



PROCUREMENT REGULATIONS FOR ADB BORROWERS

Goods, Works, Nonconsulting and Consulting Services

- (d) risks of unavoidable work interruption are better borne by the borrower than by a contractor, or
- (e) there are emergencies needing prompt attention.

Particular Types of Procurement Arrangements

A. Selection of Consultants

- 2.20 In the case of consulting services, OCB allows for methods of evaluation and comparison of bids to take account of both quality and cost according to the specific nature of the consulting services to be acquired and the conditions under which they are to be acquired (Appendix 4). In practice, this means that borrowers may
- (a) balance the quality and cost of the proposed services using a quality- and cost-based selection (QCBS);
 - (b) prioritize quality through quality-based selection (QBS) or selection based on consultants' qualifications (CQS);
 - (c) select the highest quality consultant within the available budget using a fixed-budget selection (FBS); or
 - (d) prioritize cost through least-cost selection (LCS).

B. Selection of Individual Consultants

- 2.21 For certain assignments, individual consultants may be more appropriate and cost-effective than firms. Individual consultants may be recruited by the borrower directly in their individual capacity or through an organization such as a consulting firm, an academic institution, a government, or an international agency.

C. Procurement from Specialized Agencies

- 2.22 There may be situations in which procurement directly from specialized agencies,¹⁵ acting as suppliers, pursuant to their own procedures, may be the most appropriate way of procuring

¹⁵ Specialized Agencies are legally independent international organizations with their own rules, membership, organs, and financial resources that were brought into relationship with the United Nations through negotiated agreements. As described at United Nations System Chief Executives Board for Coordination. 2016. *Directory Of United Nations System Organizations*. <http://www.unsystem.org/members/specialized-agencies>

APPENDIX 4

Consulting Services Selection Using Open Competitive Bidding

Short-Listing

1. In the case of consulting services, prequalification is done using a short-listing process.
2. Borrowers will advertise a request for expressions of interest (REOI) which sets out the criteria to be applied to select the short list of bidders for consultancy contracts. The borrower may decide to limit the number of bidders appearing on the short list, and the objective criteria for doing so shall be set out in the REOI.
3. The short-listed firms shall be invited to bid by way of a request for proposals (RFP).
4. RFPs shall be prepared containing the relevant documents and forms.

Selection Methods

5. In the case of contracts for consulting services, value for money is normally based on the best combination of quality and price appropriate to the service in question. This is achieved through competition among prequalified (short-listed) 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.
6. The quality- and cost-based selection (QCBS) method is appropriate when
 - (a) the scope of work can be precisely defined;
 - (b) the terms of reference (TOR) are well-specified and clear; and
 - (c) the borrower (or, as applicable, Asian Development Bank [ADB])

and the consultants can estimate with reasonable precision the personnel time as well as the other inputs required of the consultants. The weightage for the cost shall be chosen, taking into account the complexity and impact of the assignment and the relative importance of quality.

7. In particular cases, consulting services are evaluated under a quality-based selection (QBS) method where only the quality of the technical proposals is evaluated. QBS is appropriate when
 - (a) assignments are complex or highly specialized, making it difficult to define precise TOR and the required input from the consultants;
 - (b) the downstream impact of the assignment is so large that the quality of the services is of overriding importance for the outcome of the project; and
 - (c) assignments can be carried out in substantially different ways such that financial proposals may be difficult to compare.
8. In some cases, quality is also paramount for small assignments where selection based on consultants' qualifications (CQS) may be used, if
 - (a) highly specialized expertise is required for the assignment and recruitment of "boutique" consulting firms that provide depth of expertise in specific areas is contemplated;
 - (b) recruitment time is critical and the assignment is, typically, short term;
 - (c) few consultants are qualified; and
 - (d) the preparation and evaluation of competitive proposals is not justified.
9. Fixed-budget selection (FBS) is appropriate when
 - (a) the TOR are precisely defined,
 - (b) the time and personnel inputs can be accurately assessed, and
 - (c) the budget is fixed and cannot be exceeded.
10. Least-cost selection (LCS) is the appropriate method for selecting consultants for small assignments of a standard or routine nature¹ where well-established practices and standards exist.

