

Guidelines on  
**The Use of Consultants**  
by Asian Development Bank  
and Its Borrowers

February 2007

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"This document has been translated from English in order to reach a wider audience. While the Asian Development Bank (ADB) has made efforts to verify the accuracy of the translation, English is the working language of ADB and the English original of this document is the only authentic (that is, official and authoritative) text. Any citations must refer to the English original of this document."

**Asian Development Bank**

# FOREWORD

*The Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers ("Guidelines") replace the former Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers (April 2006).*

The Guidelines apply to loan and technical assistance projects funded by the Asian Development Bank (ADB) or other grant funds administered by ADB.

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# I. INTRODUCTION AND POLICIES

## Purpose

1.1 The purpose of these Guidelines is to define policies and procedures of the Asian Development Bank (ADB) for selecting, contracting, and monitoring consultants required for loan and technical assistance (TA) projects financed in whole or in part by loans from ADB, grants by ADB, or funds administered by ADB. The Guidelines provide a statement of applicable ADB policies and procedures; further clarifications are included in ADB’s project administration instructions (PAIs),<sup>1</sup> and/or standard requests for proposals (RFPs).<sup>2</sup>

1.2 The loan agreement, grant agreement or TA letter agreement,<sup>3</sup> as the case may be, governs the legal relationships between the recipient and ADB, and the Guidelines apply to the recruitment of consultants as provided in the relevant agreement. The rights and obligations of the borrower<sup>4</sup> or ADB and the

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<sup>1</sup> PAIs may be accessed on the ADB website, [www.adb.org](http://www.adb.org).

<sup>2</sup> The standard request for proposal (RFP) for loans is fully harmonized with those of other MDBs and may be accessed on the ADB website, [www.adb.org](http://www.adb.org)

<sup>3</sup> For ADB-funded TA, the recipient country enters into an “umbrella” TA framework agreement with ADB that governs the relationship between ADB and the recipient country in general for all TA projects extended by ADB to such country. For each specific TA project, however, a TA letter agreement is agreed between ADB and the borrower. The TA letter agreement typically incorporates provisions of the relevant TA Framework Agreement and of the TA paper proposing approval of the TA.

<sup>4</sup> References in these Guidelines to “borrower” include the executing and/or implementing agencies responsible for an ADB-financed project where the borrower (or grant recipient) does not directly execute the project.

consultant are governed by the specific RFP issued by the borrower or ADB and by the contract signed by the borrower or ADB with the consultant, and not by these Guidelines, the loan agreement, grant agreement or TA letter agreement. No party other than the parties to the loan agreement, grant agreement or TA letter agreement shall derive any rights therefrom or have any claim to loan, grant or TA proceeds.

1.3 For the purpose of these Guidelines, the term consultants includes a wide variety of private and public entities, including international<sup>5</sup> and national<sup>6</sup> consulting firms, engineering firms, construction firms, management firms, procurement agents, inspection agents, auditors, United Nations (UN) agencies and other multinational organizations, universities, research institutions, government agencies, nongovernment organizations (NGOs), and individuals.<sup>7</sup> ADB or its borrowers use these organizations as consultants to help in a wide range of activities such as policy advice, institutional reforms, management, engineering services, construction supervision, financial services, procurement services, social and environmental studies, and identification, preparation, and implementation of projects to complement borrowers' or ADB's capabilities in these areas.

## General Considerations

1.3 Normally, the borrower is responsible for the selection, engagement and supervision of loan-financed consultants,<sup>8</sup> and ADB is responsible for the selection, engagement and supervision

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<sup>5</sup> "International consultant" means any consulting firm established or incorporated in any ADB member country, including the borrower's country, or a person who is a citizen of any ADB member country including the borrower's country.

<sup>6</sup> "National consultant" means any consulting firm or individual from the borrower's country that is established or incorporated and has a registered office in the borrower's country, or a person who is a citizen of such country.

<sup>7</sup> Individual consultants, see para 2.34.

<sup>8</sup> This includes consultants engaged under investment projects wholly or partially-funded by Asian Development Fund (ADF) Grants.

of TA grant-financed consultants.<sup>9</sup> While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, six main considerations guide ADB's policy on the selection process:

- (a) need for high-quality services,
- (b) need for economy and efficiency,
- (c) need to give all qualified consultants an opportunity to compete in providing the services financed by ADB,
- (d) ADB's interest in encouraging the development and use of national consultants from developing member countries (DMCs),
- (e) need for transparency in the selection process, and
- (f) need for increasing focus on anticorruption and observance of ethics.

1.5 ADB considers that, in the majority of cases, these considerations can best be addressed through competition among qualified shortlisted firms in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided. Part II, section A, of these Guidelines describes the different methods of selection of consultants accepted by ADB and the circumstances in which they are appropriate. Since quality- and cost-based selection (QCBS) is ADB's preferred method, paras. 2.02-2.21 of these Guidelines describes in detail the procedures for QCBS. However, for cases where QCBS is not the most appropriate, paras. 2.23–2.32 outline alternative selection methods.

1.6 The methods that may be used for the selection of consultants under a loan or TA project are provided for in the loan agreement, grant agreement, or TA letter agreement. The specific contracts to be financed under the project, and their method of

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<sup>9</sup> In order to increase ownership of TA projects and improve sustainability of project benefits, ADB may, in particular circumstances, delegate responsibility to a borrower ("delegated TA") to recruit and supervise TA consultants.



selection, consistent with the provisions of the loan, grant or TA letter agreement, shall be specified in the procurement plan (see para. 1.27).

## **Applicability**

1.7 Consulting services to which these Guidelines apply are generally of an intellectual and advisory nature covering a wide range of sectors, both public and private, and a wide range of services<sup>10</sup> at all stages of the project cycle. These guidelines do not normally apply to other types of services in which the physical aspects of the activity predominate (e.g., construction of works).

1.8 The procedures outlined in these Guidelines apply to all contracts for consulting services financed in whole or in part from loans, TAs or other grants or ADB-administered funds implemented by ADB or a borrower. In procuring consulting services not financed from such sources, the borrower may adopt other procedures. In such cases, ADB shall satisfy itself that (i) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications, (ii) the selected consultants will carry out the assignment in accordance with the agreed schedule, and (iii) the scope of the services is consistent with the needs of the project.

