



Policy Paper

Use of Consultants by the Asian Development Bank and Its Borrowers

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Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
COSO	–	Central Operations Services Office
CPAR	–	country procurement assessment review
CRAM	–	consultant recruitment activity monitoring
CSC	–	consultant selection committee
CSP	–	country strategy and program
CSPU	–	country strategy and program update
DACON	–	data on consulting firms
DICON	–	data on individual consultants
DMC	–	developing member country
EA	–	executing agency
FTP	–	full technical proposal
ICS	–	individual consultant system
IT	–	information technology
ISTS	–	information system technology strategy
MDB	–	multilateral development bank
NGO	–	nongovernment organization
PRC	–	People's Republic of China
QBS	–	quality-based selection
QCBS	–	quality- and cost-based selection
RFP	–	request for proposal
RM	–	resident mission
TA	–	technical assistance
TOR	–	terms of reference

NOTE

In this report, "\$" refers to US dollars.

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EXECUTIVE SUMMARY

The Asian Development Bank (ADB) policy on recruitment and supervision of consultants, embodied in the *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers* (the Guidelines), originally issued in 1979, needs substantial updating and revising to reflect the significant changes that have taken place during the past two decades.

Several factors underscore the need for revision. First, ADB needs to increase operational efficiency, enhance accountability, and streamline procedures, with renewed efforts to promote simplicity and user-friendly approaches that allow delegation of authority to regional departments, resident missions, and executing agencies to the extent possible. At the same time, the quality of consultant engagement and supervision must be improved. This requires focusing on performance monitoring, compliance oversight, and internal and external training.

Second, consultant engagements need to be handled more flexibly given the increasingly complex and varied nature of ADB projects and borrower needs, as well as the broadened range of consulting service specialization for project assignments. This means that new consultant selection methods need to be introduced to provide ADB staff and executing agencies with a wider range of consultant recruitment and contracting options.

Third, to integrate best practices and reduce transaction costs, consulting policies and procedures need to be harmonized to the extent possible with those of other multilateral development banks and financial institutions, taking into account recent advances in information and communications technology and consulting industry changes.

This paper reviews ADB's experience with consultant recruitment procedures under technical assistance and loans, and highlights the problem of time-consuming and numerous steps, combined with a lack of day-to-day recruitment monitoring, that significantly delay consultant engagements. The recent experiences with the quality- and cost-based selection method, introduced in 2002, and a Board-approved technical assistance pilot study on delegation of consultant selection to executing agencies, which began in 2004, are also reviewed.

Taking these factors into account, the paper proposes improvements to the Guidelines are identified, including increasing flexibility and performance monitoring, assessing executing agency and country procurement capacity, promoting more country ownership, increasing the focus on developing national consulting industries, and simplifying selection of smaller (including national) nongovernment organizations. The paper summarizes efficiency measures approved by Management for implementation in January 2005, and the streamlining of consultant engagement and supervision procedures. It proposes new consultant selection methods: fixed-budget, least-cost, and consultants' qualifications.

Because consultant recruitment and supervision procedures are increasingly delegated and streamlined to meet the needs of developing member countries, the paper focuses on training and highlights governance and anticorruption issues. Appendix 6 contains the text of the proposed revised Guidelines, and Appendix 7 compares the revised Guidelines with those of the World Bank. Finally, an implementation plan is included in Appendix 8.

I. INTRODUCTION

1. The reform agenda of the Asian Development Bank (ADB) highlights the importance of streamlined and flexible administrative and operational procedures to promote increased operational efficiency and clearer accountability for delivering results.¹ ADB's *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers* (the Guidelines) have not been substantially revised or updated since 1979, although particular provisions were revised to introduce quality- and cost-based selection (QCBS) in 2002 and to expand the scope of ADB's anticorruption focus in 1998 and 2004.

2. This paper addresses the recruitment and performance of consultants. It proposes revised Guidelines for streamlined consultant recruitment and supervision for ADB-financed and administered technical assistance (TA) and for loan projects. It proposes new consultant selection and contracting methods to promote flexibility and responsiveness with deepened focus on performance.² Extensive internal and external consultations have taken place in formulating the proposed revised Guidelines.³ The paper also summarizes ADB's recent experience with use of QCBS for consulting firm recruitment⁴ and the selection of firms by executing agencies (EAs) under ADB-financed projects.⁵

II. BACKGROUND AND RATIONALE

3. The scope and range of consulting services provided to ADB and its borrowers have expanded in recent years with the mainstreaming of poverty, governance, legal, and institutional reform, anticorruption, beneficiary participation, environment, resettlement, indigenous peoples and other initiatives into ADB's development agenda.⁶ The current Guidelines are based on an outdated conception of consulting services that focused mainly on engineering disciplines.

4. ADB's increasing decentralization, deepened ownership by developing member countries (DMCs) and expanded use of nongovernment organizations (NGOs) has increased the need for streamlining and flexibility, with a number of approaches to consultant engagement, rather than a rigid one-size-fits-all approach. Currently, recruitment of consultants by ADB and its borrowers is an unreasonably protracted process. Some DMCs, for example, have capacity for consultant recruitment with less oversight by ADB, but this is not adequately taken into account by current processes. ADB also needs to introduce more effective systems for benchmarking and monitoring consultant performance, as well as the performance of ADB and EAs in processing and administering TA and loan projects, to promote fuller accountability.

5. The twin imperatives of harmonization with other development partners, particularly multilateral development banks (MDBs),⁷ and application of new information technology (IT) in

¹ ADB. 2004. *ADB's Reform Agenda Today: Achieving Results Together*. Manila.

² This paper should be read in conjunction with the companion Procurement R-Paper (ADB. 2005. *Revising ADB's Guidelines for Procurement*. Manila).

³ Appendix 1 provides a summary of such consultations.

⁴ ADB. 2002. *Use of Price as a Criterion for Selection of Consultants*. Manila.

⁵ ADB. 2003. *A Pilot Study for Delegation of Consultant Recruitment and Supervision Under Technical Assistance to Executing Agencies* (Pilot Study). Manila.

⁶ ADB. 2002. *Review of the Management and Effectiveness of Technical Assistance Operations of the Asian Development Bank*. Manila. This review covered the wide range of services, including various knowledge products and services, that currently characterize ADB TA.

⁷ ADB continues to participate in meetings of procurement heads attended by representatives of other MDBs. This work includes attempts to harmonize procedures and documentation. The harmonization process is intended to reduce MDB borrowers' administrative complexities and transaction costs associated with selecting and engaging consultants, and to promote best practices.

the internet era⁸ have prompted the updating of existing procedures. The harmonization process between ADB and other MDBs has resulted in relatively standard (although not uniform) documentation. “E-procurement”—including e-consultant recruitment—has also become a viable option for many DMCs with the required basic IT infrastructure. The revised Guidelines need to permit use of IT options, including internet-based applications, for selection and engagement of consultant services. Recent tsunami-related and other disaster rehabilitation and reconstruction efforts by ADB and other MDBs have also heightened the need to permit consultant selection procedures in emergency situations that allow for rapid mobilization of expert teams and individual consultants.

6. Important changes have also been taking place in the consultant industry in developed countries. In an effort to mitigate the effect of higher costs and workload discontinuities,⁹ consulting firms have increasingly reduced fixed personnel costs by contracting freelance individual experts or those with other firms for project assignments, a process known as “outsourcing.” At the same time, consulting firms have sought to increase revenues by developing “economies of scope”, that is, to attempt to sell many different services to the same project or client in order to spread fixed costs across a larger sales volume. These disparate trends have resulted in large multidisciplinary consulting firms and small, specialized (or so called “boutique” firms) occupying the same market segments (footnote 9). This has resulted in synergies in some cases, with larger firms associating with the smaller, specialized firms to provide optimal, cost-effective expertise to clients. On the other hand, medium-sized firms appear to have been put at competitive disadvantage. Outsourcing has led to the need for consulting firms and clients to focus increasingly on quality management procedures to ensure outputs of uniform quality and effective coordination of experts from different firms and professional backgrounds (footnote 9).

7. ADB needs to develop updated user-friendly guidelines that provide increased flexibility through a wider range of consultant selection methods and contracting arrangements. ADB’s innovation and efficiency initiative has examined ways to promote more effective and quicker processing of projects, with special regard for the needs of middle-income countries. At the same time, with increased delegation and decentralization and less focus on prior ADB review of critical stages in the consultant recruitment process, there must be more effective training of ADB project staff and borrower and EA officials, deepened efforts to promote EA capacity building and increased compliance-related oversight. Updating the Guidelines is an essential part of this process. The revised Guidelines will provide ADB and its DMCs with an appropriate enabling environment for streamlined yet transparent and fair engagement of consultants. The anticipated benefits include reduced transaction costs for ADB and its borrowers, improvements in loan disbursements because of more timely mobilization of consultants, and increased effectiveness of consulting services through synchronization of consulting inputs with project activities.

8. Against this background, ADB’s reliance on consultants has been steadily increasing over the years. For TA projects, the average annual increase in consulting services engagements between 1994 to 2004, in terms of experts employed, has been 4% for firms and 17% for individuals. For staff consultants, the average annual growth rates over the same period, in terms of number of experts employed, has been 6.3% and 26.5%, respectively, for international and national consultants. At the same time, the proportion of national consultants (firms and

⁸ ADB’s recently adopted information system and technology strategy II (ISTS II, 2004-2009) will improve the way ADB shares and uses knowledge. ADB will improve the databases on consulting firms (DACON) and on individual consultants (DICON) by, among others, strengthening the interface between information on consultants’ past performance and consultant selection for future assignments.

⁹ World Bank. 2002. *Consulting Services Manual*. Washington, DC (pages 6–8). “Workload discontinuities” refer to time periods when consulting firms are confronted with over or under capacity.

individuals) employed in TA projects has gone up.¹⁰ Increasing reliance on consultants is a matter of some concern, given the finding of the most recent ADB report on loan and TA portfolio performance, which noted that ADB's TA portfolio had expanded beyond ADB's capacity to effectively manage it or to ensure that development results are achieved.¹¹

III. DELAYS IN LOAN AND TECHNICAL ASSISTANCE CONSULTANT ENGAGEMENT

9. A Central Operations Services Office (COSO) survey of recent ADB loan and TA projects indicated that the consultant recruitment process is cumbersome. For loan projects, recruitment of firms takes, on average, about 21 months; for TA projects, it is about 6 months.¹² Particularly in the case of loan projects, such delays in consultant recruitment result in significantly delayed project implementation, consulting services inputs that are in many cases not well sequenced with project activities, frequent replacement of experts because of scheduling problems resulting from delayed recruitment, and generally less effective loan project performance.

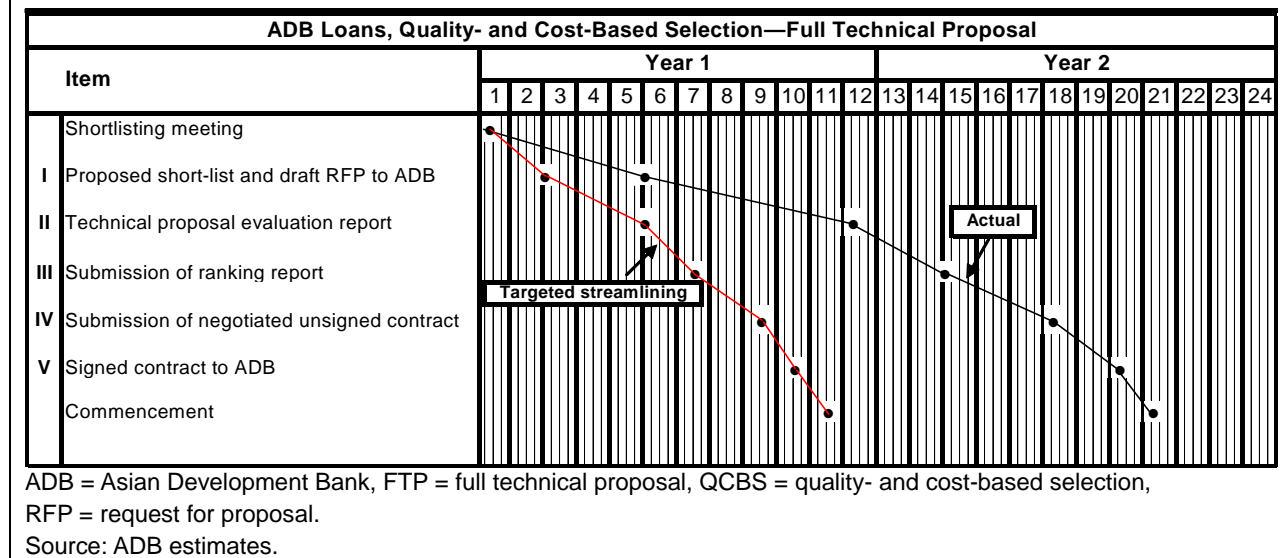
A. Loan Projects

10. Consultant recruitment under ADB-financed loans currently takes far too long. Selection, engagement, and mobilization of consultants under ADB-financed loans is delayed because the process is too complex and suffers from lack of timely and systematic follow up by EAs. The average duration for mobilization of a consulting firm (under QCBS using full technical proposals) is 20–21 months (Figure 1). This results in increased transaction costs and delays in project implementation.

¹⁰ COSO staff estimates. For a graphical breakdown of international and national person-month allocations for firms and individuals as a proportion of total contracted person-months under TA projects between 1994-2004, see Appendix 2.

¹¹ ADB. 2005. *Annual Report on Loan and Technical Assistance Portfolio Performance for the Year Ending 31 December 2004*. Manila, p. 96. This *Annual Report* makes several recommendations to improve ADB's portfolio performance, including enhancing efficiency in project implementation. Management has constituted a task force to address key recommendations of the *Annual Report*. The task force has set out an action plan to improve project administration. ADB. 2005. *Action Plan to Improve Loan and Technical Assistance Portfolio Performance*. Manila (Ref: IN 292-05).

¹² It has been difficult to obtain sufficient information to benchmark ADB's performance in consultant selection against average durations of other MDBs as the latter, unlike ADB, do not keep detailed statistical information.

Figure 1: Selection and Engagement of ADB Loan Consultants—Average Durations

11. Further analysis of this review of selected ADB-financed loan projects suggests the following:

- (i) EA capacity is variable.
- (ii) During loan formulation, neither ADB nor the EA concerned (either separately or jointly) systematically:
 - (a) assess EA capacity for consultant selection or prepare any detailed recruitment plan,
 - (b) define specific EA training needs, or
 - (c) relate the extent of checks and balances (submissions) required to actual EA capacity to handle the process.
- (iii) Many EAs lack the capacity and the expertise to implement the selection and engagement process, and to provide timely submissions in a format required by ADB.
- (iv) Many EAs are unfamiliar with ADB procedures.
- (v) EA staff administering loan projects are, in many cases, different to those previously trained by ADB.
- (vi) EA staff are frequently transferred and responsible ADB staff are also changed from time to time.
- (vii) Inadequate government and EA delegation of authority and highly centralized, cumbersome decision-making procedures at various stages of the process are major causes of delay.¹³
- (viii) ADB has not had a system to apply selection and engagement activity duration norms.
- (ix) Possible lobbying and political interference by the government and/or EA creates delays.
- (x) Opportunities for corruption increase if there are unexplained delays.

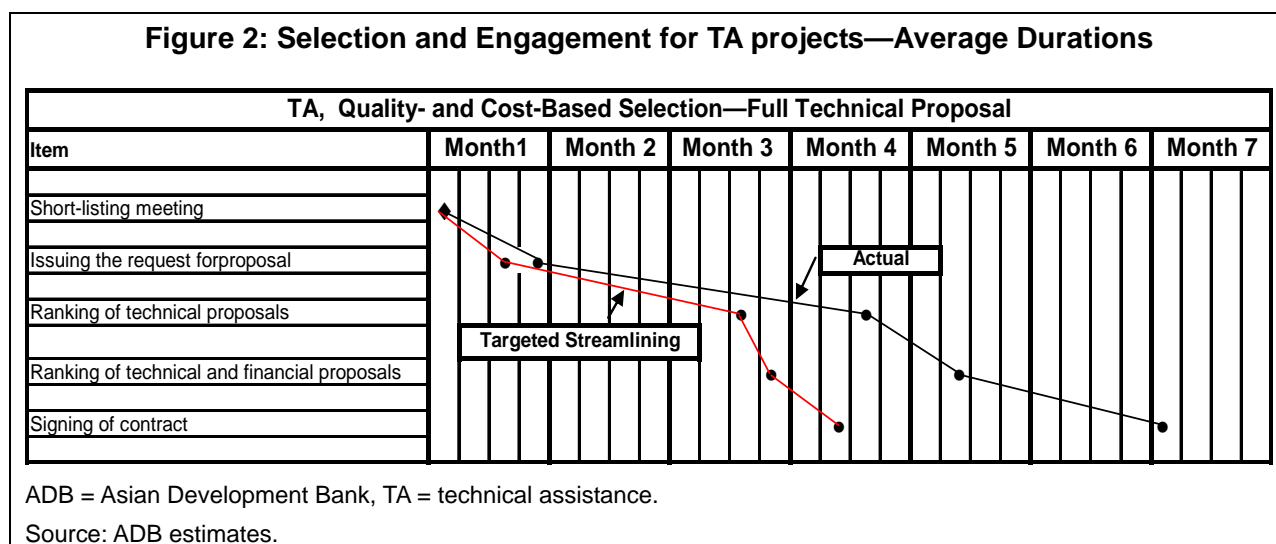
¹³ In countries facing international pressure to improve governance (and reduce corruption), the government approval process can become even more detailed and time-consuming.

