

Agreement No. CE 61/2009 (HY)
Independent Checking of the Funding Arrangement of the Kwun Tong Line
Extension – Investigation

Invitation for Technical and Fee Proposals

1. Interested consultants are invited to submit Technical and Fee Proposals for undertaking the above consultancy. Please note that submissions are being invited on a non-commitment basis. Consultants should fulfill and declare that they have met the following selection criteria for their submissions to be considered further:

The company should be registered in Hong Kong Special Administrative Region (HKSAR) with at least one professional staff in HKSAR in each of the following categories :-

- (i) General Civil Engineering (S1)
- (ii) Railway Engineering (S10)
- (iii) Quantity Surveying (S15)

2. The scope of this consultancy, which is currently expected to commence in June 2010, is indicated in the draft Brief in the EIP. Interested consultants may obtain an Electronic Invitation Package (EIP) in the context of Works Bureau Technical Circular No. 17/2001 for the assignment by contacting the following officers of Highways Department :

<u>Name</u>	<u>Post</u>	<u>Telephone</u>	<u>Fax No.</u>
Ms. Tonia Lo	SE/SCL(3)	2762 4030	2714 5297
Mr. Y.C. Ting	E/SCL(8)	2762 3587	2714 5297

3. If you wish to be considered for possible appointment, you should submit your Technical and Fee proposals by 12:00 noon on **16 April 2010 (Friday)**. You should submit **six (6)** copies of your Technical proposal to the Senior Treasury Accountant of the Highways Department in a sealed enveloped clearly indicating the consultant's name and project reference and deposited them in the Highways Department Tender Box at the Headquarters of the Highways Department on 5/F, Ho Man Tin Government Offices, 88 Chung Hau Street, Homantin, Kowloon and submit **two (2)** copies of your Fee Proposal in a sealed envelope clearly indicating the consultants' name and project reference and marked "Restricted (Contract)" to the Chairman of EACSB at Civil Engineering and Development Department, 15/F., Civil Engineering and Development Building, 101, Princess Margaret Road, Homantin, Kowloon. If a black rainstorm warning or typhoon signal no. 8 or above is hoisted between 9 a.m. and 12 noon on the closing day for receipt of submission, the closing date shall be extended to 12 noon on the first working day of the following week (excluding Saturday). Late submissions or submissions with Technical Proposals that do not conform to the requirement in respect of the number of pages shall not be considered. The maximum size of submission which can be deposited into the Highways Department Tender Box is 740mm x 640mm x 100mm.

4A.1 Consultants shall note that it is a condition for appointment under the Agreement No. CE 61/2009 (HY) ("the Agreement") that they (or any of their associated companies, associates or associated persons and sub-consultants) have not undertaken, nor will they undertake at the same time during the term of the Agreement (as far as the

position can be ascertained when nomination for appointment is made), any services, tasks or jobs or doing anything whatsoever for or on behalf of any third party (hereinafter “involvement”) which touches, concerns or affects the Project. The terms “associated companies”, “associates” and “associated persons” shall have the meaning as assigned to them in SCE 14(H).

4A.2 Consultants are therefore required to declare and confirm all their past, current and future involvement (and any of their associated companies, associates or associated persons and sub-consultants) which touches, concerns or affects the Project, whether directly employed by MTR Corporation Limited or employed as a sub-consultant of the Project, and whether as an employee of MTR Corporation Limited or any of its consultants or sub-consultants engaged for the Project. Consultants should complete the sample declaration form given in Annex B and submit it together with the Technical and Fee Proposal. Failure to do so may render the Technical and Fee Proposal not to be considered further.

4A.3 Consultants who have submitted bids/tenders for any involvement which touches, concerns or affects the Project (including the scenario where their associated companies, associates or associated persons and sub-consultants have submitted such bids/tenders) but the result of which has not yet been available as at the date set for close of submission are still allowed to submit a Technical and Fee Proposal for the Agreement. However, Consultants should note that they will not be nominated for appointment for the Agreement unless as at such time when nomination is considered they can confirm that (i) the result of the relevant bids/tenders for other services in connection with the Project has been available and that the bid/tender has not been accepted or (ii) the relevant bid/tender has been withdrawn. The Employer will send out a request to all the Consultants who have submitted a bid for the Agreement for such confirmation to update the position before nomination for appointment is made. Only the Consultants which have satisfied the “no other involvement in the Project” rule as set out herein are eligible for nomination for appointment for the Agreement.

4A.4. The “Project” in paragraphs 4A.1, 4A.2 and 4A.3 above means the Kwun Tong Line Extension project as more particularly described in Section 2 of the Brief.