1.9 Consultants recruited by the borrower include firms and individuals for loan projects and delegated TA. ADB may use consultants for TA activities which are financed by ADB from its own resources or which, although financed by another institution, are executed by ADB on behalf of such other institution. ADB may also use (i) staff consultants to supplement its own staff by providing

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<sup>10</sup> "Services" include policy advice; governance; institutional reforms; social considerations including poverty alleviation and gender concerns; environment assessments and audits, participation and consultation, institutional strengthening and capacity building including training; legal and financial services; management and engineering services; and construction supervision.

specialized expert knowledge and advice for ADB activities under contracts financed from ADB's administrative budget; and (ii) resource persons to facilitate conferences, workshops, and seminars. In such cases, the consultants will be recruited by ADB. The duties of consultants are defined in the terms of reference (TOR) which, in the case of a TA project, are prepared in collaboration with the recipient entity.

## Conflict of Interest

1.10 ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations and that such conflict of interest may contribute to or constitute a prohibited practice under ADB's anticorruption policy. In pursuance of the anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity) as well as consultants under ADB-financed contracts observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest or may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any consultant selection process.

1.11 Without limitation on the generality of the foregoing, consultants shall not be recruited under the circumstances set forth below:

- (a) Conflict between consulting activities and procurement of goods, works or services (other than consulting services covered by these guidelines<sup>11</sup>).** A consulting firm or individual consultant that has been engaged by ADB or a borrower to provide goods, works, or services (other than consulting services covered by these Guidelines) for a project, shall be

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<sup>11</sup> See para. 1.7 of these Guidelines.

disqualified from providing consulting services related to those goods, works or services. Conversely, a consulting firm or individual consultant hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods, works or services (other than consulting services covered by these Guidelines) resulting from or directly related to the firm's or individual consultant's services for such preparation or implementation.

**(b) Conflict among consulting assignments.** Consulting firms or individual consultants shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the firm or individual. As an example, consulting firms or individual consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consulting firms or individual consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare TOR for an assignment shall not be hired for the assignment in question.

**(c) Relationship with borrower's staff.** Consulting firms or individual consultants that have a business or family relationship with an ADB staff member or with a borrower's staff who are directly or indirectly involved in any part of (i) the preparation of the TOR of the contract, (ii) the recruitment process for such contract, or (iii) supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to ADB throughout the recruitment process and the execution of the contract.

## Unfair Competitive Advantage

1.12 Fairness and transparency in the recruitment process require that consulting firms or individual consultants competing for a

specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, ADB or the borrower shall make available to all the shortlisted consultants together with the RFP all information that would in that respect give a consulting firm or an individual consultant a competitive advantage.

## Eligibility

1.13 To foster competition, ADB permits firms and individuals from all ADB member countries to offer consulting services for projects to be financed by ADB. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. However, the following considerations will also be taken into account.

- (a) Consultants may be excluded if, by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the borrower's country prohibits any payments to any country, person, or entity. Where the borrower's country prohibits payments to a particular consultant or for particular goods by such an act of compliance, that consultant may be excluded.
- (b) Government-owned enterprises or institutions in the borrower's country may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the borrower or sub-borrower.
- (c) As an exception to (b), when the services of government-owned universities or research centers in the borrower's country are of unique and exceptional nature, and their participation is critical to project implementation, ADB may agree on the hiring of those institutions on a case-by-case

basis. On the same basis, university professors or scientists from research institutes can be contracted individually under ADB financing.

- (d) Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see para. 1.10).
- (e) A consultant declared ineligible by ADB in accordance with subparagraph (d) of para. 1.23 of these Guidelines shall be ineligible to be awarded an ADB-financed or administered contract during such period of time as ADB shall determine.

## **Associations between Consultants**

1.14 Consultants may associate with each other in the form of a joint venture<sup>12</sup> or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals, and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If ADB or a borrower employs an association in the form of a joint venture, the association will appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Borrowers shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

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<sup>12</sup> The nationality of the joint venture (JV) for the purpose of shortlisting will be defined by the nationality of the firm representing the JV.

## **Advance Contracting and Retroactive Financing**

1.15 ADB encourages advance contracting and retroactive financing, where appropriate, to accelerate project implementation. The borrower may wish to proceed, with ADB's approval, with the selection (though not contracting) of consultants before the loan agreement is signed. In such cases, the selection procedures shall be in accordance with these Guidelines, and ADB shall review the process used by the borrower. A borrower undertakes such advance contracting at its own risk, and any "no objection" issued by ADB with regard to the procedures, documentation, or proposal for award does not commit ADB to make a loan for the project in question. If the contract is signed, reimbursement by ADB of any payments made by the borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the loan agreement. In particular circumstances, advance recruitment action may be applied to recruitment of consultants for ADB TA or delegated TA.

## **ADB Review, Assistance and Monitoring**

1.16 To ensure borrowers comply with these Guidelines, ADB conducts prior reviews for recruitment of loan and delegated TA consultants. Prior reviews require the borrower to make submissions for ADB's approval at different stage of the recruitment process for all selection methods. The frequency and depth of prior reviews are linked to the capacity of the borrower. Fewer submissions are required from borrowers demonstrating substantial capacity and experience. In particular circumstances, the requirement for prior reviews may be dropped in favor of post-reviews. The requirement, the frequency and depth of prior reviews, and the thresholds for applying post-reviews will be agreed by the borrower and ADB during project preparation and incorporated in the procurement plan (see paras. 1.6 and 1.27).

1.17 Under special circumstances, for example, where an inadequate number of expressions of interest (EOIs) have been received, and in response to a written request from the borrower, ADB may furnish to the borrower long lists of firms that it expects to be capable of undertaking the assignment. The provision of the list does not represent an endorsement of the consultants. The borrower may delete any name or add other names as it wishes; however, the final shortlist shall be submitted to ADB for its approval before the borrower issues the RFP. As appropriate, ADB may take part in discussions between the borrower and consultants and, if necessary, may help the borrower in addressing issues related to the assignment.