¹ For example, audits, engineering design and/or supervision of simple projects, and simple surveys.

Pricing for Consulting Services

11. For time-based consulting contracts,² payments are linked to inputs and bidders will be required to quote prices based on the identified inputs, such as monthly rates for personnel named in the contract, and on reimbursable expenses using actual expenses and/or an agreed unit rate. In other cases, pricing may be agreed on alternative bases such as lump-sum fees,³ agreed remuneration rates for experts typically payable on the basis of the time inputs actually provided in the case of indefinite delivery (price agreement) contracts,⁴ percentage payments based on performance⁵ triggered on the achievement of selected milestones, or a success fee (normally expressed as a percentage of the sale price of the assets) for retainer or contingency (success) fee contracts.⁶

Evaluation Criteria and Methodology for Consulting Services

12. Quality in respect of the provision of consultancy services is not readily assessed on the basis of standard technical specifications, given the importance of consultant qualifications, experience, and performance. At the same time, the nature of the services to be provided and the

² These may be 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.

³ Lump-sum contracts are 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.

⁴ 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 and is commonly used to retain advisers for implementation of complex projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, and technical troubleshooting, normally for a period of a year or more.

⁵ A performance-based contract is used to enhance the delivery of consulting services outputs, thereby improving value for money.

⁶ These contracts are widely used when consultants (banks or financial firms) are preparing companies for sale or merger, notably in privatization operations.

degree of intellectual input required⁷ will dictate the level of quality required versus the cost.

13. The evaluation methodology for various methods used for consulting services selection is described in Appendix 5.

⁷ Some consulting services require qualified professionals to carry out routine tasks according to standard procedures (e.g., bookkeeping or notarial services) which require no additional creative input. Other services are not routine and require additional intellectual creativity (e.g., forensic accounting or litigation advice) where the experience and performance record of the professional is paramount.

APPENDIX 5

Evaluation Criteria and Methodology

1. Evaluation criteria shall be designed to enable the borrower to achieve value for money in procurement financed by the Asian Development Bank (ADB) and shall be informed by the procurement plan.

Key Requirements

2. The evaluation criteria shall be appropriate to the nature and complexity of the procurement and
 - (a) be proportionate and appropriate to the type, nature, market conditions, complexity, risk, value, and objective of what is being procured;
 - (b) to the extent practicable, be quantifiable (such as convertible to monetary terms);
 - (c) be included (to the exclusion of all other criteria) in the bidding or request for proposals documents together with a full explanation of the specific manner in which they are to be applied;
 - (d) be changed only through amendments; and
 - (e) be applied consistently to all bids or proposals submitted.
3. In particular, the evaluation criteria shall reflect the nature of the procurement and the need to balance the cost and quality elements appropriately.
 - (a) Where quality standards of the technical requirements can be established and measured easily by reference to technical specifications or well-established industry standards, value for money will be achieved by applying evaluation based on lowest evaluated cost for goods, works, and services substantially meeting those requirements. This will be the case for standard off-the-shelf goods and equipment and standard construction and other nonconsulting services.

- (b) Where quality needs to be measured by comparison between providers based on an assessment of qualification, experience, and performance, such as in the case of consultancy services, or where complex solutions are required consisting of a combination of goods, works, and services, value for money is more likely to be achieved by applying evaluation methods which allow for an assessment of the balance between cost and quality according to the needs of the borrower as well as intended project development objectives.

