



# African Development Bank

## Rules and Procedures for the Use of Consultants



Procurement and  
Fiduciary Services  
Department

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CONSULTANTS

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## Acronyms

ADB	African Development Bank
ADF	African Development Fund
CQS	Selection Based on Consultants' Qualifications
FBS	Selection under a Fixed Budget
IBRD	International Bank for Reconstruction and Development (World Bank)
IDA	International Development Association
ITC	Instructions to Consultants
LCS	Least-Cost Selection
LOI	Letter of Invitation
MOS	Monthly Operational Summary
NGO	Non-government Organization
NTF	Nigeria Trust Fund
PAD	Project Appraisal Document
PAs	Procurement Agents
PID	Project Information Document
QBS	Quality-Based Selection
QCBS	Quality- and Cost-Based Selection
RFP	Request for Proposal
RMC	Regional Member Country
SSS	Single-Source Selection
SWAps	Sector Wide Approaches
TOR	Terms of Reference
UN	United Nations
UNDB	United Nations Development Business

## I. INTRODUCTION

### Purpose

- 1.1 The purpose of these Rules is to define the policies and procedures for the selection, contracting, and monitoring consultants required for projects that are financed in whole or in part by Financing<sup>1</sup> from the "Bank"<sup>2</sup>.
- 1.2 The Financing Agreement governs the legal relationships between the Borrower<sup>3</sup> and the Bank, and the Rules apply to the selection and employment of consultants for the project, as provided in the Financing Agreement. The rights and obligations of the Borrower<sup>4</sup> and the consultant are governed by the specific Request for Proposals (RFP)<sup>5</sup> issued by the Borrower and by the contract signed by the Borrower and the consultant, and not by these Rules or the Financing Agreement. No party other than the parties to the Financing Agreement shall derive any rights therefrom or have any claim to proceeds of the Financing.
- 1.3 For the purpose of these Rules, the term consultants includes a wide variety of private and public entities, including consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, Specialized Agencies<sup>6</sup> and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals<sup>7</sup>. Bank 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' capabilities in these areas.

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<sup>1</sup> "Financing" shall mean any loan or grant provided by the African Development Bank (ADB), the African Development Fund (ADF), the Nigeria Trust Fund (NTF) or other funds administered by these entities.

<sup>2</sup> "Bank" shall mean the African Development Bank, the African Development Fund, the Nigeria Trust Fund, as well as any other funds administered by the African Development Bank, and any or all of these entities, as the context may require.

<sup>3</sup> "Borrower" shall mean a party to a Financing Agreement with the Bank and shall include the Borrower in a Financing agreement with the Bank or the recipient of any other type of Financing from the Bank.

<sup>4</sup> In some cases, the Borrower acts only as an intermediary, and the project is carried out by another agency or entity. References in these Rules to the Borrower include such agencies and entities, as well as Sub-Borrowers under "on lending arrangements."

<sup>5</sup> See Appendix 2.

<sup>6</sup> Specialized Agencies are agencies affiliated with public international organizations that can be contracted by Borrowers as consultants, procurement agents or suppliers, with financing from the Bank

<sup>7</sup> See paras. 3.15-3.20 for particular types of consultants. Individual consultants are covered in Section V.

## General Considerations

- 1.4 The Borrower is responsible for preparing and implementing the project, and therefore for selecting the consultant, and awarding and subsequently administering the contract. While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, five main considerations guide the Bank's policy on the selection process:
- (a) the need for high-quality services,
  - (b) the need for economy and efficiency,
  - (c) the need to give all eligible consultants an opportunity to compete in providing the services financed by the Bank,
  - (d) the Bank's interest in encouraging the development and use of national consultants in its Regional Member Countries, and
  - (e) the need for transparency in the selection process.
- 1.5 The Bank considers that, in the majority of cases, these considerations can best be addressed through competition among qualified short-listed 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. Sections II and III of these Rules describe the different methods of selection of consultants accepted by the Bank and the circumstances in which they are appropriate. Since Quality- and Cost-Based Selection (QCBS) is the most commonly recommended method, Section II of these Rules describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases, therefore, Section III describes other methods of selection and the circumstances in which they are more appropriate.
- 1.6 The particular methods that may be followed for the selection of consultants under a given project are provided for in the Financing Agreement. The specific contracts to be financed under the project, and their method of selection, consistent with the provisions of the Financing Agreement, shall be specified in the Procurement Plan as indicated in paragraph 1.24 of these Rules.

## Applicability of the Rules

- 1.7 The consulting services to which these Rules apply are of an intellectual and advisory nature. These Rules do not apply to other types of services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities or plant,

surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of performance of measurable physical output)<sup>8</sup>.

- 1.8 The procedures outlined in these Rules apply to all contracts for consulting services financed in whole or in part from Bank loans or grants or trust funds<sup>9</sup> implemented by the beneficiary. In procuring consulting services not financed from such sources, the Borrower may adopt other procedures. In such cases, the Bank shall satisfy itself that (a) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications; (b) the selected consultant will carry out the assignment in accordance with the agreed schedule; and (c) the scope of the services is consistent with the needs of the project.

## Conflict of Interest

- 1.9 Bank policy requires that consultants provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Borrower. Without limitation on the generality of the forgoing, consultants shall not be hired 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 Rules<sup>10</sup>): A firm that has been engaged by the Borrower to provide goods, works, or services (other than consulting services covered by these Rules) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services (other than consulting services covered by these Rules) resulting from or directly related to the firm's consulting services for such preparation or implementation.
  - (b) Conflict among consulting assignments: Neither consultants (including their personnel and sub-consultants) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, 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 consultants assisting a client in the privatization of public assets shall

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<sup>8</sup> These latter services are bid and contracted on the basis of performance of measurable physical outputs and procured in accordance with the Rules and Procedures for the Procurement of Goods and Works, referred to herein as the Procurement Rules.

<sup>9</sup> The Rules for Procurement by the Private Sector are specified in Appendix 7.

<sup>10</sup> See paragraph 1.7 of these Rules.



neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.

- (c) Relationship with Borrower's staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Borrower's staff (or of the project implementing agency's staff, or of a beneficiary of the Financing) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection 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 the Bank throughout the selection process and the execution of the contract.

## Unfair Competitive Advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates 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, the Borrower shall make available to all the short-listed consultants together with the request for proposals all information that would in that respect give a consultant a competitive advantage.

## Eligibility

1.11 The African Development Fund permits firms and individuals from all countries to offer consulting services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank and the Nigeria Trust Fund shall be used to cover services, provided by consultants from Eligible<sup>11</sup> Countries<sup>12</sup>. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In the case of ADB and NTF, Consultants from non-Member Countries offering services are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

As exceptions to the foregoing:

- (a) Consultants may be excluded if (i) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with the consultant's country, or (ii) 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

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<sup>11</sup> Refer to Appendix 5 for additional information on Eligibility.

<sup>12</sup> "Eligible Countries" shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the African Development Bank.

payments to a particular firm or for particular goods by such an act of compliance, that firm 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, the Bank 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 Bank 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 paragraph 1.9).
- (e) A firm or an individual sanctioned by the Bank in accordance with subparagraph (d) of paragraph 1.22 of these Rules or in accordance with the Bank's policies on anti-corruption and fraud and the Bank's sanctions procedures<sup>13</sup> shall be ineligible to be awarded a Bank-financed contract or to benefit from a Bank-financed contract, financially or in any other manner, during such period of time as the Bank shall determine.