- (xi) Delay in local project consultant selection frequently results in (a) fragmented project implementation and poor loan performance; and (b) the need to replace individual experts who cannot reschedule their work activities for participation in the delayed assignment.

12. Delays in the selection and engagement of loan consultants have a negative impact on the quality of consulting services. A consulting firm ranked first in the evaluation process cannot be expected to retain the same team for an unreasonably prolonged period;¹⁴ under such circumstances, the firm may have the right to substitute candidates. Put another way, if consulting firms consider that delays are likely, they may nominate candidates with excellent credentials whom they know will probably not be available at the time of project start-up, or at all. The end result is normally the fielding of experts of lesser quality than originally proposed and opens the door for EA criticism.

B. Technical Assistance Projects

13. The following chart graphically illustrates the problem of slow consultant recruitment for TA projects:



14. Major causes of delays in TA consultant recruitment have included constraints in ADB staff resources (including lack of back-up staff when the relevant project officer is on mission), no monitoring of planning dates for recruitment set by the consultants selection committee (CSC), delays in scheduling of CSCs, and in signing-off CSC minutes, delays in EA responses, and protracted contract negotiations. Of these, the lack of internal systems to monitor the recruitment process has been a principal reason why TA consultant recruitment takes too long. As noted, indicative “planning” dates agreed at CSC and/or by regional departmental shortlisting meetings are not used for selection monitoring and evaluation purposes. Historic average durations for consultant recruitment are excessive and do not provide a realistic yardstick for setting future consultant recruitment norms. Further, decentralizing consultant recruitment under TA to the

¹⁴ However, under standard documentation, firms are required to keep their teams together and ready for undertaking the assignment for 60 days from the date of submission of proposals.

regional departments, without further streamlining and increased training, does not currently accelerate the selection process.¹⁵

15. The problem of delay in recruitment of consultants under ADB-financed TA projects is not limited to those TA projects for which ADB is responsible for consultant selection. Even in the case of particular TA projects under which consultant selection has been delegated to EAs (under the pilot study), there appears to be a significant delay in consultant recruitment, at least for those “delegated” TA projects where the central government has not shown significant commitment to supervising and monitoring EA involvement in the consultant selection process.¹⁶ However, Management approved significant procedural changes in consultant selection, effective 1 January 2005, to permit quicker and more compressed processing of the engagement of firms and individual consultants and increased delegation to regional departments and resident missions. Broader use of single-source selection for individual consultants has also been permitted, subject to limits on contract size and duration. In response to the tsunami disaster, additional flexibility has been encouraged, particularly in broader application of single-source selection to both firms and individuals, to allow rapid mobilization of consultants consistent with ADB’s *Disaster and Emergency Assistance Policy*.¹⁷

16. Application of a consultant recruitment activity monitoring (CRAM) system has also been introduced for TA projects and, recently, for loans. CRAM provides an accurate, up-to-date mechanism for measuring delays, with appropriate departmental and individual staff accountability. Close monitoring of specific tasks in the consultant recruitment process through CRAM for TA projects and loans has reduced the time taken to recruit consultants. Since CRAM was introduced, effective 1 January 2005, the time taken to recruit TA consulting firms has been reduced by an average of 25%.¹⁸

17. For recruitment of individual consultants, a new web-based computerized individual consultant system (ICS), earlier approved by Management and pilot-tested during 2004, is now fully operational. This new ICS significantly cuts down processing time for engagement of individual consultants; more objectively determines remuneration rates, based on job complexity and market rates for a given sector; and permits interactive and increased participation in individual consultant selection by regional departments. With ICS, recruitment duration has dropped to an average of 9 calendar days from 24 calendar days under the previous non-web-based system.

¹⁵ Figure 1 is based on an analysis of ADB TA with a value less than \$400,000. Analyses of ADB TA with a value of \$400,000 or more, where the regional department has been responsible for the process, indicates almost identical average duration times. TA projects with a consulting services budget of \$500,000 or less are now decentralized to regional departments for selection of consulting firms.

¹⁶ The results of the pilot study to date indicate only a small proportion of pilot TA projects under which consultants have been recruited in timely fashion. See paras. 22 and 23 of this paper.

¹⁷ ADB. 2004. *Disaster and Emergency Assistance Policy*. Manila. (Ref. Board Paper R71-04 dated 1 June 2004). These streamlined approaches incorporate more use of direct selection for both executing agencies and affected resident missions, wherever appropriate, particularly where consultants are already mobilized in the country for other assignments. Other emergency measures include (i) shortened *ADB Business Opportunities* listing requirements; (ii) a minimum of three, rather than five, shortlisted firms; (iii) waiver of the requirement of geographical balance for shortlisting in the case of small consulting firm contracts; (iv) the use of simpler technical proposals for consulting contracts under \$1 million and with compressed proposal submission time; and (v) significant delegation to resident missions in the tsunami-affected countries for both consultant selection and supervision. Such measures are more fully described in the Board information paper (ADB. 2005. *Asian Development Bank Assistance for Tsunami-Affected Developing Member Countries*. Manila [IN 35-05, 15 February, paras. 13–16 and 18]) and Appendix 3.

¹⁸ CRAM has been applied to loan projects very recently and no statistics are yet available on the impact of CRAM on reduction of consultant recruitment time under loans.

IV. QUALITY- AND COST-BASED SELECTION AND PILOT STUDY UPDATE

A. Quality- and Cost-Based Selection

18. Since Board approval of the use of QCBS in April 2002,¹⁹ it has become the predominant method for selecting consulting firms. Quality-based selection (QBS), while permissible for complex or highly specialized assignments, is infrequently used.²⁰ A staff review has been undertaken to assess the first 2 years of application of QCBS.²¹ Consultant recruitment under QCBS should take somewhat longer when compared with QBS, primarily because of the need to schedule public opening of financial proposals and to make the final composite ranking of each set of submitted proposals. However, a random sample of TA and loan projects processed under QCBS suggests that the QCBS process, while requiring additional steps, takes in practice roughly the same time for TA projects and less time for loans.²² Moreover, shortlisted firms reported that the preparation time for a financial proposal under QCBS was less than under QBS, and winning firms confirmed that the time required for providing supporting information for negotiations under QCBS was greatly reduced.

19. When compared with QBS over the same time period, QCBS statistics show a reduction of about 11% on international consultant remuneration rates. Under QCBS, 80% of the first technically ranked firms for TA projects were awarded the contract; the vast majority of firms under the remaining 20% were the second technically ranked firms. Under QCBS, even if non-first technically-ranked firms were awarded contracts because they submitted cheaper financial proposals, an acceptable level of technical quality is maintained by requiring all responsive firms to have scored at least 750 points on their technical proposals before their respective financial proposals can be considered.

20. There has been mixed individual feedback from consultants on whether application of QCBS results in a lower quality of firm outputs. It is an issue of concern that 15% of QCBS consultant evaluations (albeit from a shallow data pool) were rated marginal or unsatisfactory, although the corresponding figure for QBS contracts was only 7%. This will continue to be monitored closely in coming months and further checks on the quality of performance under QCBS contracts will be undertaken when more data are available.²³ The use of QCBS may decrease in coming years if the new selection methods proposed under the Guidelines are approved. Further, fact-finding and appraisal missions will be encouraged to examine whether project requirements justify use of QBS rather than QCBS or another selection method in particular circumstances.

21. With uniform application of the 80:20 quality-to-cost ratio, operation of QCBS has worked well to date, with relative administrative ease. External feedback from developed country consultants indicates that a higher weighting should be given to quality. However, some DMCs have argued for flexible application of the 80:20 ratio, so that cost can be given additional weight, if it can be justified on a project-by-project basis. With the proposed introduction of new selection methods that allow for increased focus on cost or quality in particular circumstances, there will be flexibility to choose the most suitable selection method for the purpose. The introduction of a case-by-case application of the quality-cost ratio for QCBS will cause uncertainty and possible

¹⁹ Application of the method began on 1 April 2002. The first contract under QCBS was signed in August 2002.

²⁰ Recent departmental statistics indicate application of QBS in approximately 10% of cases involving selection of consultant firms.

²¹ This study included a desk review, statistical analyses, and consultations with ADB project staff and selected consultants, including an open invitation on ADB website for comment and suggestions.

²² Board Information Note, "Quality and Cost-Based Selection (QCBS): Update (July 2005)" (BIN: QCBS), para. 20.

²³ BIN: QCBS, para. 13.

delays. Therefore, any change to the existing quality–cost approach under QCBS is not recommended at this stage, although this aspect will continue to be carefully monitored.

B. Pilot Study

22. The pilot study, approved in late 2003, allows DMCs to select and manage consultants under ADB TA. Twenty TA projects were initially selected for inclusion (“delegated TA”), representing a reasonable mix of project preparatory and advisory TA in varying sectors with EAs located in both smaller and larger DMCs. Of these pilot TA projects, five each were selected from People’s Republic of China (PRC) and India, with the remaining ten pilot TA projects from other DMCs. The applicable procedure for delegation to EAs under the pilot approved by the Board follows the approach currently taken under ADB–financed loan projects, with limited modification.²⁴

23. However, to date, the results have not been encouraging. As of December 2005, only four EAs have completed the recruitment and engagement process for their respective TA projects and all these have been in PRC. While the PRC experience has been generally positive, it is unclear whether PRC EAs for pilot TA projects would have been as committed to expediting consultant selection, if the central government (through the Ministry of Finance) had not taken a special interest in pushing the process forward.²⁵ The pilot study experience to date highlights the need for accurate assessment of EA capacity to expedite the process of consultant recruitment. ADB has continued to provide training and to encourage EAs to move forward with pilot TA projects.

V. NEEDED IMPROVEMENTS

A. Flexibility

24. In most cases, high-quality consulting services can best be achieved through a competitive selection and engagement process based on quality and cost. QCBS will remain ADB’s preferred procedure. However, apart from QBS and single-source (formerly “direct”) selection, other selection options need to be considered so ADB can be flexible and responsive to EA and market demands.

25. ADB needs to balance factors such as performance quality, risk, complexity, value for money, flexibility, and integrity management at entry and during implementation of consulting services. At the same time, ADB needs to simplify contracts and to focus on consultant performance. This requires structured feedback at critical stages during and on completion of the contract. Contract payments need to be aligned to verifiable achievements. The capacity to win future work must be linked more closely to past performance.

²⁴ This means an EA–driven recruitment process, closely coordinated by ADB’s regional departments, with documentary submission to ADB for approval at four critical stages: short-listing, evaluation of technical proposals, evaluation of final ranking, and agreement on the draft negotiated contract. Further details on the pilot study are provided in Board Information Note “TA Pilot Study: Delegation of Consultant Recruitment and Supervision to Executing Agencies,” July 2005.”

²⁵ Under the pilot study, a manual was prepared for use by mission leaders. Orientation sessions were held for mission leaders in October 2003 and February 2004. Training missions for pilot EAs in PRC, India, and Kazakhstan were undertaken during 2004. During the PRC training mission, government and EA officials expressed concern at the detailed 4-stage ADB approval process and extended indicative recruitment timetable. Several months later they requested ADB to permit an abbreviated recruitment schedule. ADB allowed PRC EAs to follow a compressed recruitment schedule and agreed, whenever it was considered necessary, to opt for applying abbreviated EA submission review procedures, including waiver of three-member ADB CSC review meetings.

B. Consultant Performance Quality Monitoring

26. Existing consultant performance quality monitoring and evaluation systems, including feedback from operational divisions, are inadequate. Currently, for TA projects, these are limited to a performance evaluation report (PER) completed by the user division at the end of an assignment, and processed and maintained by COSO. This system is insufficient because (i) it is limited to a post-assignment completion assessment, (ii) project officers are reluctant to write critical end of assignment reports, and (iii) there is limited interface between information about consultants' past performance and information describing the skills and experience available for future assignments. As a result, operational staff do not always take the evaluation process seriously.

27. The system needs to be re-worked so it addresses performance quality during (i) formulation of the terms of reference (TOR); (ii) the selection and engagement process; (iii) implementation; and (iv) following contract completion. Incorporation of quality management criteria to assess the performance of consulting firms is also necessary. Work is under way as part of ADB's ISTS II program to design a new performance evaluation monitoring system that will link the quality of past performance with further business opportunities.

28. The revised performance evaluation process will include assessment of consultant performance by both ADB and the EA. The consultant will also be encouraged to provide feedback on ADB and EA performance during the assignment. A web-based pilot approach is being finalized for loans and TA projects that will require consultants to complete an assessment of TOR accomplishments at critical intervals during implementation of the assignment. The performance of the consultant during the relevant period will also be evaluated. A modest proportion of the amount payable to the consultant under the contract will be retained until he or she completes such assessments. The consultant responses will be reviewed and evaluated by the EA and ADB. The consultant will be paid the retained amounts due under the contract upon completion of the assessments following validation by the EA and ADB. For marginal or unsatisfactory ratings, a special meeting will be convened by the EA (or by ADB for TA projects) to review the consultant's response to the rating and to determine whether the rating should be maintained or upgraded. For TA projects, increased EA participation in the TA consultant performance evaluation process will be promoted by requiring ADB to consult with EAs during the performance evaluation process.²⁶

C. Nongovernment Organizations and Specialized Agencies

29. ADB cooperates with a broad range of NGOs to improve the effectiveness, quality, and sustainability of its operations.²⁷ "NGO", in this context, refers to organizations that are not based in government and are not for profit. As more NGOs are being employed as consultants for TA and loan projects, simpler processes for smaller (particularly national) NGOs are proposed (that nevertheless maintain principles of transparency, competitiveness, and service quality). A simplified QCBS recruitment procedure is contemplated (particularly when only smaller NGOs are shortlisted) that applies technical proposal evaluation criteria that reflect the unique characteristics of NGOs, such as (i) local community involvement, (ii) familiarity with participating development approaches, and (iii) capacity to co-opt beneficiary participation. In addition, evidence of committed leadership and adequate management will be assessed.²⁸

²⁶ See para. 2.34 of the revised Guidelines, Appendix 6.

²⁷ ADB. 1998. *Cooperation between Asian Development Bank and Nongovernment Organization*. Manila; ADB. 2003. *ADB-Government-NGO Cooperation, A Framework for Action*. Manila.

²⁸ See revised Guidelines, Appendix 6, para. 2.13.

30. Work with United Nations (UN) and other specialized agencies (including universities and research institutes), both as development partners and as consultants providing specialized expertise, has also increased in recent years. User-friendly and simplified procedures for these types of agencies and institutes are also needed. In some cases, such as UN agencies, special tax issues and other exemptions and privileges are provided. While such specialized agencies should not be given preferential treatment in any competitive selection process, simpler documentation that recognizes their special legal status will allow for more timely recruitment.

D. Capacity Development

1. Executing Agency Capacity Assessments

31. ADB does not currently conduct systematic assessments of EAs to ensure that their recruitment operations provide for open competition, economy, efficiency, and transparency consistent with ADB standards, or, in the case of a new EA, to assess its track record. Moreover, ADB does not link the extent of review by ADB of EA consultant recruitment submissions—for short listing, technical and financial proposal evaluation, and after contract negotiations—to the capacity level of the EA concerned.

32. An EA assessment should be capable of (i) defining the appropriate level of review by ADB in the selection and engagement process, (ii) identifying areas where training is required to strengthen EA capacity to adhere to ADB consultant recruitment procedures, and (iii) assessing EA capacity to implement national consultant engagement procurement systems (that meet ADB standards). ADB needs to develop an EA consultant recruitment and supervision capacity evaluation system and to apply it during the processing cycle.²⁹

33. The primary role of EA capacity assessments is to assess compliance risks, at a project level, that may affect the ability of an EA (or implementing agency) to carry out effective, efficient, and transparent consultant recruitment. The assessments should also feed into plans to develop institutional capacity to mitigate such risks. These risks may be political, organizational, or procedural and must be reviewed and assessed, so an effective action plan can be developed to improve the capacity to manage such risks.

34. Preparation of a procurement plan covering procurement of goods and works and recruitment of consultants is required for each project.³⁰ For a new EA where capacity is known to be weak, or where abbreviated prior-reviews or post-reviews are contemplated, ADB may conduct an EA capacity assessment during project processing (ideally at the project preparation TA [PPTA] stage). This assessment will feed into and influence the procurement plan by defining the requirement for, and frequency of, prior and/or post-reviews. Where appropriate, the assessment will define training to strengthen EA recruitment capacity. The initial procurement plan will be incorporated into the report and recommendation of the President (RRP), but this will be a “rolling plan” that is updated periodically.

35. The typical approach for EA capacity assessments is outlined in Appendix 3. A graphical representation of the way in which EA capacity assessments can help to streamline consultant recruitment is in Appendix 4. However, efforts to introduce less intrusive prior reviews or post-reviews by EAs with proven capacity will be undertaken cautiously under a measured approach

²⁹ Where feasible, such EA assessments can be undertaken jointly with MDBs such as the World Bank and/or other interested donors.

³⁰ See para. 1.27 of the proposed Guidelines, Appendix 6. This will be a “rolling” procurement plan, updated periodically at reasonable intervals.

to minimize the potential for more corruption or compliance-related risks.³¹ Well-framed EA capacity assessments will allow ADB to define the required degree and depth of compliance oversight necessary for review of EA consultant recruitment.