## **Misprocurement**

1.18 ADB does not finance expenditures for consulting services if the consultants have not been selected in accordance with the provisions of the relevant agreement and these Guidelines. If recruitment is not carried out as agreed, ADB will declare misprocurement, and normally cancel that portion of the financing allocated to the services that have been misprocured. In appropriate cases, ADB may permit re-issuing of the RFP after declaring misprocurement. ADB may, in addition, exercise other remedies provided for in the relevant Agreement. Even if a contract is awarded after obtaining a “no objection” from ADB, ADB reserves the right to declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate or misleading information, or that the terms and conditions of the contract had been substantially modified without ADB’s approval.

## **References to ADB**

1.19 When the project is to be financed wholly or partly by ADB, reference shall be made to ADB in the RFP and contract documents as follows:

“.....[name of borrower] .....has received a [loan] [and/or grant] from the [ordinary capital resources or Special Funds resources] of Asian Development Bank toward the cost of [name of project], and intends to apply a portion of the proceeds of this [loan] [grant] to eligible payments under this Contract. The terms and conditions of the contract (contracts) and payments by the Asian Development Bank will be subject to the terms and conditions of the [loan/grant agreement], including the *Guidelines on the Use of Consultants by Asian Development Bank and Its Borrowers*. Except as ADB may specifically otherwise agree, no party other than [name of borrower] shall derive any rights from the [loan/grant agreement] or have any claim to the proceeds of the [loan/grant]”

## Capacity Development

1.20 ADB provides capacity building to enhance (i) country capacity and ownership by highlighting the requirement for, and defining approaches to, strengthening DMC recruitment capacity; (ii) borrower recruitment capacity through assessment and implementation of hands-on, stand-alone, and “twinning” training defined in the procurement plan; (iii) development of DMC consulting industries by addressing capacity building requirements at four levels: (a) policy/regulatory level, to promote the role of government to facilitate a business environment conducive to the evolution of the industry, (b) consulting association level, to guide and develop industry training and strong representation, (c) consulting firm level, through, for example, including in the TORs of international firms a requirement to transfer “consulting management” expertise to national firms, and (d) individual consultant level, by creating awareness of consulting industry job opportunities.

## Training or Transfer of Knowledge

1.21 If the assignment includes an important component for training or transfer of knowledge to borrower staff or national



consultants, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall normally be included in the consultant's contract and in the budget for the assignment.

## Language

1.22 Documentation and communication relating to the use of consultants prepared by ADB, the borrower, and consultants shall be in English.

## Fraud and Corruption

1.23 ADB's anticorruption policy requires that borrowers (including beneficiaries of ADB-financed activity), as well as consultants under ADB-financed contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy,<sup>13</sup> in the context of these Guidelines, ADB:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - (i) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

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<sup>13</sup> See ADB's Anticorruption Policy (<http://www.adb.org/Documents/Policies/Anticorruption>) and Integrity Principles and Guidelines (<http://www.adb.org/Documents/Guidelines/Integrity-Guidelines-Procedures>).

- (ii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (iii) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- (b) will reject a proposal for an award if it determines that the consultant recommended for the award has directly, or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower of ADB financing engaged in corrupt, fraudulent, collusive, or coercive practices during the consultant selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
  - (d) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, such party or successor from participation in ADB-financed activities if it at any time determines that the consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or other prohibited practices in competing for, or in executing, an ADB-financed contract; and
  - (e) will have the right to require that, in consultant selection documentation and in contracts financed by ADB, a provision be included requiring consultants to permit ADB or its

representative to inspect their accounts and records and other documents relating to consultant selection and to the performance of the contract and to have them audited by auditors appointed by ADB.

1.24 With the specific agreement of ADB, a borrower of ADB financing may introduce, into the RFPs for delegated TA or loan projects financed by ADB, an undertaking of the consultants to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFPs. ADB will accept the introduction of such undertaking at the request of the borrower of ADB financing provided the arrangements governing such undertaking are satisfactory to ADB.

1.25 When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the consultants that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the proposal, have been given, received, or promised in connection with the consultant selection process or in contract execution.

## **Performance Evaluation**

1.26 ADB believes that past consultant performance should be linked to further business opportunities. ADB and its borrowers implement formal consultant performance evaluations. As part of the evaluation process, the consultant is invited to comment on the performance of the borrower and ADB for delegated TA, loan projects, and TA respectively. The consultant is also given the opportunity to review and comment on the content of the performance evaluation report prepared by the borrower or ADB.

## **Procurement Plan**

1.27 As part of the preparation of loan and/or grant projects, the borrower, in consultation with ADB, shall prepare a procurement

plan (“the plan”) covering goods, works and recruitment of consulting services as early as possible, and, in any event, before loan negotiations. For consulting services, the plan will set forth: (i) each particular contract package; (ii) proposed methods for selection of consulting services and type of proposal, and (iii) an overall indicative recruitment schedule and budget for each consulting contract package. Preparation of the plan will increase borrower ownership, including borrower participation in determining consultancy requirements, producing and endorsing TOR, and providing more focus on identification of national consultants. Prior to, or during preparation of the plan, ADB may,<sup>14</sup> for new borrowers, borrowers where capacity is known to be weak, where abbreviated prior reviews or post- reviews are envisaged, or where delegated TA is proposed, assess the capability of the borrower to implement the plan. This assessment will influence the plan by defining the requirement for, and frequency of, prior, and/or post-reviews. Where appropriate, the assessment will also define training to strengthen borrower recruitment capacity. Although the initial plan will be incorporated in the report and recommendation of the President (RRP), this will be a “rolling” plan, updated periodically at reasonable intervals.

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<sup>14</sup> Guidance will be sought, among others, from country procurement assessment reports (CPARs), and the previous experience of ADB and other MDBs with the borrower.

## **II. PROCEDURES**

### **A. Selection Methods<sup>15</sup>**

#### **1. Recruitment of Consulting Firm**

2.1 In order to (i) provide a wide range of services, (ii) promote streamlining and harmonization, and (iii) reduce administrative complexities and transaction costs, ADB implements a range of selection methods.

##### **a. Quality- and Cost-Based Selection (QCBS)**

2.2 QCBS is based on the quality of the technical proposal and the cost of the services to be provided. Since under QCBS the cost of the proposed services is a factor in the selection, this method is appropriate when, (i) the scope of work can be precisely defined, (ii) the TOR are well specified and clear, and (iii) ADB or the borrower and the consultants can estimate with reasonable precision the personnel time as well as the other inputs required of the consultants.

