
Guidelines

Selection

and Employment

of Consultants

by World Bank

Borrowers

January 1997
Revised September 1997 and January 1999

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The World Bank
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Washington, D.C. 20433

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FOREWORD

i. These *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* (January 1997, revised September 1997 and January 1999) replace the 1981 *Guidelines: Use of Consultants by World Bank Borrowers and the World Bank as Executing Agency*. They take into account the following important developments, among others:

- (a) diversification of Bank lending to new sectors and the need to address the specific issues that apply to the use of consultants in these new areas;
- (b) Bank's continuing policy to promote the development and use of consultants in Borrower countries;
- (c) worldwide increased use of cost as a factor in the selection of consultants, in both the public and the private sectors;
- (d) increased emphasis on transparency in the selection process;
- (e) need for simplification of the selection and review process; and
- (f) the Bank's policy of entrusting the beneficiary with the selection of consultants funded by trust funds, with the Bank acting as executing agency only exceptionally.

ii. The basic principles underlying the procedures for selecting consultants financed under Bank operations remain the same: the overriding concern for quality of the services provided, with due attention to economy, efficiency, fair opportunity for all firms, and transparency of process.

I. INTRODUCTION

Purpose

1.1 The purpose of the *Guidelines: Selection and Employment of Consultants by World Bank Borrowers* (hereinafter referred to as "Guidelines") is to define the procedures for selecting, contracting, and monitoring consultants required for projects that are financed in whole or in part by loans from the International Bank for Reconstruction and Development (IBRD), credits from the International Development Association (IDA),¹ or grants from the Bank or trust funds² administered by the Bank and executed by the beneficiary.

1.2 The Loan Agreement governs the legal relationships between the Borrower and the Bank, and the Guidelines apply to the selection and employment of consultants for the project as provided in the Agreement. The rights and obligations of the Borrower³ and the consultant are governed by the specific Request for Proposals (RFP) issued by the Borrower and by the contract signed by the Borrower with the consultant, and not by these Guidelines or the Loan Agreement. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

1.3 For the purpose of these Guidelines, the term *consultants* includes a wide variety of private and public entities, including consulting

¹ Requirements of IBRD and IDA are identical. References in these Guidelines to *the Bank* include both *IBRD* and *IDA*, and references to *loans* include *credits and grants*. *Loan Agreement* includes Development Credit Agreement and Project Agreement.

² To the extent that the Trust Fund Agreement does not conflict with these provisions, in which case the Agreement will prevail.

³ In some cases, the Borrower acts only as an intermediary, and the project is carried out by another agency or entity. References in these Guidelines to the Borrower include such agencies and entities, as well as Sub-Borrowers under "onlending arrangements."

firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, United Nations (UN) agencies and other multinational organizations, investment and merchant banks, universities, research institutions, government agencies, nongovernmental organizations (NGOs), and individuals.⁴ Bank Borrowers use these organizations as *consultants* to help in a wide range of activities—such as policy advice; institutional reforms; management; engineering services; construction supervision; financial services; procurement services; social and environmental studies; and identification, preparation, and implementation of projects to complement Borrowers' capabilities in these areas.

General Considerations

1.4 The Borrower is responsible for preparing and implementing the project, and therefore for selecting the consultant, and awarding and subsequently administering the contract. While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, five main considerations guide the Bank's policy on the selection process:

- (a) the need for high-quality services,
- (b) the need for economy and efficiency,
- (c) the need to give qualified consultants from all eligible countries an opportunity to compete in providing the services financed by the Bank,
- (d) the Bank's interest in encouraging the development and use of national consultants in its developing member countries, and
- (e) the importance of transparency in the selection process.

1.5 The Bank considers that, in the majority of cases, these considerations can best be

⁴ Individual consultants are covered in Section V.

addressed through competition among qualified short-listed firms in which the selection is based both on the quality of the proposal and on the cost of the services to be provided. (Quality- and Cost-Based Selection [QCBS]). Section II of these Guidelines describes the procedures for QCBS. However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), as described in Section III, would be more appropriate. In addition, Section III describes other methods of selection and the circumstances in which they are appropriate.

1.6 The particular methods to be followed for the selection of consultants for any given project shall be selected by the Borrower in accordance with the criteria outlined in these Guidelines and agreed upon by the Bank and shall be specified in the Bank's project documentation and the Loan Agreement for such project.

Applicability of Guidelines

1.7 The consulting services to which these Guidelines apply are of an intellectual and advisory nature. These Guidelines do not apply to other types of services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, and satellite imagery).⁵

1.8 The procedures outlined in these Guidelines apply to all contracts for consulting

⁵ These latter services are bid and contracted on the basis of performance of measurable physical outputs and procured in accordance with *Guidelines: Procurement under IBRD Loans and IDA Credits* (January 1995, Revised January and August 1996, September 1997, and January 1999), referred to herein as the Procurement Guidelines.

services financed in whole or in part from Bank loans or grants or trust funds⁶ implemented by the beneficiary. In procuring consulting services not financed from such sources, the Borrower may adopt other procedures. In such cases, the Bank shall satisfy itself that (a) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications, (b) the selected consultant will carry out the assignment in accordance with the agreed schedule, and (c) the scope of the services is consistent with the needs of the project.