2. Development of National Consulting Industries

36. National consulting industries in Asia are at various stages of development. Developed economies, including Japan, Malaysia, Singapore, and Republic of Korea have developed industries and export their services in the region and beyond. However, their influence on the “softer” aspects of developmental consulting has, to date, been somewhat limited. Of the middle-income countries, India also has a well-developed national industry and exports services successfully in the region, while the PRC has strong capabilities in the engineering sector and is rapidly developing consulting experience in the “softer” sectors.³² The PRC has been exporting services under its own bilateral aid program, notably in the roads sector, but, among other issues, the lack of English language capabilities is currently a constraint to further development. DMCs with strong English language capabilities, including Bangladesh, India, Pakistan, the Philippines, and Sri Lanka have well developed national industries and have also been successful in exporting their services in the region. Other countries lag behind for various reasons, including a thinly-developed consulting skills base, limited English language capability, and the absence of strong associations to represent the national consulting industry.

37. Given this mixed range of development, each DMC will need an individual approach to assessing and enhancing its national consulting industry capacity. Country assessments will identify the institutional improvements necessary to upgrade local consultant services. ADB and each borrower will need to agree on the type and extent of training required and the manner in which consultant recruitment processes and procedures can be strengthened. TA for upgrading national consulting industry capabilities in DMCs is needed. Market-based improvements in local capacity are already underway in some countries, through joint ventures and franchising agreements between international and national consulting firms. In some cases, national consulting companies are now employing international freelance consultants in efforts to provide increased quality and depth of expertise.

38. However, for most developmental consulting firms, ad hoc associations with international firms for ADB TA or loan consulting assignments have been the first step. Here there has been mixed success. The role of the national consultant is often ill-defined, resulting in delivery of services that is less than optimal. The national consultant is often labelled an “assistant” to the international consultant and transfer of expertise has been inadequate or marginal. More permanent relationships between international and national consultants and consulting industry associations must be developed. TA that upgrades national consulting associations and related regulatory requirements can facilitate this process, but it can only be a small part of the solution. To this end, COSO will increase its focus on diagnostic work, including identification of potential national consulting industry capacity building initiatives that may become part of CSPs.³³ At the project level, training and transfer of consulting management expertise to associated national

³¹ See paras. 39 and 44–46 of this paper.

³² TA 3138-PRC: Regulatory Framework for the Engagement of Consultants (July 2000): Consultant’s Report. ADB has been supporting the development of the national consulting industry in PRC through TA 2273-PRC (ADB.1995. *Technical Assistance to the People’s Republic of China for the Study on the Local Consulting Industry*. Manila); and TA 3138-PRC (ADB.1999. *Technical Assistance to the People’s Republic of China for the Regulatory Framework for the Engagement of Consultants*. Manila). Currently, ADB is implementing TA 4486-PRC (ADB. 2004. *Technical Assistance to People’s Republic of China for the Formulation of the Regulation for Selection and Engagement for Government-Financed Projects*. Manila).

³³ See para. 1.20 of the revised Guidelines, Appendix 6, that highlights this strategic priority.

consultants will generally be included as part of required TOR for international consultants. International consultant performance evaluations will include assessments of the extent and effectiveness of such training and transfer of expertise.

3. Upgrading Country Capacity and Ownership

a. Capacity

39. Country governance assessments identify areas that need reform in DMCs. An important component of such assessments is a review of the quality of DMC procurement (including consulting services recruitment) policies and procedures. In addition, ADB has undertaken several country procurement³⁴ assessment reports (CPARs) jointly with the World Bank.³⁵ The extent to which CPARs are relied upon in developing CSPs for particular DMCs appears uneven and needs review. However, continued use of specially created project management units seems to perpetuate the problem of weak country systems (including procurement). In coming years, ADB governance and sector “road maps” for longer-term strategic capacity development initiatives must be framed and implemented in a systematic way, with sustained commitment of resources, to upgrade the quality of DMC governance, including public procurement. This means more focus by ADB on ways to strengthen DMC public procurement capacity and to improve the utilization of technical assistance and loan resources to this end.

b. Ownership

40. Increased country (and EA) ownership of the consultant selection and engagement process will come with more capacity at country (and EA) levels. At the country level, the primary vehicle for DMC engagement in improving national procurement systems is through the CSP process. In framing and updating CSPs, procurement capacity (including consultant recruitment and supervision) will be included as a possible area for ADB assistance. Advisory TA should be provided where appropriate to improve DMC efforts to improve country consultant recruitment and supervision systems. COSO staff will assist regional departments in this process with diagnostic and analytical work to identify country consultant recruitment systems that can or should be targeted for capacity development technical assistance.³⁶

41. At the project level, the process of formalizing procurement plans will help to identify EA training needs. Regional departments will be encouraged to ensure that project preparatory TA TOR and TA budgets expressly provide for EA capacity assessments and training and transfer of knowledge by consultants to EAs and government departments. This aspect will need to be carefully monitored in consultant performance assessments.³⁷ For loan projects, EA and government participation and input in formulating procurement plans and packaging of

³⁴ “Procurement” as used here includes consulting services recruitment and related activities.

³⁵ CPARs address, at the macro-level, ways to strengthen legal and regulatory frameworks for procurement. CPARs also review government organization and staffing for procurement-related activities and provide an assessment of government procurement processes and practices, including oversight capacity. Consultations with DMCs have highlighted that CPARs are important strategic documents that should inform CSPs, projects and programs. CPARs also provide opportunities for DMCs to produce “road maps” for achieving internationally acceptable procurement policies and practices and can be meaningfully used by MDBs to support strengthening of procurement-related functions.

³⁶ To increase development impact and deepen country ownership, donor agencies are considering the application of country procurement systems. ADB will monitor MDB efforts to use country systems for consulting services recruitment and will consider selective pilot applications of the approach to particular DMCs.

³⁷ For instance, the performance of lead consulting firms will be evaluated in terms of the quality of training and transfer of knowledge provided to EA staff, as well as to associate national firms and experts engaged for the assignment.

consultant contracts must be deepened during the project fact-finding and appraisal process to increase the extent and quality of counterpart ownership.

42. DMCs have raised several issues on how the effectiveness of consultants can be strengthened. Among others, these include (i) addressing the level of country ownership, particularly EA capacity to understand TOR, manage consultants and potentially benefit from the use of consultants in project design; (ii) increasing EA participation in determining consultancy requirements, producing and endorsing TOR, selecting consultants and making consultant performance assessments; (iii) making a threshold assessment of whether national expertise (in the EA or otherwise) is available for the assignment before engaging international consultants; (iv) explicitly providing for capacity development as part of TOR, and detailing how such capacity building will be delivered, tracked, measured, and reported; and (v) providing more focus on identification of national consultants and building local capacity and knowledge, so that longer-term commitment and more context specific inputs can be obtained. To the extent possible, such considerations will be addressed, at a project level, through framing of a well-designed consultant procurement plan and TOR.³⁸ Broader issues of deepening country-level procurement capacity and ownership will need to be addressed at the CSP level.

VI. STREAMLINED OVERSIGHT AND NEW SELECTION METHODS

43. The streamlining initiatives³⁹ earlier approved by Management provide some initial flexibility. However, with increasing capacity in particular DMCs and the demand for more compressed recruitment, there is a need for more delegation to EAs with proven capacity. New competitive consultant selection and contracting methods are also required to handle the increasingly varied landscape of consultant recruitment and DMC capacity.

A. Delegation

44. In the past, for consultant recruitment under loans (and “delegated TA”), regardless of experience or capacity, all EAs were required to make several standard submissions to ADB for approval at critical stages in the consultant selection and engagement process, namely at shortlisting, evaluation and final ranking of proposals, and at contract negotiations. In cases where particular EAs lacked experience or adequate capacity, this detailed submission process has been useful in assisting EAs in step-by-step compliance with applicable ADB procedures. For EAs with adequate capacity, however, this oversight process has been viewed as cumbersome and paternalistic.

45. Consequently, the proposed revisions to the Guidelines require EAs with solid capacity to make submissions only at the shortlisting and overall evaluation stages. Further, for EAs with demonstrated competence in consultant recruitment (including strong internal control and compliance systems) that have been subject to detailed capacity assessments, the prior

³⁸ See para. 1.27 of the revised Guidelines (Appendix 6 of this paper).

³⁹ See paras. 15–17 above. In connection with such streamlining, the effectiveness of the current “quota” system (which limits a consulting firm to not more than three ADB TA shortlistings—for which proposals are submitted—within any given year) has been assessed. The recent internal review concluded that application of the quota system has not resulted in significant increased participation of smaller firms in ADB projects. Given administrative complexity, the quota restriction does not apply to decentralized TA projects that are handled by user divisions. These currently cover more than half of TA projects processed annually by ADB. With greater decentralization, the proportion of TA projects subject to a quota limitation will decrease. Further, figures suggest that, on average, under 10% of firms actually “hit” quota restrictions. Consequently, the quota system for ADB TA consulting assignment shortlistings will be discontinued on 1 January 2006. However, ensuring wide geographic balance in short-listing of consulting firms, and including firms from DMCs in shortlists, is promoted under para. 2.02(i)(e) of the proposed revised Guidelines (Appendix 6 of this paper).

submission process may be dropped in particular circumstances in favour of post-review, with the frequency and depth of such post-reviews to be detailed in the relevant project procurement plan.⁴⁰

46. Decentralization of consultant recruitment and supervision within ADB as part of “results based” management to promote increased efficiency, ownership and accountability is a complementary process. In addition to increasing thresholds for review of EA consultant recruitment submissions by regional departments without the need to hold formal three-member consultant selection committee meetings, ADB-wide efforts are under way to increase delegation of critical aspects of the consultant recruitment and supervision cycle to resident missions. This process will be encouraged as part of ADB’s increasing focus on improving the quality of project implementation. Continued delegation to regional departments and resident missions will be undertaken in a measured manner provided there are sufficient resources and adequate implementation capacity, particularly at resident missions.

B. New Selection Methods

47. QCBS⁴¹ is expected to remain ADB’s preferred selection method for engagement of consulting firms, except for complex and highly specialized assignments for which QBS may be applied.⁴² Single-source selection will continue to be applied in exceptional cases, provided it can be justified based on considerations of economy and efficiency (e.g., emergencies, small contracts, unique prior experience of the directly selected consultant, etc).

48. For additional flexibility and responsiveness, three new selection methods are proposed.⁴³

- (i) **Fixed-budget.** This method is appropriate only when the assignment is simple, can be precisely defined, and the budget can be fixed. The request for proposal (RFP) should indicate the available budget and request shortlisted consultants to provide their technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to make sure that the budget is sufficient for the consultants to perform the expected tasks. The RFP sets down a minimum qualifying mark of 750 points (out of a possible score of 1000 points) for quality. Evaluation of all technical proposals should be carried out first. Then the financial proposals should be opened in public and prices announced. Proposals that exceed the indicated budget are rejected. If a proposal does not cover particular technical aspects included in the TOR, the offered price may be increased to reflect the estimated cost of the missing activities or items. If

⁴⁰ The World Bank Guidelines allow for post-reviews. World Bank staff identify post-review thresholds for each project in the relevant procurement plan prepared during project processing.

⁴¹ When QCBS is used, the terms of reference (TOR) must be detailed and specific and typically “position-based.” The scope of the consultant’s work must be precisely defined and the required inputs (total person months allocation and number of expert positions) and all the other requirements affecting the cost of the services must be indicated, so that the consultants can prepare detailed and complete financial proposals.

⁴² This may include 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 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).

⁴³ These proposed new selection methods are already in use by the World Bank and the Inter-American Development Bank. A table that summarizes the typical circumstances in which each selection method is applied is provided in Appendix 5.

- this increased price exceeds the requested budget, the proposal is rejected. The highest-ranked technical proposal within the stipulated budget is selected.
- (ii) **Least-cost.** This method is only appropriate for selecting consultants for very small assignments of a routine nature (e.g. audits, engineering design of noncomplex works) where well-established practices and standards exist. The RFP defines a minimum qualifying mark for quality of 750 points and requests shortlisted firms to provide technical and financial proposals in separate envelopes. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened in public. The firm with the lowest price is then selected.
 - (iii) **Consultants' qualifications.** This method may be used for small assignments⁴⁴ for which there is no need to prepare and evaluate detailed proposals. It is used in cases where (a) highly specialized expertise is needed from "boutique" consulting firms that provide depth of expertise in specific areas; and (b) recruitment time is critical and the assignment is short-term. ADB or the relevant EA prepares the TOR and requests amplified expressions of interest (EOI) that include detailed information on the consultants' experience and competence relevant to the assignment. Based on such amplified EOI submissions, a shortlist is established and the firm with the most appropriate qualifications and references is selected. That firm is asked to submit a combined technical-financial proposal and then invited to negotiate the contract. If such negotiations fail for any reason, the firm with the second-ranked EOI will be requested to submit a proposal and to negotiate a contract.

49. At the Working Paper stage,⁴⁵ "framework contract selection" was proposed as an additional selection method. Framework contract selection involves a two-step process: competitive initial screening, followed by a limited competitive selection process for particular assignments among the pre-screened firm consortia over 3–4 years. However, because of reservations expressed about the possible anticompetition or exclusionary effects of using such framework selection, particularly for smaller and national firms, this proposal has been withdrawn. Framework contract selection has been used by other agencies with varying success.⁴⁶ It may be a useful tool for expedited consultant recruitment in particular circumstances. With appropriate safeguards included to minimize possible anticompetition effects, pilot testing of framework contract selection on a case-by-case basis may be proposed for consideration at a later stage.

C. Contracting Arrangements

1. Performance-based Contracts

50. Performance-based contracts are designed to help donors and borrowers obtain better results, including enhanced quality, and to shift the risk of less than satisfactory performance from the donor or borrower to the consultant. Under such contracts, the TOR describe the services in terms of required outputs in a clear and precise manner, yet with sufficient flexibility to enable the consultant to determine the best way to perform the assignment. For this reason, it ADB staff (for TA projects) and EAs (for loans) will need to move away from micromanagement of consultant inputs and focus on objectives and outcomes of the assignment.

⁴⁴ Assignments usually under \$200,000.

⁴⁵ ADB. 2005. *Policies and Procedures on the Use of Consultants by the Asian Development Bank and Its Borrowers*. Manila. Working Paper 4-05 dated 29 August 2005 (W-Paper).

⁴⁶ These agencies include the European Union and AUSAid.

51. Performance-based contracts include a set of measurable performance standards. For typical infrastructure projects, identification of objective and measurable performance standards is a relatively straightforward process. However, for institutional capacity development projects or programs, key performance indicators are typically framed to assess whether the consultant has performed satisfactorily in promoting or achieving particular outcomes in critical result areas. Such performance indicators are correlated with key outcomes for the particular project or program, taking into account the extent to which the consultant has complete or partial control in achievement of such outcomes. Each performance indicator is given a particular weight to be applied when performance is periodically reviewed during the course of the assignment. The framing of a quality assurance surveillance plan, with accurate and fair performance measurement and evaluation criteria, is critical for monitoring the consultant's performance.

52. Performance-based contracts provide for payment(s) to the consultant based on receipt of deliverables which meet or exceed the prescribed performance standards. Particular payment milestones may be tied to such performance indicators and/or related key result area outcomes. This can be measured by achievement of (i) project "outcome" milestones, or (ii) contract "output" milestones spread over the duration of the project.⁴⁷ Such performance-based contracts usually include procedures for reducing payments to the consultant when the services, as evaluated under the quality assurance plan, are below the prescribed standard. Most performance-based contracts are fixed-sum contracts that do not contemplate variations to the specified work as described in the TOR.

53. ADB proposes to develop and test innovative performance-based arrangements where payments to the consultants may be based on a combination of contract inputs⁴⁸ and performance-based outputs and project outcomes. Milestones will be based on "key performance indicators/targets" extracted from the relevant project framework. This can be a difficult process and requires specific, objectively measurable indicators. To this end, ADB is developing a project performance management system (PPMS) that includes a design and monitoring framework which defines project outcomes, outputs, activities, etc. for loans and TA. Such frameworks will facilitate definition of milestones for performance-based contracts.⁴⁹ The benefits for ADB and its borrowers in using performance-based contracts for consulting services include lower costs, fewer delays, improved quality of services and likely savings in ADB or EA staff time, as they no longer have to micromanage the consultant's inputs.

2. Other Types of Contracts

54. For assignments in which the content, duration of services and required output of the consultants are clearly defined, a lump sum contract may be used.⁵⁰ Under this approach, ADB or the borrower pays the consultant a fixed sum of money for a well-defined product to be delivered by an agreed deadline, where the quality can be easily assessed. No physical or price contingencies will be provided. Payments are made in accordance with an agreed schedule linked to the delivery of a product. For administrative streamlining, more use will be made of lump

⁴⁷ Donors using "output" milestones have had mixed results. Major outputs-based contracts, relying solely on milestones as the payment mechanism, have required substantial resources that could have been better directed toward the actual achievement of project "outcomes" rather than the production, verification and acceptance of numerous and sometimes mechanical reports.

⁴⁸ Contract "input" based payments are made under ADB's standard time-based contracts in terms of person-months of consulting services used for producing a particular "output."

⁴⁹ The design and implementation of the new PPMS system will also be part of ADB's efforts to upgrade IT options under ISTS II.