- (i) Quality- and Cost-Based Selection Procedure for Loans and Delegated TAs

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<sup>15</sup> The detailed breakdowns of activities for each selection method are defined by PAIs available on the ADB website, [www.adb.org](http://www.adb.org).

2.3 The QCBS procedure for loan and delegated TA consultants, when the borrower is responsible, is outlined below and summarized in Appendix 1. Normally, the borrower will be required to make three submissions (prior reviews) for ADB approval: (i) a draft RFP including the shortlist, (ii) a technical proposal evaluation report, and (iii) an overall evaluation and ranking report. However, borrowers with proven capacity are required to make only two submissions: (i) a draft RFP including the shortlist, and (ii) an overall evaluation and ranking report.

a. Preparation of the Terms of Reference

2.4 Before the process of recruitment of a consulting firm starts, the objective and scope of the proposed work, and the functions and duties to be assigned to the consultants should be clearly and adequately defined in the TOR.

b. Cost Estimates (Budget for the Assignment)

2.5 Well-developed cost estimates are essential to ensure realistic budgetary resources are provided. The cost estimates for loan projects shall be prepared by the borrower based on assessment of the resources needed to carry out the assignment: expert time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (i) remuneration (according to the type of contract used) and (ii) out-of-pocket expenses. The cost of expert time shall be estimated on a realistic basis for international and national personnel.

c. Advertising

2.6 ADB normally lists all loan projects requiring consulting services on ADB's website before shortlisting. To attract EOIs from consulting firms, the borrower, may also advertise in an appropriate national journal, newspaper, or website.

d. Preparation of long list of consultants

2.7 The borrower shall prepare a long list of technically qualified firms based on EOIs submitted.

e. Preparation of shortlist of consultants

2.8 The borrower is responsible for preparation of the shortlist. The borrower shall give first consideration to those firms expressing interest that possess the relevant qualifications. Shortlists shall comprise six firms with a wide geographic spread, with no more than two firms from any one country and at least one firm from a developing country, unless qualified firms from developing countries are not identified. ADB may agree to shortlists comprising a smaller number of firms in special circumstances, for example, when only a few qualified firms have expressed interest in the specific assignment or when the size of the contract does not justify wider competition. For the purpose of establishing the shortlist, the nationality of a firm is that of the country in which it is registered or incorporated and, in the case of a joint venture, the nationality of the firm appointed to represent the joint venture. Once ADB has issued a “no objection” to a shortlist, the borrower shall not add or delete names.

2.9 The shortlist may comprise entirely national consultants (firms registered or incorporated in the country), if the assignment is below any ceiling (or ceilings) established in the procurement plan approved by ADB,<sup>16</sup> sufficient qualified firms are available to enable a shortlist of firms with competitive costs to be drawn up, and when competition, including foreign consultants, is prima facie not justified or foreign consultants have not expressed interest. These same amounts will be used in ADB lending operations

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<sup>16</sup> Dollar ceilings may be determined, taking into account the nature of the project, the capacity of national consultants, and the complexity of the assignment, and cannot exceed applicable ceilings set out in any country procurement assessment report (CPAR) that has been completed for the country or the borrower.

supporting sector wide approaches (SWAps)<sup>17</sup> (in which government and/or donor funds are pooled) as the threshold below which shortlists will be composed entirely of national firms selected under procedures agreed with ADB. However, if foreign firms express interest, they shall be considered.

f. Preparation and Issuance of the Request for Proposals (RFPs)

2.10 Borrowers shall use the standard RFP. The RFP includes:

- letter of invitation;
- instructions to consultants, including a data sheet and evaluation criteria;
- technical proposal standard forms;
- financial proposal standard forms;
- TOR;
- standard form of contract; and
- list of ADB member countries.

2.11 The borrower shall send RFPs to consultants on the shortlist. The borrower may use an electronic system to distribute the RFP, provided that ADB is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not restrict the access of shortlisted consultants to the RFP.

g. Receipt of Proposals

2.12 Firms shall be required to submit technical and financial proposals in separate sealed envelopes at the same time. Any proposal received after the closing time for submission of proposals

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<sup>17</sup> SWAps represent an approach by development agencies to support country-led programs whose scale is greater than a single project. It typically encompasses an entire sector or large portions of one.



will be returned unopened, and no amendments to the technical or financial proposals will be accepted after the deadline.

h. Evaluation of technical proposal

2.13 The evaluation shall be based on the evaluation criteria defined in the instructions to consultants. After the technical quality is evaluated, firms whose technical proposals did not meet the minimum qualifying score of 750 points out of a possible 1,000 points, or were considered non-responsive to the invitation requirements, will be advised and their financial proposals will be returned unopened. Firms that have secured the minimum qualifying technical score will be advised of the location, date, and time for opening of financial proposals.

i. Public opening of financial proposals

2.14 The borrower shall then inform the firms whose technical proposals scored 750 points or more of the time and place where the borrower will publicly open their financial proposals. The name of the firms, the technical quality scores, and the proposed prices shall be announced, and recorded when the financial proposals are opened.

j. Evaluation of financial proposal

2.15 The borrower shall then review the congruency of the technical and financial proposals, make adjustments as appropriate, and correct arithmetical or computational errors.

k. Ranking of proposals

2.16 The total score shall be obtained by weighting and adding the technical and financial scores; this will determine the overall ranking of the consultants' proposals. The weight for the "cost" shall be chosen, taking into account the complexity of the

assignment and the relative importance of quality. Except as provided for in the case of other selection methods, the weight for cost shall normally be 20%.

#### I. Negotiations

2.17 The borrower shall then negotiate a contract with the first ranked firm. Negotiations will include discussions of the TOR, the methodology, personnel schedule, the borrower's counterpart facilities and the quantities of cost items in the firm's financial proposal. However, these discussions will not substantially alter the TOR attached to the invitation. The selected firm should not be allowed to substitute experts, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.<sup>18</sup> Proposed unit rates for remuneration shall not be altered and other expenses shall not be negotiated since unit rate cost has been a factor in the selection process. Successful negotiations conclude with signing of the contract. Financial negotiations shall include clarification of the consultant's tax liability in the borrower's country (if any) and how this tax liability has been or would be reflected in the contract. If the borrower and the firm cannot reach agreement, the borrower may terminate the negotiations with ADB's prior agreement and start negotiations with the next ranked firm until an agreement is reached. The borrower shall send a copy of the signed contract to ADB for its records.