Conflict of Interest

1.9 Bank policy requires that consultants provide professional, objective, and impartial advice and at all times hold the client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Borrower. Without limitation on the generality of this rule, consultants shall not be hired under the circumstances set forth below:

- (a) A firm that has been engaged by the Borrower to provide goods or works for a project, and any of its affiliates, shall be disqualified from providing consulting services for the same project. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as further described in paragraph 3.10)

⁶ To the extent that the Trust Fund Agreement does not conflict with these provisions, in which case the Agreement will prevail.

for the same project. This provision does not apply to the various firms (consultants, contractors, or suppliers) that together are performing the contractor's obligations under a turnkey or design-and-build contract.

- (b) consultants or any of their affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets shall not purchase, nor advise purchasers of, such assets.

Eligibility

1.10 Only firms that are registered or incorporated in, and individuals and personnel who are nationals of, Bank member countries⁷ are eligible to compete for Bank-financed consulting services. However,

- (a) Consultants from a member country may be excluded if (i) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the procurement of the consulting services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any payments to persons or entities in that country.

⁷ See Section 5.01 of the General Conditions Applicable to Loan and Guarantee Agreements, dated January 1, 1985. The Bank maintains a list of countries from which bidders, goods, and services are not eligible to participate in procurement financed by the Bank. The list is regularly updated and can be obtained from the Public Information Center of the World Bank.

- (b) Government-owned enterprises in the Borrower's country may participate only if they can establish that they (i) are legally and financially autonomous and (ii) operate under commercial law. No dependent agency of the Borrower or Sub-Borrower of the project or their employees shall be permitted to submit or participate in a proposal for the provision of consulting services under the project.

Advance Contracting and Retroactive Financing

1.11 In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's agreement, wish to proceed with the selection of consultants before the related Bank loan is signed. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and the Bank's normal review process shall be followed. A Borrower undertakes such advance contracting at its own risk, and any "no objection" issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

Associations between Consultants

1.12 Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The "association" may take the form of a joint venture or of a subconsultancy. In case of a joint venture,

all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the short list is finalized, and Requests for Proposals (RFPs) are issued, any association in the form of joint venture or subconsultancy among short-listed firms shall be permissible only with the approval of the Borrower. Borrowers shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

Bank Review, Assistance, and Monitoring

1.13 The Bank reviews the Borrower's hiring of consultants to satisfy itself that the selection process is carried out in accordance with the provisions of the Loan Agreement. (The review procedures are described in Appendix 1.)

1.14 Under special circumstances, the Bank may assist the Borrower in any or all of the various steps of the selection process, such as the provision of short lists⁸ or long lists.⁹ In response to a written request from a Borrower, the Bank will furnish a short or long list of firms that it expects to be capable of undertaking the assignment. The provision of the list does not represent an endorsement of the consultants. The Borrower may delete or add other names as it wishes; however, the final short list shall be submitted to the Bank for its approval before issue of the RFP.

1.15 The Bank maintains an information system on consultants—DAta on CONsultants (DACON). Registration in DACON is not mandatory to be considered for a Bank-financed assignment, nor is DACON a list of preapproved consultants. When firms register with DACON, they provide information that may be useful to Borrowers and the Bank in the preparation of short lists and review of qualifications of firms

⁸ Short List: a list of three to six firms to which the Request for Proposals (RFP) will be addressed.

⁹ Long List: a preliminary list of potential firms from which the short list will be established.

proposed by Borrowers. The Bank does not verify or endorse the information provided. The Bank provides this information to member governments, UN agencies, and other public international bodies upon request, without any charge for the Borrowers and at a cost to others. The Bank may, with the consent of the firms, also provide nonconfidential information to other consultants interested in seeking associates or partners for assignments.

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

Reserved Consultant Services

1.17 If a competitive process under these Guidelines would be the appropriate way of procuring certain consulting services, but the Borrower wishes to reserve these services for one or more specific firms, the Bank may accept such reserved selection only on condition that:

- (a) the assignment is not eligible for financing out of the Bank loan; and
- (b) it will not significantly affect the satisfactory project implementation in terms of cost, quality, and completion time.

Misprocurement

1.18 The Bank shall not finance expenditures for consulting services if the consultants have not been selected or the services have not been contracted in accordance with the agreed procedures in the Loan Agreement. In particular, the Bank will not finance a contract when the qualifications of the consultant or the terms and conditions of the contract are not satisfactory to the Bank. In such cases, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the loan allocated to the services that have been misprocured. The Bank may, in addition, exercise other remedies under the Loan Agreement. Once the contract is awarded after obtaining a "no objection" from the Bank, the Bank may still declare misprocurement if it concludes that the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower.