## Advance Contracting and Retroactive Financing

1.12 In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's approval, wish to proceed with the selection of consultants before the related Financing Agreement is signed. This process is referred to as advance contracting<sup>14</sup>. In such cases, the selection procedures, including advertisement, shall be in accordance with these Rules, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any "no objection" issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to provide Financing for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to signing of the Financing Agreement is referred to as retroactive Financing and is only permitted within the limits specified in the Financing Agreement.

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<sup>13</sup> See the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group and the Bank's Whistleblowing and Complaints Handling Policy. The Bank's sanctions procedures are publicly disclosed on the Bank's external website.

<sup>14</sup> See Appendix 4.

## Associations between Consultants

1.13 Consultants may associate with each other in the form of a joint venture 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, to offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the Borrower employs an association in the form of a joint venture, the association should 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. Once the short list is finalized, and Requests for Proposals (RFP) are issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of the Borrower. Borrowers shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

## Bank Review, Assistance, and Monitoring

1.14 The Bank reviews the Borrower's hiring of consultants to satisfy itself that the selection process is carried out in accordance with the provisions of these Rules. The review procedures are described in Appendix 1.

1.15 Under special circumstances, and in response to a written request from the Borrower, the Bank may furnish to the Borrower short lists<sup>15</sup> or long lists<sup>16</sup> 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 short list shall be submitted to the Bank for its "no objection" before the Borrower issues the RFP.

1.16 The Borrower is responsible for supervising the consultants' performance and ensuring that they carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Borrower or the consultants, Bank staff shall monitor the work as necessary to satisfy themselves that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, the Bank may take part in discussions between the Borrower and consultants and, if necessary, may help the Borrower in addressing issues related to the assignment. If a significant portion of project preparation work is being carried out in the consultants' home offices, Bank staff may, with the Borrower's agreement, visit these offices to review the consultants' work.

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<sup>15</sup> Short List: see paragraph 2.6, 2.7 and 2.8.

<sup>16</sup> Long List: a preliminary list of potential firms from which the short list will be established.

## Misprocurement

1.17 The Bank does not finance expenditures under a contract for consulting services if the Bank concludes that such contract: (a) has not been awarded in accordance with the agreed provisions of the Financing Agreement and as further elaborated in the Procurement Plan<sup>17</sup> to which the Bank provided no objection; (b) could not be awarded to the consultant otherwise determined successful due to willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, or the successful proposal being no longer available, or the wrongful rejection of any proposal; or (c) involves the engagement of a representative of the Borrower, or a recipient of any part of the proceeds of the Financing, in fraud and corruption as per paragraph 1.22(c). In such cases, whether under prior or post review, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the Financing allocated to the services that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Financing Agreement. Even once the contract is awarded after obtaining a no objection from the Bank, the Bank may still declare misprocurement and apply in full its policies and remedies regardless of whether the loan has closed or not, if it concludes that the no objection was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or that the terms and conditions of the contract had been substantially modified without the Bank's no objection.

## References to the Bank

1.18 The Borrower shall use the following language<sup>18</sup> when referring to the Bank in the RFP and contract documents:

*"[Name of the Borrower] has received [or, 'has applied for'] a [type of Financing] from the [ADB, ADF, NTF] (the Bank) in an amount equivalent to UA\_\_\_\_, toward the cost of [name of project], and intends to apply a portion of the proceeds of this [type of Financing] to eligible payments under this Contract. Payments by the [Bank] will be made only at the request of [name of Borrower or designate] and upon approval by the [Bank], and will be subject, in all respects, to the terms and conditions of the [Financing] Agreement. No party other than [name of Borrower] shall derive any rights from the [Financing] Agreement or have any claim to the proceeds of the [type of Financing]."*

## Training or Transfer of Knowledge

1.19 If the assignment includes an important component for Training or Transfer of Knowledge<sup>19</sup> 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

<sup>17</sup> See paragraph 1.24

<sup>18</sup> To be suitably modified in the case of a credit from ADF grant or a trust fund.

<sup>19</sup> See Appendix 6 for details.

monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant's contract and in the budget for the assignment.

## Language

1.20 The RFP and the proposals shall be prepared in one of the following two languages, selected by the Borrower: English or French. The contract signed with the winning consultant shall be written in the language so selected for the RFP, and this language shall be the one that governs the contractual relations between the Borrower and the selected consultant.

1.21 In addition to being prepared in English or French, as indicated in paragraph 1.20 of these Rules, the RFP may, at the Borrower's option, also be prepared in the national language of the Borrower's country (or the language used nation-wide in the Borrower's country for commercial transactions)<sup>20</sup>. If the RFP and bidding documents are prepared in two languages, consultants shall be permitted to submit their proposals in either of these two languages. In such case, the contract signed with the selected consultant shall be written in the language in which its proposal was submitted, in which case this language shall be the one that governs the contractual relations between the Borrower and the winning consultant. If the contract is signed in a language other than English or French, the Borrower shall provide the Bank with a translation of the contract in the internationally used language in which the RFP was prepared. Consultants shall not be required nor permitted to sign contracts in two languages.

## Fraud and Corruption

1.22 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank Financing), consultants and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers and any personnel thereof, observe the highest standard of ethics during the selection and execution of Bank-financed contracts<sup>21</sup>. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>22</sup>;

(ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts

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<sup>20</sup> The Bank shall be satisfied with the language to be used.

<sup>21</sup> In this context, any action taken by a consultant or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers, and/or their employees, to influence the selection process or contract execution for undue advantage, is improper.

<sup>22</sup> For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the selection process or contract execution. In this context, "public official" includes Bank staff and employees of other organizations taking or reviewing selection decisions

to mislead, a party<sup>23</sup> to obtain financial or other benefit or to avoid an obligation;

(iii) "collusive practice" is an arrangement between two or more parties<sup>24</sup> designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) "coercive practice" is 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<sup>25</sup>;

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.22(e) below.

(b) will reject a proposal for award if it determines that the consultant recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the Financing were engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the selection process or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

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<sup>23</sup> For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution, and the "act or omission" is intended to influence the selection process or contract execution.

<sup>24</sup> For the purpose of this sub-paragraph, "parties" refers to participants in the procurement or selection process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish contract prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>25</sup> For the purpose of this sub-paragraph, "party" refers to a participant in the selection process or contract execution.

- (d) will sanction a firm or an individual, at any time, in accordance with prevailing Bank's sanctions procedures<sup>26</sup>, including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time, (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>27</sup> as sub-consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and
  - (e) will require that a clause be inserted in the RFP and in contracts financed by the Bank, requiring consultants and their agents, personnel, sub-consultants, sub-contractors, service providers, or suppliers, to permit the Bank to inspect all accounts, records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Bank.
- 1.23 With the specific agreement of the Bank, a Borrower may introduce, into the RFP for large contracts financed by the Bank, a requirement that the consultant include in the proposal an undertaking of the consultant to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFP<sup>28</sup>. The Bank will accept the introduction of such a requirement at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

## Procurement Plan

- 1.24 As part of the preparation of the project, the Borrower shall prepare and, before negotiating the Financing Agreement, furnish to the Bank for its approval, a Procurement Plan<sup>29</sup> acceptable to the Bank setting forth: (a) the particular contracts for consulting services required to carry out the project during an initial period of at least 18 months; (b) the proposed methods for selection of consultants services; and (c) the related Bank review procedures<sup>30</sup>.

