

# Chapter X

## Supervising Consulting Services

260. Supervising the implementation of consulting services entails a series of activities that are basically the same for all types of consultancies, whether individuals or from a firm, whether recruited by ADB or recruited by the EA. These activities are

- issuing the notice to proceed,
- review of the inception phase,
- issuing contract variations,
- reporting and monitoring,
- billing and payment,
- dealing with disputes and arbitration,
- terminating services prior to the end of the contract,
- concluding the assignment, and
- evaluation.

These topics are discussed in this chapter.

### A. Issuing the Notice to Proceed

261. A notice to proceed is required to initiate all types of consulting services. It is normally issued as soon as possible after negotiations have been successfully concluded and the contract has been signed. Normally, the notice to proceed is issued by the EA for individuals and firms hired under loan funding and by ADB for staff consultants, individual consultants hired through a TA grant, and consulting firms recruited under a TA grant.

262. In some cases, certain conditions need to be fulfilled before a notice to proceed can be issued. These are known as “conditions of effectiveness” and are spelled out in the special conditions of the consulting services contract. One of the most common is the approval of the loan by ADB. Another may be the appointment of a particular expert as decided on during contract negotiations or the clarification of a particular contractual arrangement between or among the international and the national firms contracting the services.

263. After the issuance of the notice to proceed, the contract normally commences upon the arrival of the consultant or the consulting team’s members in the country of operation.

## B. Review of Inception Phase

264. For most consultancies lasting more than a few weeks, the work is divided into phases, of which one of the most critical is the inception phase. The inception phase normally lasts about 1 month from the time of the arrival of the consultant or consulting team and covers the establishment of the consultant in the country, a review of the work plan with the client (normally the EA), and the initiation of the field work.

265. This will constitute the first time that the consulting firm will have encountered the realities on the ground and is the initial period of contact and cooperation between the EA and the consultants. It is common for an inception report to be prepared to cover the consultant's experience and observations during this period, and often a workshop or seminar is held to discuss it. It is normally helpful if this coincides with a review mission from ADB so that an ADB officer can attend. Even if no formal workshop is conducted, the presence of an ADB staff member at the conclusion of the inception phase can be very useful, at times even critical.

266. The following issues may be raised at the end of the inception phase and will need resolution.

### 1. Overall Scope of Work

267. During the inception phase, it will be possible for the first time for the consultant or consulting firm to get a full grasp of the task to be undertaken. It may become clear that at the time of preparing the proposal or when negotiating the contract the consultant did not have a full picture of the situation. It may be that some particular aspect of the job to be done was missed out or underemphasized during the planning phase, or that some aspects of the work are the mandate of agencies other than the appointed EA, and special procedures will be needed in order to complete them. It may also become clear that the capacity of the EA or its project office is not as effective as was assumed during the planning of the consultancy, and that extra support may be required to complete the work on time. Likewise, the consulting firm may realize that some conceptual or institutional flaws will affect the ultimate completion of the TOR. These will need to be carefully documented and discussed in full with the EA, project office, or other representatives of the borrower (and possibly ADB), and measures must be taken to resolve the issues through a change in the scope of work in the contract. The EA or ADB officer may have recognized that there is a difference of opinion with the consulting firm about the scope of work, and this will need to be raised and resolved.

### 2. Work Plan and Staffing Schedule

268. On a less fundamental level, the consultants may have recognized that changes in the various types of expertise or their levels of input will be needed to complete the assignment

successfully. Gaps in the expertise required might also have been identified such that additional experts may need to be appointed. Again, these will need to be clearly identified; any proposed changes justified; and full consultations or discussions undertaken with all parties, including, as necessary, ADB. The EA or ADB officer may also have developed reservations about the capacity or orientation of one or more of the consultant's personnel, and this issue will need to be resolved.

### 3. Specific Terms of Reference

269. The inception phase is also the appropriate time to recognize or identify changes needed in specific TOR for specific experts. Once again, it is best to achieve a consensus on these changes among all parties so that they can be expeditiously arranged and appropriately resolved.

