

WORLD BANK

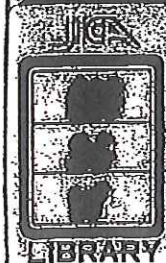
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**Guidelines for the Use of
Consultants by World Bank
Borrowers and by the World
Bank as Executing Agency**



August 1981

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CONTENTS

	Page
FOREWORD	v
INTRODUCTION	1
PART I. <i>Consulting Services</i>	3
Types of Assignments	3
Types of Consulting Firms	4
The Role of Domestic Consulting Firms	5
Information Concerning Consulting Firms	6
Evaluation of a Consulting Firm's Performance	7
PART II. <i>Consulting Firms Retained by the Borrower</i>	7
The Selection Process	7
Terms of Reference (TOR)	8
Cost Estimate (Budget)	10
Short List of Firms	11
Selection Procedures	13
Letter of Invitation	18
Proposal Evaluation	19
The Contract	19
Policies and Procedures in Exceptional Cases	23
Supervision of Consulting Services	24
PART III. <i>Consulting Firms Retained by the Bank as Executing Agency</i>	24
PART IV. <i>Engineering Firms</i>	25
PART V. <i>Individual Consultants Retained by Borrowers</i>	28
ANNEX I <i>Letter of Invitation to Consultants</i>	31
ANNEX II <i>Types of Contracts and Some Principal Provisions</i>	33

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FOREWORD

i. These "Guidelines for the Use of Consultants by World Bank Borrowers and by the World Bank as Executing Agency" replace the booklet entitled "Uses of Consultants by the World Bank and Its Borrowers" published by the Bank in April, 1974. These Guidelines revise and amplify the earlier booklet's coverage of the use of consulting firms by Bank borrowers, including the role of price as a factor in the selection of consultants and the Bank's involvement in the selection process.

ii. Quality considerations will continue to be the overriding factor in consultants' selection. The responsibility for the selection of consultants must clearly remain with the borrower. The Bank's objectives are to ensure that the consulting services to be provided are appropriate for the assignment and that consultants are treated in an equitable manner. To help achieve these objectives, the Bank requires that it be given an opportunity to approve or comment at several stages in the selection process.

INTRODUCTION

1.01 These Guidelines cover policies and procedures concerning the use of consultants by Bank borrowers and by the Bank as executing agency for the United Nations Development Programme (UNDP).¹ Parts I to IV deal with the services of consulting firms and Part V deals with those of individual consultants.

1.02 Both individual consultants and consulting firms are employed by Bank borrowers. The services required may take many forms, ranging from, but not restricted to, engineering and architecture to economics, finance and management. Consultants eligible for Bank-financed services must be from a Bank member country or Switzerland.²

1.03 These Guidelines cover services of consultants:

- (i) where consultants are retained by borrowers in connection with Bank-financed projects; and
- (ii) where consultants are retained by the Bank as executing agency for studies financed by UNDP.

1.04 The Bank's borrowers employ consultants in the normal course of their work in connection with Bank-financed projects to carry out activities for which their own resources are inadequate. Contracts of consultants so employed are directly with the borrower, or with an agency designated by the borrower, and not with the Bank. These cases constitute by far the largest proportion (over 90 per cent) of consultants' services in which the Bank has an interest. The services may be financed by the borrower or from the proceeds of a loan or from an advance from the Bank's Project Preparation Facility. Policies and procedures that apply to such contracts with consulting firms are discussed in Part II, and those which apply to contracts with individual consultants employed by the borrowers in Part V.

1.05 The Bank may require the services of consultants in connection with technical assistance, pre-investment and other studies financed by the UNDP,

¹ References to the Bank include the International Development Association (IDA) and references to loans include credits. In some cases, the borrower acts only as an intermediary, and the project is carried out by another agency or entity. This is often the case in projects financed by IDA. References in these Guidelines to the borrower include such agencies and entities.

² Consultants from Taiwan are also eligible.

when the Bank is acting as executing agency. In these cases, the consultants' contract is directly with the Bank. Policies and procedures that apply specifically to these contracts are discussed in Part III.

PART I CONSULTING SERVICES

Types of Assignments

1.06 Services of consulting firms used by borrowers and the Bank can be grouped broadly into four categories:

- (a) *Preinvestment studies*, which comprise the investigations which normally precede decisions to go forward with specific projects. These studies may have as their objectives:
 - (i) the establishment of investment priorities and sector policies;
 - (ii) the determination of the basic features and the feasibility of individual projects; or
 - (iii) the identification and definition of changes and improvements in governmental policies, operations and institutions necessary for the successful implementation or functioning of development programs and investment projects.
- (b) *Preparation services*, which comprise the technical, economic, or other work required to fully define a project and prepare it for implementation. These services normally include the preparation of detailed capital and operating cost estimates, detailed engineering, performance specifications for turnkey contracts, and tender documents required for invitation of bids for construction work and equipment. They also often include services in connection with the preparation of procurement documents, the determination of insurance requirements, the prequalification of licensors and contractors, and the analysis of bids and recommendations thereon.
- (c) *Implementation services*, which comprise construction supervision and project management, including inspection and expediting, certification of invoices submitted by contractors and suppliers, and technical services connected with the interpretation of contract documents. Implementation services can include assistance in procurement and the coordination of inputs by various

contractors and suppliers engaged on a single project, and the start up of facilities and their operation for an initial period.

- (d) *Technical assistance*, which comprises a wide range of advisory and borrower support services, such as development and sector planning and institution-building, including organization and management studies, staffing requirement and training studies, and assistance in implementation of study recommendations.

Types of Consulting Firms

1.07 The services outlined above are provided by various types of organizations which, for purposes of these Guidelines, are considered to be "consulting firms." These organizations include (inter alia): consulting partnerships, private companies, public companies or corporations, government-assisted firms, government enterprises, private non-profit organizations, international organizations and universities.

1.08 Some consulting firms are part of or otherwise affiliated with other commercial activities or concerns, including construction firms or manufacturers. These firms are acceptable to the Bank if their qualifications and experience are suitable for the work in question. However, to ensure professional impartiality, they must agree to limit their role to that of consulting services and to disqualify themselves and their associates for work in any other capacity on the same project.

1.09 This policy also applies to "engineering firms," discussed in Part IV, which accept major responsibility for bringing a complete facility into operation, from design to start-up, and which provide process licenses and performance guarantees. However, for some types of projects, firms are required to enter into a single contract to provide not only the services referred to above but, in addition, to supply the equipment and construct the work. Selection of firms for such "turnkey contracts" under Bank-financed projects is governed by the "Guidelines for Procurement Under World Bank Loans and IDA Credits."

1.10 Consulting organizations that are partly or totally owned or sponsored by governments, including those of the borrower, are eligible for Bank-financed projects provided:

- (a) their qualifications and experience are suitable for the work in question; and
- (b) their structure and legal status are such that they can enter into a legally-binding agreement with the borrower's implementing agency (or the Bank).

The Role of Domestic Consulting Firms

1.11 It is the Bank's policy to encourage and foster the development of domestic consulting firms. The Bank encourages borrowers to employ domestic consulting firms in connection with Bank-financed projects where such firms are qualified to perform the work either alone or in combination with foreign firms.

