

## Section 2. Instructions to Consultants

This Section 2 - Instructions to Consultants shall not be modified. Any necessary changes, acceptable to the ADB, to address specific country and project issues, shall be introduced only through the Data Sheet (e.g., by adding new reference paragraphs).

### Definitions

- (a) “ADB” means Asian Development Bank.
- (b) “Borrower” means the Government and includes the executing agency or the implementing agency.
- (c) “Client” means the agency with which the selected Consultant signs the Contract for the Services.
- (d) “Client’s Country” means the country of the Borrower as indicated on the Data Sheet.
- (e) “Consultant” means any private or public entity including a Joint Venture that will provide the Services to the Client under the Contract.
- (f) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is the General Conditions (GC), the Special Conditions (SC) by which the GC may be amended or supplemented, and the Appendices.
- (g) “CQS” means Consultant’s Qualification Selection.
- (h) “Data Sheet” means such part of the Instructions to Consultants used to reflect specific country and assignment conditions.
- (i) “Day” means calendar day.
- (j) “FBS” means Fixed Budget Selection.
- (k) “Government” means the government of the Client’s Country.
- (l) “Instructions to Consultants” (Section 2 of the RFP) means the document which provides shortlisted Consultants with all information needed to prepare their Proposals.
- (m) “Joint Venture” means a Consultant which comprises two or more Partners each of whom will be jointly and severally liable to the Client for all the Consultant’s obligations under the Contract.
- (n) “LCS” means Least Cost Selection.

- (o) “Partner” means any of the entities that make up the Joint Venture; and Partners means all those entities.
- (p) “Personnel” means qualified persons provided by the Consultant and assigned to perform the Services or any part thereof; “International Personnel” means such qualified persons who are citizens of an ADB member country; “National Personnel” means such qualified persons who are citizens of the Client’s country.
- (q) “Proposal” means a technical proposal or a financial proposal, or both.
- (r) “QBS” means Quality-Based Selection.
- (s) “QCBS” means Quality- and Cost-Based Selection.
- (t) “RFP” means this Request for Proposal.
- (u) “Services” means the work to be performed pursuant to the Contract.
- (v) “SSS” means Single Source Selection.
- (w) “Standard Electronic Means” includes facsimile and email transmissions.
- (x) “Sub-Consultant” means any person or entity with whom the Consultant associates for performance of any part of the Services and for whom the Consultant is fully responsible.
- (y) “Terms of Reference” (TOR) means the document included in the RFP as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

## **1. Introduction**

- 1.1 The Client named in the Data Sheet will select a consulting firm/organization (the Consultant) from those listed in the Letter of Invitation, in accordance with the method of selection specified in the Data Sheet.
- 1.2 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal, or a Technical Proposal only, as specified in the Data Sheet, for consulting services required for the assignment named in the Data Sheet. The Proposal will be the basis for contract negotiations and ultimately for a signed Contract with the selected Consultants.

- 1.3 Consultants should familiarize themselves with local conditions relevant to the Services and take them into account in preparing their Proposals. To obtain first-hand information on the assignment and local conditions, Consultants are encouraged to visit the Client before submitting a proposal and to attend a pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. Consultants should contact the Client's representative named in the Data Sheet to arrange for their visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.4 The Client will provide at no cost to the Consultants the inputs and facilities specified in the Data Sheet, assist the firm in obtaining licenses and permits needed to carry out the Services, and make available relevant project data and reports.
- 1.5 Consultants shall bear all costs associated with the preparation and submission of their proposals and contract negotiation. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultants.

**Conflict of Interest**

- 1.6.1 The ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations and that such conflict of interest may contribute to or constitute a prohibited practice under the ADB's Anticorruption Policy. In pursuance of the Anticorruption Policy's requirement that borrowers of ADB loans (including beneficiaries of ADB-financed or administered activity) as well as consultants under ADB-financed or administered contracts, observe the highest standard of ethics, the ADB will take appropriate actions to manage such conflicts of interest including withdrawal of this RFP, and/or any shortlisting of a particular firm or firms in relation thereto or termination of a resulting contract if it determines that a conflict of interest has flawed the integrity of the consultant selection or engagement or in the performance of the Services.
- 1.6.2 Without limitation on the generality of the foregoing, Consultants shall not be recruited under the circumstances set forth below:
  - (a) Conflict between consulting activities and procurement of goods, works or services: Consultants or Sub-Consultants that have been engaged by the Client to provide goods, works or services for a project shall be disqualified from

providing consulting services related to such project. Conversely, a consulting firm or individual consultant hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods, works or services resulting from or directly related to the firm's or individual consultant's services for such preparation or implementation.