<sup>26</sup> A firm or an individual may be declared ineligible to be awarded a Bank-financed contract (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank, and through the application of the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group; and ((ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanctions proceeding. See footnote 13 and paragraph 9 of Appendix 1 of these Rules.

<sup>27</sup> A nominated sub-consultant, supplier, or service provider is one which has been either: (i) included by the consultant in its proposal because it brings specific and critical experience and know-how that are accounted for in the technical evaluation of the consultant's proposal for the particular services, or (ii) appointed by the Borrower.

<sup>28</sup> As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Client, as such laws have been listed by the Client in the RFP for this contract."

<sup>29</sup> If the Project includes the procurement of goods, works, and non-consulting services, the Procurement Plan should also include the methods for procurement of goods, works, and non-consulting services in accordance with the Rules and Procedures for Procurement of Goods and Works. The Bank will disclose the initial Procurement Plan to the public after the related financing has been approved; additional updates will be disclosed after the Bank has approved them.

<sup>30</sup> See Appendix 1.

The Borrower shall update the Procurement Plan annually or as needed throughout the duration of the project. The Borrower shall implement the Procurement Plan in the manner in which it has been approved by the Bank.



## II. QUALITY- AND COST-BASED SELECTION (QCBS)

### The Selection Process

- 2.1 QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.
- 2.2 The selection process shall include the following steps:
- (a) preparation of the TOR;
  - (b) preparation of cost estimate and the budget;
  - (c) advertising;
  - (d) preparation of the short list of consultants;
  - (e) preparation and issuance of the RFP [which should include: the Letter of Invitation (LOI); Instructions to Consultants (ITC); the TOR and the proposed draft contract];
  - (f) receipt of proposals;
  - (g) evaluation of technical proposals: consideration of quality;
  - (h) public opening of financial proposals;
  - (i) evaluation of financial proposal;
  - (j) final evaluation of quality and cost; and
  - (k) negotiations and award of the contract to the selected firm.

### Terms of Reference (TOR)

- 2.3 The Borrower shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources.

TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Borrower's and consultants' respective responsibilities should be clearly defined in the TOR.

## Cost Estimate (Budget)

- 2.4 Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Borrower's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used) and (b) reimbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.

## Advertising

- 2.5 For all projects the Borrower is required to prepare and submit to the Bank a draft General Procurement Notice. The Bank will arrange for its publication in *UN Development Business online (UNDB online)* and on the *Bank's Internet Website*<sup>31</sup>. To obtain expressions of interest, the Borrower shall include a list of expected consulting assignments in the General Procurement Notice<sup>32</sup>, and shall advertise a Specific Procurement Notice requesting for expressions of interest for each contract for consulting firms in at least one newspaper of national circulation in the Borrower's country. The Borrower may also publish these notices in the official gazette or an electronic portal with free access. In addition, contracts expected to cost more than UA 200,000 shall be advertised in *UNDB online* and in the *Bank's Internet Website*. Borrowers may also advertise requests for expressions of interest in an international newspaper or a technical magazine. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Not less than 14 days from date of posting on *UNDB online* shall be provided for responses, before preparation of the short list.

## Short List of Consultants

- 2.6 The Borrower is responsible for preparation of the short list. The Borrower shall give first consideration to those firms expressing interest that possess the

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<sup>31</sup> UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations (Website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)); The African Development Bank Website is [www.afdb.org](http://www.afdb.org).

<sup>32</sup> The General Procurement Notice is prepared by the Borrower and submitted to the Bank, which will arrange for its publication in the United Nations Development Business (UNDB online) and in Bank's Internet Website.

relevant qualifications. Short lists 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 Regional Member Country, unless qualified firms from Regional Member Countries are not identified. The Bank may agree to short lists comprising a smaller number of firms in special circumstances, for example, when only a few qualified firms have expressed interest for the specific assignment or when the size of the contract does not justify wider competition. For the purpose of establishing the short list, 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. The Bank may agree with the Borrower to expand or reduce a short list; however, once the Bank has issued a "no objection" to a short list, the Borrower shall not add or delete names without the Bank's approval<sup>33</sup>. Firms that expressed interest, as well as any other firm that specifically so requests, shall be provided the final short list of firms.

- 2.7 The short list may comprise entirely national consultants (firms registered or incorporated in the country), if the assignment is below the ceiling (or ceilings) established in the Procurement Plan approved by the Bank<sup>34</sup>, a sufficient number of qualified firms is available for having a short list of firms with competitive costs, 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 Bank lending operations supporting Sector Wide Approaches (SWAs)<sup>35</sup> (in which government and/or donor funds are pooled) as the threshold below which short lists will be composed entirely of national firms selected under procedures agreed with the Bank. However, if foreign firms express interest, they shall be considered.
- 2.8 The short list should preferably comprise consultants of the same category, similar capacity, and business objectives. Consequently, the short list should normally be composed of firms of similar experience or of not-for-profit organizations (NGOs, Universities, Specialized Agencies, etc.) acting in the same field of expertise. If mixing is used, the selection should be made using Quality-Based Selection (QBS) or Selection Based on the Consultants' Qualifications (CQS) (for small assignments)<sup>36</sup>. The short list shall not include Individual Consultants.

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<sup>33</sup> In any case, the maximum number should not exceed six firms.

<sup>34</sup> Monetary ceilings shall be determined in each case, taking into account the nature of the project, the capacity of national and regional consultants and the complexity of the assignments. The ceiling (or ceilings) shall not in any case exceed the amount defined in the Country Procurement Assessment Report (CPAR) for the Country of the Borrower. The monetary ceiling for each borrowing country will be posted in the Bank's website.

<sup>35</sup> SWAs 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.

<sup>36</sup> Thresholds amounts defining "small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed UA200,000.

## Preparation and Issuance of the Request for Proposals (RFP)

2.9 The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed contract. Borrowers shall use the applicable standard RFPs issued by the Bank with minimal changes, acceptable to the Bank, as necessary to address project-specific conditions. Any such changes shall be introduced only through the RFP data sheet. Borrowers shall list all the documents included in the RFP. The Borrower may use an electronic system to distribute the RFP, provided that the Bank 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 short-listed consultants to the RFP.

## Letter of Invitation (LOI)

2.10 The LOI shall state the intention of the Borrower to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

## Instructions to Consultants (ITC)

2.11 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall indicate an estimate of the level of key staff inputs (in staff time) required of the consultants or the total budget, but not both. Consultants, however, shall be free to prepare their own estimates of staff time to carry out the assignment and to offer the corresponding cost in their proposals. The ITC shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, Bank review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITC is provided in Appendix 2.

## Contract

2.12 Section IV of these Rules briefly discusses the most common types of contracts. Borrowers shall use the appropriate Standard Form of Contract issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address specific country and project issues. Any such changes shall be introduced only through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Bank's Standard Form. These forms of contract cover the majority of consulting services. When these forms are not appropriate (for example, for pre-shipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning) Borrowers shall use other contract forms acceptable to the Bank.

## Receipt of Proposals

2.13 The Borrower shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarifications about the information provided in the RFP. The Borrower shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the Borrower shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened. Borrowers may use electronic systems permitting consultants to submit proposals by electronic means, provided the Bank is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep consultants bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the consultant and the Borrower. In this case, consultants shall continue to have the option to submit their proposals in hard copy.