1.12 When a domestic firm is capable of providing part, but not all, of the services required, a variety of possible arrangements may be considered. In some cases, the assignment may be suitably divided, with domestic firms entering into contracts for the appropriate parts of the assignment, but performing under the general direction of a foreign consultant responsible for managing the activity as a whole. Under clearly defined contractual arrangements with the borrower, the managing consultant would normally be responsible for developing the standards, design parameters and technical specifications and, on behalf of the borrower, for reviewing and approving the domestic firms' work program and other critical steps.

1.13 If expertise is required that is not available locally, then either the domestic firm may engage foreign individuals to bring it up to a level of expertise capable of undertaking the assignment or a joint venture may be considered. In a joint venture, the consulting firms agree to associate to perform certain services. All firms are usually named in the contract with the borrower, and they usually have a private cost and profit sharing agreement between them. Responsibility is a major issue in a joint venture, and the contractual arrangements should clearly define the responsibility of each firm. The Bank prefers that one firm assume contractual responsibility (and liability) for satisfactory execution of the assignment. If a contract calls for all firms to be jointly and severally liable, then the Bank should be satisfied that at least one firm in the joint venture is financially capable of meeting the contract requirements and potential liabilities on its own.

1.14 In determining the most appropriate joint venture arrangement, the following considerations should be borne in mind:

- (i) The contribution of the local firm should be the maximum of which it is capable.
- (ii) The contractual arrangement should define clearly the responsibilities and the services to be provided by each firm.
- (iii) Joint ventures are more likely to develop local capabilities if they provide for suitable training.
- (iv) The Bank prefers voluntary joint venture arrangements and will accept mandatory joint ventures only if:
 - (a) there are a sufficient number of capable domestic firms available to allow reasonable freedom of choice for the invited foreign firms;
 - (b) the desirable contribution by either firm will not be constrained by any prescribed manner or extent of participation; and
 - (c) association with specific named firms selected by the borrower is not required.

Other Developing Country Firms

1.15 Consideration should also be given to the use of qualified consultants from other developing countries which may offer some of the advantages of local firms—for example, experience with similar problems, familiarity with climatic or physical conditions and design practices, cultural affinities, or lower costs (paras. 2.28-2.38).

Information Concerning Consulting Firms

1.16 To enable the Bank to judge the acceptability of firms proposed by borrowers (para. 2.13), it maintains information concerning the capabilities and experience of a large number of consulting firms. This information is also used when the Bank prepares lists of suggested consulting firms for borrowers (para. 2.61) or selects consulting firms for studies financed by the UNDP. Key information contained in the Bank's file on consulting firms is entered in a Data on Consulting Firms (DACON) system which is shared by the Bank and some other international financing agencies.

1.17 The Bank's general files on consulting firms, including DACON, are available to representatives of Bank borrowers and member governments. However, the information available on any one firm may be limited or, in some cases, non-existent, and it may be necessary for the Bank or the borrower to request additional information from a particular firm in order to form a judgment on its qualifications to carry out a specific assignment.

1.18 The fact that the Bank has been supplied with information about a firm does not indicate that the Bank has verified the accuracy of the information provided, that it has endorsed the firm's qualifications in general, or that it will approve the firm's appointment for any specific project. The Bank has no list of "approved" consulting firms, nor does it require registration as a condition of employment.

Information for Consulting Firms

1.19 A twice-monthly publication of the United Nations entitled *Development Forum Business Edition* carries in alternate issues "Monthly Operational Summaries" from the World Bank and from the Inter-American Development Bank. Useful information for consulting firms is contained in these summaries which give the status of projects under preparation from the identification stage until the loan agreement is signed.

Evaluation of a Consulting Firm's Performance

1.20 The Bank evaluates and records the performance of consulting firms on both Bank-financed contracts and UNDP-financed contracts where the Bank is executing agency. The Bank's procedures are designed to ensure that performance evaluation is handled fairly and confidentially.

PART II CONSULTING FIRMS RETAINED BY THE BORROWER

The Selection Process

2.01 Unlike procurement of goods and civil works, there is no requirement for competitive bidding with the award being made to the lowest evaluated bid when borrowers obtain consulting services for Bank-financed projects. The competence and experience of the firm and the personnel to be assigned, the quality

of the proposal, and the client/consultant relationship are the principal factors in choosing a firm. The proposed financial terms may sometimes be an additional element to be considered.

2.02 The borrower may decide to approach a single firm of its own choice for the assignment in some cases (paras. 2.16-2.20). Where this is not the case, the normal method of selection is for the borrower to invite proposals from three to six qualified and experienced firms and, through a suitable selection procedure as discussed below, to choose the firm most appropriate for the assignment. After the Bank and the borrower have agreed on the key objectives and the general scope of the assignment, the principal steps in the selection process, in chronological order, are as follows:

- (a) Preparing the assignment terms of reference;
- (b) Preparing the cost estimate—the budget;
- (c) Preparing a short list of firms;
- (d) Determining the selection procedure;
- (e) Sending the letter of invitation to submit a proposal to the firms on the short list;
- (f) Evaluating the firms' proposals and selecting a firm for contract negotiations; and
- (g) Negotiating a contract with the selected firm.

2.03 Bank staff are prepared to advise and assist the borrower, at its request, at all stages of the selection process but, except as indicated in paras. 2.60 and 2.61 and in Part IV, do not take part in: (a) preparing the short list of firms; (b) evaluating the firms' proposals; or (c) negotiating the contract.

Terms of Reference (TOR)

2.04 The TOR are the initial statement to the consultant of the work that is required and, with eventual modifications, form an integral part of the contract which governs the work that the consulting firm is to perform. The TOR should, therefore, be as clear and precise as the type of assignment will allow. Because of their importance to the success of the assignment, the Bank reviews and approves the TOR.

2.05 TOR are used by the Bank and its borrowers for three purposes:

- (a) to confirm agreement between the borrower, the Bank and other agencies concerned on the objectives and scope of a proposed assignment;

- (b) to inform the consultants to be invited of the objectives and intended scope of the work; and

- (c) to define the consultant's services in the contract to be negotiated with the selected firm.

2.06 Normally, the TOR should contain the following:

- (i) a precise statement of the objectives of the assignment;
- (ii) the scope and timing of the required services;
- (iii) the inputs to be provided by the borrower; and
- (iv) particulars of the output (i.e., reports, drawings, etc.) required of the consulting firm.

2.07 Clear TOR are especially important for pre-investment studies where the scope and form of the assignment are open to different interpretations and require sharp definition. For preparation and implementation services, including detailed engineering and construction supervision, the definition and depth of the consultant's tasks are largely dictated by the complexity of the project. If a preinvestment study has been conducted prior to detailed engineering, then design standards and other criteria will normally have been determined on the basis of the study. If a preinvestment study has not been undertaken, as may be the case for some rural and urban development projects, careful attention should be given to the design parameters to be adopted.

2.08 A consulting firm appointed to prepare final designs and tender documents should be solely responsible for the accuracy and suitability of its work. While borrowers should supervise and review the consultant's work, no modifications should be made in the final documents prepared by the consultant without the firm's consent. Similarly, when a consulting firm assists in implementation, it is normally desirable for the firm, acting under the written agreement with the borrower and on its behalf, to have the authority to supervise construction. In some cases, however, the consulting firm may act as an advisor to the borrower on all technical problems related to the project, with limited authority to make decisions as prescribed by the borrower. The borrower's and consultant's respective responsibilities should be clearly defined in the TOR and contract.

