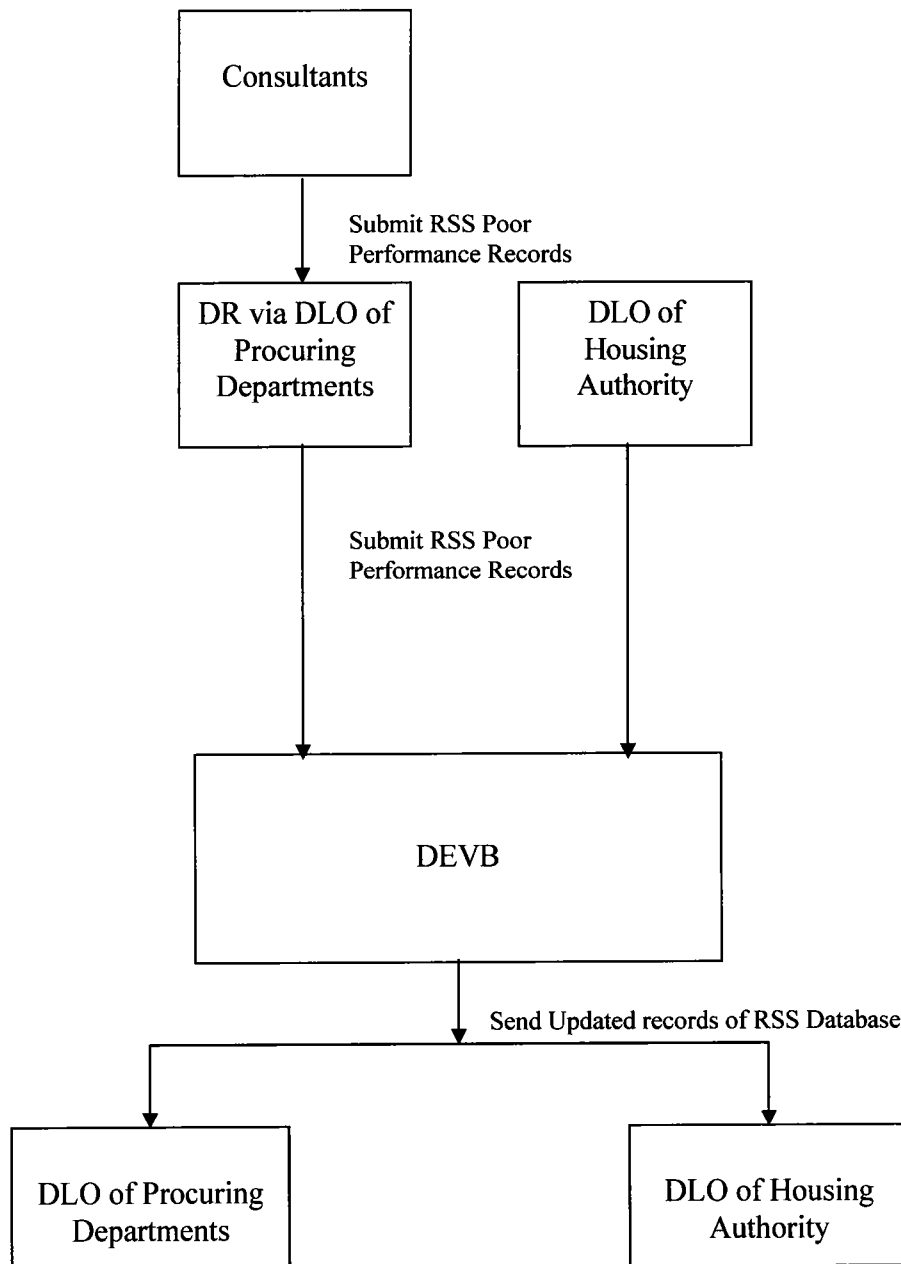
Name (of Resident Site Staff) : _____
 Identity Card/Passport Number : _____
 Signature : _____
 Date : _____

Notes

- [@] The declaration of conviction records covers conviction for offences under the Prevention of Bribery Ordinance (Cap 201) and the Theft Ordinance (Cap 210), the offence of conspiracy to defraud, and the offence of misconduct in public office.
- # Delete whichever is inappropriate
- * The period shall cover 36 months immediately before the Date of Declaration.

Chart I

Procedures for Updating the RSS Database and Transfer of Information to Departments and Housing Authority



Legend:

DR = Director's Representative

DLO = Departmental Liaison Officer

Chart II

Procedures for Vetting Consultants' Proposals for RSS Employment