⁵⁰ With lump sum contracts, contract variations that increase costs are not possible because normally there is no available contingency to fund any cost-related variations.

sum contracts in appropriate cases.⁵¹

55. However, when it is difficult to define the scope, output, and, the length of the services (either because the services are tied to outputs under other assignments for which the completion period may vary, or because the input of the consultants is difficult to assess), a time-based (cost plus fee) contract may be used. Historically, time-based contracts have been ADB's preferred arrangement for cases where payments to the consultant are often linked to inputs required to prepare time-bound reports. In some cases, it may be appropriate to combine the features of time-based and performance-based contracts. The type of contractual arrangement chosen depends not only on the applicable selection method but also on the scope and nature of the assignment. Therefore, a flexible approach is necessary.

VII. GOVERNANCE AND ANTICORRUPTION POLICIES

56. The ongoing internal governance and anticorruption implementation review suggests that full implementation of ADB's governance action plan has been hampered by a lack of ownership within ADB and its DMCs and a lack of dedicated resources. Various ways of strengthening project design, implementation, and oversight are possible. These include the following:

- (i) Undertaking systematic fiduciary due diligence studies of EA capacity.
- (ii) Mobilization of local knowledge to improve project design to minimize corruption risks, including drawing on local capacity to certify that works and services are completed to specified quality.
- (iii) Objective assessments in project documents of borrower's financial management capacity and detailed resource and skills requirements for conducting review missions.
- (iii) Systematic screening of annual audited financial statements for all projects by designated personnel in regional departments and resident missions with a view to bringing up issues of concern to the attention of the Office of the Auditor General (OAG), with established procedures for OAG to follow up and take action.
- (iv) Increase in the number of spot checks by ADB staff in regional departments and resident missions responsible for project supervision to ensure that project documentation and reports accurately reflect ground realities.
- (v) Increase in project procurement-related audits, with appropriate informational activities to increase public awareness and change expectations of corruption detection.

57. Better guidance and training on anticorruption measures is necessary, including a focus on (i) conducting and interpreting corruption assessments; (ii) assessing corruption risks and potential impact; (iii) designing effective risk mitigation measures; (iv) developing preventive measures at all stages of the project cycle; and (v) ensuring that sector programs and projects are designed with corruption risks clearly identified and protected against.

58. In addition, post-completion and project performance audit reports can be required to assess whether, and if so to what extent, ADB resources have been misappropriated and the degree to which corrupt activities have hampered the development effectiveness of the project or lowered its rate of return. Such post-completion reports can also assess the effectiveness of ADB's risk mitigation strategies developed at project design and applied during implementation. Other possible measures include using ADB's NGO Center to increase the role of NGOs and civil society in combating corruption in ADB operations and realigning staff incentives to detect and report cases of corruption.

⁵¹ More detailed TOR will be required.

59. The final recommendations of the review of governance and anticorruption policies, if approved by the Board, will be taken into account in (i) developing EA and country capacity assessments and CPARs undertaken independently or with other MDBs, and (ii) identifying measures to eliminate corruption-related risks in projects through appropriately designed procurement plans. ADB's project administration instructions (PAIs)⁵² will be reframed and expanded to provide clear guidance to staff on procedures for, among others, country and EA capacity assessments and compliance-related monitoring and oversight (particularly by project review missions).

VIII. IMPLEMENTATION ARRANGEMENTS

60. The current Guidelines are primarily a statement of policy, with a limited focus on procedures. The revised Guidelines, as proposed, provide a statement of policy and a fuller treatment of general procedures for consultant engagement and supervision.⁵³ The detailed procedures for consultant recruitment and supervision are mostly contained in the PAIs and, in some cases, in the applicable request for proposal (RFP). Substantial effort has been made to harmonize the Guidelines with those of other MDBs, particularly the World Bank. A comparison of provisions of the proposed revised Guidelines with those of the World Bank is provided in Appendix 7.⁵⁴ The distinction between "policies" and "procedures" included in the W-paper draft of the proposed revised Guidelines has been dropped. In the proposed Guidelines, amendments to any provisions can occur only with prior Board approval.

A. Implementation Plan

61. An implementation plan has been prepared with a timetable, following anticipated Board approval of this Paper in January 2006 (Appendix 8). The effective date for application of the revised Guidelines will be 1 April 2006.

62. The major steps in implementation are in Table 1.

Table 1: Implementation Schedule

Activity	Indicative Time Frame
Publication of Guidelines	by March 2006
Revisions to PAIs	by March 2006
Revisions to Standard Documentation	by March 2006
Redesign of DACON/DICON	by June 2006 - ongoing
Redesign of PER System	by June 2006 - ongoing
Training of ADB (including RM) Staff	from February 2006 – ongoing
Training of EA staff	from February 2006 - ongoing
Introduction of New Selection Methods	from April 2006
Introduction of New Contracting Methods	from April 2006

ADB = Asian Development Bank, DACON = data on consulting firms, DICON = data on individual consultants, EA = executing agency, PAI = project administration instructions, PER = performance evaluation report, RM = resident mission.

Source: ADB estimates.

⁵² Since 1 September 2005, the PAIs have been publicly disclosed on ADB's website as required under ADB. 2005. *The Public Communications Policy of the Asian Development Bank*. Manila.

⁵³ See Appendix 6. Section 1 covers "Introduction and Policies" and Section 2 covers "Procedures."

⁵⁴ One significant area that remains "unharmonized" is country eligibility.

B. Training

63. Successful implementation will require a strong focus on training ADB staff at ADB headquarters and resident missions, including reworking training materials.⁵⁵ Training documentation and materials will be upgraded to reflect a multifaceted approach, including increased interactive and web-based initiatives. New approaches will be developed, including on-the-job training and “twinning” arrangements, in addition to stand-alone seminars.⁵⁶

64. As a first step, an approximate 4-month training “roll-out” program for ADB headquarters and resident mission staff is planned, assuming the revised Guidelines are approved. Initial focus (with “train the trainer sessions”) will be for professional and support staff within COSO and is expected to be completed within the first month after Board approval. After that, within an approximate 12-week period, training sessions will be scheduled for regional departments and RM staff at several locations, including the Philippine country office. To the extent possible, during the training missions to resident missions, orientation sessions with available government and EA officials will also be conducted during this period. In a second phase, sequenced training will be scheduled for DMC officials as part of ADB’s regular project implementation seminars, with follow-up sessions as necessary. From time to time during 2006 and subsequently, as opportunities permit, orientation sessions on the revised Guidelines will be scheduled for representatives from the consulting industry in donor countries and DMCs. For more effective service delivery, an organizational realignment within COSO will take effect on 1 January 2006.⁵⁷

IX. RECOMMENDATION

65. It is recommended that the Board adopt the revised *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers*, as detailed in Appendix 6, with effect from 1 April 2006.

⁵⁵ Appointment of an expert(s) in the production of training materials, and for implementation of expanded ADB and EA training seminars, will be necessary.

⁵⁶ On-the-job training will involve assigning trained resident mission staff as observers to designated EAs at critical stages of the recruitment process such as shortlisting and evaluation to provide guidance and direction to EA representatives. Under proposed “twinning” arrangements experienced EA officials from an EA with demonstrated capacity will be seconded to less capable EAs within the same DMC or in other nearby DMCs to provide guidance and first-hand informational exchange on recruitment procedures.

⁵⁷ See Footnote 2, Procurement Paper, para. 30.

SUMMARY OF CONSULTATIONS

A. Background

1. From February to September 2005 (before discussion of the W-paper¹ that preceded this report for consideration by the Board [R-paper]), 12 consultation meetings were held in six countries with governments, consultants, chambers of commerce, consultant associations, and other stakeholders. During the same period, internal consultations were conducted with three resident missions and in ADB headquarters through the innovation and efficiency initiative (IEI) working group. The draft paper was posted on the Asian Development Bank (ADB) website for external consultations from 14 May to 24 June 2005. Written comments were sought and received by some executive directors' offices.² This appendix describes the consultation process and summarizes the responses received. Further, Board members reviewed the W-paper on 20 September 2005 and provided comments that are reflected in this R-paper to the extent possible. The W-paper and the Chair's summary of the Board discussions of the W-paper were posted on ADB's website in September 2005. Additional consultations were held with executing agencies (EAs) and government officials during October–November 2005 in Cambodia, India, and Uzbekistan.

B. Profile of Individuals and Organizations Consulted

2. An equal number of consultation meetings were held in developing and developed member countries with participation by governments and the private sector. Participants were very familiar with ADB projects.

3. The internet posting produced 55 responses. Over 70% came from consulting firms and individual consultants. About 7% were from government organizations and 7% from nongovernment organizations (NGOs). A little less than 60% came from developed countries (Australia, Europe, Japan, and North America), and the remaining 40% from developing member countries (DMCs). About 60% of the respondents had participated in ADB technical assistance (TA) and 40% in loan projects. Roughly 60% of respondents had detailed knowledge of ADB consulting service policies and procedures, and about 30% indicated at least a general knowledge of such policies and procedures.

4. Consulting industry associations, multilateral development banks (MDBs), and others were alerted to the website posting and feedback was requested. Several responses were received by letter and e-mail from, among others, multilateral development banks and consulting associations, including the International Federation of Consulting Engineers (FIDIC). The summary of responses incorporates web- and non-web-based feedback.

C. Summary of Responses

5. Overall, strong support was expressed for the proposed revised *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers* (the Guidelines). Most respondents endorsed the (i) new consultant selection methods; (ii) comprehensive performance monitoring system; (iii) increase in staff training for executing agencies (EAs) and ADB; (iv) introduction of consultant recruitment activity monitoring (CRAM) for loans, and

¹ ADB. 2005. *Policies and Procedures on the Use of Consultants by the Asian Development Bank and Its Borrowers*. Manila (29 August).

² Informal Board seminars were held in February and July 2005.

posting of CRAM on the ADB website; (v) selective introduction of performance-based contracts; (vi) division of the Guidelines into “introduction and policies” and “procedures” sections; (vii) removal of the “quota” system; and (viii) phased introduction of e-consulting services. However, some respondents expressed concern about (i) less intrusive prior ADB reviews of EA submissions at critical stages of the consultant recruitment process, (ii) delegation of consultant recruitment to EAs with proven capacity under ADB TAs, and (iii) simplified selection and evaluation procedures for smaller and national NGOs.

1. Measured Approach

6. Most of the major comments highlighted the need for a measured approach to any significant change in consultant selection, and offered suggestions designed to improve the quality of implementation and minimize risks for potential misuse or corruption. These aspects will be taken into account in developing directives to implement the revised Guidelines. Wherever possible, changes to the revised Guidelines have been changed to reflect particular comments. For example, the revised Guidelines now allow NGO recruitment in one of two ways. If all short-listed entities are NGOs, then quality- and cost-based selection (QCBS) will apply. However, if the shortlist includes consulting firms and NGOs, quality-based selection (QBS) will apply to ensure that NGOs do not receive preferential treatment because of possible tax or other financial advantages accorded to them in many countries. The proposed revised Guidelines now also reflect a suggestion to align advertising and publication provisions to those in the revised *Guidelines for Procurement* to increase transparency.

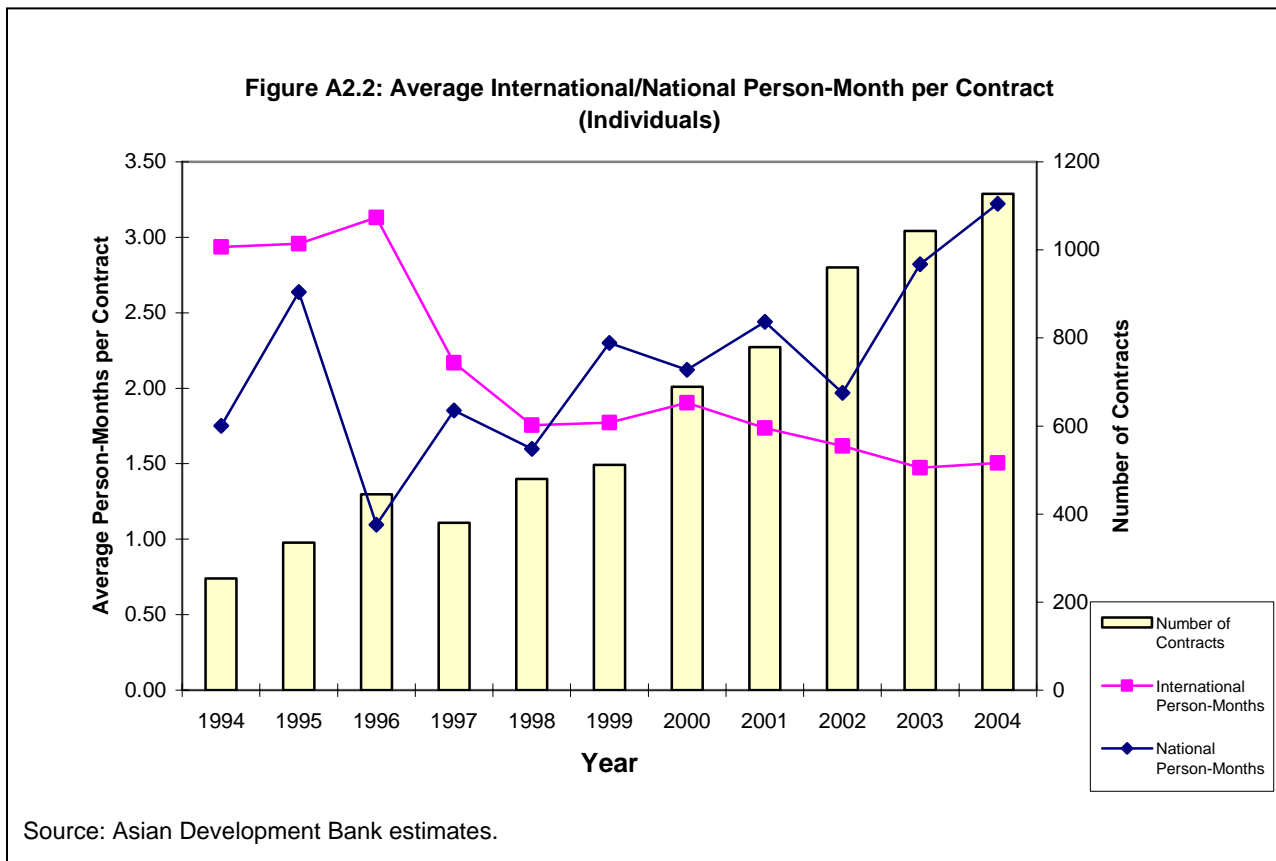
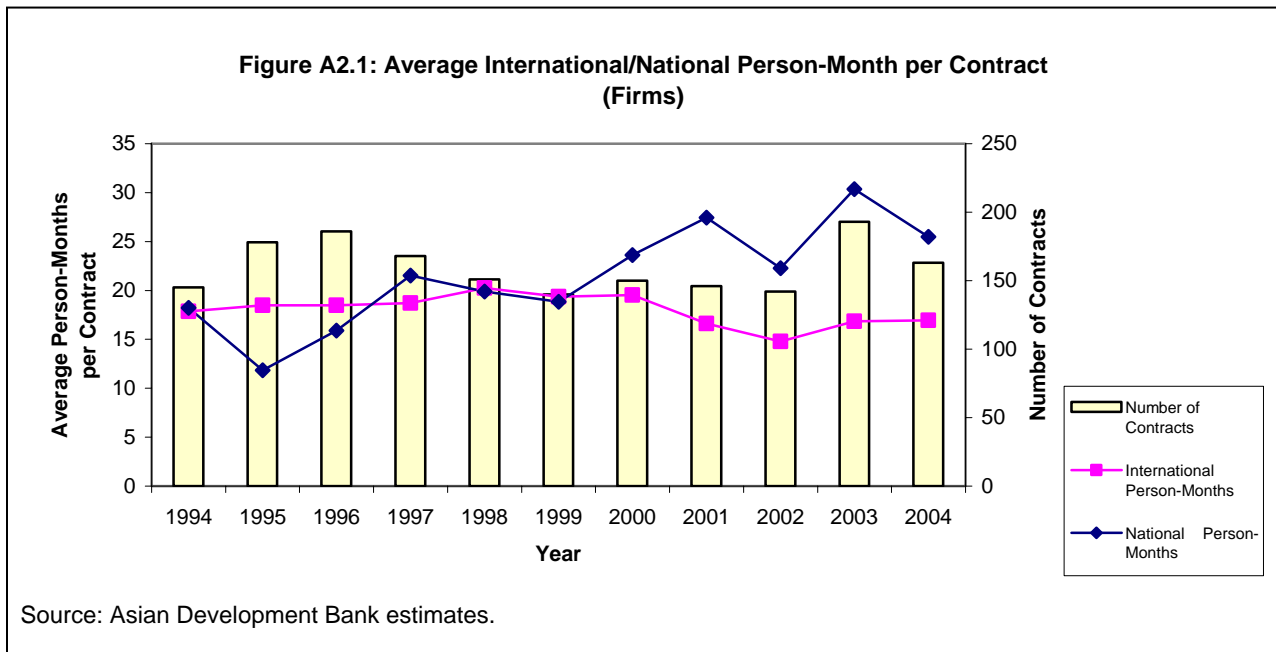
2. Harmonization

7. The major revision to the Guidelines, taking into account responses during internal and external consultation, has been with respect to harmonization. Efforts to reduce complexity and transaction costs, particularly for borrowers, have been generally supported. Accordingly, significant adjustments have been made to the revised Guidelines that aligns them more closely with corresponding guidelines of other MDBs, particularly the World Bank. Such adjustments include (i) adoption of the same or very similar consultant selection and contracting policies and methods, (ii) use of consistent terminology wherever possible, (iii) more focus on EA capacity development by introducing procurement (including consultant recruitment) plans as part of ADB loan project processing, and (iv) an appendix that guides consultants under ADB loan projects. The structure and format of the proposed Guidelines have been revised so that there is, in most substantive respects, equivalence with the approach taken by other MDBs such as the World Bank. Taking into account external comments received, the revised Guidelines have been edited to maximize clarity and simplicity of approach.