Cost Estimate (Budget)

2.09 An estimate should be made of the cost of a proposed consulting assignment and reviewed and approved by the Bank. The cost estimate, or budget, should be based on the borrower's perception of the assignment requirements in terms of level and type of personnel, period to be spent in the field and in the home office, physical inputs (e.g., vehicles, drilling rigs, etc.), and other items required for the services.

2.10 While the cost estimate is required both for the budgetary purposes of the borrower and for the use of lending agencies, it also serves other purposes. To produce a cost estimate, the borrower's staff will have to become familiar with the terms of reference and to consider alternative methods of undertaking the assignment. This, in turn, helps to lay the groundwork for preparing a short list, evaluating proposals, negotiating a contract, and supervising the assignment. It also helps the borrower's staff to determine the information which should be conveyed in the letter of invitation.

2.11 Where price is not a factor in the selection process, the letter of invitation may include the borrower's estimate either of man months or of the budget for the assignment. In the latter case, firms would be expected to include in their proposals estimates of man months required for the assignment within this budget.¹ In cases where price is to be taken into account in the selection of consultants, the letter of invitation should normally include the man months expected to be required for the assignment, but not the budget. Providing this information gives the firms a good indication of the envisaged scope of the assignment, especially for feasibility studies. While the need to limit costs is recognized, the Bank recommends that the budget amount be set so as to allow all invited firms to submit meaningful technical proposals.

2.12 The Bank does not consider it desirable that ceilings be put on the man month rates for consultant staff as this overly restricts the type and mix of personnel a consultant can assign to a study. Such a rate

¹ Where proposals are being invited for architectural services, it is normal to give the total estimated cost of the facility to be designed and not the budget or man months required for the assignment.

ceiling can also discriminate against those consultants who may be the most experienced and capable for the assignment. The Bank will not normally accept the imposition of man month rate ceilings or other rate restrictions.

Short List of Firms

2.13 To ensure that only consulting firms considered capable of undertaking the assignment are invited to submit proposals, the Bank reviews and approves the short list prepared by the borrower.

2.14 The short list is normally prepared from a longer list obtained by advertising, from embassies and professional associations, from the borrower's own knowledge or, under exceptional circumstances (para. 2.61), from the Bank. Extended lists should not be used for inviting proposals, since they have serious disadvantages. First, to carry out a meaningful evaluation of numerous proposals is time-consuming and hence may result in inadequate evaluation. Further, better firms may not be inclined to submit a proposal and all firms may be discouraged from putting adequate effort into their submissions. Finally, an extended list increases the aggregate cost to firms of unsuccessful proposals—a cost which must eventually be recovered on the successful ones. The Bank, therefore, strongly recommends a short list of firms with a lower limit of three and an upper limit of six.

2.15 The short list should normally comprise a wide geographic spread of firms with, preferably, not more than two firms of any one nationality on the list, and with consideration being given to including at least one firm from another developing country. While borrowers are encouraged to include local firms on the list, the advantages of receiving proposals from consultants of other nationalities or of encouraging joint ventures between local and foreign firms (para. 1.13), should also be considered for major assignments.

2.16 In some circumstances, it may be advantageous to engage or continue with a specific firm. These circumstances include choosing a firm which would continue from the feasibility study stage to project preparation and from project preparation to the execution stage. If a firm has carried out preinvestment studies for a project and is technically qualified to undertake the preparation services, the advantages

of continuity will be a consistency in basic technical approach and a commitment to the project cost estimate on which the investment decision was based. If a different firm were retained for detailed engineering, it would normally wish to make an in-depth review or even to repeat the preliminary design work and cost estimate done by another firm.

2.17 It is normally advisable that implementation and supervision work be carried out by the same firm which undertook the preparation work. This ensures that contract documents are interpreted properly during the implementation stage and that modifications in design, if found necessary in the course of implementation, suit the basic concepts. In certain types of projects, such as large dams, power stations and industrial projects, the design consultants prepare working drawings only after contract award and as implementation proceeds. Hence, for these types of projects, the design consultants should normally be appointed for construction supervision.

2.18 There may be circumstances where continuing with the same consulting firm may not be in the interests of the project. These include cases in which preliminary design and engineering is found to be unsuitable or where relations between a borrower and the consulting firm have deteriorated to such an extent as to have a detrimental effect on the project. It is normal, therefore, to enter into separate contracts for the preinvestment and preparation assignments, and while one contract often covers both preparation and implementation (e.g., detailed engineering and construction supervision), such a contract should allow for a detailed review of implementation requirements and revision or termination of the contract, if necessary, near the end of the preparation phase. If a change of firms between phases is unavoidable, and as such a change may have a bearing on the legal liabilities of the original and the new firm, the firm taking over should be given an opportunity to check and comment on the previous consulting work and should be required to accept appropriate responsibility for the complete project design. If a borrower wishes to change a consultant during the course of its work, it should consult the Bank before taking final action.

2.19 Further circumstances where it might be advantageous to approach a single firm rather than conduct a selection process would be where the firm:

- (i) has a close association with a similar project in the borrower's country;
- (ii) has expertise not widely available; or
- (iii) has undertaken similar assignments for, and has a good working relationship with, the borrower.

2.20 There is also the persuasive argument that nothing should hinder the creation of a good client/consultant relationship which might best be achieved if the borrower is free to approach the firm of its choice. Therefore, while the Bank generally recommends inviting proposals from a short list of firms, it does not object to the borrower's requesting a proposal from a single firm of its choice, provided that the Bank approves the firm invited and, subsequently, the contract.

Selection Procedures

2.21 The Bank's interest in the selection process is to ensure the adoption of a suitable procedure for the assignment. While allowing the borrower ample opportunity to propose any appropriate selection procedure, the Bank requires that, prior to inviting proposals, the borrower submit the proposed procedure, including the proposed evaluation criteria, in advance for comment and that its comments be taken into account. Where a proposed procedure is considered inappropriate and detrimental to a particular consulting assignment, the Bank will so advise the borrower and require that the procedure be modified.

2.22 Where a number of firms are to be invited to submit proposals, the selection procedure and evaluation criteria to be adopted should be determined prior to inviting proposals and should be included in the letter of invitation (para. 2.40).

2.23 The two basic types of selection procedures are, first, those that rely solely on an evaluation of the technical competence of the firm, the personnel undertaking the assignment, and the suitability of its proposal; and, second, those that involve both a technical evaluation and consideration of the offered price of the services.

Technical Evaluation

2.24 Under this procedure, proposals are normally evaluated in three principal categories:

- (a) the firm's general experience in the field of the assignment;

- (b) the adequacy of the proposed work plan and approach in responding to the TOR; and
- (c) the qualifications and competence of the personnel proposed for the assignment.

