



may be used in allocating the scores to the financial proposals. The methodology to be used shall be described in the RFP.

### Combined Quality and Cost Evaluation

2.26 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 (twenty) points out of a total score of 100 (one hundred). 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 the Award of Contract

2.27 Negotiations shall include discussions of the TOR, the methodology, Borrower's inputs, and special conditions of the contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract, lest the quality of the final product, its price, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the estimated cost or available budget. The final TOR and the agreed methodology shall be incorporated in the "Description of Services" which shall form part of the contract.

2.28 The selected firm should not be allowed to substitute key experts, unless both parties agree that undue delays in the selection process make 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 experts 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 experts proposed for substitution shall have qualifications equal to or better than the key experts initially proposed.<sup>41</sup>

2.29 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. Payments under lump-sum contracts are based on the delivery of outputs (or products), hence the offered price shall include all costs (experts' time, overhead, travel, hotel, etc.). Consequently, if the selection method for a lump-sum contract included cost as a factor in evaluation, the offered price shall not be negotiated. In the case of time-based contracts, payment is based on inputs (experts' time and reimbursables) and the offered price shall include experts' rates and an estimation of the amount of reimbursables. When the selection method includes cost as a factor in evaluation, negotiations of experts' rates shall not take place, except in special circumstances, like for example, experts' rates offered are much higher than typically charged rates by consultants for similar contracts.

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

<sup>41</sup> Refer to Appendix 2 paragraph 1(p) for more details.



Consequently, the prohibition of negotiation does not preclude the right of the client to ask for clarifications, and, if the fees are very high, to ask for their change, 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.

2.30 If the negotiations with the highest ranked consultant fail, the Borrower shall inform the concerned consultant in writing of all pending issues and disagreements, and provide them a final opportunity to respond in writing. Contract negotiations shall not be terminated only for budget considerations. If there is still disagreement, the Borrower shall inform the consultant in writing of its intention to terminate negotiations. Negotiations may then be terminated after obtaining the Bank's no objection, and the next ranked consultant invited for negotiations. The Borrower shall furnish to the Bank for review the minutes of negotiations and all relevant communications, as well as the reasons for such termination. Once negotiations have 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**

2.31 The procedure for publication of the award of contract is specified in paragraph 7 of Appendix 1.

#### **Debriefing by the Borrower**

2.32 In the publication of contract award referred to in paragraph 2.31, 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 in writing an explanation of why such proposal was not selected. If a consultant requests a debriefing meeting, the consultant shall bear all their costs of attending such a debriefing meeting.

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

2.33 The Borrower will be justified in rejecting all proposals only if: (i) all proposals are nonresponsive because they fail to respond to important aspects of the TOR or present major deficiencies in complying with the TOR in accordance with paragraph 2.21; or (ii) all proposals fail to achieve the minimum technical score specified in the RFP; or (iii) if the offered price of the successful proposal is substantially higher than the available budget or a recently updated cost estimate. In the latter case, as an alternative to re-invitation, the feasibility of increasing the budget or scaling down the scope of services with the firm should be investigated in consultation with the Bank. However, in accordance with



paragraph 2.27, any substantial reduction in the scope of services will not be acceptable and will require a re-invitation. If cost is a factor in the evaluation for a time-based contract, the number of person-months proposed by the consultant may be negotiated, provided that it does not compromise quality or adversely affect the assignment. Even in such cases, the experts' rates shall not normally be negotiated, as per paragraph 2.29.

2.34 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 TOR, the short list, and the budget. These revisions shall be agreed upon with the Bank.

### **Confidentiality**

2.35 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 paragraphs 2.23 and 2.30.







### 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 provisions of Section II (QCBS) shall apply for other methods of selection under Section III unless a different provision has been specifically identified in Section III, in which case, the latter shall apply.<sup>42</sup> Borrowers shall use the applicable standard RFP issued by the Bank with minimal changes, acceptable to the Bank, as necessary to address project-specific conditions, except as otherwise provided in paragraphs 3.8, 3.12, 3.13, 3.14, and 3.15 of this Section.