### 4. Access to Professional and Logistic Support

270. Within the first month of implementation, the degree of support that can realistically be provided by the EA and its project office will have become clear. Issues that may arise include

- availability and quality of office space, office equipment, office consumables, secretarial services, and communications facilities;
- availability of competent counterpart staff and translators;
- support by the borrower in obtaining visas and clearing imported equipment;
- availability of transport;
- access to documents and such items as aerial photos or government statistics;
- access by the team and its personnel to particular offices, departments, or key individuals;
- availability of acceptable living accommodation;
- sufficiency of per diems and other out-of-pocket expenditures for international and national consultants; and
- sufficiency of per diems and out-of-pocket expenditures for counterpart staff.

271. While the demands of the consultants should be reasonable, the EA should be able to provide at least what has been promised under the contract. If these items are not forthcoming or are of a quality that affects the efficiency of the implementation of the consultancy, then remedial measures will need to be taken. In some

cases, this could include additional funding to the consulting firm from contingency funds in the contract or from a reallocation of funds between budget lines to procure independently the items, facilities, or services that the borrower was originally meant to provide. In others, this may entail an agreement to provide the required facilities and support by a particular date.

272. In any event, the EA (or ADB if recruitment and supervision are by ADB) needs to understand that certain support items are needed to complete the agreed-upon assignment successfully and on time. On the other hand, consultants and consulting firms need to remember that they are, by definition, working in countries where full access to all the support facilities that they may expect in their home countries may simply not be available.

### 5. Working Arrangements and Liaison

273. The inception period is the appropriate time to review and, if necessary, improve the working arrangements and relationship between the consultant or consulting team and the EA or its project office. In most instances, the ideal situation is for the consultants and the project office to work closely with each other. This is particularly important when a degree of capacity improvement or on-the-job training is expected. Sometimes, however, a close relationship is not possible or does not evolve. This may be due to the simple fact that, as a result of limited space, the consultant's office is separate from the project office; the staff of the project office and EA are already burdened with many other responsibilities; cultural differences; or a language barrier. Whatever the circumstances, it is important to prevent a situation in which the consultants or consulting team is working without feedback from or interaction with the EA or project office. This is a particular concern during TA grant implementation when the consultant or consulting firm may consider that ADB, rather than the EA, is the client.

274. The need for good liaison and communication must be addressed openly and frankly at the time of the inception review and, if necessary, measures must be taken to improve communications and relationships between the two parties. In some extreme cases, this may mean a change in personnel either on the part of the consultant or on the part of the EA. In most cases, this can be avoided with a constructive approach by all parties.

## C. Issuing Contract Variations

275. The formal method of making and documenting a change in the consulting services contract is through a contract variation. Contract variations are used to document agreed-upon changes in the scope of work, personnel inputs, costs, TOR, timing of the submission of reports, or out-of-pocket expenditures. There are few consulting services contracts of any type that do not require a

contract variation at one time or another. Normally, these relate to changes that have a cost implication, but when there is a significant change in the timing of an activity or a particular output, these should also be recorded through a contract variation. Normally, the request for contract variation is prepared by the consultant or consulting firm and submitted to ADB for approval (for ADB-contracted consultancies) or endorsement (for EA-contracted consultancies). If the variation entails an increase in the contract amount, ADB's prior approval is required.

276. Instructions and documents relating to contract variations (including forms to be used and examples) can be found on the ADB website, [www.adb.org/Consulting/documents.asp](http://www.adb.org/Consulting/documents.asp). In the absence of their own documents, borrowers may wish to use ADB formats and templates.

277. One common type of variation involves a change of personnel. Sometimes a change of personnel is unavoidable because of resignation, illness, accident, inadequate performance, or personality conflict. When personnel are to be replaced, certain factors need to be considered:

- Any replacement should be as well qualified or better qualified than the person being replaced.
- Under QCBS, FBS, and LCS, the same remuneration will apply to the replacement as was agreed upon for the person being replaced.
- The consultant should bear all costs arising out of or incidental to the replacement (such as airfares for the substitute expert).

## D. Reporting and Monitoring

278. The timing, nature, and number of reports that the consultant or consulting firm should provide are normally contained in the consulting services contract. These may vary considerably, depending on the type of work being undertaken.