2.25 As a guide in evaluating proposals, numerical ratings are used for each category on a scale of 1 to 100. However, the relative importance of these three categories will vary with the type of assignment. Normally, for preinvestment studies, the firm's general experience is given a weight of 10 to 20 percent, the work plan 25 to 40 percent, and key personnel 40 to 60 percent. For detailed engineering, greater weight might be given to the experience of the firm and less to personnel. For construction supervision and other implementation services, greater weight might be given to key personnel. The numerical ratings for the three categories are then weighted accordingly and summed. With a non-responsive "fail" mark set at (say) 60, the normal range of points scored overall is between 60-90, and the firms are ranked in numerical order of their score.

2.26 To assess the qualifications and experience of proposed personnel, the curricula vitae of key staff members are reviewed. In cases where the assignment depends critically on the performance of an individual, it may be desirable to supplement this by interviews. The individuals are rated in the following three categories:

- (a) general qualifications: this includes education and training, length of experience, type of position held, time with the firm, etc.;
- (b) adequacy for the project: the suitability to perform the duties for the particular assignment; and
- (c) language and experience in the region: this includes background in developing countries similar to the country in which the assignment is to be conducted and linguistic ability.

The Bank recommends that only the key personnel of each discipline be evaluated.

2.27 While the three proposal categories being evaluated are qualitative, and the evaluation, to a degree, subjective, the process described above brings order into the review and facilitates the participation of several evaluators.

Technical Evaluation With Price Considerations

2.28 For certain types of assignment, it may be appropriate to take into account, in addition to the

technical evaluation, the cost to the borrower of the services offered. The process of selection, with or without price, should maintain quality as the paramount requirement of consulting services. Price must not dominate the selection process to the detriment of the effective execution of the project. Nevertheless, by inviting consulting firms to submit priced proposals for certain types of assignment for which price comparisons can appropriately be a factor, borrowers may be able to take advantage of cost savings.

2.29 Consulting assignments can be broadly classified in terms of certain characteristics which affect the extent to which price may appropriately be used in the selection process. These characteristics are: (a) the complexity of the assignment; (b) the assignment's impact on the end product; and (c) the probability that the proposals submitted by the invited firms will lead to comparable outputs.

2.30 *Complexity.* Consultants' services cover a wide variety of assignments ranging from those which technically are extremely complex to simple and routine tasks. If all such assignments were to be graded in terms of technical complexity, a small fraction (about 10 to 15 percent) of assignments would be at the top of the scale; a somewhat larger fraction (about 20 to 30 percent) would be at the bottom of the scale; and the majority of assignments (about 40 to 70 percent) would be between these two groups. Examples of technically-complex assignments would be multisectoral feasibility studies, project management, and other assignments which call for innovation and creativity; this category would include, for example, the design of an offshore oil production platform or an urban master plan. Some technically simple projects require community mobilization and participation, training, and changes in attitude and behavior, in order to suit the socio-cultural conditions, and must be considered complex for these reasons. Tasks of a straightforward technical nature, such as detailed engineering of a secondary road or a simple rural water supply system, may be examples of assignments at the bottom end of the scale of technical complexity. Assignments varying in complexity from simple feasibility studies to construction supervision would be in the majority group. It is for this group of assignments that the use of price in the selection process becomes a difficult matter for decision. For the technically-complex assignments,

consulting firms should be selected on technical grounds alone; and for the assignments of a technically-straightforward nature, price can play a significant part in the selection process, provided that other criteria are also met, as discussed below.

2.31 Assignment Impact. Assessing the impact of an assignment on the end product is in most cases largely subjective. However, the collapse of a major dam is of far greater significance than an inefficient pumping system. Assignments can be roughly classified on the basis of potential, adverse consequences in terms of the additional costs or forgone benefits that would follow if the assignments were not performed adequately. What might appear to be a minor difference in the quality of policy recommendations could have substantial financial consequences. Likewise, a small difference in quality of analysis could sometimes lead to a different choice among alternatives and significant differences in investment patterns and costs. A judgment on the impact of the assignment should, therefore, be of crucial concern in the selection of consultants. Assignment impact would be of greater significance with major structural engineering design or policy studies of national significance, than, for example, with feeder road design. Considerations of quality should be paramount at the upper end of the range of significance with the relevance of price increasing towards the lower end.

2.32 Comparability. Responsive proposals which are substantially similar in quality and which are judged to lead to comparable consultant outputs are more suitable for price competition than those which are not. Proposals are more likely to be comparable in this sense for the type of assignments where clear terms of reference can be prepared which specify in detail and with little room for discretion the output expected from responsive proposals. Such assignments are more likely to be those of a straightforward technical nature, such as engineering design, rather than studies where the value of the services depends on the quality of the analysis. Hence, the degree to which an assignment can be specified so as to give rise to comparable proposals is a major factor in determining the extent to which price can be used as a factor in selection.

2.33 Examples of assignments where comparable proposals are likely would be those of a clearly defined technical nature, such as routine detailed

engineering, construction supervision and computer services; and assignments where the outputs are clearly identified, such as seismic surveys, topographic mapping, simple road design, and aerial surveys. Examples at the other end of the scale, where comparability is more difficult, would be management advice, training, and sector and policy studies.

2.34 The extent to which price may be used as a factor in selection depends, therefore, on the technical complexity of the assignment, the impact of the assignment on the end product, and the comparability of proposals. The more complex the assignment, the more significant the end product and the less comparable the proposals, the less influence price should have on the selection. For assignments which are difficult to specify precisely, or which are at the top end of the complexity scale, or where the end product is such that a small reduction in quality could conceivably have an unacceptable impact on the project associated with the assignment, price should not be used as a selection factor.

2.35 The decision whether or not to take price into account should be taken prior to inviting proposals. In cases where it is appropriate to take price into account, except as noted in para. 2.36, the Bank does not recommend any specific method or procedure other than to emphasize that price as a selection factor should be used judiciously and cautiously, and should never undermine quality or client/consultant relationships. The appropriate relationship between price and technical quality should be a matter of judgment in any particular case, taking account of the three characteristics of assignments discussed above. The price and technical evaluations are carried out on different scales which are not easily comparable. A 10 percent difference in technical quality may or may not be worth, say, a 20 percent reduction in price, depending upon the nature of the assignment and the judgment of the client. Careful consideration should therefore be given in each case to the determination of the weights that are to be given the price and technical factors.

2.36 Where price is taken into account, the technical evaluation should be undertaken independently and free from the influence of price. A two-stage procedure should, therefore, be adopted, with the technical and financial proposals submitted separately in sealed envelopes, or with the price proposals sub-

mitted at a later date. In either case, the technical evaluation should be completed before the price proposals are reviewed.

2.37 It is important to safeguard the integrity of the two-stage procedure. Appropriate procedures should be followed to ensure that access to price information is not available to the evaluators until the technical evaluation has been completed by requiring that price proposals remain sealed and, for example, be deposited with a government or private accounting office. As part of its review of the borrower's proposed selection procedures (para. 2.21), the Bank will make a determination, in cases where price is taken into account, as to whether a satisfactory two-stage procedure is adopted.

2.38 There is a related procedure, known as "the two-envelope system,"¹ which is based on the principle that prices should be requested but not compared. The Bank does not recommend this procedure, as there is little advantage and some possible disadvantage in calling for price proposals when they are not to be compared. However, where the two-envelope system is practiced because of local requirements and familiarity, the Bank will require that safeguards be built in to ensure that prices are not compared, except as part of a two-stage procedure as described in paras. 2.36 and 2.37 above.