- (b) Consulting firms or individual consultants shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the firm or individual. As an example, consulting firms or individual consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and consulting firms or individual consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, consultants hired to prepare TOR for an assignment shall not be hired for the assignment in question.
- (c) Relationship with borrower's staff. Consultants or Sub-Consultants that have a business or family relationship with a borrower staff member or with a borrower's staff who are directly or indirectly involved in any part of (i) the preparation of the TOR of the Contract, (ii) the recruitment process for such Contract., or (iii) supervision of such contract may not be awarded a Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the borrower and ADB throughout the recruitment process and the execution of the Contract.

1.6.3 Consultants have an obligation to disclose any situation of actual or potential conflict of interest. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.

1.6.4 No agency or current employees of the Client shall work as Consultants under their own ministries, departments or agencies. In order to determine whether a conflict of interest exists, prior written approval of the ADB must be sought before former government employees or agencies of the Client are recruited to work for their former ministries, departments or agencies. When Consultants nominate any government employees or agencies as Personnel in their technical proposal, such Personnel must have written approval from their government or employer, confirming that they will be on leave without pay from their official position and available to work full-time on the assignment for the

period required by the assignment and any reasonable extension thereof. Such approval shall be provided to the Client by the Consultant invited to contract negotiations, prior to commencement of negotiations.

- Anticorruption** 1.7 The ADB's Anticorruption Policy requires that borrowers of ADB loans (including beneficiaries of ADB-financed or administered activities), as well as consultants under ADB-financed or administered contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy,<sup>1</sup> the ADB:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - (iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
  - (b) will reject a proposal for award if it determines that the consultant recommended for award has directly, or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of the ADB financing engaged in corrupt, fraudulent, collusive, or coercive practices during the consultant selection process or the

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<sup>1</sup> See ADB's Anticorruption Policy (<http://www.adb.org/Documents/Policies/Anticorruption>) and Integrity Principles and Guidelines (<http://www.adb.org/Documents/Guidelines/Integrity-Guidelines-Procedures>).

execution of that contract, without the borrower or beneficiary having taken timely and appropriate action satisfactory to the ADB to remedy the situation;

- (d) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, such party or successor from participation in the ADB-financed or administered activities if it at any time determines that the consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, an ADB-financed or administered contract; and
- (e) will have the right to require that, in consultant selection documentation and in contracts financed by the ADB, a provision be included requiring consultants to permit the ADB or its representative to inspect their accounts and records and other documents relating to consultant selection and to the performance of the contract and to have them audited by auditors appointed by the ADB.

1.8 Consultants, and their Sub-Consultants shall not be under a declaration of ineligibility for corrupt, fraudulent, collusive, coercive or other prohibited practices issued by the ADB in accordance with the above para. 1.7(d). Furthermore, the Consultants shall be aware of the provisions on the ADB's Anticorruption Policy stated in the specific clauses in the General Conditions of Contract.

1.9 Consultants shall furnish information on fees, gratuities, rebates, gifts, commissions or other payments if any, paid or to be paid to agents and/or representatives relating to this proposal and during execution of the assignment, as requested in the Financial Proposal submission form (Section 4).

**Origin of Goods and Services**

1.10 All goods that may be supplied under the Contract and financed by the ADB, shall have as their country of origin an eligible member country of the ADB. See Section 7 - List of ADB Member Countries.

**Only one Proposal**

1.11 Shortlisted Consultants may only submit one proposal. If a Consultant (including a partner in any Joint Venture) submits or participates in more than one proposal, such proposals shall be disqualified. However, this does not limit the inclusion of a Sub-Consultant, including individual experts, in more than one proposal.

**Proposal Validity**

1.12 The Data Sheet indicates how long Consultants' Proposals must remain valid after the submission date. During this period, Consultants shall maintain the availability of experts nominated in

the Proposal. The Client will make its best effort to complete negotiations within this period. Should the need arise, however, the Client may request Consultants to extend the validity period of their proposals. Consultants who do not agree have the right to refuse to extend the validity of their Proposals.