279. If the assignment is of a routine nature over a long period (for example, implementation supervision), then monthly, quarterly, and annual progress reports may be required. On the other hand, if the assignment is to prepare a study or to implement a particular task, a more specific type of reporting may be required. This could entail, besides the inception report mentioned above, interim or midterm reports, design reports, reports at the end of each phase of the work, a draft final report, and a final report. These may be provided in a number of media and formats but normally will entail hard and soft copy versions. The production or acceptance of various reports is often used as a milestone for payment under lump-sum contacts and ADB-funded time-based TA contracts.

280. Specific individuals should be appointed within the project office, EA, or ADB to review the reports as they are produced, to provide feedback, and to monitor the implementation progress of the consultancy. Shortcomings in the quality of the work produced or deviations from the implementation schedule should be brought to the immediate attention of the team leader, the head of the EA's project office, and the ADB officer concerned so that they can be addressed at the earliest opportunity.

## E. Billing and Payment

281. Two billing and payment procedures can be followed for borrower-contracted consultancies:

- a direct payment procedure by ADB, or
- initial payment by the EA and subsequent reimbursement by ADB.

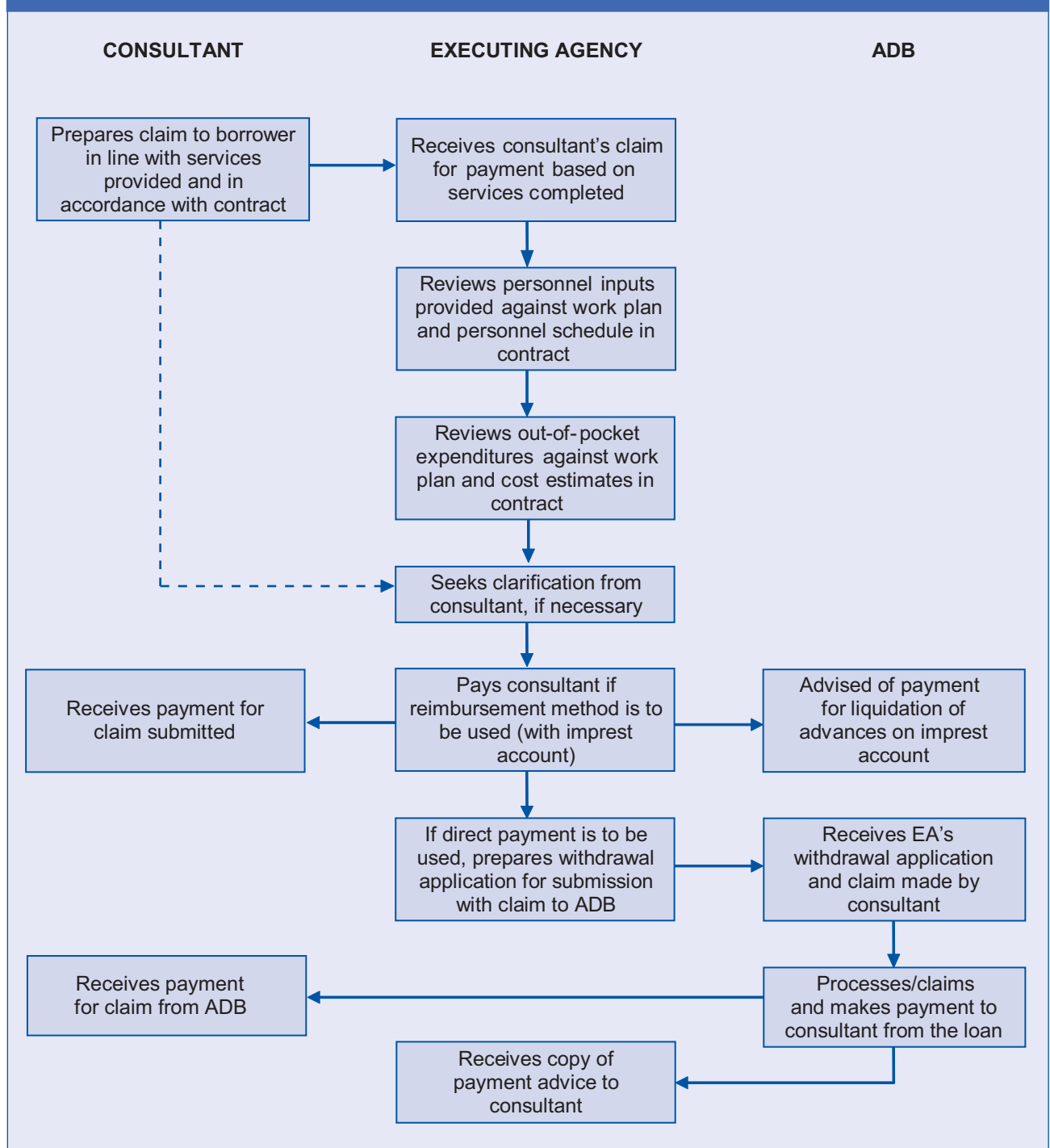
The steps involved in both procedures are shown diagrammatically in Figure 7.