Letter of Invitation

2.39 As the letter of invitation includes the terms of reference and the selection procedure, the Bank should be given the opportunity to comment on the draft letter before it is finalized.

2.40 When agreement has been reached between the borrower and the Bank on the short list of consulting firms, a letter of invitation, sometimes known as a request for proposals or "RFP," is sent to each

¹ In this procedure, both technical and financial terms are called at the same time, with the financial terms contained in sealed envelopes. A technical evaluation is undertaken, and *only* the envelope containing the financial terms of the best technically-ranked firm is opened. If the negotiations with this firm are successful, all other envelopes containing financial terms are *returned unopened* to the firms concerned. If negotiations fail, the price envelope of the second-highest technically-ranked firm is opened, and the firm is invited to negotiate a contract. In particular, the price envelope of the second firm is not opened until it is agreed with the first firm that a contract cannot be concluded.

of the firms. Apart from a possible visit to the borrower's country and the area of study, the consultant's proposal is usually based on the information contained in the letter of invitation. It is important that this information be as complete as possible, not only to allow the consultant to prepare a fully-responsive proposal, but also to help make all the proposals submitted comparable. The letter of invitation should also include a clear indication of the selection procedure and evaluation method which the borrower proposes to use. After proposals have been received, borrowers should follow procedures consistent with those indicated in the letter of invitation. A detailed list of information which should be included in the letter of invitation is given in Annex I.

Proposal Evaluation

2.41 The Bank will normally wish to receive and comment on a copy of the winning proposal before the borrower invites the firm to negotiate a contract, in order to satisfy itself of the adequacy of the proposed work plan and approach and the qualifications and experience of the personnel proposed for the assignment. The Bank may also wish, in particular cases, to review the evaluation report covering all proposals.

2.42 Where proposals have been invited from several firms, the primary objective of evaluating these proposals is to choose the firm which, through the quality of its proposal, is deemed to be best qualified for the assignment. A secondary objective is to determine what changes, if any, in the firm's work plan or personnel should be discussed during negotiations.

2.43 The evaluation process should begin as soon as possible after receipt of all proposals, with the evaluation being carried out, normally by an evaluation committee, as indicated in the letter of invitation (para. 2.40). In particular, if price is a factor in the selection process, the two-stage procedure (paras. 2.36 and 2.37) should be followed. The firm that is ranked highest, taking all factors into consideration, should be invited to negotiate a contract to carry out the assignment.

The Contract

2.44 The Bank will review and comment on the contract negotiated between the borrower and the selected firm prior to its signature. The contract, as

well as any material amendments thereto, must be satisfactory to the Bank. More broadly, the Bank reserves the right not to finance a contract in cases where: (i) the consultants have not been selected under procedures substantially in accordance with those agreed between the Bank and the borrower; (ii) the qualifications of the consultants are not satisfactory to the Bank; or (iii) the terms and conditions of the contract are not satisfactory to the Bank.

Negotiations

2.45 Following the decision on the winning proposal, the selected firm is invited to negotiate a contract with the borrower. The Bank recommends that discussion of the work plan, staffing, borrower's inputs and form of proposed contract be completed prior to financial negotiations.

2.46 Staff substitution by a consulting firm is undesirable at any time and particularly between receipt of the proposal and commencement of field work. However, if the proposal validity has lapsed, staff substitution may be discussed during negotiations. During an assignment, if substitution is necessary because of ill health, or if one or more staff prove to be unsuitable, the consultant should propose other appropriate staff for approval by the borrower. The Bank would wish to satisfy itself of the competence of replacement staff for key positions.

2.47 Financial negotiations should preferably begin with a clarification of the consultant's local tax liability (if any), and how this tax liability will be accommodated in the contract. While the conduct of negotiations is not discussed in these Guidelines, there are some practices which the Bank does not consider in the best interests of the project. Negotiations on price are customary where selection has been made on a technical basis; where price has been a factor in selection, there is normally little room left for price reduction, and any negotiation downwards is likely to be at the expense of quality. In cases where the best technical proposal is not the lowest priced, the practice of either giving the best proposal to the lowest bidder and asking him to adapt it to his low price, or asking the firm with the best technical proposal to do the work for the lowest price, is not appropriate. Another practice which does not encourage due consideration of quality is to negotiate with more than one firm at the same time. While there should be

some flexibility in work plans, major reductions in work inputs which have been previously agreed as appropriate for the assignment should not be made to meet the budget. The Bank will not approve contracts which result from practices that would jeopardize the successful outcome of the assignment.

Informing Unsuccessful Firms

2.48 Promptly after completion of negotiations with the selected firm the borrower should notify other firms on the short list that they were unsuccessful.

Announcement of Contract Award

2.49 After a contract in which the Bank has an interest has been awarded to a consulting firm, the borrower is required promptly to advise the Bank so that it may announce or arrange for the publication of the award, if the value of the contract is greater than US\$500,000 equivalent.

Types and Provisions of Contract

2.50 There are several basic types of contract used for consulting services. An early decision should normally be made on the type of contract to be adopted, and a draft of this contract should be included with the letter of invitation (Annex I). Except for assignments contracted directly with the Bank, the Bank has no standard "approved" contract.¹ A brief description is given in Annex II of four of the more common types of contracts, together with the Bank's comments.

Government Contribution

2.51 The contract should detail the data, facilities and personnel which will be provided by the government. This contribution normally includes office space, utilities, materials, vehicles (with drivers and maintenance), and staff, and may include housing. The contract should indicate what alternate measures can be taken by the consultants if some of the items cannot be provided or have to be withdrawn during the assignment.

¹ However, the Bank has been consulted in the preparation of the "International Model Form of Agreement Between Client and Consulting Engineer," produced by the International Federation of Consulting Engineers (FIDIC), and has no objections to its use.

2.52 Government will also normally allocate some of its own professional staff to the assignment. Professional staff will be required to supervise the consultant's work in accordance with the contract, provide liaison between the consultant and government agencies and, through their offices, assist with data collection. They may also review and discuss with the consultant the findings and recommendations to be included in final reports.

2.53 While all professional staff of the borrower may gain experience through day-to-day exposure to the consultant's team, some may be temporarily released from duty and incorporated into the consultant's team to receive training in some specific field (paras. 2.56-2.59). This latter group of professionals is normally known as counterpart staff.

2.54 While the Bank fully supports the participation by counterpart staff, certain matters should be discussed before specific agreement is reached on the level, numbers and responsibilities of such staff. These include: (a) the responsibilities of counterpart staff in relation to the consulting firm's contract responsibilities; (b) the extent to which counterpart staff are released from their normal duties; (c) the extent to which counterpart staff can fit in with the consultant's proposed work schedule; (d) the arrangements for replacement of unsuitable counterpart staff; and (e) the field and travel costs of counterpart staff.

2.55 In addition to the professional counterpart staff, government agencies are often able to supply clerical, administrative and technical services in support of the consulting firm, which can substantially reduce the cost of its contract. When such support services are provided, they normally become an integral part of the consulting firm's work program, and should be under its operational control and direction.

Training

2.56 It is the Bank's policy to support the strengthening of local capabilities in borrower countries by promoting the transfer of know-how—knowledge and skills—to local professionals engaged in projects it helps finance. International consulting firms retained by the borrower can serve a useful role in this training.