3. Country Eligibility

8. One important area that remains “unharmonized” however, is the restriction of country eligibility in the revised Guidelines. Some respondents suggested that ADB remove the restriction in the Guidelines requiring consultants (including joint ventures, subconsultants, and individual experts) to be nationals of ADB member countries so that nationals from all countries, if qualified, could participate in ADB TA and loan projects. However, as this is a restriction embodied in ADB’s Charter, only an amendment to the Charter can remove the eligibility restriction.

RATIO OF INTERNATIONAL/NATIONAL CONSULTANT PERSON-MONTHS TO TOTAL CONSULTANT PERSON-MONTHS PER CONTRACT FOR TAs



UNDERTAKING EXECUTING AGENCY CAPACITY ASSESSMENTS: SUMMARY OF APPROACH¹

1. **Objective.** The objective of an executing agency (EA) capacity assessment is to determine whether the EA has the institutional capacity to handle ADB procurement, recruitment, and related matters during project implementation. Ideally, all EAs should be assessed and the assessment updated from time to time. For new EAs, EAs considered at risk, or where limited or minimal ADB prior review or post-review is contemplated, capacity assessments should be conducted before project approval.
2. **Responsibility.** Project administering departments are responsible for undertaking EA capacity assessments, in consultation with the Central Operations Services Office (COSO). A representative from COSO may comprise part of the assessment team.
3. **Timing.** EA capacity assessments, or assessment updates, may be undertaken as part of project processing, or as a separate exercise. If part of project processing, ideally, it should be done as part of a project preparatory technical assistance (PPTA) or, if not done during the PPTA, then at the fact-finding stage. A determination of the level of EA capacity is a critical input to the individual project procurement plan, which the EA prepares and needs to be finalized at or during loan appraisal.
4. **Scope.** There are two broad dimensions that need to be addressed: (i) a risk assessment of potential capacity problems relating to procurement and recruitment within the EA; and (ii) framing of an action plan to mitigate such risks to the extent possible, including training and other efforts to build and strengthen EA capacity. The risk assessment and action plan may form the basis for the framing of related capacity building technical assistance to the EA. The capacity assessment should include a review of the following aspects of EA operations.
 - (i) **Legal and regulatory regime.** The laws and regulations applicable to the EA should be reviewed to determine whether the EA can carry out procurement and recruitment acceptable with ADB procedures. To this end, any relevant country procurement assessment reports (CPARs) that have been completed should be reviewed to assess the procurement and recruitment context within which the EA works.
 - (ii) **Organizational and functional structure.** The organizational and functional arrangements within the EA should be reviewed, particularly for the unit or division responsible for procurement, recruitment, and related activities. Among other aspects, the organizational independence of the unit responsible for procurement and recruitment (and the extent to which this promotes thorough and impartial procurement- and recruitment-related evaluations) should be assessed.
 - (iii) **Operational management and control systems.** The quality, accuracy, and timeliness of the EA's handling of each phase of procurement, recruitment, and contract implementation should be assessed. This should include planning of procurement and recruitment and adherence to timetables, ability to prepare and issue bidding documents, and managing the procurement and recruitment process from advertising to contract negotiation, and during implementation. The

¹ The substance of this Appendix is based in substantial part on the applicable procedures for undertaking EA capacity assessments currently followed by the World Bank. Capacity assessments for procurement and recruitment of consultants would logically be done at the same time.

checking, oversight, control and audit mechanisms within the procurement and recruitment unit (and within the EA generally) need to be carefully assessed. This should include a review of internal technical and administrative controls, unit and departmental oversight and auditing, the applicable code of professional ethics, and anticorruption-related initiatives and operating measures.

- (iv) **Documentation and records.** An assessment of the quality and completeness of procurement- and recruitment-related files should be made. This should include documentation of all aspects of the procurement and recruitment cycles, including public notice, prequalification (if any), issuance bidding documents, public bid opening, bid evaluation, contract negotiations, and appeals or disputes raised by unsuccessful bidders. The approach of the procurement and recruitment unit (and, as relevant, the EA) to maintaining records and procurement and recruitment related correspondence should be reviewed, including safeguards used to maintain confidentiality and security of records. The ability to document monitoring of the procurement and recruitment process should be assessed.
- (v) **Staffing.** Staff resources dedicated to procurement, recruitment, and related activities, in terms of quality and quantity, should be assessed, to determine whether there is adequate expertise to handle procurement and recruitment. The professionalism, specialization and decision-making autonomy of EA staff and their past experience in handling procurement and recruitment for multilateral development institutions should be reviewed.
- (vi) **General institutional environment.** The autonomy, independence, accountability, transparency and past record of the EA should be assessed, particularly the extent to which the EA and/or its staff may be subjected to political or other pressures to influence procurement and recruitment. As part of this assessment, views of private sector suppliers and contractors who have dealt with the EA should be obtained, particularly as to the integrity and professionalism of EA staff and the quality of EA management of the procurement and recruitment process.

5. **Risk Assessment.** Taking the above factors into account, an analysis of the potential implementation risks in the procurement and recruitment process by the EA needs to be undertaken. This should conclude with rating of such risks as high, average, or low. Such risk determination will define the frequency and extent of prior review, or whether post-review may be permissible in particular circumstances (including the frequency and depth of such post-review).

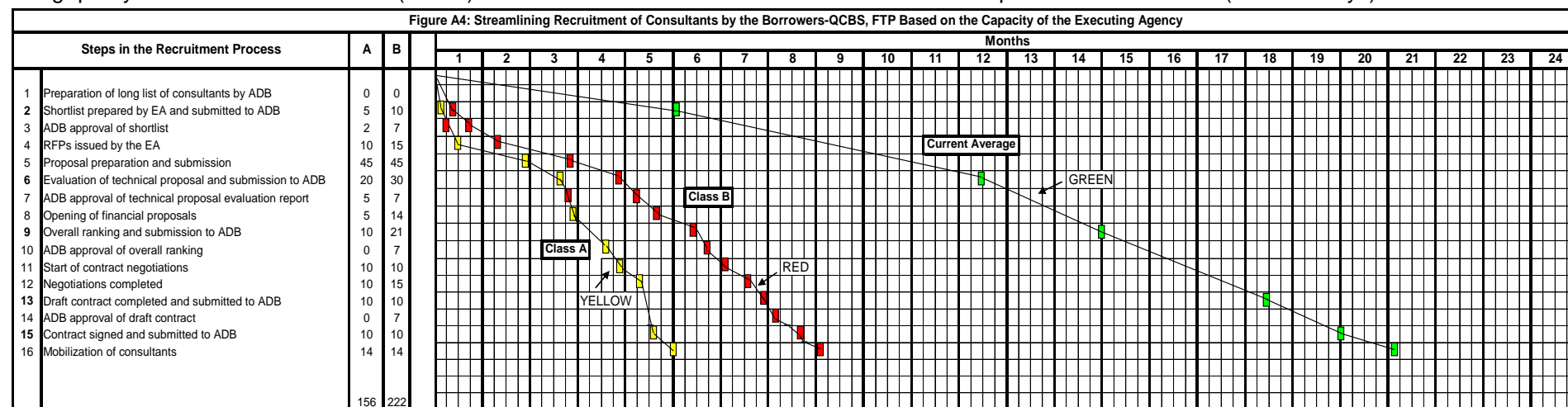
6. **Action Plan.** In order to improve EA capacity, an action plan should be developed based on the risk assessment. The action plan should identify short-term actions essential to position the EA to handle procurement and recruitment adequately during project implementation, as well as other changes necessary to improve the long-term capacity of the EA to administer procurement and recruitment. The timing and sequencing of such short-term and longer-term activities should also be specified in the action plan. The action plan should be developed in sufficient detail (including terms of reference for any procurement, recruitment and cost estimates) so that, depending on the extent of capacity development necessary, it becomes a capacity building component of the project to be negotiated with the borrower.

7. **Procurement Plan.** The intensity and nature of the supervision of procurement and recruitment is linked to the capacity of the EA (and associated risks) through the setting of prior and post-review thresholds, and determining the frequency and depth of prior and post-reviews.

In developing a procurement plan, other factors also need to be taken into account, such as the nature of the project and the extent and value of contract packages contemplated for the particular project.

USE OF EXECUTING AGENCY CAPACITY ASSESSMENTS FOR STREAMLINING

1. The “green” curve shown in Figure A4 is the current average time for recruitment of consultants by borrowers for a full technical proposal (FTP) using quality- and cost-based selection (QCBS). The “red” curve is based on a normative recruitment process time schedule (calendar days).¹



ADB = Asian Development Bank, EA = executing agency, FTP = full technical proposal, QCBS = quality- and cost-based selection, RFP = request for proposal.
Source: ADB estimates.

2. A major outcome of executing agency (EA) capacity assessments will be the definition of categories of competence for EAs. These will define the level of ADB oversight in the process (e.g., the number of submissions to be required from the EA), and the level and/or type of EA training needed. By way of example, the 'yellow' curve above defines the target time for a class "A" EA, defined by proven past experience with ADB (or another multilateral development bank/bilateral agency), competency of the assigned project management staff, clear definition of responsibility, etc., for which abbreviated prior review has been approved by ADB. Class "A" EAs may be permitted to make a reduced number of submissions for ADB approval as part of the prior review process set out in the relevant project procurement (including recruitment) plan. A class "B" EA (the “red” curve) might be one recruiting consultants for the first time, or one whose capacity is doubtful and requiring significant training and oversight. In this case, class "B" EAs would require capacity building and/or training and should complete all required submissions under QCBS.

3. The shorter times for recruitment by class “A” and “B” EAs are based on historic averages but assume improved training.

¹ This normative recruitment time schedule is included in the *Guide for Borrowers and Mission Leaders of Appraisal Missions on Recruitment of Consultants for Loan Projects* (May 2003).

SUMMARY OF SELECTION METHODS

Selection Methods	Application
Quality-and Cost-Based Selection (QCBS)	<ul style="list-style-type: none"> (i) Scope of work can be precisely defined. (ii) Terms of reference (TORs) are well specified and clear. (iii) Inputs can be estimated with reasonable precision.
Quality-Based Selection (QBS)	<ul style="list-style-type: none"> (i) Complex assignments. (ii) Assignments where the downstream impact is so large that the quality of consulting services is of overriding importance. (iii) Assignments that can be carried out in substantially different ways so that financial proposals may be difficult to compare.
Single-Source Selection	<ul style="list-style-type: none"> (i) Assignments that represent a natural continuation of previous work carried out by a firm. (ii) Emergency relief and rehabilitation. (iii) When one firm is uniquely qualified.
Fixed Budget Selection	<ul style="list-style-type: none"> (i) TORs are precisely defined. (ii) Outputs and deliverables can be accurately defined. (iii) Budget is precise. (iv) Budget is fixed and cannot be exceeded.
Least-Cost Selection	<ul style="list-style-type: none"> (i) Small routine assignments where standards are well established. (ii) Low risks. (iii) Generally for assignments below \$100,000.
Consultants' Qualification	<ul style="list-style-type: none"> (i) Time is critical (e.g., emergency relief). (ii) Pool of available consultants is small. (iii) Not feasible to call for detailed technical proposals. (iv) Generally for assignments below \$200,000.
Individual Consultants (for technical assistance [TA] and loan projects)	<ul style="list-style-type: none"> (i) Recruited when teams of personnel not required. (ii) No additional (home office) professional support required. (iii) Experience and qualifications of the individual are the paramount requirement.
Staff Consultant Selection	<ul style="list-style-type: none"> (i) Supplement ADB staff. (ii) Specific time-bound inputs. (iii) Specialized expertise (generally individuals) for a limited period, generally no more than a year.
Nongovernment organization (NGO) Selection	Small NGOs (annual turnover less than \$500,000) and national NGOs in DMCs.

Source: Asian Development Bank.

**Guidelines on the Use of
Consultants by
Asian Development Bank
and Its Borrowers**

Asian Development Bank
April 2006

Foreword:

The *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers* (“Guidelines”) replace the former *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers* (January 2005).

The Guidelines apply to loan and technical assistance projects funded by the Asian Development Bank (ADB) or other grant funds administered by ADB.

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I. INTRODUCTION AND POLICIES

Purpose

1.01 The purpose of these Guidelines is to define policies and procedures of the Asian Development Bank (ADB) for selecting, contracting, and monitoring consultants required for loan projects and technical assistance (TA) financed in whole or in part by loans from ADB, grants by ADB, or funds administered by ADB. The Guidelines provide a statement of applicable ADB policies and procedures; further clarifications are included in ADB's project administration instructions (PAIs),¹ and/or standard requests for proposals (RFPs).²

1.02 The loan agreement, grant agreement or TA letter agreement,³ as the case may be, governs the legal relationships between the recipient and ADB, and the Guidelines apply to the recruitment of consultants as provided in the relevant agreement. The rights and obligations of the borrower⁴ or ADB and the consultant are governed by the specific RFP issued by the borrower or ADB and by the contract signed by the borrower or ADB with the consultant, and not by these Guidelines, the loan agreement, grant agreement or TA letter agreement. No party other than the parties to the loan agreement, grant agreement or TA letter agreement shall derive any rights therefrom or have any claim to loan, grant or TA proceeds.

1.03 For the purpose of these Guidelines, the term consultants includes a wide variety of private and public entities, including international⁵ and national⁶ consulting firms, engineering firms, construction firms, management firms, procurement agents, inspection agents, auditors, United Nations (UN) agencies and other multinational organizations, universities, research institutions, government agencies, nongovernment organizations (NGOs), and individuals.⁷ ADB or its 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' or ADB's capabilities in these areas.

General Considerations

1.04 Normally, the borrower is responsible for the selection, engagement and supervision of loan-financed consultants,⁸ and ADB is responsible for the selection, engagement and

¹ PAIs may be accessed on the ADB website, www.adb.org.

² The standard request for proposals (RFP) (Loans) is fully harmonized with those of other MDBs and may be accessed on the ADB website, www.adb.org

³ For ADB-funded TA, the recipient country enters into an "umbrella" TA framework agreement with ADB that governs the relationship between ADB and the recipient country in general for all TA projects extended by ADB to such country. For each specific TA project, however, a TA letter agreement is agreed between ADB and the borrower. The TA letter agreement typically incorporates provisions of the relevant TA Framework Agreement and of the TA paper proposing approval of the TA.

⁴ References in these Guidelines to "borrower" include the executing and/or implementing agencies responsible for an ADB-financed project where the borrower (or grant recipient) does not directly execute the project.

⁵ "International consultant" means any consulting firm established or incorporated in any ADB member country, including the borrower's country, or a person who is a citizen of any ADB member country including the borrower's country.

⁶ "National consultant" means any consulting firm or individual from the borrower's country that is established or incorporated and has a registered office in the borrower's country, or a person who is a citizen of such country.

⁷ Individual consultants, see para 2.09.

⁸ This includes consultants engaged under investment projects wholly or partially-funded by Asian Development Fund (ADF) Grants.

supervision of TA grant-financed consultants.⁹ While the specific rules and procedures to be followed for employing consultants depend on the circumstances of the particular case, six main considerations guide ADB's policy on the selection process:

- (a) need for high-quality services,
- (b) need for economy and efficiency,
- (c) need to give all qualified consultants an opportunity to compete in providing the services financed by ADB,
- (d) ADB's interest in encouraging the development and use of national consultants from developing member countries (DMCs),
- (e) need for transparency in the selection process, and
- (f) need for increasing focus on anticorruption and observance of ethics.

1.05 ADB considers that, in the majority of cases, these considerations can best be addressed through competition among qualified shortlisted firms in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided. Part II, section A, of these Guidelines describes the different methods of selection of consultants accepted by ADB and the circumstances in which they are appropriate. Since quality- and cost-based selection (QCBS) is ADB's preferred method, paragraph 2.02 of these Guidelines describes in detail the procedures for QCBS. However, for cases where QCBS is not the most appropriate, paras. 2.03–2.07 outline alternative selection methods.

1.06 The methods that may be used for the selection of consultants under a loan project or TA are provided for in the loan agreement, grant agreement, or TA letter agreement. The specific contracts to be financed under the project, and their method of selection, consistent with the provisions of the loan, grant or TA letter agreement, shall be specified in the procurement plan (see paragraph 1.27).

Applicability

1.07 Consulting services to which these Guidelines apply are generally of an intellectual and advisory nature covering a wide range of sectors, both public and private, and a wide range of services¹⁰ at all stages of the project cycle. These guidelines do not normally apply to other types of services in which the physical aspects of the activity predominate (e.g., construction of works).