#### m. Publication of the Award of Contract

2.18 After the award of contract, the borrower shall provide ADB with the following information which ADB shall publish on ADB's website:<sup>19</sup> (i) the names of all consultants who submitted proposals,

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<sup>18</sup> Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.

<sup>19</sup> [www.adb.org](http://www.adb.org)

(ii) the technical points assigned to each consultant, (iii) the offered prices of each consultant, (iv) the overall ranking of the consultants, and (v) the name of the winning consultant and the contract sum.

n. Debriefing

2.19 In the publication of award of contract the borrower shall specify that if any consultant who submitted a proposal wishes to ascertain the reasons why its proposal was not selected, such consultant should request an explanation from the borrower. The borrower shall promptly provide an explanation as to why its proposal was not selected.

o. Rejection of All Proposals and Reinvitation

2.20 The borrower will be justified in rejecting all proposals only if all proposals are non-responsive because they present major deficiencies in complying with the TOR or if they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of the services with the firm should be investigated in consultation with ADB. Before all proposals are rejected and new proposals are invited, the borrower shall notify ADB, indicating the reasons for rejection of all proposals, and shall obtain ADB's "no objection" before proceeding with the rejection and the new process. The new process may include revising the RFP (including the shortlist) and the budget. These revisions shall be agreed upon with ADB.

p. Confidentiality

2.21 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process until the publication of the award of contract, except as provided in paras. 2.14 and 2.16 above.

(ii) Quality- and Cost-Based Selection Procedures for Technical Assistance

2.22 The procedure for TA is similar to that for loan and delegated TA consultants and is summarized in Appendix 1.

**b. Quality-Based Selection (QBS)**

2.23 Quality-based selection (QBS) is a method based on evaluating only the quality of the technical proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. QBS is appropriate when (i) assignments are complex or highly specialised making it difficult to define precise TOR and the required input from the consultants, (ii) assignments where the downstream impact is so large that the quality of the services is of overriding importance for the outcome of the project, and (iii) assignments that can be carried out in substantially different ways such that financial proposals maybe difficult to compare.

(i) Quality-Based Selection for Loan and Delegated TAs

2.24 Generally, when QBS is used, as price will not be used as a selection criterion, the RFP will request firms to submit a technical proposal only. Using the same methodology as in QCBS for evaluation and ranking of the consultants' technical proposal, the borrower shall request the consultant with the highest ranked technical proposal to submit a detailed financial proposal, including supporting documentation that may be subject to audit. The borrower and the consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract except that only the cost of the winning firm is published. During the process all borrowers shall be required to make two submissions (prior reviews) for ADB approval (i) shortlist, and (ii) final ranking. The procedure is summarised in Appendix 1.

(ii) Quality-Based Selection for TAs

2.25 The procedure for TA is similar to that for loan and delegated TA consultants and is summarised in Appendix 1.

**c. Fixed Budget Selection (FBS)**

2.26 Fixed budget selection (FBS) is appropriate only when (i) the TOR are precisely defined, (ii) the time and personnel inputs can be accurately assessed, and (iii) the budget is fixed and cannot be exceeded. To reduce the financial risk for consultants and avoid receiving unacceptable technical proposals or no proposals at all, this method can only be used for well-defined TA projects or projects where it is expected there will be no changes during implementation. Shortlists for FBS will normally comprise six firms with a reasonable geographic spread. The RFP shall indicate the available budget, define the “minimum” qualifying mark for the “quality” as 750 points out of a possible 1,000 points, and request firms to submit their best technical and financial proposals in separate envelopes, at the same time, and within the budget. Evaluation of all technical proposals shall be carried out first. Then the financial proposals of firms meeting the “minimum” qualifying mark shall be opened in public and prices shall be announced. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the remaining proposals shall be selected and invited to negotiate. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

**d. Least-Cost Selection (LCS)**

2.27 Least-cost selection is only appropriate for selecting consultants for very small assignments,<sup>20</sup> of a standard or routine

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<sup>20</sup> Generally less than \$100,000.

nature (audits, engineering design/supervision of simple projects, and simple surveys) where well-established practices and standards exist. Shortlists for LCS will normally comprise three firms with a reasonable geographic spread. The RFP shall define the “minimum” qualifying mark for the “quality” as 750 points out of a possible 1,000 points, and request the firms to submit at the same time technical and financial proposals in separate envelopes. Technical proposals will be opened first and evaluated. Those securing less than the minimum qualifying mark will be rejected, and the financial proposals of the rest will be opened in public. The firm with the lowest price shall then be selected and invited to finalize the contract. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

#### **e. Consultants’ Qualifications Selection (CQS)**

2.28 This method may be used for small assignments<sup>21</sup> where (i) highly specialized expertise is required for the assignment and recruitment of “boutique” consulting firms that provide depth of expertise in specific areas is contemplated; (ii) recruitment time is critical and the assignment is, typically, short-term; (iii) few consultants are qualified; and (iv) the preparation and evaluation of competitive proposals is not justified. The borrower or ADB shall (i) prepare the TOR, (ii) request amplified EOIs and information on the consultants’ experience and competence relevant to the assignment, (iii) establish a shortlist of at least three firms, and (iv) select the firm with the most appropriate qualifications and references based on the EOIs. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

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<sup>21</sup> Usually less than \$200,000.

## **f. Single Source Selection (SSS)**

2.29 Single-source selection (SSS) of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for SSS shall be examined in the context of the overall interests of the client and the project, and ADB's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

2.30 SSS may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph), (b) in emergency cases, such as in response to disasters, (c) for very small<sup>22</sup> assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

2.31 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and, if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the borrower shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the borrower, which shall then be negotiated. If the initial assignment was not awarded on a competitive basis, or if the downstream assignment is substantially larger in value, a competitive process acceptable to ADB shall normally be followed in which the consultant carrying out the initial work is not excluded

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<sup>22</sup> Dollar thresholds defining "very small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed \$100,000.

from consideration if it expresses interest. ADB will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

2.32 When a borrower or ADB proposes to use SSS, ADB's mission includes the proposed procedures in the TA paper, and RRP. The borrower or ADB requests the consultant to submit a biodata technical proposal (BTP)<sup>23</sup> and a financial proposal at the same time. ADB or a borrower review the BTP to make sure that it is adequate and negotiate a contract with the firm or individual.