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|---|------|---|
| <b>Eligibility of Sub-Consultants and Partners of a Joint Venture</b> | 1.13 | In case a shortlisted Consultant intends to be the lead firm in an association with Sub-Consultants, or, if the Consultant is a Joint Venture, each Sub-Consultant and Joint Venture Partner (and every individual expert) shall be a citizen or legal entity, as the case may be, of an ADB-member country.  |
| <b>Participation of National Consultants</b>                          | 1.14 | Certain ADB-financed or administered consulting services assignments require international Consultants to work together with eligible national Consultants as a team. The TOR should be checked to determine if this assignment requires participation of eligible national Consultants. Shortlisted Consultants are free to be the lead firm in an association (or managing Partner in a Joint Venture) with any eligible national Consultants(s) considered to be suitable for the required services.   |
| <b>2. Clarification of RFP Documents</b>                              | 2.1  | Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the Client's address indicated in the Data Sheet. The Client will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under para. 2.2. |
| <b>Amendment of RFP Documents</b>                                     | 2.2  | At any time before the submission of Proposals, the Client may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all Consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give Consultants reasonable time in which to take an amendment into account in their Proposals the Client may, if the amendment is substantial, extend the deadline for the submission of Proposals.   |
| <b>Client Clarification of Proposals</b>                              | 2.3  | It is understood that from time the proposals are received by the Client to the time that the Contract is awarded, the Client shall not request the Consultant to provide any clarification on any matter related to the Consultant's technical or financial proposal.  |
| <b>3. Preparation of Proposals</b>                                    | 3.1  | The Proposal (see para. 1.2), as well as all related correspondence exchanged by the Consultants and the Client, shall be written in the English language.  |

**Association  
Arrangements  
and Joint  
Ventures**

- 3.2 In preparing their Proposal, Consultants are expected to examine in detail the documents comprising the RFP. Consultants whose proposals do not respond to the requirements of the documents comprising the RFP may fail to meet the minimum qualifying score as indicated in the Data Sheet.
- 3.3 While preparing the Technical Proposal, Consultants must give particular attention to the following:
- (i) For the purpose of submitting a proposal and subject to para. 1.13 above, a shortlisted Consultant may enhance its expertise for the assignment either by:
    - (a) associating with non-shortlisted firms, in which case the Consultant shall be the lead consultant and shall be solely liable under the Contract, or
    - (b) forming a Joint Venture with non-shortlisted firms, in which case the Consultant and the Partners of the Joint Venture shall be jointly and severally liable under the Contract.

In the event that the Consultant constitutes a Joint Venture, the Consultant shall submit (i) a copy of the Joint Venture Agreement with its Technical Proposal, and (ii) a power of attorney (executed by all partners) that authorizes the designated lead or managing Partner of the Joint Venture to act for and in behalf of the Joint Venture and to legally bind such Joint Venture in any contractual or similar documentation. Any Joint Venture agreement and Joint Venture power of attorney shall be attached to TECH-1, Standard Forms (Section 3) and submitted as part of the Technical Proposal of such Consultant.

- (ii) No shortlisted Consultant (including any Joint Venture partner) can associate with another shortlisted Consultant, and every full-time employee<sup>2</sup> of a shortlisted Consultant is not eligible to participate as an associate or Sub-Consultant of another Consultant shortlisted for the assignment, even if such shortlisted Consultant declines to submit any proposal.

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<sup>2</sup> (a) is currently employed under a contract or agreement of employment with the Consultant or the Sub-Consultant;

(b) has been employed by the Consultant or the Sub-Consultant for the last 12 consecutive months preceding the date of submission of the Proposal;

(c) is entitled to receive regular remuneration and benefits (e.g. social security, pension or medical contributions) from the Consultant or the Sub-Consultant; and

(d) is engaged to work for the Consultant or the Sub-Consultant for the number of hours per day and days per year considered the norm for full-time employees in the country of employment or in the country in which the person is assigned.