2.57 To be effective, a training program requires a concerted effort by the borrower and the consultant, commencing with the program's design, and extending through its implementation and the final evaluation of the work performed. Two factors are especially critical. One is the borrower's willingness to select qualified local professionals for training, to make those professionals available for the duration of the program, and to afford them appropriate opportunities to apply the acquired skills in the future following the consultant's departure. The other factor is the consultant's willingness to recognize the training function as a separate obligation, distinct from its other services, and to anticipate possible time and personnel conflicts between these competing demands. Both of these factors should be addressed by advance planning and provision of adequate funding and time for the training program.

2.58 Both government counterparts and, in the case of joint ventures, staff of domestic consulting firms may receive training within an international consultant's assignment. In either case, the objectives of the training program should be included in the TOR sent to the invited consultants and, during contract negotiations, the program should be defined with regard to the trainers and trainees, the skills to be transferred, and the time frame.

2.59 Training has a cost in money and time, and the budget for the training program should be included in the consultant's contract. The Bank is willing to consider financing the additional cost of such training programs as part of the total contract cost.

Policies and Procedures in Exceptional Cases

2.60 Bank participation in the selection of consultants by borrowers beyond that detailed above is only undertaken in exceptional cases where the Bank considers that it is justified by the particular circumstances involved. The desire on the part of a borrower to be assisted by the Bank is not by itself a sufficient reason for the Bank to play a greater role in the selection. In such cases, if requested, the Bank will consider providing the assistance needed.

2.61 When a borrower is unable to prepare a short list and requests the Bank in writing to provide a short list of consultants for work on a Bank-financed project, then, on an exceptional basis, the Bank is

prepared to provide such a list.¹ The suggested list must not be considered in any way exclusive, and the borrower may delete or add other names as it wishes; however, in accordance with para. 2.13, the final short list must be approved by the Bank. While, as far as can be judged from information in the Bank's files, the suggested firms may appear capable of undertaking the assignment, the provision of the list will not represent an endorsement of any of the consultants, and the Bank in no way accepts responsibility for the quality of their work. In very special cases, the Bank may provide assistance with all the selection steps listed in para. 2.02.

Supervision of Consulting Services

2.62 When borrowers have contracts with consulting firms, the borrowers have full responsibility for supervising the consultants. However, as part of their project preparation and supervision activities, Bank staff will review periodically the consultants' progress to ascertain that the work is proceeding in accordance with the terms of reference and on schedule. Without assuming the respective responsibilities of the consultant or the borrower, the Bank staff will, in the course of their project work, make spot checks of the more important activities, including design calculations and test results, to ensure that the work is being carried out in a technically-sound manner and based on acceptable data. As appropriate, Bank staff may take part in discussions between the borrower and consultants and, if necessary, assist the borrower in resolving problems. Where a significant portion of project preparation work is being carried out in a consultant's home office, Bank staff may, with the approval of the borrower, visit these offices to review the consultant's work.

PART III CONSULTING FIRMS RETAINED BY THE BANK AS EXECUTING AGENCY

3.01 As indicated in para. 1.05, the Bank contracts directly with consulting firms for assignments for which the Bank is the executing agency for the

¹ Borrowers' representatives may use the Bank's files to prepare lists on their own (para. 1.17).

UNDP. The selection procedures followed by the Bank in these cases are essentially the same as described in Part II for consulting firms retained by borrowers. The terms of reference for the assignment and the short list of firms are prepared by Bank staff in consultation with the government agencies concerned, and their final version agreed with the government. As most assignments for which the Bank is executing agency are of the type for which it is not appropriate to use price as a factor in selection, the Bank normally requests unpriced proposals. Following evaluation by the Bank, an authorized representative of the recipient government normally participates in the negotiations with the selected firm with a view to arriving at a thorough understanding by all parties regarding the assignment, including agreement on the "in kind" services and facilities which the government will provide.

3.02 The Bank is responsible for supervising the consulting firms it retains as executing agency. However, the Bank and the government often agree that the government will monitor the consultant's field work. Invoices for the field services performed by the consultant are also usually reviewed by the government before being submitted to the Bank.

3.03 The UNDP Resident Representative in the country of the study has a responsibility to monitor, on behalf of the UNDP Administrator, the progress of studies financed by the UNDP. To facilitate this, consultants are expected to maintain contact with the Resident Representative and provide him with a copy of each report prepared. However, the Resident Representative has no authority to act on behalf of the Bank or to instruct consultants on matters relating to their contract with the Bank.

3.04 UNDP-financed studies are subject to periodic reviews conducted jointly by representatives of the government, UNDP and the Bank. In the light of progress and findings of the study to date, any necessary adjustments in its scope, work plan and budget can be made on these occasions.

PART IV ENGINEERING FIRMS

4.01 A special type of consulting firm provides, individually or in association with other firms, the spectrum of services required to conceive, design,

manage implementation of, and bring into operation complex and normally capital-intensive industrial and metallurgical plants. These generally large organizations are often referred to as engineering firms or engineering contractors. The services they provide may include some or all of the following: definition of project scope, selection of production process, provision of licenses and technology, process design, detailed engineering, procurement, inspection, construction management, provision of guarantees on overall project performance, assistance with commissioning, start-up and initial operations, and recruitment and training. A firm may also own the license to the proposed process(es). Many of these firms also undertake construction, manufacturing and erection contracts; however, on Bank-financed projects they are restricted to either providing services, or undertaking construction and/or supply of goods. This restriction does not apply for turnkey contracts (para. 1.09) and where certain proprietary and critical items of equipment and materials are required. The procedures for selecting these types of firms are discussed separately in this section as the Bank normally prescribes procedures for their selection which are more detailed than for other consulting firms.

4.02 While the steps in selecting these firms are similar to those for other consultants (para. 2.02), the Bank is more closely involved and its approval is normally required at each step. As for other consultants, the Bank will, on request, assist in drafting the terms of reference for the services and approve the final version, together with the estimated cost of the services. Several firms are normally invited to submit proposals, and the preparation of the short list of firms is a rigorous exercise. First, the Bank may require the borrower to advertise the assignment on an international basis, inviting suitable firms to submit letters of interest together with their qualifications. Using the information supplied by the firms, the borrower will then undertake a careful screening exercise to produce a short list, using criteria which have been previously discussed and agreed with the Bank. The final short list will comprise only firms which, from available information, are considered able to submit proposals that are likely to be responsive. This final list, which is usually limited to three to six firms, shall be discussed and agreed with the Bank. In special cases, such as when there is a good existing relationship

between the borrower and an engineering firm, and subject to prior approval of the Bank, the borrower may approach only one firm.

4.03 The draft letter of invitation, including the agreed evaluation and selection procedures, is subject to Bank approval before the letter of invitation is sent to the short-listed firms. As the proposals are complex and often require extensive engineering input to prepare, more time is allowed to submit proposals than for most consulting assignments. The proposals will normally include a detailed description of the project, including all plant, equipment, and materials required, its method of construction, the definition of subcontracts, the implementation schedule, guarantees and liabilities regarding major inputs and outputs, capital and operating costs, project management, training and start-up assistance and a definition of all services offered by the engineering firm.