5. Consultant who has requested for novation of consultancy agreements pursuant to the provision in the circular would not be invited or bid for or be awarded any further consultancies. Similarly, bids submitted by consultants who engaged such a consultant as sub-consultant would not be considered. Please refer to ETWBTC(W) No. 3/2005 for details.

6. The electronic documents for preparing your submission are included in the attached CD-ROM (Electronic Invitation Package Ref : EIP-CE 61/2009(HY)-T&F-0) and are listed in Schedule 2 to the attached License Conditions for using these documents. You will be deemed to have accepted these conditions if you use the documents listed in Schedule 2.

7. You may make your submission in either electronic format or 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 you elect to make your submission in electronic format, the documents for your proposal shall be prepared and submitted in accordance with Annex A - Requirements for Submission of Proposal in Electronic Format. All proposals, whether submitted in electronic format or in hard copy format, will be

evaluated on an equal basis. Irrespective of whether the submission is in hard copy format or electronic format, you should submit the Technical Proposal to the Highways Department Tender Box and the Fee Proposal to the Chairman of EACSB as mentioned above.

8. Your submission should be concise and accurate and should comply with the following conditions:

- (i) Each consultant must provide information in the Technical Proposal on the manpower input for the assignment. You are therefore required to state your proposed total professional and technical manpower input in terms of man-weeks. However, you should not provide any information in the Technical Proposal on charge rates or fees.
- (ii) In addition, you are required to give a manning schedule (with charge rates and fees), in a bar-chart form, to show the time input of key staff such as Study Directors, Managers and Team Leaders of the relevant disciplines. The manning schedule (with charge rates and fees) should be included in the Fee Proposal only and not in the Technical Proposal.
- (iii) The proposed lump sum fee on the first page of the Fee Proposal shall be equal to the total fee for staff and non-staff charges for all stages in the summary breakdown of lump sum fee. The information/data, in particular, the manpower input in the Fee Proposal, shall tally with the Technical Proposal.
- (iv) The proposed all-inclusive time charge rates for additional Services could be different from the staff charge rates indicated in the manning schedule at sub-paragraph (ii) of this paragraph.

9. We will not accept Fee Proposals in which the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee.

10. Where the lump sum fee on the first page of the Fee Proposal is different from the total fee for the staff and non-staff charges for all stages in the summary breakdown of lump sum fee or the information/data, in particular, the manpower input in the Fee Proposal, does not tally with the Technical Proposal, you will be asked to rectify the discrepancy by correcting arithmetic errors or making adjustments to the unit charge rate or amending any information/data in the Fee proposal to bring it in line with the Technical Proposal, where appropriate. If you fail to rectify the discrepancy within 3 days of the date of the request for rectification, your submission will be disqualified and will not be considered. You are not, however, allowed to make any adjustment to the lump sum fee on the first page of the Fee Proposal.

11. You are reminded not to alter the format or text of the Fee Proposal Proforma. You are also reminded to exercise extreme care in completing the Proforma to ensure consistency throughout the Fee and Technical Proposals.

12. In respect of each category of staff specified in the prescribed Fee Proforma for “additional services”, irrespective of the number of sub-consultancies that may be involved, only ONE time charge rate shall be inserted as specified. Submissions which do not comply with this requirement shall not be considered.

13. Your attention is drawn to the requirement to insert the all-inclusive time charge rates in respect of each category of staff specified in the prescribed Fee Proforma for “additional services”, which information is essential for bid comparison purpose and for payment/management of the Consultants upon award of the Assignment. If a zero rate is inserted for any or all of these rates we will seek confirmation from you to abide by the bid with the zero rate(s) so proposed for bid comparison purpose and for payment/management of the Consultants upon award of the Assignment. If you fail to put in any or all of these rates, the relevant rate(s) shall be corrected by deeming the rate(s) as zero and we will seek confirmation from you to abide by the bid with the relevant rate(s) so corrected for bid comparison purpose and for payment/management of the Consultants upon award of the Assignment. If you confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected, the comparative assessment of technical and fee proposals would then be completed in the usual prescribed manner in accordance with Appendix 3.16 of the EACSB Handbook on the basis of the proposed fee and/or rates with such rate(s) so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with the rate(s) so proposed and/or corrected in writing by a specified deadline, your bid shall not be considered further for this consultants selection exercise.