282. In direct payment by ADB, the consultant bills the EA, which then reviews the claim and verifies that personnel inputs and out-of-pocket expenditures are in line with the contract, the work plan, and the associated cost estimates. (Clarification of certain items may be required, but further processing of undisputed claims should proceed while any disputed items are being clarified.) A withdrawal application is then prepared and submitted to ADB. Based on the withdrawal application, ADB makes a direct payment to the consultant. This payment will not include the reimbursement of taxes and duties, which will need to be reimbursed separately by the EA if this is the method agreed upon at contract negotiations.

283. Payment by the EA and subsequent reimbursement follow a similar pattern, except that the EA directly pays the consultant, and a withdrawal application is subsequently sent to ADB. The EA is subsequently reimbursed, generally through a topping up of its imprest account. Both procedures have their advantages and disadvantages. In direct payment by ADB, the EA does not need to worry whether funds will be available or not, and the consultant or consulting firm can be confident that at least the base cost of the consulting fees, exclusive of taxes and duties, will be paid promptly. On the other hand, this may result in a degree of complacency with regard to the ultimate reimbursement of taxes and duties to the consultant if this is an issue.

284. For ADB-contracted consultancies (normally for TA grants and staff consultancies), payment is made to the consultant or consulting firm based on a schedule agreed on at contract negotiations, often based on certain milestones or outputs. The consultant or consulting firm submits an invoice to the user department detailing

Figure 7: Steps in Processing a Consultant's Claim for Payment



the expenditures for personnel and out-of-pocket items. The user department then reviews the documentation and forwards it to the Controller's Department for further review and ultimate payment. In normal practice, if any item needs further scrutiny before the Controller's Department can approve payment, payment of undisputed items will be made. But payment of any disputed items will be withheld until the circumstances are clarified.

285. Advance payments by EAs to loan-financed consultants may be agreed upon during contract negotiations. The terms and conditions of such payments in foreign currency and local currency are set out in the special conditions section of the contract wherein the amount of advance payment is specified, as are the timing of the payment and the amount of advance payment security to be provided by the consulting firm. The advance payment is set off by the EA in equal installments against monthly billing statements until it has been fully set off. The advance payment security is then released.

286. Advance payments are not normally made to TA-financed consulting firms. However, firms are provided mobilization fees (as agreed upon during contract negotiations). For individual TA-financed consultants and staff consultants, COSO and the project division may approve advances against their reimbursable expenses when justified, although not for remuneration or expenses that are paid by lump sum. Detailed procedures for doing this are spelled out in PAI 2.04 Part A. During the assignment, one or more additional advances may be approved on request, up to an aggregate limit of 75% of the expenses. Once an advance has been provided, requests for any additional advance are not considered until the consultant liquidates the previous advance.