- (iii) A shortlisted Consultant cannot add or replace or otherwise change the composition of the Partners described in its Joint Venture Agreement. Such Joint Venture Agreement shall identify the lead or managing Partner.
  - (iv) None of the firms or experts proposed in an association or Joint Venture should be the subject of a sanction by the ADB.
  - (v) Alternative experts shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position.
- Proof of Legal Status** 3.4 Prior to contract negotiations, the selected Consultant will be required to submit its proof of legal status i.e., certificate of incorporation (or registration, in the case of a partnership or joint venture) or any document required by the commercial laws of the ADB member country establishing the Consultant's status to conduct or transact business as a legal entity.
- Disqualification** 3.5 Zero rating resulting in disqualification will be given to a nominated expert in particular circumstances, if the expert:
- (i) is not a citizen (determined from the passport the expert holds or other equivalent legal document in the case of national professionals in certain countries who do not have passports) of a member country of the ADB; member countries are specified under Section 7 – List of ADB Member Countries; or
  - (ii) is proposed for a national position but is not a citizen of that country; or
  - (iii) failed to state citizenship on the CV; or
  - (iv) the CV is not signed in accordance with para. 3.4 (vi) requirements; or
  - (v) is a current employee of the Client; or
  - (vi) has failed to disclose any situation of actual or potential conflict in terms of para. 1.6.3
- Technical Proposal Format and Content** 3.6 Depending on the nature of the assignment, Consultants are required to submit a Full Technical Proposal (FTP), a Simplified Technical Proposal (STP), or a Biodata Technical Proposal (BTP). The Data Sheet indicates the format of the Technical Proposal to be submitted. Submission of the wrong type of Technical Proposal will result in the Proposal being deemed non-

responsive. The Technical Proposal shall provide the information indicated in the following paragraphs from (i) to (vii) using the attached Standard Forms (Section 3). The following table summarizes the content and maximum number of pages permitted for each type of Proposal. **If the maximum number of pages is exceeded, a penalty of 5 percentage points will be applied for every page over the maximum page limit during evaluation of the Proposal.** A page is considered to be one printed side of A4 or letter size paper.

| Proposal Type  | Full Technical Proposal (FTP)   | Simplified Technical Proposal (STP)                                 | Biodata Technical Proposal (BTP)   |
|--|---|---|--|
| Experience of the firm                                     | (i) maximum two (2) pages introducing the firm and associate firm(s) background and general experience (Form TECH-2A).<br>(ii) maximum of twenty (20) pages of relevant completed projects in the format of Form TECH-2B illustrating firm and associate(s) firm's relevant experience. No promotional material should be included. | not required.   | not required.  |
| General approach and methodology, work plan                | maximum fifty (50) pages inclusive of charts and diagrams (Form TECH-4).  | maximum ten (10) pages including charts and diagrams (Form TECH-4). | maximum one (1) page for work plan. No written methodology to be provided. |
| Personnel schedule   | Form TECH-7   | Form TECH-7   | Form TECH-7  |
| Comments on terms of reference                             | no limit, but to be concise and to the point (Form TECH-3A).  | included as part of general approach and methodology.               | not required.  |
| Experts' CVs   | maximum of five (5) pages for each expert's CV using Form TECH-6.   | maximum of five (5) page CV for each expert using Form TECH-6.      | maximum of five (5) page CV for each expert using Form TECH-6.             |
| Counterpart staff and facility requirements                | maximum of two (2) pages (Form TECH-3B).  | not required.   | not required.  |
| List of Proposed Expert Team and Summary of CV Particulars | Form TECH-5   | Form TECH-5   | Form TECH-5  |

- (i) (a) [For FTP only:] a brief description of the Consultants' organization and an outline of recent experience of the Consultants and, in the case of Joint Venture, for each partner, on assignments of a similar nature is required in Form TECH-2 of Section 3. For each assignment, the outline should indicate the names of Sub-Consultants/experts who participated, duration of the assignment, contract amount, and Consultant's involvement. Information should be provided only for those assignments for which the Consultant was legally contracted as a lead firm or as one of the major firms within a Joint Venture. Assignments completed by individual experts working privately or through other consulting firms cannot be claimed as the experience of the