1.08 The procedures outlined in these Guidelines apply to all contracts for consulting services financed in whole or in part from loans, TAs or other grants or ADB-administered funds implemented by ADB or a borrower. In procuring consulting services not financed from such sources, the borrower may adopt other procedures. In such cases, ADB shall satisfy itself that (i) the procedures to be used will result in the selection of consultants who have the necessary professional qualifications, (ii) the selected consultants will carry out the assignment in accordance with the agreed schedule, and (iii) the scope of the services is consistent with the needs of the project.

⁹ In order to increase ownership of TA projects and improve sustainability of project benefits, ADB may, in particular circumstances, delegate responsibility to a borrower ("delegated TA") to recruit and supervise TA consultants.

¹⁰ "Services" include policy advice; governance; institutional reforms; social considerations including poverty alleviation and gender concerns; environment assessments and audits, participation and consultation, institutional strengthening and capacity building including training; legal and financial services; management and engineering services; and construction supervision.

1.09 Consultants recruited by the borrower include firms and individuals for loan projects and delegated TA. ADB may use consultants for TA activities which are financed by ADB from its own resources or which, although financed by another institution, are executed by ADB on behalf of such other institution. ADB may also use (i) staff consultants to supplement its own staff by providing specialized expert knowledge and advice for ADB activities under contracts financed from ADB's administrative budget; and (ii) resource persons to facilitate conferences, workshops, and seminars. In such cases, the consultants will be recruited by ADB. The duties of consultants are defined in the terms of reference (TOR) which, in the case of a TA project, are prepared in collaboration with the recipient entity.

Conflict of Interest

1.10 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 ADB's anticorruption policy. In pursuance of the anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity) as well as consultants under ADB-financed contracts observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest or may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any consultant selection process.

1.11 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 (other than consulting services covered by these guidelines¹¹).** A consulting firm or individual consultant that has been engaged by ADB or a borrower to provide goods, works, or services (other than consulting services covered by these Guidelines) for a project, shall be disqualified from providing consulting services related to those goods, works or services. 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 (other than consulting services covered by these Guidelines) resulting from or directly related to the firm's or individual consultant's services for such preparation or implementation.
- (b) **Conflict among consulting assignments.** 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.** Consulting firms or individual consultants that have a business or family relationship with an ADB 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

¹¹ See para. 1.07 of these Guidelines.

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 ADB throughout the recruitment process and the execution of the contract.

Unfair Competitive Advantage

1.12 Fairness and transparency in the recruitment process require that consulting firms or individual consultants competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, ADB or the borrower shall make available to all the shortlisted consultants together with the RFP all information that would in that respect give a consulting firm or an individual consultant a competitive advantage.

Eligibility

1.13 To foster competition, ADB permits firms and individuals from all ADB member countries to offer consulting services for projects to be financed by ADB. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. However, the following considerations will also be taken into account.

- (a) Consultants may be excluded if, 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 any country, person, or entity. Where the borrower's country prohibits payments to a particular consultant or for particular goods by such an act of compliance, that consultant may be excluded.
- (b) Government-owned enterprises or institutions in the borrower's country may participate only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the borrower or sub-borrower.
- (c) As an exception to (b), when the services of government-owned universities or research centers in the borrower's country are of unique and exceptional nature, and their participation is critical to project implementation, ADB may agree on the hiring of those institutions on a case-by-case basis. On the same basis, university professors or scientists from research institutes can be contracted individually under ADB financing.
- (d) Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see paragraph 1.10).
- (e) A consultant declared ineligible by ADB in accordance with subparagraph (d) of paragraph 1.23 of these Guidelines shall be ineligible to be awarded an ADB-financed or administered contract during such period of time as ADB shall determine.

Associations between Consultants

1.14 Consultants may associate with each other in the form of a joint venture¹² or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals, and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If ADB or a borrower employs an association in the form of a joint venture, the association will appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Borrowers shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

Advance Contracting and Retroactive Financing

1.15 ADB encourages advance contracting and retroactive financing, where appropriate, to accelerate project implementation. The borrower may wish to proceed, with ADB's approval, with the selection (though not contracting) of consultants before the loan agreement is signed. In such cases, the selection procedures shall be in accordance with these Guidelines, and ADB shall review the process used by the borrower. A borrower undertakes such advance contracting at its own risk, and any "no objection" issued by ADB with regard to the procedures, documentation, or proposal for award does not commit ADB to make a loan for the project in question. If the contract is signed, reimbursement by ADB 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. In particular circumstances, advance recruitment action may be applied to recruitment of consultants for ADB TA or delegated TA.

ADB Review, Assistance and Monitoring

1.16 To ensure borrowers comply with these Guidelines, ADB conducts prior reviews for recruitment of loan and delegated TA consultants. Prior reviews require the borrower to make submissions for ADB's approval at different stage of the recruitment process for all selection methods. The frequency and depth of prior reviews are linked to the capacity of the borrower. Fewer submissions are required from borrowers demonstrating substantial capacity and experience. In particular circumstances, the requirement for prior reviews may be dropped in favor of post-reviews. The requirement, the frequency and depth of prior reviews, and the thresholds for applying post-reviews will be agreed by the borrower and ADB during project preparation and incorporated in the procurement plan (see paras. 1.06 and 1.26).

1.17 Under special circumstances, for example, where an inadequate number of expressions of interest (EOIs) have been received, and in response to a written request from the borrower, ADB may furnish to the borrower long lists 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 any name or add other names as it wishes; however, the final shortlist shall be submitted to ADB for its approval before the borrower issues the RFP. As appropriate, ADB may take part in discussions between the borrower and consultants and, if necessary, may help the borrower in addressing issues related to the assignment.

¹² The nationality of the joint venture (JV) for the purpose of shortlisting will be defined by the nationality of the firm representing the JV.

Misprocurement

1.18 ADB does not finance expenditures for consulting services if the consultants have not been selected in accordance with the provisions of the relevant agreement and these Guidelines. If recruitment is not carried out as agreed, ADB will declare misprocurement, and normally cancel that portion of the financing allocated to the services that have been misprocured. In appropriate cases, ADB may permit re-issuing of the RFP after declaring misprocurement. ADB may, in addition, exercise other remedies provided for in the relevant Agreement. Even if a contract is awarded after obtaining a “no objection” from ADB, ADB reserves the right to declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate or misleading information, or that the terms and conditions of the contract had been substantially modified without ADB’s approval.

References to ADB

1.19 When the project is to be financed wholly or partly by ADB, reference shall be made to ADB in the RFP and contract documents as follows:

“.....[name of borrower]has received a [loan] [and/or grant] from the [ordinary capital resources or Special Funds resources] of Asian Development Bank toward the cost of [name of project], and intends to apply a portion of the proceeds of this [loan] [grant] to eligible payments under this Contract. The terms and conditions of the contract (contracts) and payments by the Asian Development Bank will be subject to the terms and conditions of the [loan/grant agreement], including the *Guidelines on Policies and Procedures on the Use of Consultants by Asian Development Bank and Its Borrowers*. Except as ADB may specifically otherwise agree, no party other than [name of borrower] shall derive any rights from the [loan/grant agreement] or have any claim to the proceeds of the [loan/grant]”

Capacity Development

1.20 ADB provides capacity building to enhance (i) country capacity and ownership by highlighting the requirement for, and defining approaches to, strengthening DMC recruitment capacity; (ii) borrower recruitment capacity through assessment and implementation of hands-on, stand-alone, and “twinning” training defined in the procurement plan; (iii) development of DMC consulting industries by addressing capacity building requirements at four levels: (a) policy/regulatory level, to promote the role of government to facilitate a business environment conducive to the evolution of the industry, (b) consulting association level, to guide and develop industry training and strong representation, (c) consulting firm level, through, for example, including in the TORs of international firms a requirement to transfer “consulting management” expertise to national firms, and (d) individual consultant level, by creating awareness of consulting industry job opportunities.

Training or Transfer of Knowledge

1.21 If the assignment includes an important component for training or transfer of knowledge to borrower staff or national consultants, the 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 normally be included in the consultant's contract and in the budget for the assignment.

Language

1.22 Documentation and communication relating to the use of consultants prepared by ADB, the borrower, and consultants shall be in English.

Fraud and Corruption

1.23 ADB's anticorruption policy requires that borrowers (including beneficiaries of ADB-financed activity), as well as consultants under ADB-financed contracts, observe the highest standard of ethics during the selection process and in execution of such contracts. In pursuance of this policy, in the context of these Guidelines, 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, of any thing of value to influence the action of any party in the consultant selection process or in contract execution;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more consultants, with or without the knowledge of a borrower, designed to influence the action of any party in a consultant selection process or the execution of a contract;
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a consultant selection process, or affect the execution of a contract.
- (b) will reject a proposal for an award if it determines that the consultant recommended for the 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 of ADB financing engaged in corrupt, fraudulent, collusive, or coercive practices during the consultant selection process or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to 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 ADB-financed activities if it at any time determines that the consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or other prohibited practices in competing for, or in executing, an ADB-financed contract; and
- (e) will have the right to require that, in consultant selection documentation and in contracts financed by ADB, a provision be included requiring consultants to permit 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 ADB.

1.24 With the specific agreement of ADB, a borrower of ADB financing may introduce, into the RFPs for delegated TA or loan projects financed by ADB, an undertaking of the consultants to

observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the RFPs. ADB will accept the introduction of such undertaking at the request of the borrower of ADB financing provided the arrangements governing such undertaking are satisfactory to ADB.

1.25 When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the consultants that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the proposal, have been given, received, or promised in connection with the consultant selection process or in contract execution.

Performance Evaluation

1.26 ADB believes that past consultant performance should be linked to further business opportunities. ADB and its borrowers implement formal consultant performance evaluations. As part of the evaluation process, the consultant is invited to comment on the performance of the borrower and ADB for delegated TA, loan projects, and TA respectively. The consultant is also given the opportunity to review and comment on the content of the performance evaluation report prepared by the borrower or ADB.

Procurement Plan

1.27 As part of the preparation of loan and/or grant projects, the borrower, in consultation with ADB, shall prepare a procurement plan ("the plan") covering goods, works and recruitment of consulting services as early as possible, and, in any event, before loan negotiations. For consulting services, the plan will set forth: (i) each particular contract package; (ii) proposed methods for selection of consulting services and type of proposal, and (iii) an overall indicative recruitment schedule and budget for each consulting contract package. Preparation of the plan will increase borrower ownership, including borrower participation in determining consultancy requirements, producing and endorsing TOR, and providing more focus on identification of national consultants. Prior to, or during preparation of the plan, ADB may,¹³ for new borrowers, borrowers where capacity is known to be weak, where abbreviated prior reviews or post-reviews are envisaged, or where delegated TA is proposed, assess the capability of the borrower to implement the plan. This assessment will influence the plan by defining the requirement for, and frequency of, prior, and/or post-reviews. Where appropriate, the assessment will also define training to strengthen borrower recruitment capacity. Although the initial plan will be incorporated in the report and recommendation of the President (RRP), this will be a "rolling" plan, updated periodically at reasonable intervals.

II. PROCEDURES

A. Selection Methods¹⁴

1. Recruitment of Consulting Firm

¹³ Guidance will be sought, among others, from country procurement assessment reports (CPARs), and the previous experience of ADB and other MDBs with the borrower.

¹⁴ The detailed breakdowns of activities for each selection method are defined by PAIs available on the ADB website, www.adb.org.

2.01 In order to (i) provide a wide range of services, (ii) promote streamlining and harmonization, and (iii) reduce administrative complexities and transaction costs, ADB implements a range of selection methods.

a. Quality- and Cost-Based Selection (QCBS)

2.02 QCBS is based on the quality of the technical proposal and the cost of the services to be provided. Since under QCBS the cost of the proposed services is a factor in the selection, this method is appropriate when, (i) the scope of work can be precisely defined, (ii) the TOR are well specified and clear, and (iii) ADB or the borrower and the consultants can estimate with reasonable precision the personnel time as well as the other inputs required of the consultants.

(i) Quality- and Cost-Based Selection Procedure for Loans and Delegated TAs

The QCBS procedure for loan and delegated TA consultants, when the borrower is responsible, is outlined below and summarized in Appendix 6.1. Normally, the borrower will be required to make three submissions (prior reviews) for ADB approval: (i) a draft RFP including the shortlist, (ii) a technical proposal evaluation report, and (iii) an overall evaluation and ranking report. However, borrowers with proven capacity are required to make only two submissions: (i) a draft RFP including the shortlist, and (ii) an overall evaluation and ranking report.

a. Preparation of the Terms of Reference

Before the process of recruitment of a consulting firm starts, the objective and scope of the proposed work, and the functions and duties to be assigned to the consultants should be clearly and adequately defined in the TOR.

b. Cost Estimates (Budget for the Assignment)

Well-developed cost estimates are essential to ensure realistic budgetary resources are provided. The cost estimates for loan projects shall be prepared by the borrower based on assessment of the resources needed to carry out the assignment: expert time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (i) remuneration (according to the type of contract used) and (ii) out-of-pocket expenses. The cost of expert time shall be estimated on a realistic basis for international and national personnel.

c. Advertising

ADB normally lists all loan projects requiring consulting services on ADB's website before shortlisting. To attract EOIs from consulting firms, the borrower, may also advertise in an appropriate national journal, newspaper, or website.

d. Preparation of long list of consultants

The borrower shall prepare a long list of technically qualified firms. The borrower shall decide whether to include any of these firms on the long list and may also add other experienced firms, based on EOIs submitted, to the list.

e. Preparation of shortlist of consultants

The borrower is responsible for preparation of the shortlist. The borrower shall give first consideration to those firms expressing interest that possess the relevant qualifications. Shortlists shall comprise 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 identified. ADB may agree to shortlists comprising a smaller number of firms in special circumstances, for example, when only a few qualified firms have expressed interest in the specific assignment or when the size of the contract does not justify wider competition. For the purpose of establishing the shortlist, the nationality of a firm is that of the country in which it is registered or incorporated and, in the case of a joint venture, the nationality of the firm appointed to represent the joint venture. Once ADB has issued a “no objection” to a shortlist, the borrower shall not add or delete names.

The shortlist may comprise entirely national consultants (firms registered or incorporated in the country), if the assignment is below any ceiling (or ceilings) established in the procurement plan approved by ADB,¹⁵ sufficient qualified firms are available to enable a shortlist of firms with competitive costs to be drawn up, and when competition, including foreign consultants, is prima facie not justified or foreign consultants have not expressed interest. These same amounts will be used in ADB lending operations supporting sector wide approaches (SWAs)¹⁶ (in which government and/or donor funds are pooled) as the threshold below which shortlists will be composed entirely of national firms selected under procedures agreed with ADB. However, if foreign firms express interest, they shall be considered.

f. Preparation and Issuance of the Request for Proposals (RFPs)

Borrowers shall use the standard RFP. The RFP includes:

- letter of invitation;
- instructions to consultants, including a data sheet and evaluation criteria;
- technical proposal standard forms;
- financial proposal standard forms;
- TOR;
- standard form of contract; and
- list of ADB member countries.

The borrower shall send RFPs to consultants on the shortlist. The borrower may use an electronic system to distribute the RFP, provided that ADB is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not restrict the access of shortlisted consultants to the RFP.

¹⁵ Dollar ceilings may be determined, taking into account the nature of the project, the capacity of national consultants, and the complexity of the assignment, and cannot exceed applicable ceilings set out in any country procurement assessment report (CPAR) that has been completed for the country or the borrower.

¹⁶ SWAs represent an approach by development agencies to support country-led programs whose scale is greater than a single project. It typically encompasses an entire sector or large portions of one.

g. Receipt of Proposals

Firms shall be required to submit technical and financial proposals in separate sealed envelopes at the same time. Any proposal received after the closing time for submission of proposals will be returned unopened, and no amendments to the technical or financial proposals will be accepted after the deadline.

h. Evaluation of technical proposal

The evaluation shall be based on the evaluation criteria defined in the instructions to consultants. After the technical quality is evaluated, firms whose technical proposals did not meet the minimum qualifying score of 750 points out of a possible 1,000 points, or were considered non-responsive to the invitation requirements, will be advised and their financial proposals will be returned unopened. Firms that have secured the minimum qualifying technical score will be advised of the location, date, and time for opening of financial proposals.

i. Public opening of financial proposals

The borrower shall then inform the firms whose technical proposals scored 750 points or more of the time and place where the borrower will publicly open their financial proposals. The name of the firms, the technical quality scores, and the proposed prices shall be announced, and recorded when the financial proposals are opened.

j. Evaluation of financial proposal

The borrower shall then review the congruency of the technical and financial proposals, make adjustments as appropriate, and correct arithmetical or computational errors.

k. Ranking of proposals

The total score shall be obtained by weighting and adding the technical and financial scores; this will determine the overall ranking of the consultants' proposals. The weight for technical quality will be 80%; the weight for cost will be 20%.