## Evaluation of Proposals: Consideration of Quality and Cost

2.14 The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any Bank reviews and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

## Evaluation of the Quality

2.15 The Borrower shall evaluate each technical proposal (using an evaluation committee of three or more specialists in the sector), taking into account several criteria: (a) the consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed, (d) transfer of knowledge, if required in the TOR, and (e) the extent of participation by nationals among key staff in the performance of the assignment. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The following weights are indicative. The actual

percentage figures to be used shall fit the specific assignment and shall be within the ranges indicated below, except with the approval of the Bank. The proposed weights shall be disclosed in the RFP.

Consultant's specific experience:	0 to 10 points
Methodology:	20 to 50 points
Key personnel:	30 to 60 points
Transfer of knowledge <sup>37</sup> :	0 to 10 points
Participation by nationals <sup>38</sup> :	0 to 10 points
Total:	100 points

- 2.16 The Borrower shall normally divide these criteria into sub-criteria. For example, sub-criteria under methodology might be innovation and level of detail. However, the number of sub-criteria should be kept to the essential. The Bank recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).
- 2.17 Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Borrower shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The individuals shall be rated in the following three sub-criteria, as relevant to the task:
- (a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;
  - (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
  - (c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.
- 2.18 Borrowers shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

<sup>37</sup> Transfer of knowledge may be the main objective of some assignments; in such cases, it shall be indicated in the TOR and, only with Bank prior approval may be given a higher weight to reflect its importance.

<sup>38</sup> As reflected by nationals among key staff presented by foreign and national firms.

2.19 At the end of the process, the Borrower shall prepare a Technical Evaluation Report of the “quality” of the proposals and, in the case of contracts subject to prior review, submit it to the Bank for its review and “no objection”. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

## Evaluation of Cost

2.20 After the evaluation of quality is completed and the Bank has issued its no objection, the Borrower shall inform the consultants who have submitted proposals, the technical points assigned to each consultant and shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and TOR that their financial proposals will be returned unopened after the signature of the contract. The Borrower shall simultaneously notify the consultants that have secured the minimum qualifying mark, the date, time, and place set for opening the financial proposals. The opening date shall be defined allowing sufficient time for consultants to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened,. The Borrower shall also prepare the minutes of the public opening and a copy of this record shall be promptly sent to the Bank and to all consultants who submitted proposals.

2.21 The Borrower shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) as stated in the RFP. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions. The RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.

2.22 For the purpose of evaluation, “cost” shall exclude local identifiable indirect taxes<sup>39</sup> on the contract and income tax payable to the country of the Borrower on the remuneration of services rendered in the country of the Borrower by non-resident staff of the consultant. The cost shall include all consultant’s remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a

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<sup>39</sup> All indirect taxes levied on the contract invoices, at National, State (or Provincial) and Municipal levels.

financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

## Combined Quality and Cost Evaluation

2.23 The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the “cost” shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. Except for the type of services specified in Section III, the weight for cost shall normally be 20 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

## Negotiations and Award of Contract

2.24 Negotiations shall include discussions of the TOR, the methodology, staffing, Borrower’s inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in “Description of Services,” which shall form part of the contract.

2.25 The selected firm should not be allowed to substitute key staff, 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>40</sup>. If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.26 Financial negotiations shall include clarification of the consultants’ tax liability in the Borrower’s country (if any) and how this tax liability has been or would be reflected in the contract. As Lump-sum Contracts payments are based on delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a Lump-sum contract included price as a component, this price shall not be negotiated. In the case of Time-based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates should not take place, except in special circumstances, like for example, staff rates offered are much higher than typically charged rates by consultants for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the

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<sup>40</sup> Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.



client to ask for clarifications, and, if fees are very high, to ask for change of fees, after due consultation with the Bank. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the client wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), they should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

- 2.27 If the negotiations fail to result in an acceptable contract, the Borrower shall terminate the negotiations and invite the next ranked firm for negotiations. The Borrower shall consult with the Bank prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Borrower shall not reopen the earlier negotiations. After negotiations are successfully completed and the Bank has issued its no objection to the initialed negotiated contract, the Borrower shall promptly notify other firms on the short list that they were unsuccessful.

### Publication of the Award of Contract

- 2.28 After the award of contract, the Borrower shall publish in *UNDB online* and on the *Bank's Internet Website* the following information: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the evaluated prices of each consultant; (d) the final point ranking of the consultants; (e) the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals.

### Debriefing

- 2.29 In the publication of contract award referred to in paragraph 2.28 the Borrower shall specify that any consultant who wishes to ascertain the grounds on which its proposal was not selected, should request an explanation from the Borrower. The Borrower shall promptly provide the explanation as to why such proposal was not selected, either in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant shall bear all the costs of attending such a debriefing.

### Rejection of All Proposals, and Re-invitation

- 2.30 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 services with the firm should be investigated in consultation with the Bank. Before all the proposals are rejected and new proposals are invited, the Borrower shall notify the Bank, indicating the reasons for rejection of all proposals, and shall obtain the Bank's "no objection" before proceeding with the rejection and the new process. The new process may include revising the RFP

(including the short list) and the budget. These revisions shall be agreed upon with the Bank.

## **Confidentiality**

2.31 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 paragraph 2.20 and 2.27.

## III. OTHER METHODS OF SELECTION

### General

3.1 This section describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant<sup>41</sup> provisions of Section II (QCBS) shall apply whenever competition is used.

### Quality-Based Selection (QBS)

3.2 QBS is appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectorial feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- (b) assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- (c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Borrower shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Borrower and the consultant shall then negotiate the financial proposal<sup>42</sup> 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 as described in paragraph 2.28 except that only the price of the

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<sup>41</sup> All provisions of Section II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case. Advertisement (SPN) for expression of interest is not required when single-source selection is used.

<sup>42</sup> Financial negotiations under QBS includes negotiations of all consultant's remuneration and other expenses.

winning firm is published. If consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS to ensure that the price proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

### **Selection under a Fixed Budget (FBS)**

- 3.5 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in paragraph 2.28.

### **Least-Cost Selection (LCS)**

- 3.6 This method is only appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark<sup>43</sup> are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected and the publication of the Award of Contract shall be as described in paragraph 2.28. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “cost.” The minimum qualifying mark shall be stated in the RFP.

### **Selection Based on the Consultants’ Qualifications (CQS)**

- 3.7 This method may be used for small<sup>44</sup> assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the Borrower shall prepare the TOR, request expressions of interest and information on the consultants’ experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a

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<sup>43</sup> This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

<sup>44</sup> Monetary thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed UA200,000

combined technical-financial proposal and then be invited to negotiate the contract.

- 3.8 The Borrower shall publish in *UNDB online* and on the *Bank's Internet Website* the name of the consultant to which the contract was awarded, and the price, duration, and scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

### Single-Source Selection (SSS)

- 3.9 Single-source selection 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 single-source selection shall be examined in the context of the overall interests of the client and the project, and the Bank's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.
- 3.10 Single-source selection 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 and for consulting services required during the period of time immediately following the emergency, (c) for very small<sup>45</sup> assignments; or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.
- 3.11 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 a 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.
- 3.12 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or if the downstream assignment is substantially larger in value, a competitive process acceptable to the Bank shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. The Bank will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.
- 3.13 The Borrower shall publish in *UNDB online* and on the *Bank's Internet Website* the name of the consultant to which the contract was awarded and the price,

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<sup>45</sup> Thresholds amounts defining "very small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed UA50,000.

duration, and scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

## Commercial Practices

3.14 In the case of loans on-lent by a financial intermediary to private sector<sup>46</sup> 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 the Bank to be acceptable to it. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments.