- Consultant, or that of the Joint Venture partners or Sub-Consultants, but can be claimed by the expert themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the Client.
- (b) For STP information in para. 3.4(i)(a) is not required and Form TECH-2 of Section 3 shall not be used.
- (ii)
    - (a) [For FTP only:] comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality/effectiveness of the assignment; and on requirements for counterpart staff and facilities including: administrative support, office space, local transportation, equipment, data, etc. to be provided by the Client (Form TECH-3 A and B of Section 3).
    - (b) For STP Form TECH-3 of Section 3 shall not be used; the above comments and suggestions, if any, should be incorporated into the description of the approach and methodology (refer to following sub-para. 3.4 (iii) (b)).
  - (iii)
    - (a) [For FTP and STP:] a description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organization and personnel schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form of a bar chart the timing proposed for each activity.
    - (b) For STP only: the description of the approach, methodology and work plan shall consist of 10 pages, including charts, diagrams, and comments and suggestions, if any, on Terms of Reference and counterpart staff and facilities.
  - (iv) The list of the proposed team by area of expertise, the position that would be assigned to each team member, their tasks and a summary of essential CV information (Form TECH-5 of Section 3).
  - (v) Estimates of the expert and/or specialist input (person-

months of international and national personnel) needed to carry out the assignment (Form TECH-7 of Section 3). The person-months input should be indicated separately for home office and field activities, and for international and national personnel.

- (vi) CVs of the experts signed by the experts themselves or by the authorized representative submitting the proposal (Form TECH-6 of Section 3). Should the firm be ranked first, copies of the same CVs signed by the experts must be submitted to the Client prior to commencement of contract negotiations.

3.7 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial details under any selection method, except CQS and SSS, will be declared non responsive.

### Financial Proposals

3.8 (i) The Consultant shall submit a hard copy of the Financial Proposal using the attached standard forms (Section 4). The Client shall read the Hard Copy during the public opening of Financial Proposals.

(ii) It is the Consultant's responsibility to ensure that the correct Financial Proposal format is used for the selected method indicated in the Data Sheet.

(iii) The Financial Proposal requires completion of the six forms FIN-1 to FIN-6 shown in Section 4.

a. Form FIN-1 is the Financial Proposal Submission Form.

b. Form FIN-2 summarizes the proposed cost(s) by currency(ies). Remuneration is divided into billing rates for international and national experts; reimbursable expenses are divided into per diem rates for international and national experts and costs for other reimbursable expenses items required to perform the Services, as indicated in the Data Sheet. When QCBS is used, the Data Sheet will specify either an estimated budget or a maximum budget [see 5.6(iii)-(iv)]:

1. For estimated budgets: the gross evaluated financial proposal (inclusive of provisional sums and contingencies) **may** exceed the estimated budget for the assignment;

2. For maximum budgets: the gross evaluated financial proposal (inclusive of provisional sums and contingencies) **cannot** exceed the maximum budget for the assignment, and if it does, this will result in disqualification of such financial proposal.
- c. Forms FIN-3 and FIN-4 show the remuneration. **FIN-4 shows the remuneration details and shall only be used when CQS, QBS or SSS method is used.**
- d. FIN-5 shows details of reimbursable expenses.
- e. **Form FIN-6 is the declaration of compliance with ADB's Guidelines. The Consultant's authorized representative shall sign and date this Form on behalf of the Consultant. Failure to do so and submit the duly signed declaration of compliance with the Financial Proposal will result in the disqualification of the Proposal.**
- f. The amounts stated under provisional sums and for contingency in FIN-2 must be the exact amounts and in the same currency as specified in the Data Sheet for such cost and are included within the maximum budget for the assignment specified in the Data Sheet. The exact amounts of provisional sums and contingency, the applicable payment schedule and the currency of payments will be determined during contract negotiations.
- g. All activities and items described in the Technical Proposal must be priced. For non-remuneration (e.g. out-of-pocket) related omissions, any activities or items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items provided for in the Financial Proposal. For remuneration related costs, if less than the minimum number of person months specified in the Data Sheet is provided in the Personnel Schedule of the Technical Proposal for international and/or national experts, the difference between such proposed person months for each expert in the Financial Proposal will be added to remuneration related costs at the remuneration rate per month (either home or field) specified for such expert in the Financial Proposal.