I. Negotiations

The borrower shall then negotiate a contract with the first ranked firm. Negotiations will include discussions of the TOR, the methodology, personnel schedule, the borrower's counterpart facilities and the quantities of cost items in the firm's financial proposal. However, these discussions will not substantially alter the TOR attached to the invitation. The selected firm should not be allowed to substitute experts, 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.¹⁷ Proposed unit rates for remuneration shall not be altered and other expenses shall not be negotiated since unit rate cost has been a factor in the selection process. Successful negotiations conclude with signing of the contract. Financial negotiations shall include clarification of the consultant's tax liability in the borrower's country (if any) and how this tax liability has been or would be reflected in the contract. If the borrower and the firm cannot reach agreement, the borrower may terminate the negotiations with ADB's prior

¹⁷ Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.

agreement and start negotiations with the next ranked firm until an agreement is reached. The borrower shall send a copy of the signed contract to ADB for its records.

m. Publication of the Award of Contract

After the award of contract, the borrower shall provide ADB with the following information which ADB shall publish on ADB's website:¹⁸ (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.

n. Debriefing

In the publication of award of contract the borrower shall specify that if any consultant who submitted a proposal wishes to ascertain the reasons why its proposal was not selected, such consultant should request an explanation from the borrower. The borrower shall promptly provide an explanation as to why its proposal was not selected.

o. Rejection of All Proposals and Reinvitation

The borrower will be justified in rejecting all proposals only if all proposals are non-responsive because they present major deficiencies in complying with the TOR or if 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 the services with the firm should be investigated in consultation with ADB. Before all proposals are rejected and new proposals are invited, the borrower shall notify ADB, indicating the reasons for rejection of all proposals, and shall obtain ADB's "no objection" before proceeding with the rejection and the new process. The new process may include revising the RFP (including the shortlist) and the budget. These revisions shall be agreed upon with ADB.

p. Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process until the publication of the award of contract, except as provided in paragraphs (vii) and (ix) above.

(ii) Quality- and Cost-Based Selection Procedures for Technical Assistance

The procedure for TA is similar to that for loan and delegated TA consultants and is summarized in Appendix 6.1.

b. Quality-Based Selection (QBS)

2.03 Quality-based selection (QBS) is a method based on evaluating only the quality of the technical proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. QBS is appropriate when (i) assignments are complex or highly specialised making it difficult to define precise TOR

¹⁸ www.adb.org

and the required input from the consultants, (ii) assignments where the downstream impact is so large that the quality of the services is of overriding importance for the outcome of the project, and (iii) assignments that can be carried out in substantially different ways such that financial proposals maybe difficult to compare.

(i) Quality-Based Selection for Loan and Delegated TAs

Generally, when QBS is used, as price will not be used as a selection criterion, the RFP will request firms to submit a technical proposal only. Using the same methodology as in QCBS for evaluation and ranking of the consultants' technical proposal, the borrower shall request the consultant with the highest ranked technical proposal to submit a detailed financial proposal, including supporting documentation that may be subject to audit. 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, including the publication of the award of contract except that only the cost of the winning firm is published. During the process all borrowers shall be required to make two submissions (prior reviews) for ADB approval (i) shortlist, and (ii) final ranking. The procedure is summarised in Appendix 6.1.

(ii) Quality-Based Selection for TAs

The procedure for TA is similar to that for loan and delegated TA consultants and is summarised in Appendix 6.1.

c. Fixed Budget Selection (FBS)

2.04 Fixed budget selection (FBS) is appropriate only when (i) the TOR are precisely defined, (ii) the time and personnel inputs can be accurately assessed, and (iii) the budget is fixed and cannot be exceeded. To reduce the financial risk for consultants and avoid receiving unacceptable technical proposals or no proposals at all, this method can only be used for well-defined TA projects or projects where it is expected there will be no changes during implementation. Shortlists for FBS will normally comprise six firms with a reasonable geographic spread. The RFP shall indicate the available budget, define the "minimum" qualifying mark for the "quality" as 750 points out of a possible 1,000 points, and request firms to submit their best technical and financial proposals in separate envelopes, at the same time, and within the budget. Evaluation of all technical proposals shall be carried out first. Then the financial proposals of firms meeting the "minimum" qualifying mark shall be opened in public and prices shall be announced. Proposals that exceed the indicated budget shall be rejected. The consultant who has submitted the highest ranked technical proposal among the remaining proposals shall be selected and invited to negotiate. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

d. Least-Cost Selection (LCS)

2.05 Least-cost selection is only appropriate for selecting consultants for very small assignments,¹⁹ of a standard or routine nature (audits, engineering design/supervision of simple projects, and simple surveys) where well-established practices and standards exist. Shortlists for LCS will normally comprise three firms with a reasonable geographic spread. The RFP shall define the "minimum" qualifying mark for the "quality" as 750 points out of a possible 1,000 points, and request the firms to submit at the same time technical and financial proposals in separate envelopes. Technical proposals will be opened first and evaluated. Those securing

¹⁹ Generally less than \$100,000.

less than the minimum qualifying mark will be rejected, and the financial proposals of the rest will be opened in public. The firm with the lowest price shall then be selected and invited to finalize the contract. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

e. Consultants' Qualifications Selection (CQS)

2.06 This method may be used for small assignments²⁰ where (i) highly specialized expertise is required for the assignment and recruitment of "boutique" consulting firms that provide depth of expertise in specific areas is contemplated; (ii) recruitment time is critical and the assignment is, typically, short-term; (iii) few consultants are qualified; and (iv) the preparation and evaluation of competitive proposals is not justified. The borrower or ADB shall (i) prepare the TOR, (ii) request amplified EOIs and information on the consultants' experience and competence relevant to the assignment, (iii) establish a shortlist of at least three firms, and (iv) select the firm with the most appropriate qualifications and references based on the EOIs. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract. Should negotiations fail, the borrower or ADB shall start negotiations with the next ranked firm until an agreement is reached.

f. Single Source Selection (SSS)

2.07 Single-source selection (SSS) 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 SSS shall be examined in the context of the overall interests of the client and the project, and ADB's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.

SSS 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) in emergency cases, such as in response to disasters, (c) for very small²¹ assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

When continuity for downstream work is essential, the initial RFP shall outline this prospect, and, if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to 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. If the initial assignment was not awarded on a competitive basis, or if the downstream assignment is substantially larger in value, a competitive process acceptable to ADB shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. ADB will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

²⁰ Usually less than \$200,000.

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 exceed \$100,000.

When a borrower or ADB proposes to use SSS, ADB's mission includes the proposed procedures in the TA paper, and RRP. The borrower or ADB requests the consultant to submit a biodata technical proposal (BTP)²² and a financial proposal at the same time. ADB or a borrower review the BTP to make sure that it is adequate and negotiate a contract with the firm or individual.

Commercial Practices

2.08 In the case of loans on-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 that have been determined by ADB to be acceptable to it. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments.

2. Recruitment of Individual Consultant

2.09 For some assignments, individual consultants are more appropriate and cost-effective than firms. Individual consultants may be recruited directly (independent individual) or through an organization, such as a consulting firm, an academic institution, a government, or an international agency by a borrower or ADB. The procedures for selection are simpler than those for selecting international and national consulting firms. Individual consultants are recruited on the basis of their qualifications for the assignment. When the borrower recruits individual international and national consultants for loan projects, agreements are reached as early as possible and in any case before loan negotiations on (i) the type of consultant best suited for the assignment, (ii) the applicable procedure. Typically, the borrower will recruit them in accordance with government procedures acceptable to ADB. For TA, the procedure for recruitment is dependent on the complexity²³ of the TOR, and the duration of the assignment.

3. Recruitment of Particular Types of Consultant

a. Staff Consultant

2.10 ADB shall define the requirements and prepare the TOR for a staff consultant. ADB shall review expressions of interest submitted and the data on individual consultants (DICON) for suitable candidates and, if necessary, ask organizations or consulting firms for nominations.

b. Resource Persons

2.11 Resource persons may not be engaged for more than 10 working days but may be recruited using single source selection.

c. UN and other Specialized Agencies

2.12 UN and other similar specialized 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

²² BTPs comprise a work plan, personnel schedule and the biodata of each proposed expert.

²³ Complexity in this sense is defined by the "job level" (based on the responsibilities of the assignment and the required qualifications and experience of the consultant) of the assignment.

arrangements required according to the agency's charter, provided these are acceptable to the ADB. To neutralize the privileges of UN Agencies, as well as other advantages such as tax exemption and facilities, and special payment provisions, the QBS method shall be used. UN agencies may be hired on a single-source selection basis if the criteria outlined in paragraph 2.07(f) of these Guidelines are fulfilled.

d. Nongovernment Organizations (NGOs)

2.13 To improve the effectiveness, quality, and sustainability of its operations ADB cooperates with a range of international and national NGOs. Large international NGOs are sometimes included in shortlists for TA and loan consultants providing ADB or a borrower find their qualifications satisfactory. Simplified recruitment procedures and contracting arrangements will be applied for smaller (particularly national) NGOs. Where international NGOs are included with consulting firms on shortlists for TA or loan consultants, the QBS method will be used. Where TA projects or loan projects require in-depth knowledge of local issues, community needs, and/or participatory approaches for which either international or national NGOs are clearly better qualified, the short list may entirely comprise NGOs and the selection method will be QCBS. Where national NGOs are being recruited either for a TA or loan project, ADB may apply a modified (simplified) QCBS recruitment procedure to reflect the capacity of the competing NGOs where evaluation criteria reflect the unique qualifications of NGOs including: (i) history of work with local communities and evidence of satisfactory performance, (ii) familiarity with participatory development approaches, (iii) committed leadership and adequate management, and (iv) capacity to co-opt beneficiary participation. ADB or its borrower may select the NGO by Single Source Selection, provided the criteria outlined in para. 2.07(f) of these guidelines are fulfilled.

e. Procurement Agents (PAs)

2.14 When a borrower lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. When PAs are specifically used as "agents" handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. In such cases PAs shall be selected using QCBS procedures with cost being given a weight up to 50%. However, when PAs provide only advisory services for procurement or act as "agents" for a whole project in a specific office for such project they are usually paid on a time basis, and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and time-based contract, specified in these Guidelines. The agent shall follow all the procurement procedures outlined in the loan agreement and in the procurement plan approved by ADB on behalf of the borrower, including the use of RFP, review procedures, and documentation.

f. Inspection Agents

2.15 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% and using a contract format with payments based on a percentage of the value of goods inspected and certified.

g. Banks

2.16 Investment and commercial banks, financial firms, and fund managers hired by borrowers for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of privatization operations, shall be selected under QCBS. The RFP shall specify selection criteria relevant to the activity—for example, experience in similar assignments or network of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee”; this fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee shall be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in paragraph 2.02(k) 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.

h. Auditors

2.17 Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS giving cost a weight of up to 50% or by the “Least-Cost Selection” outlined in para. 2.05. For very small²⁴ assignments CQS may be used.

i. Service Delivery Assignments

2.18 Projects requiring support services, e.g. training, the design or production of project training materials or promotional materials or videos, and planning and implementing workshops or seminars may involve hiring individuals or specialist organizations that deliver services on a contract basis. The TOR will be prepared. A lump sum contract (see para. 2.22) is typically the most appropriate mechanism for engaging the service provider.

B. Contracting Methods

Selection of the type of contract will be dependent on (i) the nature of the assignment, (ii) whether the scope and output are definable, and (iii) the distribution of risks between the concerned parties.

1. Time-based Contract²⁵

2.19 Time-based contract is used when it is difficult to define the scope, output, and the length of the services, either because the services are related to and await completion of activities by others for which the completion period may vary, or because the input of the consultants is difficult to assess. This type of contract will be used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are linked to inputs and are usually based on monthly rates for personnel named in the contract), and on reimbursable expenses using actual expenses and/or an agreed unit rate.

²⁴ See footnote 21.

²⁵ Sometimes referred to as progress payment contract.

2. Retainer and/or Contingency (Success) Fee Contract

2.20 Retainer and contingency fee contract is 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.

3. Indefinite Delivery Contract (Price Agreement)

2.21 This contract is 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. This is 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.

4. Lump Sum (LS) Contract

2.22 Lump sum contract is used for assignments in which the content, duration of services and the required output of the consultants are clearly defined. This includes simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, service delivery assignments, and preparation of data processing systems. Prices shall include all costs and cannot be negotiated. Payments are linked to outputs, such as reports, drawings, bill of quantities, bidding documents, and software programs.

5. Performance-based Contract

2.23 A performance-based contract is used to enhance the delivery of consulting services outputs, thereby improving value-for-money. Payments to the consultant are triggered on achievement of selected milestones signifying that certain project deliverables (e.g., an outcome or outputs defined in the project design and monitoring frameworks) have been completed or achieved. Contract milestones need to be clearly specified, sufficient in number to enable effective monitoring and verifiable. Selection of milestones and the indicators for verifying achievement of milestones are agreed with the consultant and/or the borrower at the time of contract negotiations. The ease with which milestones can be verified depends upon the nature of the project. Verification can be relatively straightforward in a construction project, but quite difficult for institutional strengthening projects. In the case of the latter, a compromise, combining principles of time- and performance-based contracts, will be applied. In this case a percentage of contract payments to the consultant is based on completed inputs, and a percentage based on achievement, often in the latter part of a contract, of one or more “strategic” milestones.

C. Important Contract Provisions for Loans

Contracts should include provisions for the following items.

1. Currency

2.24 RFPs shall clearly state that firms may express the price for their services, in any fully convertible currency of an ADB member country. 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 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.

2. Price Adjustment

2.25 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. Contracts of a shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

3. Payment Provisions

2.26 Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, 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% of the contract amount should normally be backed by advance payment guarantees.

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

- (i) consultants can be paid directly by ADB at the request of the borrower or exceptionally through a letter of credit;
- (ii) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and
- (iii) 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. Advance Payment Guarantee

2.27 For loan consultant contracts, the borrower may request the consultant to provide an advance payment guarantee against the amount advanced by the borrower.

5. Borrower's Contribution

2.28 The borrower may assign members of its own professional staff to the assignment in different capacities. The contract between the borrower and the consultant shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the borrower, such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case.

6. Conflict of Interest

2.29 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 ADB's anticorruption policy. In pursuance of the anticorruption policy's requirement that borrowers (including beneficiaries of ADB-financed activity) as well as consultants under ADB-financed contracts observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest and may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any consultant selection process. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of para. 1.11 of these Guidelines.

7. Professional Liability

2.30 The consultant is expected to carry out assignments with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the borrower will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that (a) there must be no such limitation in case of the consultant's gross negligence or willful misconduct; (b) the consultant's liability to the borrower may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); 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.

8. Personnel Substitution

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

9. Applicable Law and Settlement of Disputes

2.32 The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration. ADB shall not be named an arbitrator or be asked to name an arbitrator.

D. Monitoring and Evaluating Performance

Monitoring the Recruitment Process

2.33 ADB applies a monitoring tool, consultant recruitment activity monitoring (CRAM), that subdivides the recruitment process for loan consultants and TA into activities and assigns "norms" (working days) to compute target dates for each activity and the overall process. CRAM also assigns accountability to those involved to (a) implement activities, (b) monitor actual against target dates, and, where appropriate, (c) take timely actions. CRAM is adaptable for (a)

different selection methods, and (b) types of technical proposal.

Performance Evaluation

2.34 The borrower evaluates the performance of consulting firms and individual consultants for loan and delegated TA consultants. ADB, in consultation with the borrower, evaluates consultant performance for TA. Depending on the assignment duration, evaluation may be conducted during, as well as on completion of, the assignment. Through a post-assignment questionnaire, the consultant has the opportunity to comment on the evaluation report and on the performance of the borrower and ADB. At contract negotiations, the borrower or ADB gives the negotiating consultant a copy of the performance evaluation form, and the post-assignment questionnaire to be completed by the consultant; the procedures for processing the performance evaluation report and the post-assignment questionnaire are explained. On completion of the assignment, the borrower or ADB prepares a confidential report that explains its overall ratings, particularly any low ratings. If the firm's performance is later found to be poor, the report could be used to support any restrictions or other sanctions. The consultant is given the opportunity to comment on the findings of the performance evaluation and on the performance of the borrower and ADB. ADB maintains files on the performance of consulting firms and individual consultants and checks these records at the time of TA and loan consultant shortlisting.

SUMMARY OF QUALITY- AND COST-BASED SELECTION (QCBS) AND QUALITY-BASED SELECTION (QBS) PROCEDURES

Table A6.1.1: QCBS Procedure

No.	Loan and Delegated TA	TA
(i)	Preparation of the TOR and cost estimates	Preparation of the TOR and cost estimates
(ii)	Advertising	Advertising
(iii)	Preparing a long list of consultants	Preparing a long list of consultants
(iv)	Preparation of the RFP and shortlist of consultants	Preparation of the RFP and shortlist of consultants
	First submission to ADB ^a	
(v)	Issuing of the RFP	Issuing of the RFP
(vi)	Receipt of proposals	Receipt of proposals
(vii)	Evaluation of technical proposal	Evaluation of technical proposal
	Second submission to ADB	
(viii)	Public opening of financial proposal	Public opening of financial proposal
(ix)	Evaluation of financial proposals	Evaluation of financial proposals
(x)	Ranking of proposals	Ranking of proposals
	Third submission to ADB ^a	
(xi)	Copy of signed contract sent to ADB	Negotiations and signing of contract
(xii)	Publication of the award of contract	Publication of the award of contract
(xiii)	Debriefing	Debriefing

ADB = Asian Development Bank, QBS = quality-based selection, QCBS = quality- and cost-based selection, RFP = request for proposal, TA = technical assistance, TOR = terms of reference.

Source: ADB estimates.

