



10th BUSINESS OPPORTUNITIES FAIR 2019



Consulting and Non-Consulting Services

Galiya Ismakova
Procurement, Portfolio and Financial
Management Department, ADB
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Overview



- Procurement Policy framework
- Consulting Services and changes to RFP
- Non-consulting Services



ADB Procurement Framework – Key documents



The new ADB procurement framework consists of the *ADB Procurement Policy* (the Policy), the *Procurement Regulations for ADB Borrowers* (the Regulations), the *Staff Instructions* (SI), and associated *guidance notes* (GN).

- (i) *ADB Procurement Policy*: Approved by ADB Board of Directors, the Policy specifies ADB's six core procurement principles and various considerations relevant to their implementation in ADB financed operations.
- (ii) *The Regulations*: Approved by ADB Management, the Regulations provide choices for Borrowers to allow them to determine the most appropriate procurement method, specify the rules that must be followed and set out ADB's procurement due diligence function.
- (iii) *The Staff Instructions*: Approved by the Procurement, Portfolio and Financial Management Department (PPFD) Staff Instructions define the roles and responsibilities of ADB staff in implementing the Policy and Regulations, including the procurement decision authorities and service standards. They also set out the procurement procedures and practices to be applied by ADB Borrowers.
- (iv) *The Guidance Notes*: Approved by PPFD provide more details to ADB Borrowers to give best practice advice and assist them in implementing various procurement methods and modalities.

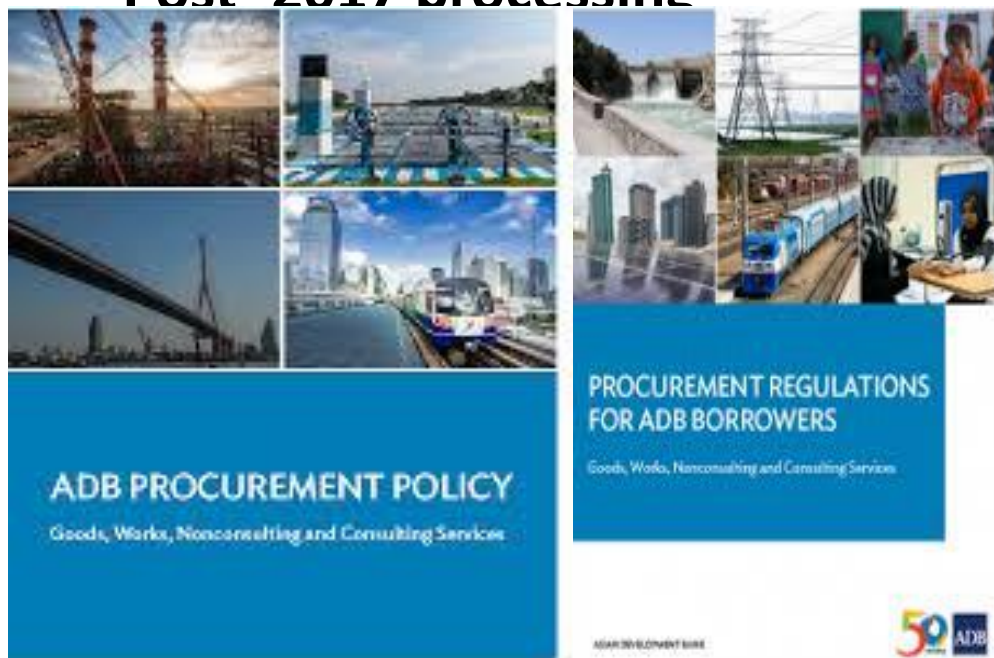


Policies applicable to Recruitment of Consultants and Service Providers

Pre-2017 processing



Post -2017 processing





Consulting Services Contracts 2016-2018

Type	No. of Contracts	ADB-Financed Amount (US\$ million)
Loans	1,431	1,107.12
EA-administered grants	1,188	294.53
ADB-administered grants	23	4.12
TA	7,899	659.78
Staff consulting	3,139	92.39
Total	13,680	2,157.94



Overview of consulting services - 2018

In 2018 ADB funded consulting services contracts worth \$736 million.

About \$168.5 million was contracted to individual consultants of which \$100.8 million was financed under TAs, \$29 million under staff consulting, \$18 million under loans and \$20.7 million under grants.

The \$567.5 million on consulting firm contracts included \$366.3 million under loans, \$124.5 million under TAs, \$65.8 million under grants, and \$10.9 million from staff consulting.