- Taxes**
- 3.9 The Consultant may be subject to local taxes (such as: value added or sales tax, social charges or income taxes on non resident International Personnel, duties, fees, levies) on amounts payable by the Client under the Contract. The Client will state in the Data Sheet if the Consultant is subject to payment of any local taxes. Any such amounts of taxes shall be excluded from the Financial Proposal as they will not be evaluated.
- 3.10 Consultants may express the price of their services in a maximum of three internationally traded currencies of ADB member countries, singly or in combination. Because the provisional sums are in US\$, one of the currencies shall be US\$. The Client may require Consultants to state the portion of their price representing local cost in the national currency if so indicated in the Data Sheet.
- Fees, Gratuities and Currencies**
- 3.11 Fees, gratuities, rebates, gifts, commissions or other payments, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1 of Section 4.
- 4. Submission, Receipt, and Opening of Proposals**
- 4.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Consultants themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should be in the format of TECH-1 of Section 3 and FIN-1 of Section 4, respectively, including required attachments, if any. [See para. 3.3(i) above.]
- 4.2 An authorized representative of the Consultants shall initial all pages of Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been duly authorized to sign. The signed Financial Proposal shall be marked "ORIGINAL."
- 4.3 The Technical Proposal shall be marked "ORIGINAL" or "COPY" as appropriate. The Technical Proposals shall be sent to the addresses referred to in para. 4.5 and in the number of copies indicated in the Data Sheet. All required copies of the Technical Proposal are to be made from the original. If there are discrepancies between the original and the copies of the Technical Proposal, the original governs.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL" Similarly, the original Financial Proposal, in the case

of FBS, LCS and QCBS, shall be placed in a sealed envelope clearly marked “FINANCIAL PROPOSAL” followed by the Loan number and the name of the assignment, and with a warning “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**” The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address, reference number and title of the Loan, and be clearly marked “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OFFICIAL APPOINTED, BEFORE** [*insert the time and date of the submission deadline indicated in the Data Sheet*]”. The Client shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be cause for Proposal rejection. If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, for FBS, LCS and QCBS, this will constitute grounds for declaring the Proposal non-responsive.

- 4.5 The Proposals must be sent to the address/addresses indicated in the Data Sheet and received by the Client no later than the time and the date indicated in the Data Sheet, or any extension to this date in accordance with para. 2.2. Any proposal received by the Client after the deadline for submission shall be returned unopened.
- 4.6 The Client shall open the Technical Proposal immediately after the deadline for their submission. For FBS, LCS and QCBS methods, the envelopes with the Financial Proposal shall remain sealed and securely stored.
- 4.7 From the time the Proposals are opened to the time the Contract is awarded, the Consultants should not contact the Client on any matter related to its Technical and/or Financial Proposal. Any effort by Consultants to influence the Client in the examination, evaluation, ranking of Proposals, and recommendation for award of Contract may result in the rejection of the Consultants’ Proposal.
- 4.8 For FBS, LCS and QCBS methods, the evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded and the ADB issues its “no objection.”

## 5. Evaluation of Technical Proposals

- 5.1 The evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, subcriteria, and rating system specified in the Data Sheet in terms of the Summary and Personnel Evaluation Criteria detailed in the Appendix thereto. Each responsive Proposal will be given a technical score (St). A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of

- Reference or if it fails to achieve the minimum technical score, if any, indicated in the Data Sheet.
- Financial Proposals for CQS, QBS, and SSS**
- 5.2 Following the ranking of Technical Proposals, when selection is based on CQS, QBS and SSS methods, the first ranked Consultant is invited to negotiate its Financial Proposal and the Contract in accordance with the instructions given under para. 6 of these Instructions.
- Public Opening and Evaluation of Financial Proposals (only for QCBS, FBS and LCS)**
- 5.3 In the case of FBS, LCS and QCBS, after the technical evaluation is completed, the Client shall notify those Consultants whose Proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP, indicating that their Financial Proposals will be returned unopened after completing the selection process. The Client shall simultaneously notify in writing Consultants that have secured the minimum qualifying mark, informing them of the technical scores obtained by their Technical Proposals, and indicating the date, time and location for opening the Financial Proposals. The expected date for the public opening of the Financial Proposals is indicated in the Data Sheet; the opening date should allow Consultants sufficient time to make arrangements for attending the opening. Consultants' attendance at the opening of Financial Proposals is optional.
- Opening and Evaluation of Financial Proposals (only for QCBS, FBS, and LCS)**
- 5.4 Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend. The name of the Consultants, and the technical scores of the Consultants shall be read aloud. The Financial Proposal of the Consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded. Copy of the record shall be sent to all Consultants and the ADB.
- The Client's representative will provide attendees with details of applicable currency exchange rate which will be used to compute US dollar equivalents during evaluation of Financial Proposals. The source for determining the exchange rates will be indicated in the Data Sheet.
- 5.5 The evaluation committee will review the detailed content of each Financial Proposal. During the review of Financial Proposals under FBS, LCS and QCBS methods, the Committee and any Client personnel and others involved in the evaluation process, will not be permitted to seek clarification or additional information from any Consultant, who has submitted a Financial Proposal. Financial Proposals will be reviewed to ensure these are:
- (i) complete (i.e., whether Consultants have priced all items of the corresponding Technical Proposal); if not, for