References to the Bank

1.19 The Borrower shall use the following language¹⁰ when referring to the Bank in the RFP and contract documents:

"[Name of the Borrower] has received [or, 'has applied for'] a loan from the International Bank for Reconstruction and Development (IBRD) in various currencies equivalent to US\$____, toward the cost of [name of project], and intends to apply a portion of this loan to eligible payments under this Contract. Payments by IBRD will be made only at the request of [name of Borrower or designate] and upon approval by IBRD, and will be subject, in all respects, to the terms and conditions of the Loan Agreement. The Loan Agreement prohibits a withdrawal from the Loan Account for the purpose of any payment to persons or entities, or for any import of

¹⁰ To be suitably modified in the case of a credit from IDA or a grant or a trust fund.

goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than *[name of Borrower]* shall derive any rights from the Loan Agreement or have any claim to proceeds.”

Training or Transfer of Knowledge

1.20 If the assignment includes an important component for training or transfer of knowledge to Borrower staff or national consultants, the Terms of Reference (TOR) shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the consultant’s contract and in the budget for the assignment.

Language

1.21 The RFP and the proposal shall be prepared in English, French, or Spanish at the choice of the Borrower. The text of the contract documents in that language shall govern.

1.22 The Borrower may, at its option and provided the national language is widely used, permit national consultants (excluding joint ventures between foreign and national firms) to submit their proposals and sign their contracts in the national language only, which shall then be the governing language for the contract. In such cases, the Bank shall be provided a translation of the firm’s proposal and the contract in the international language specified in the RFP for contracts subject to prior review. Borrowers shall not ask firms to sign contracts both in a foreign and in the national language.

Evaluation of the Performance of Consultants

1.23 Consultants shall observe due diligence and prevailing standards in the performance of the assignment. The Bank shall evaluate the performance of consultants employed under Bank-financed contracts in a fair and confidential process. The performance ratings will be an input for future short-listing. In the case of repeated poor performance, the firm will be notified and provided an opportunity to explain the reasons for it and the remedial action proposed. If poor performance persists, the Bank may exclude the firm from participation in Bank-financed assignments for a stated period.

1.24 Consultants shall be responsible for the accuracy and suitability of their work. Although Borrowers supervise and review the consultants' work, no modifications shall be made in the final documents prepared by the consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of adviser to the client with little authority to make decisions.¹¹

Fraud and Corruption

1.25 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as consultants under Bank-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting

¹¹ Care should be taken to ensure that the provisions about the consultant's authority in the consultant's contract and in the works contract are properly coordinated.

of any thing of value to influence the action of a public official in the selection process or in contract execution; and

- (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition;
- (b) will reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;
- (c) will cancel the portion of the loan allocated to the consultant's contract if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the loan during the selection process or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
- (d) will declare a consultant ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract; and
- (e) will have the right to require that, in contracts financed by a Bank loan, a provision be included requiring consultants to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank.

1.26 With the specific agreement of the Bank, a Borrower may introduce, into the RFPs for large contracts financed by the Bank, a requirement that the consultant include in the proposal an

undertaking of the consultant to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFPs.¹² The Bank will accept the introduction of such a requirement at the request of the Borrower's country, provided it is satisfied:

- (a) that the requirement of such an undertaking is part of an anticorruption program initiated by the Borrower's country; and
- (b) that such requirement will apply, within a timetable agreed between the Bank and the Borrower's country, to all similar public selections of consultants."

¹² As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will observe the laws against fraud and corruption in force in the country of the Client, as such laws have been listed by the Client in the RFP for this contract."

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

The Selection Process

2.1 QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2 The selection process shall include the following steps:

- (a) preparation of Terms of Reference (TOR);
- (b) preparation of cost estimate and the budget;
- (c) advertising;
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the Request for Proposals (RFP);
 - (i) Letter of Invitation (LOI);
 - (ii) Information to consultants (ITC);
 - (iii) proposed contract;
- (f) receipt of proposals;
- (g) evaluation of technical proposals: consideration of quality;
- (h) evaluation of financial proposal;
- (i) final evaluation of quality and cost; and
- (j) negotiations and award of the contract to the selected firm.

Terms of Reference (TOR)

2.3 The Borrower shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by a person(s) or a firm

specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Borrower's and consultants' respective responsibilities should be clearly defined in the TOR.