^a EAs with proven capacity (see para. 1.27 and 2.02[i])

Table A6.1.2: QBS Procedure

No.	Loan and Delegated TA	TA
(i).	Preparation of the TOR	Preparation of the TOR
(ii).	Advertising	Advertising
(iii).	Preparing a long list of consultants	Preparing a long list of consultants
(iv).	Preparation of the RFP and shortlist of consultants	Preparation of the RFP and shortlist of consultants
	First submission to ADB	
(v).	Issuing the RFP	Issuing of the RFP
(vi).	Receipt of proposals	Receipt of proposals
(vii).	Evaluation and ranking of technical proposals	Evaluation and ranking of technical proposals
	Second submission to ADB	
(viii).	Borrower invites consultant with the highest ranked technical proposal to submit a financial proposal	ADB invites consultant with the highest ranked technical proposal to submit a financial proposal
(ix).	Negotiations and preparation of a draft contract with the selected firm	Negotiations with the selected firm
(x).	Signing of contract	Signing of contract
(xi).	Copy of signed contract sent to ADB	
(xii).	Publication of the award of contract	Publication of the award of contract

ADB = Asian Development Bank, QBS = quality-based selection, RFP = request for proposal, TA = technical assistance, TOR = terms of reference.

Source: ADB estimates.

GUIDANCE TO CONSULTANTS FOR LOAN PROJECTS

Purpose

1.01 This appendix provides guidance to consultants wishing to provide consulting services for loan projects financed by the Asian Development Bank (ADB) and through ADB-administered funds.

Responsibility for Selection of Consultants

- 1.02 (i) The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the borrower for loan projects. ADB, for its part, ensures that funds are paid from a loan only as expenditures are incurred.
- (ii) Disbursements of the proceeds of a loan are made only at the borrower's request. Supporting evidence that the funds are used in accordance with the loan agreement shall be submitted with the borrower's withdrawal application. Payment may be made (a) to reimburse the borrower for payment(s) already made from its own resources, or (b) directly to a third party (i.e., to the consultant).
- (iii) As emphasized in these Guidelines, the borrower is responsible for the recruitment of loan consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is between the borrower and the consultant. ADB is not a party to the contract.

ADB's Role

- 1.03 (i) As stated in these Guidelines, ADB reviews the request for proposal (RFP), including the shortlist, the technical evaluation of proposals, award recommendations and contract to ensure that the process is carried out in accordance with agreed procedures, as required by the loan agreement and the procurement plan. For all contracts requiring prior reviews, ADB assesses submissions by the borrower before they are issued.
- (ii) If at any time in the selection process (even after the award of contract) ADB concludes that the agreed procedures were not followed in any substantial respect, ADB may declare misprocurement, as described in para. 1.18 of the Guidelines. However, if a borrower has awarded a contract after obtaining ADB's "no objection," ADB will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the borrower.
- (iii) Furthermore, if ADB determines that corrupt, fraudulent or other prohibited practices were engaged in by representatives of the borrower or of the consultant, ADB may impose the applicable sanctions set forth in paragraph 1.23(d) of the Guidelines.
- (iv) ADB publishes standard RFPs and contracts for different types of consulting services. It is mandatory for the borrower to use these documents, with minimum changes acceptable to ADB to address project-specific issues. The borrower finalizes and issues these documents as part of the RFP.

Information on Consultant Services

- 1.04 (i) Information on consultant services, including a brief description of the nature of services, timing, estimated cost, and person-months, will be, in the first instance, listed for a minimum 30 days on ADB's website before shortlisting.
- (ii) After the award of TA and loan consultant contracts, ADB shall publish on its website the following information: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the overall ranking of the consultants; (d) the name of the winning consultant and the cost, duration, and summary scope of the contract.

Consultants' Role

- 1.05 (i) 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. In this connection, it should be emphasized that the specific RFP issued by the borrower governs each selection. 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.
- (ii) 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 curriculum vitae (CV) of experts submitted with the proposals. The CV shall be signed and dated confirming the content accuracy of the CV, and availability of the expert. 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, experts, and so forth. Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth, except²⁶ at the time of negotiations carried out in accordance with the provisions of the RFP. If an extension of validity of proposals was the reason that experts were not available, a change of expert with equivalent or better qualification might be possible.

Confidentiality

1.06 As stated in the Guidelines, paragraph 2.02(p), the process of proposal evaluation shall be confidential until the publication of the contract award, except for the disclosure of the technical points as indicated in paragraph 2.02(h), and disclosure of financial information at the public opening of financial proposals, see para. 2.02(i). Confidentiality enables the borrower and ADB reviewers to avoid either the reality or the perception of improper interference.

²⁶ Depending on the selection method. For example, with quality- and cost-based selection (QCBS) and fixed budget selection (FBS), negotiation of the price is not permitted.

Complaints during the Recruitment Process

1.07 If, during the recruitment process, consultants wish to bring information with respect to the integrity of the selection process to the notice of the borrower, ADB, or both, they should do so in writing through the borrower, or they may write to ADB directly if the borrower does not respond promptly or if the communication is a complaint against the borrower.

Debriefing after Contract Award

1.08 If after contract 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 the consultant may write directly to ADB.

COMPARISON BETWEEN THE DRAFT REVISED ASIAN DEVELOPMENT BANK GUIDELINES AND THE WORLD BANK GUIDELINES

A. Introduction

1. The heads of procurement of the multilateral development banks (MDBs) have pursued a harmonization process since 1998. The revised *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers* (the Guidelines) extend this process by being closely aligned with the guidelines of other MDBs, particularly the World Bank. This appendix describes the differences between the World Bank guidelines and the revised Asian Development Bank (ADB) Guidelines. Table A7.1 compares the content of the ADB's revised Guidelines with that of the World Bank and shows the substantial harmonization between the two sets of guidelines.

B. Differences

2. **Scope.** The World Bank guidelines focus exclusively on recruitment by World Bank borrowers. In contrast to the World Bank, ADB implements a mainstream technical assistance (TA) program facilitating, among others, project preparation and advisory support services where recruitment is, in most cases, ADB's responsibility. Recruitment of consultants for loan projects is the borrowers' responsibility. Project cycle management is facilitated by integrating both processes within a single set of guidelines.

3. **Format.** ADB believes that recruitment "policies" and "procedures" should be clearly differentiated in the guidelines. The ADB guidelines thus include a section titled "Introduction and Policies." This draws attention to the importance of policies, e.g., those covering ethics, fraud, and corruption.

4. **Policies.** The underlying sections summarize policy differences between the Guidelines and the World Bank guidelines.

- (i) **Eligibility.** Article 14(ix) of the Agreement Establishing the Asian Development Bank (the Charter) provides that ADB will only finance services (the Guidelines, para. 1.03, footnote 5) that are supplied from a member country. This requirement for country eligibility is reflected in ADB's Guidelines. The World Bank does not have this restriction.
- (ii) **Conflict of Interest.** ADB's anticorruption policy¹ lays out specific wording (the Guidelines, para. 1.10) with respect to conflict of interest.
- (iii) **Capacity Development.** ADB (the Guidelines, para. 1.20) give more emphasis to capacity development of the ADB, the borrower, and DMC consulting industries.
- (iv) **Language.** ADB requires "documentation and communication relating to the use of consultants prepared by ADB, its borrower, and consultants shall be in English" (the Guidelines, para. 1.22). For the request for proposal (RFP) and the proposals, the World Bank provides the borrower with the option of English, French, or Spanish, and the possibility, at the borrower's option, for the RFP to be prepared in the national language of the borrower's country and for consultants to submit their proposals in either of the two languages.

¹ ADB. 2004. *Anticorruption Policy Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines*. Manila.

- (v) **Fraud and Corruption.** ADB's anticorruption policy lays out specific wording (the Guidelines, para. 1.23) with respect to fraud and corruption.
 - (vi) **Performance Evaluation.** ADB gives greater emphasis (the Guidelines, para. 1.26) to evaluating performance of the consultant and linking past performance to opportunities for future shortlisting. The evaluation is a two-way process where the consultant also has the opportunity to review and/or assess the support of the ADB and/or the borrower.
5. **Procedures.** The underlying sections summarize procedural differences between the Guidelines and the World Bank Guidelines.
- (i) **Quality- and Cost-Based Selection (QCBS)**
 - (a) **QCBS Process: level of detail.** The World Bank guidelines describe in detail each step of the QCBS process. The ADB Guidelines provide an outline, the detail is in project administration instructions (PAIs).
 - (b) **Weighting of quality and cost.** The World Bank takes into consideration the complexity of the assignment and the relative importance of quality in defining the weight for the "cost". Normally, the World Bank applies an 80:20 percentage ruling for quality and cost apportionment. ADB standardizes on 80:20 when QCBS is applied.
 - (c) **QCBS terminology.** The World Bank adopts the terms "fee," "reimbursables," "staff," and "foreign". ADB uses "remuneration," "out-of-pocket expenses," "expert," and "international" respectively.
 - (d) **Addition/deletion of firms following approval of the shortlist.** The World Bank may agree with the borrower to expand or reduce a shortlist after a "no-objection" to the shortlist by the World Bank. The ADB Guidelines do not permit this.
 - (e) **Type of proposal and firm's response time.** The time allowed for firms to prepare proposals under the World Bank Guidelines "shall not be less than four weeks or more than three months". The response time under the ADB Guidelines is dependent on whether a full technical proposal (FTP), 45 calendar days; simplified technical proposal (STP), 35 calendar days; or biodata technical proposal (BTP), 21 calendar days, is requested.
 - (f) **Evaluation of the Quality.** The World Bank does not define a standard "minimum qualifying technical score". The ADB Guidelines define the "minimum qualifying technical score" as "750 out of a possible 1,000 points."
 - (g) **Publication of the award of contract.** The World Bank publishes "the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals". ADB does not disclose the winning firm's financial proposal grand total, only the contract sum. ADB does not send information to all consultants, although it discloses the results on the ADB website.

- (ii) **Quality-Based Selection (QBS)**
- (a) **Submission of Technical and Financial Proposals.** The World Bank guidelines include the possibility of the borrower requesting submission of technical and financial proposals at the same time. The ADB Guidelines require submission and evaluation of the technical proposal first. The highest ranked firm is then asked to prepare, submit, and negotiate a financial proposal.
- (iii) **Fixed Budget Selection (FBS)**
- (a) **Evaluation of Quality.** The World Bank does not define a standard “minimum qualifying technical score”. The ADB Guidelines define the “minimum qualifying technical score” as “750 out of a possible 1,000 points”.
- (iv) **Least Cost Selection (LCS)**
- (a) **Evaluation of the Quality.** The World Bank defines the requirement for a minimum qualifying mark for the quality. ADB Guidelines define the “minimum qualifying technical score” as “750 out of a possible 1,000 points.”
- (v) **Types of Contract.**
- (a) **Percentage Contract.** The World Bank Guidelines include percentage contracts. ADB does not apply this type of contract.
- (b) **Performance-based contracts.** The World Bank does not include performance-based contracts. ADB includes enhancing the delivery of consulting services outputs thereby improving value-for-money.
- (vi) **Bid and Performance Securities.** The World Bank guidelines include bid and performance securities. ADB does not apply bid and performance securities for consulting contracts though borrowers may request the consultant to provide an advance payment guarantee.
- (vii) **Monitoring the Recruitment Process.** The ADB Guidelines include a monitoring and accountability mechanism² which subdivides the recruitment process into activities and assigns “norms” (working days) to compute target dates for achievement of each activity.
- (viii) **Performance Evaluation.** The ADB Guidelines outline a performance evaluation process for consulting firms and individual consultants. The World Bank guidelines do not include a formal performance evaluation process.
- (ix) **Review by the Asian Development Bank of the Selection of Consultants.** The World Bank includes this as Appendix 1 to the Guidelines. ADB incorporates this within the main text of the Guidelines.

² Consultant Recruitment Activity Monitoring (CRAM).

- (x) **Instructions to Consultants (ITC).** The World Bank includes these in Appendix 2. ADB does not include these in the Guidelines but in the RFP.

Table A7.1: Cross-correlation of World Bank Guidelines and ADB Revised Guidelines

No.	World Bank Guidelines	ADB Revised Guidelines (Comparable Paragraph Number)
	Title:	
	Guidelines Selection and Employment of Consultants by World Bank Borrowers, May 2004	
I	Introduction	
1.1-1.3	Purpose	1.01-1.03
1.4 -1.6	General Considerations	1.04 -1.06
1.7-1.8	Applicability of Guidelines	1.07-1.09
1.9	Conflict of Interest	1.1-1.11
1.10	Unfair Competitive Advantage	1.12
1.11	Eligibility	1.13
1.12	Advance Contracting and Retroactive Financing	1.15
1.13	Associations between Consultants	1.14
1.14-1.16	Bank Review, Assistance, and Monitoring	1.16-1.17
1.17	Misprocurement	1.18
1.18	References to the Bank	1.19
1.19	Training or Transfer of Knowledge	1.20-1.21
1.20-1.21	Language	1.22
1.22-1.23	Fraud and Corruption	1.23-1.25
1.24	Procurement Plan	1.27
II	Quality and Cost Based Selection (QCBS)	
2.1-2.2	The Selection Process	2.01
2.3	Terms of Reference (TOR)	2.02 (i) a.
2.4	Cost Estimate (Budget)	2.02 (i) b.
2.5	Advertising	2.02 (i) c.
2.6-2.8	Short List of Consultants	2.02 (i) d. e.
2.9	Preparation and Issuance of the Request for Proposals (RFP)	2.02 (i) f.
2.10	Letter of Invitation (LOI)	2.02 (i) f.
2.11	Instructions to Consultants (ITC)	2.02 (i) f.
2.12	Contract	2.02 (i) f.
2.13	Receipt of Proposals	2.02 (i) g.
2.14	Evaluation of Proposals: Consideration of Quality and Cost	2.02 (i) h.
2.15-2.19	Evaluation of the Quality	2.02 (i) h.
2.2-2.21	Evaluation of Cost	2.02 (i) j.
2.23	Combined Quality and Cost Evaluation	2.02 (i) k.
2.24-2.27	Negotiations and Award of Contract	2.02 (i) l.
2.28	Publication of the Award of Contract	2.02 (i) m.
2.29	Debriefing	2.02 (i) n.
2.30	Rejection of All Proposals, and Reinvitation	2.02 (i) o.
2.31	Confidentiality	2.02 (i) p.
III	Other Methods of Selection	
3.1, 3.2-3.4	Quality-Based Selection (QBS)	2.03 b.
3.5	Selection under a Fixed Budget (FBS)	2.04 c.
3.6	Least-Cost Selection (LCS)	2.05 d.
3.7-3.8	Selection Based on the Consultants' Qualifications (CQS)	2.06 e.
3.9-3.13	Single Source Selection (SSS)	2.07 f.
3.14	Commercial Practices	2.08
3.15-3.21	Selection of Particular Types of Consultants	2.10-2.18
IV	Types of Contracts and Important Provisions	
4.1-4.5	Types of Contracts	2.15-2.19
4.6	Important Provisions	2.19-2.23
V	Selection of Individual Consultants	2.09
	Appendix 1: Review by the Bank of the Selection of Consultants	
1	Scheduling the Selection Process	2.33
2..4	Prior Review	1.16
5	Post Review	1.16
	Appendix 2: Instructions to Consultants	None
	Appendix 3: Guidance to Consultants	Appendix 1
1	Purpose	1.01
2	Responsibility for Selection of Consultants	1.02
3..4	Bank's Role	1.03
5..6	Information on Consultant Services	1.04
7..8	Consultants' Role	1.05
10	Confidentiality	1.06
11..14	Action by the Bank	1.07
15	Debriefing	1.08

IMPLEMENTATION PLAN

No.	Key Implementation Activities							
		2005		2006				
		Nov	Dec	Jan	Feb	Mar	Apr	May
1	Publish the Guidelines and revise ADB standard documentation							
	Board approval of Guidelines			▲				
	Revisions, editing, graphics, and printing				→			
	Publish Guidelines					▲		
	Revisions to PAIs		→					
	Revisions to standard documents		→					
	Effective date for application of Guidelines						▲	Apr-06
2	Extend the range of selection methods							
	Prepare detailed procedures for fixed budget, least cost, and consultants' qualification		→					
	Prepare simplified recruitment procedures for NGOs			→				
3	Extend the range of contracting arrangements							
	Prepare (i) performance-based, (ii) combination of performance and time-based (progress payment), and (iii) indefinite delivery contracts					→		
	Prepare simplified contract for smaller NGOs					→		
4	Research innovative streamlining processes							
	Develop new format for "General Approach and Methodology"				→			
	Develop e-recruitment systems for the recruitment process							ongoing
5	Training							
	Revise all the training materials to reflect new processes					→		
	Revise the handbook for users of consulting services (four volumes)							
	Train ADB staff (regional departments and resident missions)							ongoing
	Train EA staff							ongoing
	Design an approach for assessing EA recruitment and consultant supervision capacity				→			
	Assess current approaches to training EA		→					
	Develop new training approaches to enhance EA capability		→					
	Assess and define approaches for future oversight/compliance for loan consultants							ongoing
6	Redesign the PER system (links to ISTS II)							
	Revise consultant databases (DAICON/DICON)		→					
	Develop midterm and end of contract consultant performance evaluations		→					
	Prepare new PER proposal (holistic model), linking performance records into new databases		→					ongoing

ADB = Asian Development Bank, DAICON = data on consulting firms, DICON = data on individual consultants, EA = executing agency, NGO = nongovernment organization, ISTS = information system technology strategy, PAI = project administration instruction, PER = performance evaluation report.
Source: ADB estimates.