2018 Consulting Services Contracts

Type	No. of Contracts	ADB-Financed Amount (US\$ million)
Loans	467	384.38
EA-administered grants	411	86.5
ADB-administered grants	5	0.08
TA	2,924	225.23
Staff consulting	1,094	39.97
Total	4,901	736.16

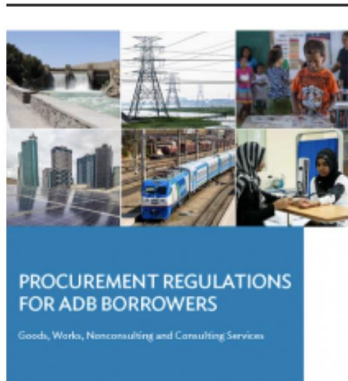


Consulting versus non-consulting services



ADB Business Center

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Procurement Regulations for ADB Borrowers

Business Guide | October 2017

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In application of the Procurement Policy of ADB, the purpose of these Procurement Regulations for ADB Borrowers ("Regulations") is to inform those carrying out a project that is financed in whole or in part by way of an investment loan from ADB, ADB-financed grant, or by ADB-administered funds of the regulations that govern the procurement of

Related

[ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services \(for projects approved on or after 1 July 2017\)](#)

[Information for Consultants](#)

[Information for Contractors and Suppliers](#)

[Information for Executing and Implementing Agencies](#)



Consulting versus non-consulting services



Consulting services are of an intellectual and advisory nature requiring evaluation of technical proposals that offer tailored approaches, methodologies, and **specially qualified experts**.

Nonconsulting services include

- (i) services for which the **physical aspects of the activity** predominate, that are bid and contracted on the basis of performance of a **measurable physical output**, and for which performance standards can be clearly identified and consistently applied; or
- (ii) **routine services** which, while requiring **expert** inputs, are based on **recognized standard offerings** that are readily available and which do not require evaluation of tailored methodologies or techniques.

Consulting Services

ADB

STAFF INSTRUCTIONS

BORROWER ADMINISTERED CONSULTING SERVICES

STAFF INSTRUCTIONS

ADB ADMINISTERED CONSULTING SERVICES





Consulting Services – Open Competitive Bidding



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. 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).



Consulting Services – Limited Competitive Bidding and Framework Agreements



Limited competitive bidding (LCB) is essentially OCB by direct invitation without open advertisement.

May be appropriate when open advertisement is not fit-for-purpose (e.g. confidentiality)

May be appropriate for call-offs under Framework Agreement

A **framework agreement (FA)** means an agreement established with a purpose of defining the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The FA also sets out terms and conditions under which specific procurements or service provisions (“call-offs”) can be made throughout the term of the agreement.



Framework Agreements for Consulting Services



Arrangements that permit Clients to retain one or more qualified individual consultants or consulting firms for multiple, planned consultancy assignments.

- Technically and thematically similar
- Require similar expertise
- Repeatable
- Generic terms of reference
- Predefined period
- Performed in an identified location
- Precise scope, location, and duration are not known



*Guidance Note on Procurement
covering Framework Agreements for
Consulting Services*



Framework Agreements for Consulting Services



Advantages

- ▶ Procurement activities “front-ended”
- ▶ Reduces duplication of effort
- ▶ Reduces negotiation and mobilization time
- ▶ Achieves VFM through attracting quality consultants whilst delivering volume discounts

Disadvantages

- ▶ Significant up-front investment by Client
- ▶ Could limit participation
- ▶ Risk of being “one size fits all”
- ▶ Call-offs less competitive than open bid
- ▶ Management of multiple consultants



Consulting Services – Direct Contracting (SSS)



Direct contracting is contracting without competition (also referred to as single source selection) and may be an appropriate method under special circumstances, such as the following:

- For consulting services tasks that represent a natural continuation of previous work carried out by the consultant firm and only where continuity for downstream work is essential (e.g., continuity in the technical approach, experience acquired, and continued professional liability of the same consultant) and presents a clear advantage over renewed competition.
- For very small consultancy assignments.
- In exceptional cases, such as in response to natural disasters.

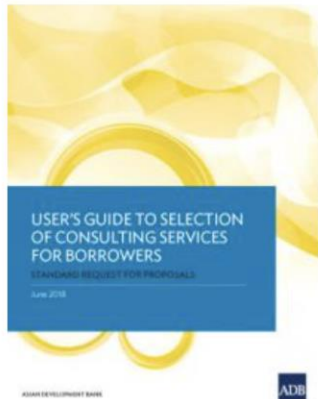


Consulting Services – Request for Proposals



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Standard Request for Proposals and User's Guide to Selection of Consulting Services for Borrowers

Business Document | June 2018



This document guides borrowers on how to prepare a bidding document for the procurement of consulting services.