Cost Estimate (Budget)

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

Advertising

2.5 To obtain expressions of interest, the Borrower shall include a list of expected consulting assignments in the General Procurement Notice, which shall be updated annually for all

outstanding procurement.¹³ It shall also advertise large-value¹⁴ contracts in a national newspaper and in *Development Business (UNDB)*. In addition, Borrowers may also advertise these contracts in an international newspaper or a technical magazine, seeking “expressions of interest.” A copy of the advertisement shall be sent to those who expressed interest in response to the GPN. The Borrower may also contact embassies, professional organizations, or firms that it knows or that are registered in DACON.¹⁵ The information requested shall be the minimum required to make a judgment on the firm’s suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than 30 days) shall be provided for responses before preparation of the short list.

Short List of Consultants

2.6 The Borrower is responsible for preparation of the short list. The Borrower shall give first consideration to those firms expressing interest that possess the relevant qualifications. Short lists shall comprise three to six firms with a wide geographic spread, with no more than two firms from any one country and at least one firm from a developing country, unless qualified firms from developing countries are not identifiable. For the purpose of establishing the short list, the nationality of a firm is that of the country in which it is registered or incorporated. The Bank may ask the Borrower to expand or reduce a short list; however, once the Bank has issued a “no objection” to a short list, the Borrower shall not add or delete names without the Bank’s concurrence. Firms that expressed interest, as well as any other firm that

¹³ The General Procurement Notice is prepared by the Borrower and submitted to the Bank, which will arrange for its publication in *United Nations Development Business (UNDB)* (refer to Appendix 4, paragraph 5).

¹⁴ Contracts expected to cost more than US\$200,000 equivalent.

¹⁵ See paragraph 1.15.

specifically so requests, shall be provided the final short list of firms.

2.7 The short list may comprise entirely national consultants (firms with majority national ownership and registered or incorporated in the country), if the assignment is small,¹⁶ a sufficient number of qualified firms (at least three) are available at competitive costs, and competition including foreign consultants is prima facie not justified. However, if foreign firms have expressed interest, they shall not be excluded from consideration.

Preparation and Issuance of the Request for Proposals (RFP)

2.8 The RFP shall include (a) a Letter of Invitation, (b) Information to consultants, (c) the TOR, and (d) the proposed contract. Whenever possible, Borrowers shall use one of the standard RFPs issued by the Bank. Borrowers shall list all the documents included in the RFP.

Letter of Invitation (LOI)

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

Information to Consultants (ITC)

2.10 The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall not indicate the budget (since cost is a selection criterion), but shall indicate the expected input of key

¹⁶ Dollar thresholds defining "small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not in any case exceed US\$200,000.

professionals (staff time), consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period (normally 60–90 days). A detailed list of the information that should be included in the ITC is given in Appendix 2.

Contract

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

Receipt of Proposals

2.12 The Borrower shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarifications about the information provided in the RFP. The Borrower shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the Borrower shall extend the deadline for submission of proposals. The technical and financial proposals shall be

submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly. Any proposal received after the closing time for submission of proposals shall be returned unopened.

Evaluation of Proposals: Consideration of Quality and Cost

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

Evaluation of the Quality

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

Consultant's specific experience:	5 to 10 points
Methodology:	20 to 50 points
Key personnel:	30 to 60 points
Transfer of knowledge: ¹⁷	0 to 10 points
Participation by nationals: ¹⁸	0 to 10 points
Total:	100 points

2.15 The Borrower shall normally divide these criteria into subcriteria. For example, subcriteria under methodology might be *innovation* and *level of detail*. However, the number of subcriteria should be kept to the essential. The Bank recommends against the use of exceedingly detailed lists of subcriteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.16 Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Borrower shall review the qualifications and experience of proposed key personnel in their *curricula vitae*, which must be accurate, complete, and signed by an authorized official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to

¹⁷ Transfer of knowledge may be the main objective of some assignments; in such cases, it should be given a higher weight to reflect its importance.

¹⁸ As reflected by nationals among key staff presented by foreign and national firms.

conduct interviews. The individuals shall be rated in the following three subcriteria, as relevant to the task:

- (a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;
- (b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
- (c) experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.17 Borrowers shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.18 At the end of the process, the Borrower shall prepare an evaluation report of the "quality" of the proposals. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

Evaluation of Cost

2.19 After the evaluation of quality is completed, the Borrower shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and TOR, indicating that their financial proposals will be returned unopened after completing the selection process. The Borrower shall simultaneously notify the consultants that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals. The opening date shall not be sooner than two

weeks after the notification date. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend. The name of the consultant, the quality scores, and the proposed prices shall be read aloud and recorded when the financial proposals are opened, and a copy of this record shall be promptly sent to the Bank. The Borrower shall prepare the minutes of the public opening.

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

2.21 For the purpose of evaluation, "cost" shall exclude local taxes, but shall include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

Combined Quality and Cost Evaluation

2.22 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 in the range of 10 to 20 points, but in no case shall exceed 30 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

Negotiations and Award of Contract

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

2.24 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.¹⁹ If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.25 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. Proposed unit rates for staff-months and reimbursables shall not be negotiated, since these have already been a factor of selection in the cost

¹⁹ Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.

of the proposal, unless there are exceptional reasons.