#### 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-sector 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 time of key experts, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

<sup>42</sup> For example, a Borrower: (i) using a one-envelope rather than a two-envelope procedure under the QBS method; (ii) not indicating in the RFP the estimated number of person-months under an FBS method; (iii) not using an EOI under an SSS method or not advertising EOIs on UNDB under the CQS method; (iv) not using the Bank's standard RFP and form of contract for very small value contracts (refer to footnote 46) under methods such as CQS; (v) conducting price negotiations as allowed under a QBS, CQS, or SSS method, or Commercial Practices; (vi) selecting a consultant under the Use of Country Systems piloting program in accordance with paragraph 3.12; (vii) using a higher than 20% (twenty percent) price factor when hiring a Procurement Agent, an Inspection Agent, an Investment Bank, or an Auditor; (viii) not following QCBS procedures under Commercial Practices; etc.



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>43</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 2.31 and paragraph 7 of Appendix 1, except that only the contract price of the 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 financial 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. The TOR should be particularly well-prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The RFP shall clearly indicate whether the budget includes taxes or levies payable in the Borrower country, and the price of any inputs provided by the client. The evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the financial proposals shall be opened as stipulated in paragraph 2.23. 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 award of contract shall be published as described in paragraph 7 of Appendix 1.

### Least-Cost Selection (LCS)

3.6 This method is generally 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>44</sup> are rejected, and the financial proposals of the rest shall be opened as stipulated in paragraph 2.23. The firm with the lowest price shall then be selected. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on

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<sup>43</sup> Financial negotiations under QBS include negotiations of all consultant's remuneration and other expenses.

<sup>44</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 (seventy) points or higher.



“cost”. The minimum qualifying mark shall be stated in the RFP. The award of contract shall be published as per paragraph 7 of Appendix 1.

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

3.7 This method may be used for small<sup>45</sup> assignments or emergency situations declared by the Borrower and recognized by the Bank for which the need for issuing an RFP, and preparing and evaluating competitive proposals is not justified. In such cases, the Borrower shall prepare the TOR and obtain expressions of interest that include information on their experience and qualifications, eventually through an REOI as may be needed, from as many firms as possible, and at least three qualified firms with relevant experience. Firms having the required experience and competence relevant to the assignment shall be assessed and compared, and the best qualified and experienced firm shall be selected. Only the selected firm shall be asked to submit a combined technical and financial proposal and, if such proposal is responsive and acceptable, be invited to negotiate a contract. Both technical and financial aspects of the proposal may be negotiated. If the negotiations fail with the selected firm, the provisions of paragraph 2.30 apply. The minutes of negotiations shall be prepared and signed by both parties. Awards of contract shall be published as per paragraph 7 of Appendix 1.

### **Single-Source Selection (SSS)**

3.8 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.

3.9 Single-source selection may be appropriate in the following cases, and 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 exceptional cases, such as, but not limited to, in response to natural disasters and for emergency situations both declared by the Borrower and recognized by the Bank; (c) for very small<sup>46</sup> assignments; or (d) when only one firm is qualified or has experience of exceptional worth for the assignment. In all such cases, the Borrower is not required to issue an RFP and shall submit to the Bank for its review and no objection the TOR of the assignment, a sufficiently detailed justification including the rationale for single-source selection instead of a competitive selection process, and the basis for recommending a

<sup>45</sup> Dollar thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$300,000, other than in exceptional cases.

<sup>46</sup> Dollar thresholds defining “very small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$100,000, other than in exceptional cases.

particular firm, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the Procurement Plan.

3.10 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 the TOR furnished by the Borrower, which shall then be negotiated.

3.11 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. The award of contract shall be published as per paragraph 7 of Appendix 1.