## Selection of Particular Types of Consultants

3.15 *Selection of Specialized Agencies as Consultants.* 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 Specialized Agencies and their staff under existing international conventions and may agree with Specialized Agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the Bank. To neutralize the privileges of Specialized Agencies, as well as other advantages such as tax exemption and facilities, and special payment provisions, the QBS method shall be used. Specialized Agencies may be hired on a single-source selection basis if the criteria outlined in paragraph 3.10 of these Rules are fulfilled.

3.16 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Borrower and the Bank are satisfied with their qualifications. Borrowers should preferably not include consulting firms in the short list for services for which NGOs are better qualified. For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely NGOs. If so, the QCBS procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in paragraph 3.10 of these Guidelines are fulfilled.

3.17 *Procurement Agents (PAs).* 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

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<sup>46</sup> Refer to Appendix 7 for details.

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 percent. 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 Rules. The agent shall follow all the procurement procedures outlined in the Financing Agreement and in the Procurement Plan approved by the Bank on behalf of the Borrower, including use of Bank Standard Request for Proposals, review procedures, and documentation.

- 3.18 *Inspection Agents.* 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 percent and using a contract format with payments based on a percentage of the value of goods inspected and certified.
- 3.19 *Banks.* 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 paragraph 2.23 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.
- 3.20 *Auditors.* Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS, with cost as a substantial selection factor (40–50 points) or by the “Least-Cost Selection” outlined in paragraph 3.6. For very small<sup>47</sup> assignments CQS may be used.
- 3.21 “*Service Delivery Contractors.*” Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications, terms of employment, selection

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<sup>47</sup> See footnote 37.

procedures, and the extent of Bank review of these procedures and documents shall be described in the project documentation and the contract shall be included in the Procurement Plan approved by the Bank.

## IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

### Types of Contracts

- 4.1 *Lump Sum Contract*<sup>48</sup>. Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.
- 4.2 *Time-Based Contract*<sup>49</sup>. This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.
- 4.3 *Retainer and/or Contingency (Success) Fee Contract*. Retainer and contingency fee contracts are 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.
- 4.4 *Percentage Contract*. These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the

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<sup>48</sup> Standard form of Contract for Consultants' Services (Lump Sum Remuneration).

<sup>49</sup> Standard form of Contract for Consultants' Services (Complex Time-Based Assignments). These documents are available on the Bank's website at <http://www.afdb.org>.



estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

- 4.5 *Indefinite Delivery Contract (Price Agreement)*. These contracts are 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. These are 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.

## Important Provisions

- 4.6 *Currency*. RFPs shall clearly state that firms may express the price for their services, in any fully convertible currency. 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.
- 4.7 *Price Adjustment*. 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 shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.
- 4.8 *Payment Provisions*. 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 percent of the contract amount should normally be backed by advance payment securities.
- 4.9 Payments shall be made promptly in accordance with the contract provisions. To that end,
- (a) consultants can be paid directly by the Bank 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.
- 4.10 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the Borrower.
- 4.11 *Borrower's Contribution.* 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.
- 4.12 *Conflict of Interest.* The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the client under the contract. 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 paragraphs 1.9 and 1.10 of the Rules.
- 4.13 *Professional Liability.* The consultant is expected to carry out its assignment 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)<sup>50</sup>; 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.
- 4.14 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant shall propose other staff of at least the same level of qualifications for approval by the Borrower.
- 4.15 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum for the settlement of

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<sup>50</sup> The Borrower is encouraged to secure insurance for potential risks above these limits. Consultants in certain cases will be required to have professional indemnity insurance.

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. The Bank shall not be named an arbitrator or be asked to name an arbitrator.

## V. SELECTION OF INDIVIDUAL CONSULTANTS

- 5.1 Individual consultants are employed on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.
- 5.2 Individual consultants are selected on the basis of their qualifications for the assignment. Advertisement is not required<sup>51</sup> and consultants do not need to submit proposals. Consultants shall be selected through comparison of qualifications of at least three candidates (not to exceed six) among those who have expressed interest in the assignment or have been approached directly by the Borrower. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be employed by the Borrower shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.
- 5.3 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Rules shall apply to the parent firm.
- 5.4 Individual consultants may be selected on a sole-source basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) assignments with total expected duration of less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

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<sup>51</sup> However, in some cases Borrowers may consider the advantage of advertising at their option.

## APPENDIX 1: REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS

### Scheduling the Selection Process

1. The Bank shall review the selection process for the hiring of consultants proposed by the Borrower in the Procurement Plan to ensure compliance with the Financing Agreement and these Rules. The Procurement Plan shall cover an initial period of at least 18 months. The Borrower shall update the Procurement Plan on an annual basis or as needed always covering the next 18 months period of project implementation. Any revisions proposed to the Procurement Plan shall be furnished to the Bank for its prior approval.

### Prior Review

2. With respect to all contracts that are subject to the Bank's prior review:
  - (a) Before inviting proposals, the Borrower shall furnish to the Bank for its review and "no objection" the proposed cost estimate and RFP (including the short list). The Borrower shall make such modifications to the short list and the documents as the Bank reasonably requests. Any further modification shall require the Bank's "no objection" before the RFP is issued to the short-listed consultants<sup>52</sup>.
  - (b) After the technical proposals have been evaluated, the Borrower shall furnish to the Bank, in sufficient time for its review, a technical evaluation report (prepared, if the Bank shall so request, by experts acceptable to the Bank) and a copy of the proposals, if requested by the Bank. If the Bank determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination; otherwise, the Bank shall issue a "no objection" to the technical evaluation. The Borrower shall also request the Bank's "no objection" if the evaluation report recommends rejection of all proposals.
  - (c) The Borrower may proceed with the opening of the financial proposals only after receiving the Bank's "no objection" to the technical evaluation. When price is a factor in the selection of the consultant, the Borrower may then proceed with the financial evaluation in accordance with the provisions of the RFP. The Borrower shall furnish to the Bank, for its information, the final evaluation report along with its recommendation of the winning firm. The Borrower shall notify the firm that received the highest total score in the final evaluation of its intention to award the contract to the firm and shall invite the firm for negotiations.

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In the case of contracts to be awarded under para. 3.12 where a new competitive process is not practicable, the Borrower shall not initiate negotiations without first furnishing to the Bank for its consideration the required justification and receiving the Bank's "no objection," and shall otherwise follow the requirements of this paragraph 2 in all relevant respects.