2.26 If the negotiations fail to result in an acceptable contract, the Borrower shall terminate the negotiations and invite the next ranked firm for negotiations. The Borrower shall consult with the Bank prior to taking this step. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Borrower shall not reopen the earlier negotiations. After negotiations are successfully completed, the Borrower shall promptly notify other firms on the short list that they were unsuccessful.

Rejection of All Proposals, and Reinvitation

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

Confidentiality

2.28 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 award of contract is notified to the successful firm, except as provided in paragraph 2.19.

III. OTHER METHODS OF SELECTION

General

3.1 In some circumstances, QCBS is not the most appropriate method for selecting consultants, and other methods are more appropriate. The particular selection methods and the type of services to which they apply are determined by agreement between the Bank and the Borrower and are specified in the Loan Agreement. This section describes other selection methods and the circumstances under which they are generally appropriate. In respect to advertisement and preparation of the short list, the relevant provisions of Section II (QCBS) shall apply whenever competition is used.

Quality-Based Selection (QBS)

3.2 QBS is appropriate for the following types of assignments:

- (a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multisectoral 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 not provide the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only and that consultants shall be free to propose their own estimates.

3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS (paragraphs 2.13–2.18), 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 and the contract. All other aspects of the selection process shall be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS (paragraph 2.12) to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection under a Fixed Budget

3.5 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price envelopes shall be opened in public. 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 (paragraphs 2.13–2.19 and 2.23–2.25).

Least-Cost Selection

3.6 This method is more appropriate to selection of 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 and in which the contract amount is small.²⁰ 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 envelopes are opened first and evaluated. Those securing less than the minimum are rejected, and the financial envelopes of the rest are opened in public. The firm with the lowest price shall then be selected. Under this method, the qualifying minimum mark shall be established, keeping in view that all proposals above the minimum compete only on “cost.” The minimum mark shall be stated in the RFP.

Selection Based on Consultants’ Qualifications

3.7 This method may be used for very small²¹ assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the Borrower shall prepare the TOR, request expressions of interest and information on the consultants’ experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

²⁰ See footnote 16.

²¹ Dollar thresholds defining “very small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not in any case exceed US\$100,000.

Single-Source Selection

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 opportunity to consultants from all member countries to the extent possible.

3.9 Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph), (b) where a rapid selection is essential (for example, in an emergency operation), (c) for very small²² assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

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 should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Borrower shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the Borrower, which shall then be negotiated.

3.11 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the

²² See footnote 21.

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.

Commercial Practices

3.12 In the case of loans lent by a financial intermediary to private sector enterprises or autonomous commercial enterprises in the public sector, the Sub-Borrower may follow well-established private sector or commercial practices acceptable to the Bank. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments.

Selection of Particular Types of Consultants

3.13 *Selection of UN Agencies as Consultants.* UN agencies may be hired as the consultants, where they are qualified to provide technical assistance and advice in their area of expertise. However, they shall not receive any preferential treatment in a competitive selection process, except that Borrowers may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the Bank. Such privileges, as well as other advantages such as tax exemption and other facilities, and special payment provisions, shall be evaluated and neutralized in the cost comparison. UN agencies may be hired on a single-source selection basis if the criteria outlined in Section 3.9 are fulfilled.

3.14 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local

issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Borrower and the Bank are satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely NGOs. If so, the QCBS procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in Section 3.9 are fulfilled.

3.15 *Procurement Agents (PAs)*. When a Borrower lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. PAs are generally paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. Such PAs shall be selected using QCBS procedures with cost being given a weight up to 50 percent. The standard contract form²³ applicable for procurement agencies, with payments based on a percentage of the total procurements and/or staff-month rates, shall be used. When PAs provide only advisory services for procurement and do not act as “agents” and are not paid a percentage fee at all, they shall be selected following the appropriate procedures as for other consulting assignments, specified in these Guidelines.

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

²³ Under preparation.

percentage of the value of goods inspected and certified.

3.17 *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 as a percentage of a predisclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in paragraph 2.22 or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP shall specify clearly how proposals will be presented and how they will be compared.

3.18 *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.

3.19 *“Service Delivery Contractors.”* Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, such as nurses and paramedics). The job descriptions, minimum qualifications,

terms of employment, selection procedures, and the extent of Bank review of these procedures and documents shall be described in the project documentation and the Loan Agreement.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

Types of Contracts

4.1 *Lump Sum (Firm Fixed Price) Contract.*²⁴

Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.

4.2 *Time-Based Contract.*²⁵ This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and

²⁴ Standard form of *Contract for Consultants' Services (Lump Sum Remuneration)*.