4.04 Normally, priced proposals will be invited, with a two-stage evaluation procedure being adopted similar to that used for the evaluation of priced proposals from other consultants. However, in this case, the technical evaluation is followed by a price comparison that covers not only the cost of the professional services of the firm, but also the estimated cost of the proposed plant and its operation and the value of its output, taking account of such factors as any bonus or penalty provisions, the guarantees which the firm can supply, and the liability it is prepared to accept.

4.05 Evaluation of proposals is a major task, and requires considerable professional input. After the technical proposals have been opened, the borrower may invite the firms to clarify and possibly modify their proposals. If changes in technical proposals result, the firms must be permitted to submit supplementary price proposals. Both the original and supplementary price proposals shall then be opened and all cost and benefit items which can be expressed in monetary terms are reduced to their present value. Items which cannot be so expressed are given points and incorporated into the final ranking through weights that have been previously specified in the agreed evaluation method. This final ranking, together with the evaluation report, the winning proposal and the borrower's recommended award, shall then be submitted to the Bank for review and approval of the recommended firm. The Bank may wish to review all

proposals and will normally expect the borrower to select the highest-ranked firm.

4.06 The procedures for the selection of the engineering firm, the qualifications of the engineering firm and the terms and conditions of the contract between the borrower and the engineering firm, as well as any material amendments thereto, must be satisfactory to the Bank. The Bank reserves the right not to finance a contract in cases where: (i) the engineering firm has not been selected under procedures substantially in accordance with those agreed between the Bank and the borrower; (ii) the qualifications of the engineering firm are not satisfactory to the Bank; or (iii) the terms and conditions of the contract are not satisfactory to the Bank.

PART V INDIVIDUAL CONSULTANTS RETAINED BY BORROWERS

5.01 The Bank's interest in the services of individual consultants is similar to its interest when consulting firms are employed—namely that the individuals the borrower proposes to employ are experienced and capable, and that their terms and conditions of employment are acceptable to the Bank. However, the selection procedures are usually less formal, and the Bank only requires approval of the terms of reference and the qualifications and conditions of employment of the individuals before an agreement (or contract) is negotiated and signed.

5.02 Individual consultants are normally employed on assignments where: (a) teams of personnel are not required; (b) no additional outside professional support is required; and, (c) the experience and qualifications of the individual are the paramount requirement. Where three or more individuals are to be employed, coordination, administration and collective responsibility can become difficult. In such cases, the Bank would normally advise that a consulting firm be employed.

5.03 From time to time, personnel of a consulting firm may be available as individual consultants. In such cases, although the contractual agreement is normally with the firm to supply the named person, usually the individual himself, and not the firm, is responsible for the quality of the work and, unless specified in the agreement and included as part of the

cost, little or no home office professional back-up is expected. The same requirement for professional impartiality would apply to this firm as discussed in para. 1.08.

5.04 Individual specialists are less well known than consulting firms. Borrowers may, therefore, have difficulty in recruiting suitable individuals for Bank-financed assignments. Therefore, on an exceptional basis, and on similar conditions to those indicated in paras. 2.60-2.61, the Bank is prepared to assist with their recruitment.

LETTER OF INVITATION TO CONSULTANTS

1. When reviewing the letter of invitation to consultants to submit proposals, the Bank seeks to ensure that it includes adequate information on the following aspects of the assignment.

- (i) A very brief description of the assignment.
- (ii) A list of attachments to the letter, including the assignment terms of reference, a draft of the contract to be used,¹ and supplementary information on what is expected to be covered in the proposals, with a sample curriculum vitae (CV), etc.
- (iii) If the assignment is of substantial value and where foreign consultants are being invited, a statement advising that the consultant should visit the project country, and giving the names of officials with whom the consultant's representative should meet.
- (iv) Details of the selection procedure to be followed, including the technical evaluation categories and an indication of the weights to be given to each. If price is to be a factor in the selection process, the basis on which price will be taken into account.
- (v) An indicative estimate of the level of staff inputs required of the consultant in terms of man months, or, alternatively, and where price will not be a selection factor, the budget for the assignment, or for architectural services, the estimated cost of the facility to be designed.
- (vi) Details and status of any relevant external financing.
- (vii) The financial and other information which will be required of the selected firm during negotiation of the contract.
- (viii) The time allowed for submission of proposals (normally about 45 days).

¹ While sending a draft contract should be the normal procedure, where a draft is not available or for some reason cannot be prepared, the letter should indicate the type of contract which will be adopted.

- (ix) Reference to any local laws which may be particularly relevant to the proposed consultant's contract.
- (x) A statement informing the consultant that any manufacturing or construction firm with which it might be associated will not be eligible to participate in any project resulting from or associated with the consulting assignment.
- (xi) The method in which the proposal should be submitted, including, if priced proposals are called, the requirement that the technical and the price proposals be sealed and submitted separately in a manner which will ensure that the technical evaluation is conducted without the influence of price.
- (xii) A request that the invited firm cable: (a) acknowledgment of receipt of the letter of invitation; (b) whether or not it will be submitting a proposal; and (c) when submitting the proposal, the date and mode of shipment.
- (xiii) The number of firms being invited to submit proposals, and preferably their names.
- (xiv) The period for which the consultants' proposals are to be held valid, normally 60-90 days, and during which the consultant will undertake to maintain, without change, the proposed staffing (including named personnel), and, if a priced proposal has been submitted, will hold to both the rates and total price proposed.
- (xv) The anticipated date when the consultant will be expected to commence the assignment.
- (xvi) A statement indicating whether the firm's contract and the firm's personnel will be tax free or not; if not, an indication of the likely tax burden or where this information might be obtained; and, if priced proposals are being invited, an indication whether or not the consultant's price should include an amount to cover taxes.
- (xvii) If not included in the TOR, details of the services, facilities, equipment and staff to be provided by the borrower.

TYPES OF CONTRACTS AND SOME PRINCIPAL PROVISIONS

1. This Annex discusses briefly four basic types of consulting contracts, contingency allowances and price adjustments, payment provisions and guarantees, and professional liability.

Man-Month¹ (or Time-Based) Contracts

2. This type of contract is widely used for general planning and feasibility studies, for design, detailed engineering and supervision of construction, and for technical assistance assignments. The Bank uses this type of contract for most assignments performed directly for the Bank and, where appropriate, encourages its use by borrowers. Payments are based on agreed time-based rates and subsistence allowances for staff (who are normally named in the contract) and on reimbursable items. The time-based rate, which is usually the man month, includes salary, social costs, firm's overhead, fee or profit and, usually, an overseas allowance. The contract price normally includes a contingency allowance to cover unforeseen work and price adjustments within an overall price ceiling.

Lump-Sum Contracts

3. Lump-sum contracts are mainly used on detailed engineering assignments, usually in the industrial sector. Contracts with payments based on an agreed lump sum differ from man month or cost-plus-fixed-fee contracts in that, once the lump sum is agreed, no matching of inputs to payments is required. Payments are normally made against some agreed time or progress schedule. Lump-sum contracts are normally negotiated on the basis of either estimated inputs of personnel and other items or on percentages which are customary norms for that particular type of work. The lump sum is then normally fixed for the life of the contract.