- (d) If the Borrower receives complaints from consultants, a copy of the complaint and a copy of the Borrower's response shall be sent to the Bank for information.
  - (e) If as result of analysis of a complaint the Borrower changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to the Bank for no objection. The Borrower shall provide a republication of the contract award in the format of paragraph 2.28 of these Rules.
  - (f) After negotiations are completed, the Borrower shall furnish to the Bank, in sufficient time for its review, a copy of the initialed negotiated contract. If the negotiated contract resulted in substitution of key staff or any changes in the TOR and original proposed contract, the Borrower shall highlight the changes and provide an explanation of why these changes are appropriate and necessary.
  - (g) If the Bank determines that the final evaluation report, recommendation for award, and/or negotiated contract are inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination. Otherwise, the Bank shall provide its final "no objection" to the contract award. The Borrower shall confirm the award of the contract only after receiving the "no objection" from the Bank.
  - (h) Following contract signature, the Borrower shall furnish to the Bank a copy of the final contract before submitting the first application for disbursement under the contract.
  - (i) The description and amount of the contract, together with the name and address of the firm, shall be subject to public disclosure by the Bank upon the Borrower's receipt of the signed copy of the contract.
3. Modification of the Signed Contract. In the case of contracts subject to prior review, before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, the Borrower shall seek the Bank's "no objection" to the proposed extension, modification, substitution, waiver, or change. If the Bank determines that the proposal would be inconsistent with the provisions of the Financing Agreement and/or Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank.
4. Translations. If a contract is subject to prior review and is written in the national language (or the language used nation-wide in the borrower's country for commercial transactions), a certified translation of the evaluation reports and the initialed negotiated draft contract in the internationally used language specified in the RFP (English or French) shall be furnished to the Bank for facilitating the

review. However, if the contract is subject to post review the Borrower shall provide the Bank with translation of all documentation as required in Paragraph 5 of this Appendix. Such certified translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

## Post Review

5. The Borrower shall retain all documentation with respect to each contract not governed by paragraph two during project implementation and up to two years after the closing date of the Financing Agreement. This documentation would include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the Bank or by its consultants, except that for contracts awarded on the basis of single-source selection, it shall include the record of justification, the qualifications and experience of the consultants, and the signed original of the contract.
6. Similar to Paragraph 2 (h) of this Appendix, the Borrower shall furnish to the Bank, promptly after its signing and prior to delivery to the Bank of the first application for withdrawal of funds from the Financing Account in respect of such contract, one conformed copy of such contract, together with the analysis of the respective bid, and recommendations for award. The Borrower shall also furnish any other documentation to the Bank upon request.
7. The Bank shall reserve the right to carry out post review of such documents, at any time before or after the first disbursement, and whenever it determines that the services were not procured in accordance with the agreed procedures, as reflected in the Financing Agreement and further detailed in the Procurement Plan approved by the Bank or that the contract itself is not consistent with such procedures, the Bank shall declare misprocurement as established in Paragraph 1.17 of the Rules. The Bank shall promptly inform the Borrower of the reasons for such determination.
8. Where payments for the contract not governed by paragraph two of this Appendix, are to be made out of a Special Account, a copy of the contract, together with the other information required to be furnished to the Bank, shall be forwarded to the Bank prior to delivery to the Bank of the first replenishment application in respect of such contract. These provisions shall not apply to contracts on account of which withdrawals from the Financing are to be on the basis of Statements of Expenditure, for which all such documents shall be retained by the Borrower for subsequent examination by independent auditors and Bank supervision missions. The Bank shall, if it determines that the award of the contract or the contract itself is not consistent with the Financing Agreement, promptly inform the Borrower and state the reasons for such determination.
9. When carrying out the selection process, the Borrower shall check the eligibility of consultants from the lists of firms and individuals debarred and suspended, pursuant to paragraph 1.22(d) of these Rules and/or paragraph 1.14(d) of the Procurement Rules, by the Bank that are posted on the Bank's external website.

The Borrower shall apply additional due diligence by closely supervising and monitoring any on-going contract (whether under prior or post review) executed by a firm or individual which has been sanctioned by the Bank after such contract was signed. The Borrower shall neither sign any new contracts nor sign an amendment, including any extension of time for completion or a change or variation order, to an on-going contract with a suspended or debarred firm or individual after the effective date of the suspension or debarment without the Bank's prior review and no objection. The Bank will only finance additional expenditures if they were incurred before the completion date of the original contract or the completion date as revised (i) for prior review contracts, in an amendment to which the Bank has given its no objection, and (ii) for post review contracts, in an amendment signed before the effective date of suspension or debarment. The Bank will not finance any new contract, or any amendment or addendum introducing a material modification to any existing contract that was signed with a suspended or debarred firm or individual on or after the effective date of suspension or debarment.

## APPENDIX 2: INSTRUCTIONS TO CONSULTANTS (ITC)

1. The Borrower shall use the standard RFPs issued by the Bank, which include the ITC, covering the majority of assignments. If under exceptional circumstances, the Borrower needs to amend the standard ITC, it shall do so through the technical data sheet and not by amending the main text. The ITC shall include adequate information on the following aspects of the assignment:
  - (a) a very brief description of the assignment;
  - (b) standard formats for the technical and financial proposals;
  - (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
  - (d) details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; and (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;
  - (e) an estimate of the level of key staff inputs (in staff-months) required of the consultants or the total budget, but not both;
  - (f) indication of minimum experience, academic achievement, and so forth, expected of key staff;
  - (g) details and status of any external financing;
  - (h) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
  - (i) the deadline for submission of proposals;
  - (j) currency(ies) in which the costs of services shall be expressed, compared, and paid;
  - (k) reference to any laws of the Borrower's country that may be particularly relevant to the proposed consultants' contract;
  - (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the Bank's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
  - (m) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed



and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;

- (n) a request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs the Borrower whether or not it will be submitting a proposal;
- (o) the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;
- (p) the period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (q) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (r) a statement indicating (i) whether or not the consultants' contract and personnel shall be tax-free or not; if not, (ii) what the likely tax burden will be or where this information can be obtained in a timely basis and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (s) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Borrower;
- (t) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (u) the procedure to handle clarifications about the information given in the RFP; and
- (v) any conditions for subcontracting part of the assignment.

## APPENDIX 3: GUIDANCE TO CONSULTANTS

### Purpose

1. This appendix provides guidance to consultants wishing to provide consulting and professional services financed by the Bank or trust funds.

### Responsibility for Selection of Consultants

2. The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Charter to ensure that funds are paid from Bank Financing only as expenditures are incurred. Disbursements of the proceeds of Financing are made only at the Borrower's request<sup>53</sup>. Supporting evidence that the funds are used in accordance with the Financing Agreement and/or Procurement Plan (or the Trust Fund Agreement) shall be submitted with the Borrower's disbursement application. Payment may be made (a) to reimburse the Borrower for payment(s) already made from its own resources, (b) directly to a third party (to the consultant), or (c) to a commercial bank for expenditures against a African Development Bank Special Commitment covering a commercial bank's letter of credit (a procedure that is exceptional in the case of consultants). As emphasized in paragraph 1.4 of these Rules, the Borrower is responsible for the selection and employment of consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is between the Borrower and the Consultant. The Bank is not a party to the contract.

### Bank's Role

3. As stated in these Rules (Appendix 1) the Bank reviews the RFP, the evaluation of proposals, award recommendations, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Financing Agreement and further elaborated in the Procurement Plan. For all contracts subject to Bank's prior review, the Bank reviews the documents before they are issued, as described in Appendix 1. Also, if at any time in the selection process (even after the award of contract) the Bank concludes that the agreed procedures were not followed in any substantial respect, the Bank may declare misprocurement, as described in paragraph 1.17. However, if a Borrower has awarded a contract after obtaining the Bank's "no objection," the Bank will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the consultant, the Bank may impose the applicable sanctions set forth in paragraph 1.22 of the Rules.