14. Your attention is also drawn to the units of the rates as specified in the prescribed Fee Proforma attached to this letter. Where any of the units of the rates as presented on the first page of the Fee Proposal you have submitted differs from the unit(s) of the respective rate(s) specified in the prescribed Fee Proforma, such discrepancy shall be corrected by regarding the former as an inadvertent typographical error and the unit(s) concerned in the Fee Proposal submitted shall be automatically corrected to the corresponding unit(s) as per the prescribed Fee Proforma. For such corrections, only the units are to be so corrected, but not the numerical figures as filled in by you in the Fee Proposal submitted. We will then seek confirmation from you to abide by the bid with units so corrected. If you confirm your agreement to abide by the bid with units corrected, the comparative assessment of technical and fee proposals would then be completed in the usual prescribed manner in accordance with Appendix 3.16 of the EACSB Handbook on the basis of the proposed fee and/or rates with units so corrected and confirmed. If you fail to confirm your agreement to abide by the bid with units so corrected in writing by a specified deadline, your bid shall not be considered further for this consultants selection exercise.

15. You are required to confirm that you agree to abide by your Technical and Fee Proposals for a period of ninety (90) 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.

16. The initial list of consultants approached for this Assignment is attached for your information. Based on the assessment of Technical Proposals, normally four suitable firms will be selected for combined technical and fee assessments.

17. The names of the selected consultants, the total mark awarded to each for technical merit, together with the lump sum fee, time-charge rates and manpower input proposed by each, will be made known to those, and only those, consultants making submissions and of which the technical and fee proposals have been completely assessed in the combined assessment. I would also like to draw your particular attention to the requirements stipulated in Clause SCE1 of the Special Conditions of Employment regarding the disclosure of fees payable to the selected consultant.

18. 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 study should be provided at the same time. Similar proof of agreement with firms, organizations or individuals who will act as your sub-consultants should also be submitted.

19. If you are a limited liability company, then you are required to submit documentary proof that the majority of the voting power in meetings of the company shall be held by directors who are consulting engineers (or equivalent professionals of associated professions).

20. You are also required to declare any involvement or interest if it is considered by you to be in real or apparent conflict with the duties to be performed for this consultancy. Any involvement or interest declared would be carefully considered but would not automatically bar you from being further considered in the selection process.

21. Consultants (these must be consulting firms to be eligible for being considered for this consultant selection exercise) having linkages to each other, e.g. subsidiaries, parent or sister companies are not allowed to bid on the same agreement. Only one firm among such consultants, as the case may be, should be allowed to submit Technical and Fee Proposals for a consultancy agreement. You are thus required to declare any linkage with other consultants on the above list. The existence of a holding-subsidary relationship shall be determined in accordance with the provisions in Section 2(4) to (8) of the Companies Ordinance, Cap 32, "Sister companies" shall mean all companies which are subsidiaries of or otherwise belonging to the same holding company. Consultants having linkages should sort out among themselves before submitting Technical and Fee Proposals.

22. For the purpose of this "no linkage" requirement, an academic institution and any separate entities/companies formed by the same academic institution or any of its current staff, or any two of such entities/companies (whether formed by the same staff or not), shall be regarded as "linked". An academic institution, and all such entities/companies formed by it or any of its current staff (whether by the same staff or not), shall be allowed to submit only one set of Technical and Fee Proposals for the same consultancy agreement. You are also required to declare any such linkage with other consultants on the above list (item 8 in paragraph 2 of this invitation letter), if applicable. An entity/company is regarded as formed by the academic institution or its staff if the latter is a partner/shareholder or a director of the former, whether or not the latter is a founding partner/subscriber when the entity/company was formed.

23. Failure to observe this requirement shall render all related Technical and Fee Proposals submitted null and void and any such submission shall not be considered.

24. 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 consultants approached for this Assignment. Failure to observe this condition may cause the Proposal to be disqualified.

25. 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 assessment of technical merit and cost. Your Fee Proposal will be construed as a bid for this consultancy and, unless under very special circumstances, there will be no fee negotiations.

26. The Government is not bound to accept any proposal it may receive. In addition, the

Government will reject bids which are considered to have been priced unreasonably low.

27. 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.

28. You should indicate in your staff proposal which of the proposed staff are core personnel and the employment status (i.e. fulltime or not) at the time of bidding of each and every core personnel to be deployed by you or your sub-consultants in this assignment. You should produce undertaking signed by all non-fulltime core personnel (of yourself or your sub-consultants) to confirm their involvement in the event that you are awarded the consultancy.

29. Documents of unsuccessful consulting firms will be destroyed three months after the date the consultancy has been awarded and the agreement signed.

30. 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.