### **g. Commercial Practices**

2.33 In the case of loans on-lent by a financial intermediary to private sector enterprises or autonomous commercial enterprises in the public sector, the sub-borrower may follow well-established private sector or commercial practices that have been determined by ADB to be acceptable to it. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments.

## **2. Recruitment of Individual Consultant**

2.34 For some assignments, individual consultants are more appropriate and cost-effective than firms. Individual consultants may be recruited directly (independent individual) or through an organization, such as a consulting firm, an academic institution, a government, or an international agency by a borrower or ADB. The procedures for selection are simpler than those for selecting international and national consulting firms. Individual consultants are recruited on the basis of their qualifications for the assignment. When the borrower recruits individual international and national consultants for loan projects, agreements are reached as early as possible and in any case before loan negotiations on (i) the type of

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<sup>23</sup> BTPs comprise a work plan, personnel schedule and the biodata of each proposed expert.



consultant best suited for the assignment, (ii) the applicable procedure. Typically, the borrower will recruit them in accordance with government procedures acceptable to ADB. For TA, the procedure for recruitment is dependent on the complexity<sup>24</sup> of the TOR, and the duration of the assignment.

### **3. Recruitment of Particular Types of Consultant**

#### **a. Staff Consultant**

2.35 ADB shall define the requirements and prepare the TOR for a staff consultant. ADB shall review expressions of interest submitted and the data on individual consultants (DICON) for suitable candidates and, if necessary, ask organizations or consulting firms for nominations.

#### **b. Resource Persons**

2.36 Resource persons may not be engaged for more than 10 working days but may be recruited using single source selection.

#### **c. UN and other Specialized Agencies**

2.37 UN and other similar specialized agencies may be hired as the consultants, where they are qualified to provide technical assistance and advice in their area of expertise. However, they shall not receive any preferential treatment in a competitive selection process, except that borrowers may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the ADB. To neutralize

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<sup>24</sup> Complexity in this sense is defined by the "job level" (based on the responsibilities of the assignment and the required qualifications and experience of the consultant) of the assignment.

the privileges of UN Agencies, as well as other advantages such as tax exemption and facilities, and special payment provisions, the QBS method shall be used. UN agencies may be hired on a single-source selection basis if the criteria outlined in para. 2.29 of these Guidelines are fulfilled.

**d. Nongovernment Organizations (NGOs)**

2.38 To improve the effectiveness, quality, and sustainability of its operations ADB cooperates with a range of international and national NGOs. Large international NGOs are sometimes included in shortlists for TA and loan consultants providing ADB or a borrower find their qualifications satisfactory. Simplified recruitment procedures and contracting arrangements will be applied for smaller (particularly national) NGOs. Where international NGOs are included with consulting firms on shortlists for TA or loan consultants, the QBS method will be used. Where TA projects or loan projects require in-depth knowledge of local issues, community needs, and/or participatory approaches for which either international or national NGOs are clearly better qualified, the short list may entirely comprise NGOs and the selection method will be QCBS. Where national NGOs are being recruited either for a TA or loan project, ADB may apply a modified (simplified) QCBS recruitment procedure to reflect the capacity of the competing NGOs where evaluation criteria reflect the unique qualifications of NGOs including: (i) history of work with local communities and evidence of satisfactory performance, (ii) familiarity with participatory development approaches, (iii) committed leadership and adequate management, and (iv) capacity to co-opt beneficiary participation. ADB or its borrower may select the NGO by Single Source Selection, provided the criteria outlined in para. 2.29 of these guidelines are fulfilled.

**e. Procurement Agents (PAs)**

2.39 When a borrower lacks the necessary organization, resources, or experience, it may be efficient and effective for it to

employ, as its agent, a firm that specializes in handling procurement. When PAs are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases PAs shall be selected using QCBS procedures with cost being given a weight up to 50%. However, when PAs provide only advisory services for procurement or act as “agents” for a whole project in a specific office for such project they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time-based contract, specified in these Guidelines. The agent shall follow all the procurement procedures outlined in the loan agreement and in the procurement plan approved by ADB on behalf of the borrower, including the use of RFP, review procedures, and documentation.

#### **f. Inspection Agents**

2.40 Borrowers may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the borrower country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using QCBS procedures giving cost a weight up to 50% and using a contract format with payments based on a percentage of the value of goods inspected and certified.

#### **g. Banks**

2.41 Investment and commercial banks, financial firms, and fund managers hired by borrowers for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, shall be selected under QCBS. The RFP shall specify selection criteria relevant to the activity—for example, experience in similar assignments or network

of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee”; this fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee shall be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in para. 2.16 or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP shall specify clearly how proposals will be presented and how they will be compared.

#### **h. Auditors**

2.42 Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS giving cost a weight of up to 50% or by the “Least-Cost Selection” outlined in para. 2.27. For very small<sup>25</sup> assignments CQS may be used.

#### **i. Service Delivery Assignments**

2.43 Projects requiring support services, e.g. training, the design or production of project training materials or promotional materials or videos, and planning and implementing workshops or seminars may involve hiring individuals or specialist organizations that deliver services on a contract basis. The TOR will be prepared. A lump sum contract (see para. 2.48) is typically the most appropriate mechanism for engaging the service provider.

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<sup>25</sup> See footnote 21.

## **B. Contracting Methods**

2.44 Selection of the type of contract will be dependent on (i) the nature of the assignment, (ii) whether the scope and output are definable, and (iii) the distribution of risks between the concerned parties.

### **1. Time-based Contract<sup>26</sup>**

2.45 Time-based contract is used when it is difficult to define the scope, output, and the length of the services, either because the services are related to and await completion of activities by others for which the completion period may vary, or because the input of the consultants is difficult to assess. This type of contract will be used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are linked to inputs and are usually based on monthly rates for personnel named in the contract), and on reimbursable expenses using actual expenses and/or an agreed unit rate.