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<sup>53</sup> A complete description of the Bank's disbursement procedures is provided in the Disbursement Handbook (available on the Bank's website at <http://www.afdb.org/projects>).

4. The Bank publishes standard RFPs and contracts for different types of consulting services. As stated in paragraphs 2.9 and 2.12 of these Rules, it is mandatory for the Borrower to use these documents, with minimum changes acceptable to the Bank to address project-specific issues. The Borrower finalizes and issues these documents as part of the RFP.

## Information on Consultant Services

5. Information on consultant services, including a brief description of the nature of services, timing, estimated cost, staff-month, and so forth, will be, in the first instance, included in the Project Information Sheet (PIS), which describes projects under preparation. At the same time, similar information will also be included in the description of each project in the Quarterly Operational Summary (QOS) and the ADB Business Bulletin (BB). Such information will be continuously updated. In relation to each project, a General Procurement Notice shall be published in the *United Nations Development Business (UNDB online)*<sup>54</sup> and on the *Bank's Internet Website*, which will include a more detailed description of the required services, the client agency, and the budgeted cost. In the case of large-value contracts<sup>55</sup>, this will be followed by a specific notice seeking "expression of interest" in *UNDB online* and on *the Bank's Internet Website*. The Project Appraisal Report (PAR) will provide yet more detailed information.
6. The Project Information Sheet (PIS) and the Quarterly Operational Summary (QOS) are available on the *Bank's Internet Website*<sup>56</sup>. The PAR is available after the Financing is approved. UNDB is available through online subscription and the Bank's Internet Website is free access.

## Consultants' Role

7. 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.
8. In this connection, it should be emphasized that the specific RFP issued by the Borrower governs each selection, as stated in paragraph 1.2 of these Rules. If consultants feel that any of the provisions in the RFP are inconsistent with the Rules, they should also raise this issue with the Borrower.

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<sup>54</sup> UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations (Website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)); Bank's Internet Website : [www.afdb.org](http://www.afdb.org).

<sup>55</sup> Contracts expected to cost more than UA200,000 equivalent.

<sup>56</sup> Bank's Internet Website : [www.afdb.org](http://www.afdb.org).

9. 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 curricula vitae of key staff submitted with the proposals. The curricula vitae shall be signed by the consultants and the individuals and dated. 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, the key staff, 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 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 key staff were not available for a company, a change of key staff with equivalent or better qualification might be possible.

## Confidentiality

10. As stated in paragraph 2.31, the process of proposal evaluation shall be confidential until the publication of contract award, except for the disclosure of the technical points as indicated in paragraphs 2.20 and 2.27. Confidentiality enables the Borrower and the Bank's reviewers to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the Borrower, the Bank, or both, they should do so in writing.

## Action by the Bank

11. If consultants wish to raise issues or questions about the selection process, they may send the Bank copies of their communications with the Borrower, or they may write to the Bank directly when the Borrower does not respond promptly or when the communication is a complaint against the Borrower. All such communications should be addressed to the Sector Director for the project, with a copy to the Resident Representative<sup>57</sup> for the Borrowing country and to the Director of the Procurement and Financial Services Department (ORPF). Name of the Sector Director is available in the PAR.
12. References received by the Bank from short-listed consultants prior to the closing date for submission of the proposal shall be, if appropriate, referred to the Borrower with the Bank's comments and advice, for action or response.
13. Communications that the Bank receives from consultants after the opening of the technical proposals shall be handled as follows. In the case of contracts not subject to prior review by the Bank, any communication shall be sent to the Borrower for due consideration and appropriate action. The Borrower's response shall be reviewed during subsequent supervision of the project by the Bank staff. In the case of contracts subject to prior review, the Bank shall examine the communication, in consultation with the Borrower, and if it needs additional information, shall request it from the Borrower. If additional information or clarification is required from the consultant, the Bank shall ask

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<sup>57</sup> Regional Director for countries with no Bank Field Offices.

the Borrower to obtain it and comment on or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered. Communication received from consultants involving allegations of fraud and corruption<sup>58</sup> may warrant a different treatment due to reasons of confidentiality. In such cases, the Bank shall apply due care and discretion in sharing information deemed appropriate with the Borrower.

14. Besides acknowledging receipt of communications, the Bank shall not enter into discussion or correspondence with any consultant during the selection and review process, until award of the contract is notified.

## Debriefing

15. 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 as indicated in paragraph 2.29. If the consultant is not satisfied with the explanation given and wishes to seek a meeting with the Bank, it may address the Director of Procurement and Financial Services Department of the Bank, who will arrange a meeting at the appropriate level and with the relevant staff. In this discussion, only the consultant's proposal can be discussed and not the proposals of competitors.

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<sup>58</sup> Reporting on suspected fraud and corruption can be done directly to the Bank's Integrity and Anti-Corruption Department (IACD) by email: [investigations@iacd-afdb.org](mailto:investigations@iacd-afdb.org); through the independent third party online reporting tool at <https://iwf.tnwgrc.com/afdb>; or through the free 24-hour operator assisted collect call hotline service: +1(770)776-5658. Additional toll free numbers are available on the Bank's website <http://www.afdb.org/en/about-us/structure/integrity-and-anti-corruption/anti-corruption-and-fraud-investigation-services-contacts/> (interpreters are available, anonymous calls accepted). IACD can also be contacted directly at its offices at the Bank in Tunis, Tunisia: +216 71-833-224.

## APPENDIX 4: ADVANCE CONTRACTING

### Introduction

1. In particular instances, or for major projects, when it is clearly demonstrated that the advance award of contracts for the acquisition of consultancy services will be a vital factor for the rapid implementation of the project, the Borrower may, with the Bank's prior "no objection", be authorized to issue the RFPs, and even sign the related contracts, prior to the approval of the project by the Board of Directors. In such cases, the Bank requires the Borrower to submit for its "no objection" all the documents and stages of the selection process, in conformity with these Rules.

### Timing of Decision on Advance Contracting

2. In general, with the exception of pre-investment studies, Advance Contracting should be considered only after project preparation or appraisal has been completed, in order to ensure that the Bank is satisfied with the overall design of the project, and that it has identified appropriate components for its own financing and possible elements which may be acceptable for Advance Contracting, if the Borrower so requests.

### Safeguards

3. The following safeguards are recommended for advance contracting and should be clearly indicated and discussed with prospective Borrowers requesting to proceed with Advance Contracting:
  - (a) The Borrower shall be fully aware that advance contracting is undertaken at its own risk and does not commit the Bank in any way to approve the Financing for the project;
  - (b) The Borrower shall be fully aware that procurement under Advance Contracting, must have been carried out according to Bank's procedures, if it is to be eligible for Bank Financing; and
  - (c) Announcements, in the case of Advance Contracting, must indicate that the Borrower has applied for Financing from the Bank, and that disbursement, in respect of any contracts signed, will be subject to approval of the Financing by the Bank.

## APPENDIX 5: THE USE OF NATIONAL AND REGIONAL CONSULTANTS

1. The development of African technical and professional skills contributes to the economic progress of the region; therefore the Bank encourages the utilization of national and regional consultants as defined below:
  - i) Consultancy services likely to be financed by the Bank as a National Consultant are:
    - a) Individual consultants who are nationals of Member Countries; or
    - b) Consulting firms whose legal constitution is in accordance with the laws of a Member Country where they must have their registered offices and their principal place of business.