31. Consultant's attention is drawn to Clause SCE5 of the Special Conditions of Employment regarding the professional indemnity insurance requirement under the agreement. Please refer to DEVB TC(W) No. 9/2007 for details of the above. Consultant's attention is also drawn to Clause SCE14 of the Special Conditions of Employment regarding the conflict of interest and debaring. For details, please refer to ETWB TC(W) No. 18/2005.

32. According to ETWB TCW No. 34/2004, 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 (the current rates being 15% for unincorporated business and 16.5% for incorporated business for the year of assessment of 2008/2009) 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. Any balance representing the excess of fees so withheld in the basis period of the year of assessment over the Consultants' tax liability for that year will be returned to the Consultants without interest within a reasonable time upon final determination and settlement of their tax liabilities.

33. 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, should they be awarded the consultancy, such data (including but not limited to their names, nature of engagement, consultancy period, consultancy fee, 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.

34. "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.

35. Consultants shall declare their resident status or the sole proprietor's resident status in their consultancy proposals. If the Consultants are unincorporated joint venture or partnership, the Consultants must declare the resident status of each and every participant or partner thereof. A sample declaration letter is given in ETWB TC(W) No. 34/2004.

36. The consultant shall submit, together with its consultancy proposal, a copy of its ISO 9001:2000 or ISO 9001:2008 certificate acceptable to the Employer showing the scope of certification and a statement either:

- (A) confirming that no area/aspect in the consultancy agreement which its quality system specifically excludes; or
- (B) disclosing the areas/aspects in the consultancy agreement which its quality system specifically excludes.

Subject to the following paragraphs, submissions from consultants who have not obtained ISO 9001:2000 or ISO 9001:2008 certification on or before the date of this invitation may not be considered.

37. If the consultant, due to circumstances beyond its control, has not obtained ISO 9001:2000 or ISO 9001:2008 certification but a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong by a certification body acceptable to the Employer and such Quality Manual has been confirmed by the certification body as being in conformity with the requirements of ISO 9001:2000 or ISO 9001:2008 standard on or before the date of this invitation, the submission by the consultant will still be considered provided that the consultant shall undertake in writing if it is awarded the consultancy agreement, to book within three months of the award of the consultancy agreement, the date of audit for the ISO 9001:2000 or ISO 9001:2008 certification with the certification body; with detailed documented quality system procedures ready at the time of booking. The booking of the audit shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

38. If the consultant whose scope of certification excludes site activities service which is required to be provided by the consultant under the consultancy agreement, its submission will be considered to be non-conforming in respect of the certification requirements. If the consultant can prove to the satisfaction of this Department that such exclusion is due to circumstances beyond its control, the proposal may still be considered to be conforming in respect of the certification requirements provided that the consultant shall undertake in writing that if the consultant is awarded the consultancy agreement, it shall apply within three months of the award of the consultancy agreement to the certification body for revision of its current scope to cover site activities service; with detailed documented quality system procedures ready at the time of applying for revision. The submission of an application for revision of the scope of its ISO 9001:2000 or ISO 9001:2008 certification to cover site activities service shall be a condition precedent to the consultant's entitlement to any payment or any further payment of fees under the consultancy agreement.

39. If the consultant is a joint venture, the consultant shall submit, together with its consultancy proposal, a statement declaring that it shall implement the quality system of one of its partners or shareholders, and specifying which one. The reference to ISO 9001:2000 or

ISO 9001:2008 certificate, ISO 9001:2000 or ISO 9001:2008 certification and Quality Manual referred to in the above paragraphs shall refer to that of the specified participant or shareholder. The consultant shall also submit a copy of the written notification to the certification body of the specified participant or shareholder that the joint venture shall implement the quality system by the specified participant or shareholder and the written agreement of all participants, or as the case may be, shareholders of the joint venture that the activities of the joint venture shall be subject to the surveillance of the certification body. Further requirements on the QA Certification are set out in WBTC No. 13/2001.

40. In connection with this invitation, **a pre-submission meeting will be held at 10:00am on 1 April 2010 in Rm 223, 2/F, Homantin Government Offices, 88 Chung Hau Street, Ho Man Tin, Kowloon** to answer any queries from consultants. Please contact Mr. Y.C. Ting, Engineer, at tel. no. 2762 3587 if you wish to attend the pre-submission meeting. The agenda of the meeting is attached.

41. If you require further details, please contact Ms. Tonia Lo at 2762 4030, or Mr. Y.C. Ting at 2762 3587 or e-mail address escl8.rdo@hyd.gov.hk.