### **2. Retainer and/or Contingency (Success) Fee Contract**

2.46 Retainer and contingency fee contract is widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

### **3. Indefinite Delivery Contract (Price Agreement)**

2.47 This contract is used when borrowers need to have “on call” specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. This is

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<sup>26</sup>

Sometimes referred to as progress payment contract.

commonly used to retain “advisers” for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The borrower and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

#### **4. Lump Sum (LS) Contract**

2.48 Lump sum contract is used for assignments in which the content, duration of services and the required output of the consultants are clearly defined. This includes simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, service delivery assignments, and preparation of data processing systems. Prices shall include all costs and cannot be negotiated. Payments are linked to outputs, such as reports, drawings, bill of quantities, bidding documents, and software programs.

#### **5. Performance-based Contract**

2.49 A performance-based contract is used to enhance the delivery of consulting services outputs, thereby improving value-for-money. Payments to the consultant are triggered on achievement of selected milestones signifying that certain project deliverables (e.g., an outcome or outputs defined in the project design and monitoring frameworks) have been completed or achieved. Contract milestones need to be clearly specified, sufficient in number to enable effective monitoring and verifiable. Selection of milestones and the indicators for verifying achievement of milestones are agreed with the consultant and/or the borrower at the time of contract negotiations. The ease with which milestones can be verified depends upon the nature of the project. Verification can be relatively straightforward in a construction project, but quite difficult for institutional strengthening projects. In the case of the latter, a compromise,

combining principles of time- and performance-based contracts, will be applied. In this case a percentage of contract payments to the consultant is based on completed inputs, and a percentage based on achievement, often in the latter part of a contract, of one or more “strategic” milestones.

## **C. Important Contract Provisions for Loans**

2.50 Contracts should include provisions for the following items.

### **1. Currency**

2.51 RFPs shall clearly state that firms may express the price for their services, in any fully convertible currency of an ADB member country. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three foreign currencies. The borrower may require consultants to state the portion of the price representing costs in the currency of the borrower’s country. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

### **2. Price Adjustment**

2.52 To adjust the remuneration for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 months. Contracts of a shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

### **3. Payment Provisions**

2.53 Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum

contracts). Payments for advances (for example, for mobilization costs) exceeding 10% of the contract amount should normally be backed by advance payment guarantees.

2.54 Payments shall be made promptly in accordance with the contract provisions. To that end:

- (a) consultants can be paid directly by ADB at the request of the borrower or exceptionally through a letter of credit;
- (b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and
- (c) the contract shall provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

#### **4. Advance Payment Guarantee**

2.55 For loan consultant contracts, the borrower may request the consultant to provide an advance payment guarantee against the amount advanced by the borrower.

#### **5. Borrower's Contribution**

2.56 The borrower may assign members of its own professional staff to the assignment in different capacities. The contract between the borrower and the consultant shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the borrower, such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case.



## **6. Conflict of Interest**

2.57 ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations and that such conflict of interest may contribute to or constitute a prohibited practice under ADB's anticorruption policy. In pursuance of the anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity) as well as consultants under ADB-financed contracts observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest and may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any consultant selection process. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of para. 1.11 of these Guidelines.

## **7. Professional Liability**

2.58 The consultant is expected to carry out assignments with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the borrower will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the borrower may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); and (c) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

## **8. Personnel Substitution**

2.59 During an assignment, if substitution is necessary (for example, because of ill health, death, or because a staff member proves to be unsuitable), the consultant shall propose other experts of at least the same level of qualifications for approval by the borrower.

## **9. Applicable Law and Settlement of Disputes**

2.60 The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration. ADB shall not be named an arbitrator or be asked to name an arbitrator.

## **D. Monitoring and Evaluating Performance**

### **Monitoring the Recruitment Process**

2.61 ADB applies a monitoring tool, consultant recruitment activity monitoring (CRAM), that subdivides the recruitment process for loan consultants and TA into activities and assigns "norms" (working days) to compute target dates for each activity and the overall process. CRAM also assigns accountability to those involved to (a) implement activities, (b) monitor actual against target dates, and, where appropriate, (c) take timely actions. CRAM is adaptable for (a) different selection methods, and (b) types of technical proposal.

## **Performance Evaluation**

2.62 The borrower evaluates the performance of consulting firms and individual consultants for loan and delegated TA consultants. ADB, in consultation with the borrower, evaluates consultant performance for TA. Depending on the assignment duration, evaluation may be conducted during, as well as on completion of, the assignment. Through a post-assignment questionnaire, the consultant has the opportunity to comment on the evaluation report and on the performance of the borrower and ADB. At contract negotiations, the borrower or ADB gives the negotiating consultant a copy of the performance evaluation form, and the post-assignment questionnaire to be completed by the consultant; the procedures for processing the performance evaluation report and the post-assignment questionnaire are explained. On completion of the assignment, the borrower or ADB prepares a confidential report that explains its overall ratings, particularly any low ratings. If the firm's performance is later found to be poor, the report could be used to support any restrictions or other sanctions. The consultant is given the opportunity to comment on the findings of the performance evaluation and on the performance of the borrower and ADB. ADB maintains files on the performance of consulting firms and individual consultants and checks these records at the time of TA and loan consultant shortlisting.

## Appendix 1

## SUMMARY OF QUALITY- AND COST-BASED SELECTION (QCBS) AND QUALITY-BASED SELECTION (QBS) PROCEDURES

**Table A1: QCBS Procedure**

No.	Loan and Delegated TA	TA
(i)	Preparation of the TOR and cost estimates	Preparation of the TOR and cost estimates
(ii)	Advertising	Advertising
(iii)	Preparing a long list of consultants	Preparing a long list of consultants
(iv)	Preparation of the RFP and shortlist of consultants	Preparation of the RFP and shortlist of consultants
<b>First submission to ADB<sup>a</sup></b>		
(v)	Issuing of the RFP	Issuing of the RFP
(vi)	Receipt of proposals	Receipt of proposals
(vii)	Evaluation of technical proposal	Evaluation of technical proposal
<b>Second submission to ADB</b>		
(viii)	Public opening of financial proposal	Public opening of financial proposal
(ix)	Evaluation of financial proposals	Evaluation of financial proposals
(x)	Ranking of proposals	Ranking of proposals
<b>Third submission to ADB<sup>a</sup></b>		
(xi)	Copy of signed contract sent to ADB	Negotiations and signing of contract
(xii)	Publication of the award of contract	Publication of the award of contract
(xiii)	Debriefing	Debriefing

ADB = Asian Development Bank, QBS = quality-based selection, QCBS = quality- and cost-based selection, RFP = request for proposal, TA = technical assistance, TOR = terms of reference.