material omissions, the Client will price them by application of the highest unit cost and quantity of the omitted item as provided in the other Financial Proposals and add their cost to the offered price, and correct any arithmetical errors. When correcting computational errors, in case of discrepancy between (a) a partial amount and the total amount the partial amount shall prevail; (b) words and figures, the words shall prevail. The evaluated total price (ETP) for each Financial Proposal will be determined. The ETP excludes non-competitive components (i.e. contingencies and provisional sums). The ETP will be converted to US dollars using the exchange rate announced during the public opening of Financial Proposals dealt with in para. 5.4.

- (ii) In compliance with the requirements set forth in the Data Sheet, each Financial Proposal must include provisional sums and contingencies in the amounts specified in the Data Sheet and the validity period of the Consultants' proposals must accord with the validity period indicated in the Data Sheet. Provision for a discount in any Financial Proposal is not permissible and the ETP for each Financial Proposal will be determined without applying any discount.

#### 5.6 When the QCBS method is used:

- (i) to allow comparison on a common basis, each Financial Proposal will be carefully scrutinized in accordance with the procedure outlined in para. 5.6, and an ETP in US dollars will be determined. The lowest evaluated Financial Proposal will receive the maximum score of 1,000 marks. The score for each other Financial Proposal is inversely proportional to its ETP and will be computed as follows:

$S_f = 1,000 \times F_m / F$  where:

$S_f$  is the financial score of the Financial Proposal being evaluated,

$F_m$  is the ETP of the lowest priced Financial Proposal,

$F$  is the ETP of the Financial Proposal under consideration.

- (ii) following completion of evaluation of Technical and Financial Proposals, final ranking of the Proposals will be determined. This will be done by normally applying a weight as specified in the data sheet (i.e., 90%:10%, 80%:20%, or 70%:30%) respectively to the technical and financial score of each evaluated qualifying Technical and Financial Proposal and then computing the relevant

combined total score for each Consultant. After such final ranking, the first-ranked Consultants will be invited for contract negotiations.

- (iii) if a maximum budget is specified in the Data Sheet, Financial Proposals must be within such maximum budget. If any proposal exceeds such maximum budget, such proposal will be held non-responsive and be given a zero score. In such cases, if the firm submitting a Financial Proposal exceeding the maximum budget still obtains the highest combined score in final ranking, this winning firm will be advised, as a condition of contract negotiations, to reduce the Financial Proposal to the maximum budget without compromising the TOR for the assignment (and without modification of proposed unit rates.)
- (iv) if an estimated budget is specified in the Data Sheet, a Financial Proposal may exceed such estimated budget, if considered necessary by the firm submitting the financial proposal. In such cases, if the firm submitting a Financial Proposal exceeding the estimated budget still obtains the highest combined score in final ranking, this winning firm may be advised, as a condition of contract negotiations, to reduce the Financial Proposal to such maximum budget without compromising the TOR for the assignment (and without modification of proposed unit rates).

**5.7 When the FBS method is used:**

- (i) the Client will select the Consultant that submitted the highest ranked Technical Proposal within the budget specified in the Data Sheet.
- (ii) **Financial Proposals that exceed the maximum budget specified in the Data Sheet will be rejected.**

**5.8 When the LCS method is used:**

- (i) the Client will select the lowest Financial Proposal of a Consultant whose Technical Proposal passed the minimum technical score specified in the Data Sheet.
- (ii) **Financial Proposals that exceed the maximum budget specified in the Data Sheet will be rejected.**

**6. Negotiations**

- 6.1 Subject to Clause 2.2, negotiations will be held at the date and address indicated in the Data Sheet. The invited Consultant will, as a pre-requisite for attendance at the negotiations, confirm availability of all experts named in its proposal in the absence of

death or medical incapacity. Failure in satisfying such requirements may result in the Client proceeding to initiate the negotiation process with the next-ranked Consultant. Representatives conducting negotiations on behalf of the Consultant must have written authority to negotiate and conclude a Contract.