## **F. Disputes and Conflicts**

287. Disputes between the consultant or consulting firm and the client may arise for a number of reasons. They may be the result of delays prompted by weaknesses on the part of the consultant or the EA; by a lack of funds; by delays in getting key approvals, data, or information; by political considerations; or by causes beyond anyone's control such as natural disasters. They may be the result of deviations from the TOR or work plan by the consultant or unjustified requests for deviations by the EA or project office. Commitments entered into by the borrower, its EA, or the project office may not be fulfilled, or not in the way that the consultants consider in conformity with their needs. Indiscretions may take place, and cultural sensitivities may be offended. All these instances are serious and unfortunate in themselves, but the most serious and unfortunate aspect is that they hold up the implementation of the consultancy and usually, by implication, the design, approval, or implementation of a multimillion dollar development investment.

288. All reasonable efforts should be made to avoid disputes in the first place; both parties should attempt to deal with problems as they arise on a mutually constructive basis. (This may include the repatriation of consultant staff if necessary or a change in the personnel of the borrower.) If this is not possible, Section 8 of the standard contract sets clear procedures for dealing with disputes. This entails

- provision of a notification of dispute by one party to the other, and
- provision for a mutual resolution at two higher levels of authority within the firm and the EA or borrower's representative.

Finally, if the dispute cannot be amicably settled between the consultant and the EA, then provision is made for arbitration under the Rules of Arbitration of the International Chamber of Commerce. The results of this arbitration are binding.

## **G. Terminating Services Prior to End of Contract**

289. At times, a decision is taken to terminate a contract prior to its conclusion and the completion of the consulting services assignment. This may be for various reasons, some (for example, political disturbances or natural disasters) of which are beyond the control of the consultant, the borrower, or ADB, and others because of the failings of one party or the other. In some cases, termination is the optimal choice; in others, it is detrimental to the overall intent of the consultancy, which is generally to support the design or implementation of an investment project. This implies a missed opportunity and a waste of the funds already expended on the consultancy. For these reasons, termination should be avoided if possible, even if this means a considerable restaffing of the consulting team.

290. Termination may be initiated by any party. For a loan-funded consultancy, a decision taken by the EA to terminate a contract must be sent to ADB for approval, while for a TA-funded consultancy, the decision of an ADB user department to terminate a contract must be approved by COSO and the Office of the General Counsel. In the former case, the decision is conveyed to the consultant or consulting firm by the EA, and in the latter case by COSO.

291. Termination must be undertaken within the terms of the contract document. For EA-contracted consulting services, these are spelled out in Section 2.9 of both the standard lump-sum contract document and the standard time-based contract document. These provide for a notice period of 30 days, the payment by the EA of any legitimate outstanding fees and costs to the consultant or consulting firm, and the payment of legitimate costs to return the team to their home countries.

292. In case of dispute over what is or is not a legitimate expense, eligible for payment, the dispute mechanism described above is invoked and, if it is not possible to resolve the matter amicably, the issue is submitted for arbitration under the Rules of Arbitration of the International Chamber of Commerce. The contract will remain valid until the arbitration decision is made.

293. Termination of ADB-contracted consulting services is covered in PAI 5.11 Section I and under Article XV of the standard contract for ADB-recruited consulting services. This allows for a phased process of consultation aimed at achieving an amicable resolution of disputes, followed by a review with the borrower agency and within ADB. If no resolution is possible, the contract is terminated. Full reimbursement is made of all eligible costs up to the date of termination (unless the termination was occasioned by the default of the consultant) and for costs incident to the orderly liquidation of the consulting services such as the return travel of the consulting firm's personnel. The user division normally indicates which of the final billings by the firm are eligible for payment and which are not. Disputes that cannot be settled amicably are settled under the Rules of Arbitration of the International Chamber of Commerce.

## H. Concluding the Assignment

294. The contract is normally considered closed on the day after the completion date listed in the contract. Any expenditures incurred after the completion date are unlikely to be funded. It is therefore important, under all types of consultancies, to request an extension of the completion date if it appears that additional items will need to be billed after the completion date.

295. Often an assignment ends with the finalization and submission of a report or design documents that may or may not require clearance before all the costs are paid by the EA or ADB. This is the case, particularly, for lump-sum contracts. All accounts must also be cleared and liquidated before they can be properly closed.

296. From a logistical point of view, consultants and consulting firms working under an EA-contracted assignment may need special clearances to remove and repatriate equipment or vehicles brought in for the assignment or for personal use. Similarly, exit permits or tax clearances may also be needed for the smooth exit of personnel and their families from the country. The EA's representative should provide the assistance necessary to ensure that this process proceeds efficiently and without undue delay.