In the case of consulting firms, it is required that:

      - The majority of the beneficial interest in any such undertaking is owned by nationals of Member Countries, as far as the ownership thereof is or can be publicly known; and
      - The majority of the directors, senior management officers and remaining staff are nationals of Member Countries.
  - ii) A consulting firm shall be considered regional if their legal constitution is in accordance with the laws of a Regional Member Country where they shall have their registered offices and their principal place of business. In addition:
    - (a) The majority of the share capital of any of these firms shall be held by nationals of Member Countries, as far as the ownership thereof is or can be publicly known; and
    - (b) The majority of the members of the Board of Directors shall be nationals of Member Countries; and
    - (c) The majority of the directors, senior management officers and the rest of the staff shall comprise nationals of Regional Member Countries.
2. In addition to the provisions of Paragraph 1.11, any other conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. Consequently, Borrowers should apply due diligence in assessing the technical and financial qualifications of consultants to be assured of their capabilities in relation to the specific services.
3. In cases where the qualifications of a regional consultant or a joint venture of regional and non-regional consultants are determined to be equal to those of a

non-regional consultant, preference in the selection will be given first to the regional consultant and second to the joint venture of regional and non-regional consultants.

4. The Bank Rules of Procedure require that except for cases mentioned in clause 2.7, on the short list prepared by the Borrowers, there be at least one consulting firm from a Regional Member Country (clause 2.6).
5. Associations or joint ventures of regional and non-regional consulting firms are encouraged by the Bank whenever the requirements of the project indicate that such arrangements will be beneficial in the conduct of the assignment and in the provision of the professional services required.
6. Associations between national or regional and non-regional firms shall be made freely and appear as such on the short list. Such arrangements may assume several forms:
  - a) in some cases, the assignment may be suitably divided, with the national or regional consulting firm entering into contract with the Borrower for the appropriate parts of the assignment, but performing under the general direction of a non-regional consultant responsible for managing the activity as a whole;
  - b) if expertise required is not available locally, a national or regional firm may engage individuals from non-regional countries to bring it up to a level of expertise capable of undertaking the assignment; and
  - c) regional and non-regional firms may group together to perform an assignment. All firms will be named in the contract with the Borrower and the respective responsibilities and assignments of each firm will be stated. The Bank prefers that one of the firms should assume contractual responsibility (and liability) for the satisfactory execution of the assignment and be accountable for it. If the contract calls for all firms to be jointly and severally liable, then the Bank shall ensure that at least one firm in the joint venture is financially capable of meeting the contract requirements and potential liabilities on its own.
7. In order to develop national and regional skills, the Bank will endeavor to help Borrowers encourage non-regional firms to use when possible, national and regional technical and professional staff in the implementation of assignments.
8. The Borrower may acquire the services of individual consultants and consulting firms on the basis of a selection procedure which, given the relatively small amounts at stake, is aimed firstly at national and regional consultants, with the possibility for non-regional consultants to participate, using the criteria specified in this document (see clause 2.15). The cost of any such single contract may not exceed UA200,000 in the case of consulting firms. However, the acquisition of such services will be subject to prior no objection by the Bank.



## APPENDIX 6: COUNTERPART STAFF AND TRAINING

### Counterpart Staff

1. In general, the Bank insists that during the acquisition of consultancy services qualified counterpart staff employed by the Borrower or its executing agency be involved in the assignment. Ideally, in some types of assignments such as feasibility studies, it would be desirable to assign to each key expert of the consultant's team, a counterpart from the executing agency, if possible temporarily released from his functions.
2. In view of the staffing constraints of the executing agencies, the number of counterparts shall be determined on an individual basis depending on the importance of the assignment, and the requirements of the executing agency or the Borrower.
3. The role of the counterpart staff may vary from assignment to assignment, but shall include the following responsibilities and elements:
  - (a) through a day-to-day contact with the consultant's experts, benefit from a transfer of skills and thus receive on-the-job training; and
  - (b) liaise between the organs of the Borrower and the consultant and assist the latter with data collection, providing it with all available information, documentation and studies on the assignment.
4. Prior to any final decision regarding the level, qualifications, number and responsibilities of each counterpart, discussions shall be held during the negotiations to determine:
  - (a) the number and responsibilities of the counterpart staff cooperating with the consultant's team;
  - (b) the extent to which counterpart staff are released from their normal duties;
  - (c) the extent to which counterpart staff can fit into the consultants' proposed work schedule;
  - (d) the arrangements made to cover field and travel expenses of the counterpart staff; and
  - (e) the arrangements for replacement of unsuitable counterpart staff.

### Training

5. The strengthening of the national capabilities of executing agencies or agents in the borrowing countries through a transfer of knowledge and skills to local professionals is of key concern to the Bank.

6. It is based on programs which fall within the framework of the assignment whose principal objective may not necessarily be training and transfer of technology, but which meet requirements related to the principal project or its sector. These programs may provide an opportunity for strengthening the capacity of the counterpart staff involved in the assignment or that of the national staff participating in a joint venture between regional and non-regional consultants.
7. To enable the successful implementation of this programme, the Borrower must be convinced of its necessity, and consequently select the necessary qualified professionals to participate in it, and release these professionals for the duration of the programme. The consultant must accept this training function and its inclusion as an obligation which is separate and distinct from the other services and propose corresponding costs and an implementation time-frame.
8. The objectives of the programme must be defined and included in the terms of reference sent to the consultants invited to submit proposals; it will be defined during the negotiations both with regard to trainers, trainees, the skills to be transferred and the time-frame. The Bank has no objections to the cost being incorporated in the estimated budget for services to be acquired.

## APPENDIX 7: PRIVATE SECTOR FINANCING

### Application of Procedures to Private Sector Operations

1. In general, the Bank's procurement policies also apply to the private sector, whether the entity is a Borrower from the Bank or a recipient of a Bank guarantee. In particular, the Bank's policies regarding the appropriate use of Financing and the eligibility of goods, works, and services, as well as its policies regarding economy and efficiency, apply to the private sector.
2. To be eligible for financing, an enterprise should be privately owned and managed, meaning that more than 50 percent of its voting shares must be in private hands. Entities with more than 50 percent of their shares held by the government and/or governmental entities or agencies ("government-owned entities") may be owners in this enterprise, provided that it has operational and managerial autonomy and is run on a commercial basis. Where government-owned entities hold, in the aggregate, more than 50 percent of the voting shares of an enterprise, private sector financing may exceptionally be considered. This would be where the Bank's involvement is consistent with the basic objectives of private sector development and direct foreign investment.

### Methods of Procurement

3. Private sector Borrowers shall utilize procurement procedures in accordance with established private sector or commercial practices that are acceptable to the Bank. The Bank ensures that such procedures result in competitive market prices for the goods and services and that these meet the needs of the project.

### Conflict of Interest

4. Contracts awarded by private sector Borrowers should be negotiated on an arm's-length basis, taking into account the financial interests of the Borrower rather than the interests of its parent firm. When a shareholder of a private sector Borrower also acts as contractor to the Borrower, it should be demonstrated to the Bank that the costs of the acquisition are approximately equivalent to budget estimates and market prices, and that the conditions of the contract are equitable and reasonable. The Bank will not finance acquisitions that exceed market prices.