#### Use of Country Systems

3.12 The Use of Country Systems (UCS) refers to the methods for selecting consultants (including individuals) contemplated in the public procurement system in place in the country of the Borrower that have been determined to be acceptable to the Bank under the Bank's Use of Country Systems Piloting Program.<sup>47</sup> They may be used by Borrowers in pilot projects that have been approved by the Bank under such Piloting Program.

#### Selection of Consultants in Loans to Financial Intermediary Institutions and Entities

3.13 When the loan provides funds to a financial intermediary institution or entity (or its designated agency) to be on-lent to beneficiaries such as individuals, private sector enterprises, small and medium enterprises, or autonomous commercial enterprises of the public sector, for the partial financing of sub-projects, the selection of consultants is usually undertaken by the respective beneficiaries in accordance with well-established private sector procurement methods or commercial practices that shall be acceptable to the Bank.<sup>48</sup> When loan funds are on-lent to public sector beneficiaries or for large and complex

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<sup>47</sup> The Piloting Program is described in the Board paper dated March 3 and March 25, 2008 entitled *Use of Country Systems in Bank-Supported Operations: Proposed Piloting Program* (R2008-0036 and 0036 and 0036/1) approved by the Bank's Board of Executive Directors on April 24, 2008.

<sup>48</sup> For other details, refer to paragraph 3.13 (Procurement in Loans to Financial Intermediary Institutions and Entities) of the *Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers*.





assignments, consideration shall be given to the use of competitive methods set forth in these Guidelines.

### **Selection of Consultants under Loans and Payment Obligations Guaranteed by the Bank**

3.14 If the Bank guarantees the repayment of a loan made by another lender, or guarantees the payment of a non-loan related government payment obligation, the consulting services financed by the said loan or said payment obligation shall be procured with due attention to principles and procedures that meet the requirements of paragraph 1.8. The Bank may conduct a review of the procurement transactions financed on this basis.

### **Selection of Particular Types of Consultants**

3.15 *Selection of UN Agencies.* Agencies of the UN<sup>49</sup> may be single-sourced by Borrowers when they are uniquely or exceptionally qualified to provide technical assistance and advice in their area of expertise. The Bank may agree that UN agencies follow their own procedures for: (a) the selection of their sub-consultants and individual experts, and the supply of the minimum necessary goods to perform the contract; (b) small assignments as defined in footnote 45 of paragraph 3.7 of these Guidelines; and (c) under certain circumstances in response to natural disasters and for emergency situations declared by the Borrower and recognized by the Bank. The Borrower shall use the Bank's standard form of Agreement between a Borrower and a UN agency for the provision of technical assistance agreed by the Bank. The Borrower shall submit to the Bank for its no objection a complete justification and the draft form of Agreement with the UN agency before signing it. UN agencies shall not receive any preferential treatment when participating in a competitive selection process, except that Borrowers may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the Bank. To neutralize the privileges of UN Agencies, as well as other advantages such as tax exemption, facilities, and special payment provisions, the QBS method, or the CQs method for small assignments (see footnote 45), shall be used.

3.16 *Use of Nongovernmental Organizations (NGOs).* NGOs are not for profit 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. For assignments that emphasize participation and

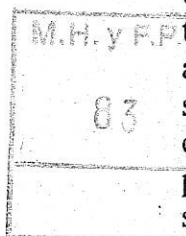
<sup>49</sup> An agency of the United Nations refers to the United Nations departments, specialized agencies and their regional offices (e.g., the PanAmerican Health Organization - PAHO), funds, and programmes. The Borrower shall submit to the Bank for its no objection a complete justification and the draft form of agreement with the UN agency.

considerable local knowledge, the short list may entirely comprise NGOs. If so, an appropriate selection method (QCBS, FBS, LCS, or CQS), based on the nature, complexity, and size of the assignment, shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as local knowledge, scale of operation, and prior relevant experience. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in paragraph 3.9 of these Guidelines are fulfilled.