297. Equipment and vehicles purchased under TA grant funding normally become the property of the recipient EA after the TA is completed and should be fully accounted for and turned over by the departing individual consultant or firm to the borrower's EA at the end of the assignment. The consultant or firm must then submit

a certificate of turnover or disposal to the ADB user division. (See PAI 2.04, Appendix 2 or PAI 5.11, Appendix 2 for examples.) The consultant or consulting firm should normally submit the certificate within a week or two of completing the assignment, but at the latest together with the final claim.

298. For ADB-contracted consultancies, the consultant should submit the final claim promptly after completing the assignment. The standard consultant contract states that the claim must be submitted within 60 days of completion. ADB does not normally accept claims submitted after this deadline.

## I. Evaluation

299. ADB evaluates all consultants and consulting firms that it contracts. A full description of the evaluation process is provided in PAI 2.05. The process followed for both firms and individuals is similar. For a firm, the performance of the firm itself is assessed based on technical, economic and financial, project-specific, and project management factors. These are rated on a four-grade scale of “excellent,” “satisfactory,” “marginal,” and “unsatisfactory.” Room is provided on the rating form for comments to support the rating. Each expert on the team is also rated on the same scale, and justification is provided as necessary. The firm is then given an overall rating on the same scale.

300. Individual consultants are evaluated on such items as practical knowledge and experience, adaptability, productivity, and ability to work with others. These are also rated on the same four-grade scale, and supporting comments are provided along with an overall rating.

301. For ADB-contracted assignments, the evaluations are done by the project officer and other ADB staff who have had contact with the consultants and are familiar with their work. These are then submitted to COSO. If deemed necessary, COSO will hold a special CSC meeting to discuss the ratings. This most often occurs if a firm or individual is rated as unsatisfactory.

302. If this is the case and the firm’s or individual’s rating is upheld by the special CSC, the firm or individual is advised of the rating and provided 21 days to reply and appeal the rating. A further special CSC is held to discuss the response. If the evaluation is upheld, then a decision is taken as to whether the firm or individual should be excluded from future short listings or recruitment by ADB. Such exclusion may be for a finite period or it may be permanent. In the case when a first-ranked firm has proposed an expert who has been rated “unsatisfactory,” it is normally asked to replace the expert prior to or during contract negotiations.

303. Some borrowers also rate consultants who have worked with them and maintain records of consultants’ performance. This is one

reason that short lists for grant TAs should be sent to the borrower for clearance prior to issuance of an RFP. The evaluation of consultants (both individuals and those from firms) by the borrower should be encouraged, and assistance and advice provided by ADB when possible. One of the problems facing governments in doing this is the diverse number and types of consultants working for a diverse number and range of agencies within the country. This situation could be resolved by providing assistance to set up a centralized evaluation service in one of the major ministries.

## Self-Study Questionnaire – Chapter X

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1. **Q.** What document is required to initiate all types of consulting services?  
**A.** A notice to proceed.
2. **Q.** When is a notice to proceed normally issued?  
**A.** As soon as possible after negotiations have been successfully concluded and the contract has been signed.
3. **Q.** What are some typical conditions of effectiveness contained in a notice to proceed?  
**A.**  approval of the loan by ADB,  
 appointment of a particular team member, and  
 clarification of contractual agreements between or among firms in an association or joint venture.
4. **Q.** Why is the inception phase so important?  
**A.** It is the first time that the consulting firm encounters the realities on the ground and is the initial period of contact and cooperation between the EA or project office and the consultants.
5. **Q.** What issues might be brought out in a review of the inception phase?  
**A.**  the overall scope of work and its relationship to the TOR,  
 adjustments required in the work plan and staffing schedule,  
 adjustments required in the TOR of specific experts,  
 the degree of access to professional and logistic support, and  
 the adequacy of working arrangements and liaison between the consulting team and the EA.
6. **Q.** What are some common problems with regard to professional and logistic support?  
**A.**  availability and quality of office space, office equipment, office consumables, secretarial services, and communications facilities;  
 availability of competent counterpart staff and translators;  
 support by the borrower in obtaining visas and clearing imported equipment;  
 availability of transport;  
 access to documents and such items as aerial photos or government statistics;