Evaluating Goods, Works, and Nonconsulting Services

4. In the case of contracts for goods, works, and nonconsulting services, value for money is generally determined on the basis of the lowest substantially responsive evaluated cost. Provided the bidder is qualified, the bid with the lowest evaluated price, but not necessarily the lowest submitted price, is likely to be successful.
5. The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable nonmaterial deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.
6. For goods and equipment, nonprice factors that normally may be taken into consideration include payment schedule; delivery time; operating costs; efficiency and compatibility of the equipment; availability of service and spare parts; and related training, safety, and environmental (including sustainability) benefits. In particular circumstances (e.g., high-level technology), such nonprice factors may include, among others, technical quality, life cycle costing, long-term maintenance, and use of alternative technologies.
7. Factors other than price shall, to the extent practicable, be expressed in monetary terms in the evaluation provisions of the bidding documents or be given a relative merit weight if it is not possible to express them in monetary terms for demonstrable reasons.
8. Under works contracts, contractors are responsible for all duties, taxes, and other levies, and bidders shall take these factors into account in preparing their bids. If time is a critical factor, the value of early completion to the borrower may be taken into account according to criteria presented in the bidding documents.

Evaluating Consulting Services

9. Under the quality- and cost-based selection (QCBS), the public opening of the bidders' financial proposals is held following completion of the technical evaluation. During this opening, the name of the firms, the technical quality scores, and the proposed prices are announced and recorded. The borrower then reviews the congruency of the technical and financial proposals, makes adjustments as appropriate, and corrects arithmetical or computational errors. The total score is obtained by weighting and adding the technical and financial scores; this determines the overall ranking of the consultants' proposals before contract negotiations. The weight for the cost is chosen, taking into account the complexity and impact of the assignment and the relative importance of quality.
10. Under the quality-based selection (QBS), price will not be used as a selection criterion; the bidding documents request firms to submit a technical proposal only. Using methodology and criteria as in QCBS for the evaluation and ranking of the consultants' technical proposal, the borrower requests the consultant with the highest ranked technical proposal to submit a detailed financial proposal for negotiation, including supporting documentation that may be subject to audit.
11. When the borrower applies the consultants' qualification selection (CQS), it selects the firm with the most appropriate qualifications and references meeting the stated requirements of experience and competence relevant to the assignment from the information provided by firms in response to the relevant request for expression of interest. The selected firm is then asked to submit a combined technical–financial proposal and then invited to negotiate the contract.
12. When fixed-budget selection (FBS) is the selected method, firms submit their best technical and financial proposals in separate envelopes, at the same time, and within the budget. Evaluation is done based on the indication given of the available budget and of a minimum qualifying mark for the quality (usually 750 points out of a possible 1,000 points). Following the first evaluation of all technical proposals, the financial proposals of firms meeting the minimum qualifying mark will be opened in public and prices announced. Proposals that exceed the indicated budget are rejected and the consultant who has submitted the highest ranked technical proposal among the remaining proposals will be selected and invited to negotiate.

13. For the least-cost selection (LCS) method, firms are requested to submit technical and financial proposals in separate envelopes at the same time. The bidding documents would define the minimum qualifying mark for the quality (normally 750 points out of a possible 1,000 points). 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 and invited to finalize the contract.
14. LCS may also be used for selecting consultants for smaller assignments of a standard or routine nature (audits, engineering design and/or supervision of simple projects, and simple surveys) where well-established practices and standards exist.
15. The evaluation procedures for selecting individual consultants are simpler and quicker than those for selecting consulting firms. Individual consultants are recruited on the basis of their qualifications and experience for the assignment. When the borrower recruits individual consultants for loan projects, agreements are reached on the type of consultant best suited for the assignment, and the applicable procedure.

APPENDIX 6

Asian Development Bank Review of Procurement Decisions

1. To ensure that funds are used only for the purposes for which the financing was granted, the Asian Development Bank (ADB) carries out a review of procurement using a risk-based approach through prior and post review (sampling).
2. The determination of whether a procurement process is subject to prior or post review (sampling) is based on the project and activity-specific procurement risks, which are assessed during project preparation and reassessed and updated during project implementation. The requirement for prior or post review (sampling) is specified in the procurement plan.
3. During project implementation, ADB monitors and reassesses the risk and risk mitigation measures, and may require the borrower to revise the prior or post review (sampling) requirements in the procurement plan.
4. Procurement oversight under alternative procurement arrangements is based on a trust-and-verify approach and may rely on oversight mechanisms of the borrower or those agreed in the applicable financing or other agreements.