**3.17 Procurement Agents and Construction Managers.** 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 Procurement Agents are specifically used as “agents” handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases, Procurement Agents shall be selected using QCBS procedures with cost being given a weight up to 50% (fifty percent). However, when Procurement Agents provide only advisory services for procurement or act as “agents” for a whole project in a specific office for such project, they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time-based contract specified in these Guidelines. The Agent shall follow all the procurement procedures outlined in the Loan Agreement and in the Procurement Plan approved by the Bank on behalf of the Borrower, including use of Bank *Standard Request for Proposals*, review procedures, and documentation. The above provisions apply as well to Construction Managers.

**3.18 Inspection Services.** Borrowers may wish to employ inspection service providers to inspect and certify goods prior to shipment or on arrival in the Borrower country. The inspection usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection service providers shall be selected using QCBS procedures giving cost a weight up to 50% (fifty 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 2.26.

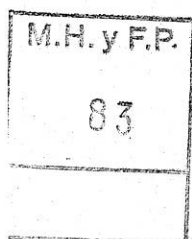




The RFP shall specify clearly how proposals will be presented and how they will be compared.

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 small<sup>50</sup> assignments, the CQS method may be used.

3.21 *Service Delivery Contractors.* Projects may involve hiring large numbers of individuals who deliver services on a contract basis. Their selection, as individual consultants or through a firm, shall be carried out in accordance with Section V of these Guidelines. The job descriptions, minimum qualifications, terms of employment, the selection methods when through a contract with a firm, and the extent of Bank review of this documentation and methods shall be described in the project documentation. The contract shall be included in the Procurement Plan to be reviewed by the Bank.



<sup>50</sup> See footnote 45.





#### IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

##### Types of Contracts

4.1 *Lump-Sum Contract.*<sup>51</sup> This type of contract is used mainly for assignments in which the scope and the duration of the services and the required output of the consultants are clearly defined. It is 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. The contract shall include a fixed price for the activities to be carried out by the consultant and shall not be subject to any price adjustment, except as provided in paragraph 4.7 of these Guidelines. Lump-sum contracts are easy to administer because they operate on the principle of fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones.

4.2 *Time-Based Contract.*<sup>52</sup> This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. It 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 experts (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for experts include remuneration, social costs, overhead, profit, and, where appropriate, special allowances. The contract shall include a ceiling amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen services and duration, and a provision for price adjustment for inflation as provided in paragraph 4.7 of these Guidelines. 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 procurement and inspection service providers. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods

<sup>51</sup> Standard form of Contract for Consultants' Services (Lump-Sum Remuneration).

<sup>52</sup> Standard form of Contract for Consultants' Services (Complex Time-Based Assignments). These documents are available on the Bank's website at [www.worldbank.org/procure](http://www.worldbank.org/procure).



procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated person-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 (but not, for example, works supervision).

**4.5 Indefinite Delivery Contract (IDCs) or Price Agreement.** IDCs are used when Borrowers need to have quick and continuing access to "on call" specialized advisory services for a particular activity, the extent and timing of which cannot be defined in advance. IDCs are commonly used to retain "advisers", expert adjudicators, members of panels, or experts to participate in the design or implementation of sub-projects or complex tasks during the execution of Bank-financed projects (for example, dam panel, dispute resolution boards, institutional reforms, procurement advice, technical troubleshooting, evaluation of safeguard issues, and so forth), normally for a period of at least a year. The services are offered by qualified firms through a list of proposed experts they commit to make available in letters of intent in response to an REOI setting selection criteria focusing on the relevant qualifications and expertise of the required experts. Borrowers shall then establish a long list of qualified experts. The Borrower and the firms agree on pre-established fee rates to be paid for the experts and on standard conditions of contract, and payments are made on the basis of the time actually spent. Experts shall be selected from the long list on the basis of a "call off" request with specific TOR for the assignment, based on the qualitative evaluation/comparison of the CVs of the proposed experts or the fees level, and a specific contract is signed for each assignment.

#### **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 local costs incurred in the currency of the Borrower's country. Payment under the contract shall be made in the currency or currencies in which the payment is requested in the proposal.