¹The term "man month" is standard usage in consultants' contracts, but staff may be men or women or both.

Percentage Contracts

4. Percentage contracts directly relate the cost of consulting services to project construction costs, and are similar to lump-sum contracts in that, once the percentage is agreed, no matching of inputs to payments is required. The contracts are negotiated on the basis of norms for the work and/or professional fee scales. This type of contract is common for architectural assignments and is also promoted by some professional engineering associations for engineering design.

5. The Bank discourages consulting contracts based on a percentage of the actual construction cost, as they are, in effect, open-ended and may discourage innovative, cost-reducing designs. The more acceptable basis is for the contract amount (or a major part of it) to be based on a percentage of estimated rather than actual cost, and for the contract to be treated as a lump-sum contract.

Cost-Plus-Fixed-Fee Contracts

6. Cost-plus-fixed-fee contracts are usually associated with preparation and commissioning work for industrial and process engineering projects. The costs are the costs of personnel and materials expected to be required by the engineering contractor to manage the work, and there is a fixed time schedule to complete the work. The fee is the amount negotiated between the firm and the borrower on the basis of technological knowledge and level of management inputs. The contract is similar to a man-month contract, except that the fee element is separated out and paid according to a schedule—or against progress targets. However, unlike the man-month contract, if the consultant and the client agree that additional personnel time is required to complete the assignment within the fixed time period, the consultant is normally only due the additional costs without any additional fee or profit.

Price Adjustment

7. Consulting firms' contracts should include provision for price adjustment. Price adjustment is normally required to adjust time-based rates to reflect personnel salary increases (or decreases) due to changes in cost of living in both the consultant's home country and the borrowing country. A price adjustment provision should normally be included in con-

tracts of over one year's duration. However, for relatively straightforward contracts of up to two years' duration, an estimate of the price adjustment may be made for the second year, and incorporated in the fixed rates to apply for the two-year period. Alternatively, and, for contracts of over two years' duration, provision should be made for an annual review and possible revision of the contract costs. Such revision should be based on appropriate official indices and/or acceptable documentary evidence. The calculated revision to man-month rates should normally incorporate both the appropriate indices for foreign and for local currency payments. Such revisions would normally apply to the entire man-month rate and to local subsistence and other appropriate costs. During contract negotiations, agreement should be reached on an equitable method of allowing for price adjustment, including the suitability of the proposed indices and formula to be used.

Contingency Allowance

8. A contingency allowance should be incorporated into the consultant's contract. The allowance should provide for the cost of unforeseen additional work and for any cost increases due to price adjustment. With respect to unforeseen work, the contingency allowance is for use at the borrower's discretion, and, can only be drawn upon by the firm with the agreement of the borrower. Including a contingency allowance may obviate difficulties otherwise experienced by borrowers in obtaining funds if additional work is required of the consulting firm. The contingency allowance should also cover any additional costs due to the application of the contractual provisions for price adjustment.

Payment Provisions

9. A clear understanding should be reached during negotiations on how and on what basis payments are to be made to the consulting firm. The Bank's practice, when contracting directly with consulting firms, is to pay against a schedule of monthly payments as agreed in the contract, thus assuring the firm that, as long as the work proceeds according to the contractual work program, and regardless of delays in processing invoices, the consulting firm receives a steady cash flow. Adjustments between invoices submitted and monthly payments paid are made from time to

time. A mobilization advance may be paid to consulting firms, but if paid before the consultant is on site, or if it is over 10 percent, the advance should be covered by a bank guarantee furnished by the consulting firm.

10. Payments should be made in accordance with contract provisions, which will normally specify the currencies and mode of payment. For a foreign consultant, either a portion will be paid into the consultant's home bank account or conversion into foreign currency will be allowed of a portion of the payments made in local currency, with provision made against a loss or gain to the consultant due to variation in exchange rates. The proposed payment and/or repatriation provisions should be thoroughly discussed and agreed with the competent authorities during negotiations. The amount of foreign currency to be paid or converted should not be less than that required by the consulting firm for expenditures outside the borrower's country and will normally include most expatriate staff and home office costs, including overhead and profit.

11. Payments to consulting firms may often be delayed for administrative reasons or because some invoice is in dispute. As consulting firms then have to borrow money at market rates, and as these borrowing costs will be reflected in the cost of the present contract or of future assignments, the Bank is concerned that payments be made promptly in accordance with the contract provisions. Four possible measures to assist in payments' being made on time are described below:

(i) *Procedure III Disbursement*¹

When consultants are financed through a Bank loan, the Bank can pay the consulting firm directly. The level of such payments will be tied to the disbursement percentage for consultants' services, as agreed between the Bank and the borrower, and as stipulated in the loan agreement. Adopting Procedure III (payment direct to supplier) may speed up the borrower's administrative approval process and make repatriation of funds from the project to the home country unnecessary.

¹ Described in "Guidelines for Withdrawal of Proceeds of World Bank Loans and IDA Credits."

(ii) *Only Disputed Amounts Withheld*

If only part of an invoice is in dispute, only this part should be withheld for further substantiation, with the remainder of the invoice paid in accordance with the contract.

(iii) *Discount on Early Payments*

A contract condition can be negotiated which will allow the borrower to receive a discount from the consulting firm on a payment made prior to the end of the period during which that payment was due.

(iv) *Interest on Overdue Payments*

The contract can provide that, if the consultant does not receive payments within the period allowed in the contract (usually 30-45 days from receipt of invoice), the consultant would be due interest on the delayed payment from the date of submission of the invoice.

Bonds, Performance Guarantees² and Retention

12. The Bank does not require, and normally recommends against, the provision of bonds and performance guarantees by consulting firms. Bid bonds serve little purpose, as competition is keen in the consulting business and frivolous proposals are rare. Also, price normally plays little part in the selection process and, in the event a proposal is withdrawn, the second-ranked firm can usually be invited to negotiate a contract with little or no financial loss to the borrower. Requesting bid bonds also increases the general cost of consulting services, as the cost of the bonds must eventually be recovered from the consultants' clients (including the Bank's borrowers). However, if bid bonds are required, these should be of such a nature that, during borrower/consultant negotiations, failure to reach agreement on the cost of the services would not be justification for calling the bond.

13. Performance guarantees for consulting assignments are also expensive and, with the exception of contracts with engineering firms discussed in Part IV, are difficult to obtain. They are usually not available to most developing country consultants, thus discriminating against the use of these consultants. If per-

² For performance guarantees with respect to engineering firms, see Part IV.

formance guarantees are required: (a) the cost of such guarantees should be included as an item in the total cost of the consultant's contract; and (b) the guarantees should not be of the unilateral "on call" variety, and access to them should be subject to adjudication or arbitration.

14. Similarly, the deduction of retention money from monthly payments is not appropriate, as this will increase the cost of the consulting services without necessarily influencing the day-to-day performance of the consultant. However, in order to retain a measure of control over adherence to the contract, the final payment due to the consultant may be retained until the assignment is completed satisfactorily and in accordance with the contract. However, the final payment should only be retained for non-performance of the contract and not because, for example, the recommendations of the consultant do not accord with the views of the borrower.

Professional Liability

15. Contracts with consultants should normally contain clauses specifying the type and terms of professional liability coverage to be maintained by them.