²⁵ Standard form of *Contract for Consultants' Services (Complex Time-Based Assignments)*.

duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

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

4.4 *Percentage Contract.* These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

4.5 *Indefinite Delivery Contract (Price Agreement).* These contracts are used when Borrowers need to have "on call" specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain "advisers" for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The Borrower and the firm agree on the unit

rates to be paid for the experts, and payments are made on the basis of the time actually used.

Important Provisions

4.6 *Currency.* RFPs shall clearly state that firms may express the price for their services, in the currency of any Bank member country.²⁶ 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 in the currency of the Borrower's country. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

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

4.8 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures,²⁷ shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for example, for mobilization costs) exceeding 10 percent of the contract amount must normally be backed by advance payment securities.

4.9 Payments shall be made promptly in accordance with the contract provisions. To that end,

²⁶ Until December 31, 2001, the price of the services may also be expressed in the former national currencies of the member countries of the European Monetary Union (the Austrian schilling, Belgian franc, Finnish markka, French franc, Deutsche mark, Irish pound, Italian lira, Luxembourg franc, Netherlands guilder, Portuguese escudo, and Spanish peseta). On January 1, 1999, the euro was substituted for these currencies. From that date these currencies were irrevocably fixed vis-à-vis the euro. Until December 31, 2001, these currencies remain in existence as nondecimal subdenominations of the euro.

²⁷ Refer to Appendix 3.

- (a) consultants can be paid directly by the Bank at the request of the Borrower or exceptionally through a Letter of Credit (see Appendix 3);
- (b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and
- (c) the contract shall provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

4.10 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the Borrower.

4.11 *Borrower's Contribution.* The Borrower normally assigns 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 some 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 activities that conflict with the interest of the client under the contract and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract.

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 the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher;²⁸ and (c) any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

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

4.15 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration. The Bank shall not be named an arbitrator or be asked to name an arbitrator.²⁹

²⁸ The Borrower is encouraged to secure insurance for potential risks above these limits.

²⁹ 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 are normally employed on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2 Individual consultants are selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the Borrower. Individuals employed by Borrowers shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

5.3 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply to the parent firm.

**REVIEW BY THE BANK
OF THE SELECTION
OF CONSULTANTS**

Scheduling the Selection Process

1. The Bank shall review the selection process for the hiring of consultants proposed by the Borrower, including the cost estimate, the contract packaging, applicable procedures, the short list, selection criteria, and so forth, for its conformity with these Guidelines and the proposed implementation program and disbursement schedule. The Borrower shall promptly inform the Bank of any delay, or other changes in the scheduling of the hiring process, that could significantly affect the timely and successful implementation of the project, and agree with the Bank on corrective measures.

Prior Review

2. With respect to all contracts that, in accordance with the Loan Agreement, are made subject to the Bank's prior review:

(a) Before inviting proposals, the Borrower shall furnish to the Bank for its review the short list and the proposed RFP and shall make such modifications to the short list and the documents as the Bank shall reasonably request. Any further modification shall require the Bank's "no objection" before the RFP is issued to the short-listed consultants.

After the technical proposals have been evaluated, the Borrower shall furnish to the Bank, in sufficient time for its review, a technical evaluation report (prepared, if the Bank shall so request, by experts acceptable to the Bank) and a copy of the proposals, if requested by the Bank. If the Bank determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination. The Borrower shall request the

Bank's "no objection" if the evaluation report recommends rejection of all proposals.

For contracts below the threshold specified in the Loan Agreement, the Borrower will notify the Bank of the results of the technical evaluation prior to opening the financial proposals.

- (b) After receiving the Bank's "no objection" to the technical evaluation, the Borrower shall proceed with opening of the financial envelopes and then with the financial evaluation in accordance with the provisions of the RFP. The Borrower shall furnish to the Bank, in sufficient time for its review, the final evaluation report along with its proposed selection of the winning firm. If the Bank determines that the evaluation and proposed selection are inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination. If not, the Bank shall advise its "no objection" to the proposed selection.
- (c) After negotiations with the selected firm are completed, the Borrower shall furnish to the Bank the final draft of the contract, highlighting any substitution of key staff or changes in the TOR and contract on which proposals were invited. The terms and conditions of the contract shall not, without the Bank's "no objection," substantially differ from those on which proposals were invited. The Borrower shall award the contract only after receiving the "no objection" from the Bank.
- (d) Upon signing of the contract, the Borrower shall furnish to the Bank a copy of the final contract prior to the first application for disbursement in respect of such contract.
- (e) The description and amount of the contract, together with the name and

address of the firm, shall be subject to release by the Bank upon confirmation by the Borrower of contract award.

Modifications of Contract

3. Before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, the Borrower shall inform the Bank of the proposed extension, modification, substitution, waiver, or change, and the reasons therefor. If the Bank determines that the proposal would be inconsistent with the provisions of the Loan Agreement, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank for its record.