**4.7 Price Adjustment.** To adjust the remuneration rates in a time-based contract for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 (eighteen) months. Time-based contracts of a shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable. Lump-sum contracts shall not generally be subject to automatic price adjustment when their duration is expected to be less than 18 (eighteen) months, except for small-value multi-year contracts (for example, with auditors). The price of a lump-sum contract may be exceptionally amended when the scope

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of the services is extended beyond what was contemplated in the original TOR and contract.

4.8 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during contract negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump-sum contracts). Payments for all advances (for example, for mobilization costs) shall be secured by an advance payment security or guarantee, except in the case of small value contracts as defined in footnote 34. If the amount of the advance is 10% (ten percent) of the contract amount or less, the Borrower may decide not to require such a security or guarantee, in which case this should be specified in the draft contract included in the RFP.

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 *Proposal and Performance Securities, and Liquidated Damages.* Proposal and performance securities are not recommended for consultants' services, but shall, if required, be in a reasonable amount. 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. In addition, because the timely delivery of services of an intellectual and advisory nature is contingent in many ways upon actions by the client, thereby rendering difficult establishing the sole responsibility of the consultant, when there are delays, the application of liquidated damages is not recommended for consulting services.

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

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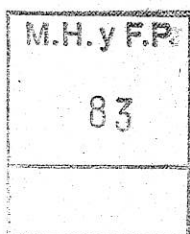


under the contract. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of paragraphs 1.9 and 1.10 of these Guidelines.

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>53</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 *Substitution of Experts.* During an assignment, if substitution is necessary (for example, because of ill health or because an expert proves to be unsuitable or becomes otherwise ineligible), the consultant shall propose other experts 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 disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the Bank requires that Borrowers use this type of arbitration in contracts awarded to foreign consultants unless the Bank has specifically agreed to waive this requirement for justified reasons, such as equivalent national regulations and arbitration procedures. The Bank shall not be named an arbitrator or be asked to name an arbitrator.<sup>54</sup>



<sup>53</sup> The Borrower is encouraged to secure insurance for potential risks above these limits. The multiplier should be more than 1 (one). Where there may be no need for professional liability requirements, the Borrower shall explain the reasons in seeking the Bank's no objection to the RFP.

<sup>54</sup> It is understood, however, that officials of the International Centre for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.



## V. SELECTION OF INDIVIDUAL CONSULTANTS

5.1 Individual consultants<sup>55</sup> are employed on assignments for which (a) a team of experts is 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. When qualified individual consultants are unavailable or cannot sign a contract directly with a Borrower due to a prior agreement with a firm, the Borrower may invite firms to provide qualified individual consultants for the assignment.

5.2 Advertisement for seeking expressions of interest (EOI) is encouraged, particularly when the Borrower does not have knowledge of experienced and qualified individuals or of their availability, or the services are complex, or there is potential benefits from wider advertising, or if it is mandatory under national law. It may not, however, be required in all cases and should not take place for small value contracts.<sup>56</sup> All invitations for EOIs should specify selection criteria that are solely based on experience and qualifications. When firms are invited to propose individual consultants, EOIs shall clarify that only the experience and qualifications of individuals shall be used in the selection process, and that their corporate experience shall not be taken into account, and specify whether the contract would be signed with the firm or the proposed individuals.

5.3 Individual consultants are selected on the basis of their relevant experience, qualifications, and capability to carry out the assignment. They do not need to submit proposals and shall be considered if they meet minimum relevant requirements which shall be determined by the Borrower on the basis of the nature and complexity of the assignment, and assessed on the basis of academic background and relevant specific experience, and, as appropriate, knowledge of local conditions such as national language, culture, administrative systems, and government organization. The selection shall be carried out through the comparison of the relevant overall capacity of at least three qualified candidates among those who have, directly or through a firm, expressed interest in the assignment or have been approached directly by the Borrower. Individuals selected to be employed by the Borrower shall be the most experienced and best qualified, and shall be fully capable of carrying out the assignment. The Borrower shall negotiate a contract with the selected individual consultant, or the firm as the case may be, after reaching

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<sup>55</sup> Individual consultants whose services are required in the context of the Bank's UCS piloting program will be selected in accordance with the methodology referred to in paragraph 3.12, and provided that the assignment falls below the ceiling determined by the Bank.