Scheduling of Procurement

5. ADB reviews the procurement arrangements proposed by the borrower in the procurement plan for its conformity with these Regulations. The procurement plan covers an initial period of at least 18 months.
6. The initial procurement plan and any subsequent version will be prepared by the borrower and agreed with ADB. The borrower shall update the procurement plan annually or as needed, covering each

successive 18-month period of project implementation.¹ The initial procurement plan and any subsequent revision will be agreed with ADB.

Prior Review

7. High-risk contracts as identified in the procurement plan are subject to ADB's prior review. The borrower shall make such additions or modifications to, or deletions from, the documents reviewed as ADB may request.
8. Prior review requirements typically are as follows:
 - (a) In cases where prequalification is used, prior review shall encompass the draft documents to be used, including the text of the invitation to prequalify, the prequalification documents, and the evaluation methodology, together with a description of the advertising procedures to be followed. The evaluation report and the list of proposed prequalified bidders shall be furnished by the borrower to ADB for its comments before the applicants are notified of the borrower's decision.
 - (b) Before bids are invited, the borrower shall furnish a complete set of the draft bidding documents to ADB for its comments, together with a description of the advertising procedures to be followed for the bidding and the draft invitation for bids.
 - (c) After bids have been received and evaluated, the borrower shall, before a final decision on the award is made and before the expiry of any standstill provision, if any, furnish ADB with a detailed report on the evaluation and comparison of the bids received, together with the recommendations for award and such other information as ADB shall reasonably request.
 - (d) If ADB determines that the intended award would be inconsistent with the procurement plan, it shall promptly inform the borrower and state the reasons for such determination. Otherwise, ADB shall provide its no-objection to the recommendation for contract award, upon receipt of which the borrower shall promptly award the contract.

¹ Appendix 9, para. 2.

- (e) If the borrower receives protests or complaints from bidders, these will be addressed as further detailed in Appendix 7 of the Regulations.
 - (f) After each contract is awarded, ADB shall be furnished with copies of the contract as executed.²
 - (g) The borrower is required to retain all documentation related to bidding and contract implementation for at least 1 year after the project closing date.
9. In the case of contracts subject to prior review, the borrower shall seek ADB's no-objection where any modification would individually or in aggregate increase the original price of the contract by more than 15%. If ADB determines that the proposal would be inconsistent with the provisions of the procurement plan, it shall promptly inform the borrower and state the reasons for its determination.

Post Review (Sampling)

10. Contracts that are not subject to ADB prior review are subject to post review using a sampling methodology by ADB that is summarized in the project procurement plan (post review sampling). The methodology is based on the value, nature, and distribution of these contracts and the procurement risks, including the capacity of the borrower. Based on the risk assessment, ADB may review the initial contract(s) as necessary. The sampling methodology should cover contracts amounting to a representative range of the total number of transactions covered by the project plan in terms of value and number, but including in the sample review of all types of contracts identified in the project procurement plan.³
11. The borrower shall retain all documentation with respect to each contract where post review (sampling) is required during project implementation and for at least 1 year after the project closing date. This documentation generally includes the bid proposals, the original signed contract, the evaluation report (including the analysis of the respective proposals), and recommendations for award, for examination by ADB or by its consultants.

² Any proposed changes which differ substantially from the original draft as reviewed by ADB shall be submitted to ADB for prior no-objection.

³ Appendix 7, para. 15.

12. Master copies of electronic documents must be retained in print form, suitably authenticated by the issuing agency by signature, stamp, or other feature acceptable to ADB. Alternatively, audit trails can be made available in case an electronic procurement system was used and documents are in electronic format.
13. The borrower shall furnish the required documentation to ADB soon after award of contract unless otherwise specified in the financing agreement.
14. If ADB determines that the goods, works, or services were not procured in accordance with the agreed procedures as reflected in the procurement plan, it may take appropriate actions consistent with the terms and conditions of such agreement(s) and ADB's implementation support and monitoring role.