**Technical negotiations**

- 6.2 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan and schedule, and organization and personnel, and any suggestions made by the Consultant to improve the TOR. The Client and the Consultants will finalize the TOR, personnel schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Contract as “Description of Services.” Special attention will be paid to clearly defining the inputs and facilities required from the Client to ensure satisfactory implementation of the assignment. The Client shall prepare minutes of negotiations which will be signed by the Client and the Consultant.

**Financial negotiations**

- 6.3 (i) **When CQS, QBS, or SSS** method is used, the financial negotiations will include a detailed review of all the Consultant’s proposed costs including a review of all documentation provided by the Consultant in support of proposed costs. In particular, the Consultants shall provide full details of the remuneration of all nominated experts, according to Section 4 - Financial Proposal - Standard Forms of this RFP, including the information required in Form FIN-4.
- (ii) **When FBS, LCS or QCBS** method is used, the financial negotiations will, as necessary, fine-tune duration of the expert’s inputs and quantities of out-of-pocket expenditure items that may be increased or decreased from the relevant amounts shown or agreed otherwise in the Financial Proposal but without significant alterations. The details of expert remuneration and specific unit rates for out-of-pocket expenditures will not be subject to negotiations.
- (iii) **For QCBS** where the Financial Proposal of the first-ranked firm is substantially higher than any maximum or estimated budget specified in the Data sheet, the Client reserves the right to invite the next-ranked firm to negotiate, if negotiations with such first-ranked firm do not result in an acceptable contract having due regard to the inputs and scope of work required under the TOR (see

5.6(iii)-(iv).<sup>3</sup>

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|---------------------------------------|-----|---|
| <b>Availability of Personnel</b>      | 6.4 | Having selected the Consultant on the basis of, among other things, an evaluation of proposed personnel, the Client expects to negotiate a Contract on the basis of the personnel named in the Proposal. Before contract negotiations, the Client will require assurances that the personnel will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. The Client may also request the replacement of any expert nominated by the invited firm who receives a rating below 70% (average) or is deemed to be unsuitable for a proposed position. In the event that the Client requests a replacement, such replacement shall have the same unit rate of remuneration proposed for the original candidate by the firm in its Financial Proposal except where the method of selection is CQS, QBS, or SSS, where the rate of remuneration will be based on supporting documentation. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate. Failure to meet either of these requirements may result in disqualification. |
| <b>Conclusion of the negotiations</b> | 6.5 | Negotiations will conclude with a review of the draft Contract. To complete negotiations the Client and the Consultant will initial the agreed Contract. If negotiations fail, the Client will invite the Consultant whose Proposal received the second highest score to negotiate a Contract.  |
| <b>7. Award of Contract</b>           | 7.1 | After completing negotiations the Client shall award the Contract to the selected Consultant and notify the other Consultants who could have been invited to negotiate a Contract that they were unsuccessful. When FBS, LCS or QCBS is used, after Contract signature the Client shall return the unopened Financial Proposals to the consultants whose Technical Proposals have not secured the minimum qualifying mark, or were found to be technically non-responsive.  |
|                                       | 7.2 | The Consultant is expected to commence the Services on the date and at the location specified in the Data Sheet.  |
|                                       | 7.3 | Consultants who were not awarded the Contract may request an oral debriefing from the executing agency after Contract award in respect of their Proposal.   |

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<sup>3</sup> N.B. Proposed unit rates for remuneration shall not be altered since the unit rate cost has been a factor in the selection process.

- 8. Publication**
- 8.1 After the Contract award, ADB shall publish on ADB's website (after receipt from the executing agency):
- (i) the names of all consultants who submitted proposals,
  - (ii) the technical points assigned to each consultant,
  - (iii) the offered prices of each consultant.
  - (iv) the overall ranking of the consultants, and
  - (v) the name of the winning consultant and the contract sum.
- 9. Confidentiality**
- 9.1 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. The use by any Consultant of confidential information related to the process may make it subject to the provisions of ADB's Anticorruption Policy.