<sup>56</sup> Advertising for EOIs shall not normally take place for individual contracts below US\$50,000. Such threshold shall, however, be determined in each case, taking into account the nature, complexity, and risks of the assignment. The Bank may agree, if requested by the Borrower, that such assignments be subject to ineligibility for Bank financing of individuals of the Borrower country who are under a sanction of debarment from being awarded a contract by the appropriate judicial authority of the Borrower country and pursuant to its relevant laws, provided that the Bank has determined that the individual has engaged in fraud or corruption and the judicial proceeding afforded the individual adequate due process.

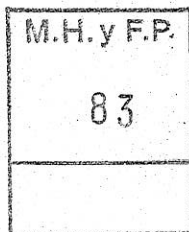


agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.

5.4 The selection of individual consultants is normally not subject to prior review. The Borrower shall, however, obtain the Bank's no objection: (a) when it has not been able to compare at least three qualified candidates before hiring, in which case it shall provide the reasons; (b) before it invites firms to offer the services of individual consultants as per paragraph 5.1 of these Guidelines; (c) in case negotiations with the selected individual fail before proceeding to negotiate with the next best individual, or firm as the case may be; and (d) in case of single-source selection as per paragraph 5.6 of these Guidelines. The Bank also requires prior review of the selection of certain categories of individual consultants.<sup>57</sup>

5.5 When a contract is signed with a consulting firm to provide individual consultants, either its permanent staff or associates or other experts it may recruit, the conflict of interest provisions described in these Guidelines shall apply to the parent firm. No substitution of any individual who was initially proposed and evaluated shall be permitted, and in such a case, the contract will be signed with the next ranked consultant.

5.6 Individual consultants may be selected on a single-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 a total expected duration of less than 6 (six) months; (c) urgent situations; and (d) when the individual is the only consultant qualified for the assignment. The Borrower shall submit to the Bank for its review and no objection the TOR of the assignment, a sufficiently detailed justification, including the rationale for single-source selection instead of a competitive selection process, and the basis for recommending a particular individual consultant in all such cases, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the Procurement Plan.



<sup>57</sup> Those being hired for long-term technical assistance or advisory services for the duration of the project (above the prior review threshold set forth in the Loan Agreement or Procurement Plan), and (without regard to the prior review threshold) those being hired for legal work or project-related procurement activities. The prior review of TOR of individual consultants by the Bank is mandatory except as may be determined by the Bank Regional Procurement Managers for limited, simple, and small value assignments.





## APPENDIX 1: REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS AND PUBLICATION OF AWARDS OF CONTRACTS

### Scheduling the Selection Process

1. The Bank shall review<sup>58</sup> Procurement Plans and their updates prepared by the Borrowers in accordance with provisions under paragraph 1.25. They shall be consistent with the Project Implementation Plan, the Loan Agreement, and these Guidelines.

### Prior Review

2. With respect to all contracts<sup>59</sup> 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>60</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 pursuant to paragraph 2.16) 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 cost 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 the final evaluation report along with its recommendation of the successful consultant. 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. If the Bank notes any discrepancies in the financial evaluation pursuant to its own review or due to a complaint, it shall

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<sup>58</sup> Paragraphs 11 to 15 of Appendix III set forth the actions taken by the Bank in response to communications from bidders, including bidder complaints and bidder requests for debriefing.

<sup>59</sup> The total value of the contract including all taxes and duties shall be the basis to determine whether a contract should be subject to prior or post review by the Bank.

<sup>60</sup> In the case of contracts to be awarded under paragraph 3.11 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 above in all relevant respects.