Post Review

4. With respect to each contract not governed by paragraph 2, the Borrower shall furnish to the Bank, promptly after its signing and prior to delivery to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract, one conformed copy of such contract, together with the analysis of the respective proposals, recommendations for award, and such other information as the Bank shall reasonably request. Where payments for the contract are to be made out of a Special Account,³⁹ a copy of the contract, together with the other information required to be furnished to the Bank, shall be furnished to the Bank prior to delivery to the Bank of the first replenishment application in respect of such contract. The Bank shall, if it determines that the award of the contract or the contract itself is not consistent

³⁹ Refer to Appendix 3.

with the Loan Agreement, promptly inform the Borrower and state the reasons for such determination. These provisions shall not apply to contracts on account of which withdrawals from the loan are to be made on the basis of Statements of Expenditures,³¹ for which case all such documents shall be retained by the Borrower for subsequent examination by independent auditors or by the Bank's supervision missions.

Translations

5. If a contract is subject to prior review and if national firms were permitted to submit a proposal in the national language, a certified translation of the proposal, evaluation report, and the draft contract in English, French, or Spanish shall be furnished to the Bank for facilitating the review. Such certified translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

³¹ Refer to Appendix 3.

INFORMATION TO CONSULTANTS (ITC)

These Guidelines specify that whenever possible, the Borrower shall use the standard RFPs issued by the Bank, which include the ITC, covering the majority of assignments. If under exceptional circumstances, the Borrower needs to amend the standard ITC, it shall do so through the technical data sheet and not by amending the main text. The ITC shall include adequate information on the following aspects of the assignment:

- (a) a very brief description of the assignment;
- (b) standard formats for the technical and financial proposals;
- (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- (d) details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; and (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;
- (e) an estimate of the level of key staff inputs (in staff-months) required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
- (f) details and status of any external financing;
- (g) information on negotiations; and financial and other information that shall be

- required of the selected firm during negotiation of the contract;
- (h) the deadline for submission of proposals;
 - (i) currency(ies) in which the costs of services shall be expressed, compared, and paid;
 - (j) reference to any laws of the Borrower's country that may be particularly relevant to the proposed consultants' contract;
 - (k) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the Bank's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
 - (l) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
 - (m) a request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs the Borrower whether or not it will be submitting a proposal;
 - (n) the short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;
 - (o) the period for which the consultants' proposals shall be held valid (normally 60–90 days) and during which the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;

- (p) the anticipated date on which the selected consultant shall be expected to commence the assignment;
- (q) a statement indicating (i) whether or not the consultants' contract and personnel shall be tax-free or not; if not, (ii) what the likely tax burden will be or where this information can be obtained and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- (r) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Borrower;
- (s) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (t) the procedure to handle clarifications about the information given in the RFP; and
- (u) any conditions for subcontracting part of the assignment.

DISBURSEMENTS

1. The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from a Bank loan only as expenditures are incurred. Disbursements of the proceeds of a loan or a grant are made only at the Borrower's request. Supporting evidence that the funds are used in accordance with the Loan Agreement (or the Trust Fund Agreement) shall be submitted with the Borrower's withdrawal application. Payments may be made (a) to reimburse the Borrower for payments already made from its own resources, (b) directly to a third party (to the consultant), or (c) to a commercial bank for expenditures against a World Bank Special Commitment covering a commercial bank's letter of credit (a procedure that is exceptional in the case of consultants).

2. When disbursement documentation³² would otherwise be cumbersome or voluminous (for example, payments against small consultant contracts or purchase orders), Borrowers may be reimbursed upon presentation of Statements of Expenditures (SOEs), using a simple form with details of the expenditures, and retain the actual supporting documentation in the field for subsequent examination by independent auditors and the Bank's supervision missions.

3. Special Accounts (SAs) are revolving accounts funded with an advance from a Bank loan for use by the Borrower exclusively to cover the Bank's share of eligible expenses in both local and foreign currencies. The primary objective of the SA is to help the Borrower overcome cash flow problems and speed disbursements. The

³² Refer to the *Disbursement Handbook*, which provides a complete description of disbursement procedures.

Borrower makes payments from the account to consultants and others when the payments are due. The Bank replenishes the SA regularly upon receipt of a withdrawal application with appropriate supporting documentation from the Borrower. Toward the end of loan disbursements, the Bank initiates a recovery procedure to obtain full documentation for the amount of the outstanding advance.

4. The Loan Agreement and the disbursement letter outline the disbursement procedures to be followed for the loan, including retroactive financing provisions, items eligible for disbursement under the SOE procedure, requirements for the operation of an SA, and a minimum application value. The minimum application value varies among loans, depending on the size of the loan and the nature of the project. When there is an SA, the minimum value is generally between 10 percent and 33 percent of the total advanced to the SA. The method of payment specified in the RFP shall take into account the disbursement procedures applicable to the loan.