- access by the team and its personnel to particular offices, departments, or key individuals;
  - availability of acceptable living accommodation;
  - sufficiency of per diems and other out-of-pocket expenditures for international and national consultants; and
  - sufficiency of per diems and out-of-pocket expenditures for counterpart staff.
7. **Q.** [How are these issues best resolved?](#)
- A. While the demands of the consultants should be reasonable, the EA should be able to provide at least what has been promised within the contract. If these items are not forthcoming or of a quality that affects the efficiency of the implementation of the consultancy, then remedial measures must be taken. In some cases, this could include additional funding to the consulting firm to procure independently the items, facilities, or services that the borrower was originally meant to provide. In others, this may entail an agreement to provide the required facilities and support by a particular date.
8. **Q.** [What are some factors that impede a close working relationship between the consulting firm and the client?](#)
- A. The consultant's office may be separate from the project office; project office and EA staff may be already burdened with many other responsibilities; there may be cultural differences between the consultants and the EA staff; or there may be a language barrier between consultants and EA staff.
9. **Q.** [When are contract variations used?](#)
- A. To document agreed-upon changes in the scope of work, personnel inputs, costs, TOR, timing of the submission of reports, or out-of-pocket expenditures.
10. **Q.** [What are the main factors to be considered when replacing personnel on the consulting team?](#)
- A.  Any replacement should be as well qualified or better qualified than the person being replaced.
- Under QCBS, FBS, and LCS, the same rate of remuneration will apply to the replacement as was agreed upon for the person being replaced.
- All costs arising out of or incidental to the replacement (such as airfares for the substitute expert) should be borne by the consultant.
11. **Q.** [What are the two possible payment methods for loan-funded consultancies?](#)
- A.  direct payment by ADB, and
- initial payment by the borrower and subsequent reimbursement by ADB.

12. **Q.** What is an important characteristic of the direct payment procedure that both the consulting firm and the borrower should note?
- A.** Payment by ADB will not include reimbursement of taxes and duties. If the contract calls for this procedure in dealing with the tax issue, then payment will need to be made separately by the EA.
13. **Q.** What is the most serious consequence of disputes between the consultant and the client (either ADB or the EA)?
- A.** They hold up the implementation of the consultancy and usually, by implication, the design, approval, or implementation of a multimillion dollar development investment.
14. **Q.** Which part of the standard contract sets out procedures for dealing with disputes?
- A.** Section 8.
15. **Q.** If disputes cannot be settled amicably between the consultant and the borrower or ADB, what are the final steps taken for dispute resolution?
- A.** Arbitration under the Rules of Arbitration of the International Chamber of Commerce. The results of this arbitration are binding.
16. **Q.** Why should early termination of a consulting contract be avoided if possible?
- A.** It implies a missed opportunity and a waste of funds already expended. This will be detrimental to the overall intent of the consultancy, which is generally to support the design or implementation of an investment project.
17. **Q.** Is ADB approval required if an EA decides to terminate a consultancy contract?
- A.** Yes.
18. **Q.** Must termination be in accordance with the provisions of the consulting contract?
- A.** Yes.
19. **Q.** What are some of the standard provisions?
- A.**  a notice period of 30 days,  
 payment by the borrower of any legitimate outstanding fees and costs to the consultant or consulting firm, and  
 payment of legitimate costs to return the team to their home countries.
20. **Q.** For ADB-recruited consulting services, which department determines the eligibility of final billings?
- A.** The user department.

21. **Q.** Why is it important to request an extension of the completion date if it appears that additional items will need to be billed after the completion date?
- A.** Any expenditures incurred after that time are unlikely to be funded.
22. **Q.** What happens to equipment and vehicles left over from a grant-funded TA at the end of the contract period?
- A.** Equipment and vehicles purchased under TA grant funding become the property of the recipient EA and should be fully accounted for and turned over to it by the departing individual consultant or firm at the end of the assignment.