Source: ADB estimates.

<sup>a</sup> EAs with proven capacity (see para. 1.27 and 2.3)

**Table A2: QBS Procedure**

<b>No.</b>	<b>Loan and Delegated TA</b>	<b>TA</b>
(i)	Preparation of the TOR	Preparation of the TOR
(ii)	Advertising	Advertising
(iii)	Preparing a long list of consultants	Preparing a long list of consultants
(iv)	Preparation of the RFP and shortlist of consultants	Preparation of the RFP and shortlist of consultants
<b>First submission to ADB</b>		
(v)	Issuing the RFP	Issuing of the RFP
(vi)	Receipt of proposals	Receipt of proposals
(vii)	Evaluation and ranking of technical proposals	Evaluation and ranking of technical proposals
<b>Second submission to ADB</b>		
(viii)	Borrower invites consultant with the highest ranked technical proposal to submit a financial proposal	ADB invites consultant with the highest ranked technical proposal to submit a financial proposal
(ix)	Negotiations and preparation of a draft contract with the selected firm	Negotiations with the selected firm
(x)	Signing of contract	Signing of contract
(xi)	Copy of signed contract sent to ADB	
(xii)	Publication of the award of contract	Publication of the award of contract

ADB = Asian Development Bank, QBS = quality-based selection, RFP = request for proposal, TA = technical assistance, TOR = terms of reference.

Source: ADB estimates.

## Appendix 2

# GUIDANCE TO CONSULTANTS FOR LOAN PROJECTS

### Purpose

1.1 This appendix provides guidance to consultants wishing to provide consulting services for loan projects financed by the Asian Development Bank (ADB) and through ADB-administered funds.

### Responsibility for Selection of Consultants

- 1.2 (i) The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the borrower for loan projects. ADB, for its part, ensures that funds are paid from a loan only as expenditures are incurred.
- (ii) Disbursements of the proceeds of a loan are made only at the borrower's request. Supporting evidence that the funds are used in accordance with the loan agreement shall be submitted with the borrower's withdrawal application. Payment may be made (a) to reimburse the borrower for payment(s) already made from its own resources, or (b) directly to a third party (i.e., to the consultant).
- (iii) As emphasized in these Guidelines, the borrower is responsible for the recruitment of loan consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is between the borrower and the consultant. ADB is not a party to the contract.

### ADB's Role

- 1.3 (i) As stated in these Guidelines, ADB reviews the request for proposal (RFP), including the shortlist, the technical

evaluation of proposals, award recommendations and contract to ensure that the process is carried out in accordance with agreed procedures, as required by the loan agreement and the procurement plan. For all contracts requiring prior reviews, ADB assesses submissions by the borrower before they are issued.

- (ii) If at any time in the selection process (even after the award of contract) ADB concludes that the agreed procedures were not followed in any substantial respect, ADB may declare misprocurement, as described in para. 1.18 of the Guidelines. However, if a borrower has awarded a contract after obtaining ADB's "no objection," ADB will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the borrower.
- (iii) Furthermore, if ADB determines that corrupt, fraudulent, collusive, coercive or other prohibited practices were engaged in by representatives of the borrower or of the consultant, ADB may impose the applicable sanctions set forth in paragraph 1.23(d) of the Guidelines.
- (iv) ADB publishes standard RFPs and contracts for different types of consulting services. It is mandatory for the borrower to use these documents, with minimum changes acceptable to ADB to address project-specific issues. The borrower finalizes and issues these documents as part of the RFP.

### **Information on Consultant Services**

- 1.4 (i) Information on consultant services, including a brief description of the nature of services, timing, estimated cost, and person-months, will be, in the first instance,

listed for a minimum 30 days on ADB's website before shortlisting.

- (ii) After the award of TA and loan consultant contracts, ADB shall publish on its website the following information: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the overall ranking of the consultants; (d) the name of the winning consultant and the cost, duration, and summary scope of the contract.

## Consultants' Role

- 1.5 (i) When consultants receive the RFP, and if they can meet the requirements of the TOR and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the country of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents—especially in the selection procedure and evaluation criteria—any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the borrower, in writing, within the period specified in the RFP for seeking clarifications. In this connection, it should be emphasized that the specific RFP issued by the borrower governs each selection. If consultants feel that any of the provisions in the RFP are inconsistent with the Guidelines, they should also raise this issue with the borrower.
- (ii) Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the curriculum vitae (CV) of experts submitted



with the proposals. The CV shall be signed and dated confirming the content accuracy of the CV, and availability of the expert. Noncompliance with important requirements will result in rejection of the proposal. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, experts, and so forth. Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth, except<sup>27</sup> at the time of negotiations carried out in accordance with the provisions of the RFP. If an extension of validity of proposals was the reason that experts were not available, a change of expert with equivalent or better qualification might be possible.

### **Confidentiality**

1.6 As stated in the Guidelines, para. 2.21, the process of proposal evaluation shall be confidential until the publication of the contract award, except for the disclosure of the technical points as indicated in para. 2.13, and disclosure of financial information at the public opening of financial proposals, see para. 2.14. Confidentiality enables the borrower and ADB reviewers to avoid either the reality or the perception of improper interference.

### **Complaints during the Recruitment Process**

1.7 If, during the recruitment process, consultants wish to bring information with respect to the integrity of the selection process to the notice of the borrower, ADB, or both, they should do so in writing through the borrower, or they may write to ADB directly if the borrower does not respond promptly or if the communication is a complaint against the borrower.

## **Debriefing after Contract Award**

1.8 If after contract award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the borrower. If the consultant is not satisfied with the explanation given the consultant may write directly to ADB.