5. A complete description of the Bank's disbursement procedures is provided in the *Disbursement Handbook*.

GUIDANCE TO CONSULTANTS

Purpose

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

Responsibility for Selection of Consultants

2. As emphasized in paragraph 1.4 of these Guidelines, the Borrower is responsible for the selection and employment of consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is between the Borrower and the Consultant. The Bank is not a party to the contract.

Bank's Role

3. As stated in these Guidelines (Appendix 1) the Bank reviews the RFP, the evaluation of proposals, award recommendations, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. Except for small contracts (below dollar thresholds specified in each Loan Agreement), the Bank reviews the documents before they are issued, as described in Appendix 1. Also, if at any time in the selection process (even after the award of contract) the Bank concludes that the agreed procedures were not followed in any substantial respect, the Bank may declare misprocurement, as described in paragraph 1.18. However, if a Borrower has awarded a contract after obtaining the Bank's "no objection," the Bank will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that corrupt or fraudulent practices were engaged in by

representatives of the Borrower or of the consultant, the Bank may impose the applicable sanctions set forth in paragraph 1.25 of the Guidelines.

4. The Bank publishes standard RFPs and contracts for different types of consulting services. As stated in paragraphs 2.8 and 2.11 of these Guidelines, it is mandatory for the Borrower to use these documents, with minimum changes acceptable to the Bank to address country- and project-specific issues. The Borrower finalizes and issues these documents as part of the RFP.

Information on Consultant Services

5. Information on consultant services, including a brief description of the nature of services, timing, estimated cost, staff-month, and so forth, will be, in the first instance, included in the Project Information Document (PID), which describes projects under preparation. At the same time, similar information will also be included in the description of each project in the Monthly Operational Summary (MOS). Such information will be continuously updated. Each project requires the publication of a General Procurement Notice in the *United Nations Development Business* (UNDB)³³ (updated annually for all outstanding procurement), which will include a more detailed description of the required services, the client agency, and the budgeted cost. In the case of large-value contracts,³⁴ this will be followed by a specific notice seeking "expression of interest" in the national press and UNDB. The project documentation will provide yet more detailed information.

6. The PID is available on the Internet and from the Public Information

³³ UNDB is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA. A UNDB office is maintained at the World Bank; see address below.

³⁴ Contracts expected to cost more than US\$200,000 equivalent.

Center (PIC)³⁵ in the Bank. The project documentation is available after the loan is approved. The UNDB, which includes the MOS, is available on subscription.

Consultants' Role

7. When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the country of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents—especially in the selection procedure and evaluation criteria—any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the Borrower, in writing, within the period specified in the RFP for seeking clarifications.

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

9. Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key staff submitted with the proposals. The *curricula vitae* shall be signed by the consultants and the individuals and dated. Noncompliance with important requirements will result in rejection of the proposal. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, the key staff, and so forth. Similarly,

³⁵ The Public Information Center address is also the World Bank address: 1818 H Street, N.W., Washington, D.C., 20433, U.S.A.

once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP.

Confidentiality

10. As stated in paragraph 2.28, the process of proposal evaluation shall be confidential until the contract award is notified to the successful firm. Confidentiality enables the Borrower and the Bank's reviewers to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the Borrower, the Bank, or both, they should do so in writing.

Action by the Bank

11. If consultants wish to raise issues or questions about the selection process, they may send the Bank copies of their communications with the Borrower, or they may write to the Bank directly when the Borrower does not respond promptly or when the communication is a complaint against the Borrower. All such communications should be addressed to the chief of the division for the relevant sector for the borrowing country, with a copy to the Regional Procurement Adviser.

12. References received by the Bank from short-listed consultants prior to the closing date for submission of the proposal shall be, if appropriate, referred to the Borrower with the Bank's comments and advice, for action or response.

13. Communications that the Bank receives from consultants after the opening of the technical proposals shall be handled as follows. In the case of contracts not subject to prior review by the Bank, any communication shall be sent to the Borrower for due consideration and appropriate action. The Borrower's response shall be reviewed during subsequent supervision of the

project by the Bank staff. In the case of contracts subject to prior review, the Bank shall examine the communication, in consultation with the Borrower, and if it needs additional information, shall request it from the Borrower. If additional information or clarification is required from the consultant, the Bank shall ask the Borrower to obtain it and comment on or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered.

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

Debriefing

15. If after notification of award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the Borrower. If the consultant is not satisfied with the explanation given and wishes to seek a meeting with the Bank, it may address the Regional Procurement Adviser for the borrowing country, who will arrange a meeting at the appropriate level and with the relevant staff. In this discussion, only the consultant's proposal can be discussed and not the proposals of competitors.