This User's Guide is intended to provide guidance to borrowers on how to prepare a bidding document for the procurement of consulting services using the Asian Development Bank's Standard Request for Proposal (SRFP).

The procedures and practices presented in the SRFP have been developed based on international experience and on the Master Procurement Document for Selection of Consultants (Master Document) prepared by multilateral development banks and other public international financial institutions. They are structured according to and contain the provisions of the Master Document, except where ADB-specific considerations have required a change. The SRFP must be used for the procurement of consulting services for loans, grants, and delegated technical assistance (TA) financed in whole or in part by ADB or by ADB-administered funds unless ADB agrees to the use of other acceptable standard bidding documents.



Consulting Services – Request for Proposals (Loans) – eligibility changes



6. Eligibility

6.1 The Bank permits consultants (individuals and firms, including JVs and their individual members) from the eligible countries as stated in Section 5 (Eligible Countries) to offer consulting services for Bank-financed projects.

6.2 The Consultant, and all parties constituting the Consultant, should be nationals of an eligible country, in accordance with Section 5 (Eligible Countries). A Consultant shall be deemed to have the nationality of a country if the Consultant is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.¹ This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.

Footnote 1. Experts employed or engaged by an eligible consulting firm will be considered eligible regardless of their nationality.



Consulting Services – Request for Proposals (Loans) – Language



9. Language

9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Consultant and the Client, shall be written in the language(s) specified in the Data Sheet.

NOTE: ADB may agree to use Local language



Consulting Services – Request for Proposals (Loans) – Availability of experts



12.3 If it is established that any Key Expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without the Key Expert's confirmation, the Proposal shall be disqualified and rejected for further evaluation, and may be subject to sanctions in accordance with Clause 6 of this ITC.

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Consulting Services – Request for Proposals (Loans) – Taxes



Taxes 16.3 The Consultant and its Sub-Consultants and Experts are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in the Client's country is provided in the Data Sheet.

DATA SHEET - 16.3 Taxes

[If the Client has obtained a tax exemption applicable to the Contract, insert "The Client has obtained an exemption for the Consultant from payment of _____ [insert the tax description; e.g., value-added tax, or local indirect taxes, etc.] in the Client's country as per [insert reference to the applicable official source that issued an exemption."]

[If there is no tax exemption in the Client's country, insert the following: "Information on the Consultant's tax obligations in the Client's country can be found [insert reference to the appropriate official source]."]. No

Choose one of the two options as appropriate. Ensure that the tax provision is consistent with SCC 43.1 and SCC 43.2

Provision for taxes will be finalized during contract negotiations and added to the contract as separate item (Data Sheet 25.2).



Consulting Services – Request for Proposals (Loans) – Taxes



Taxes 25.1 Except as set out in Subclause 25.2, **all taxes are deemed included in the Consultant's Financial Proposal, and, therefore, included in the evaluation.**

25.2 Any local identifiable indirect taxes levied on the contract invoices (such as sales tax, value-added tax, excise tax, or any similar taxes or levies) payable to the Client's country on the remuneration of non-resident Experts for the services rendered in the Client's country are dealt with in accordance with the instructions in the Data Sheet.



Consulting Services – Request for Proposals (Loans) – Taxes



DATA SHEET. 25.2 Taxes

For the purposes of the evaluation, the Client will exclude (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract invoices; and (b) all additional local indirect tax on the remuneration of services rendered by non-resident experts of the Consultant in the Client's country. At contract negotiations, all applicable indirect local taxes will be discussed and agreed (using the itemized list as guidance but not limiting to it) and added to the contract amount in a separate line, also indicating which taxes shall be paid by the Consultant and which are withheld and paid by the Client on behalf of the Consultant.

Note:

In exceptional cases only, in particular, in case of subnational lending, when indirect taxes cannot be fully identified, replace the text in Data Sheet 25.2 with: "For evaluation purposes, such taxes are deemed included in the Consultant's financial proposal." The comments in Data Sheet 14.1.2 for Indirect Local Taxes has more information



Consulting Services – Request for Proposals (Loans) – Ability of Client to seek Clarifications



20.3 From the time the proposals are received by the Client to the time that the Contract is awarded, the Client shall not request the Consultant to provide clarification on any matter related to the Consultant's Technical or Financial Proposal. In exceptional cases and with prior approval of ADB, the Client may request clarifications relating to minor clarifications or corrections of obvious errors or inconsistencies. This request shall be made in writing and copied to ADB.

20.4 Any request for clarification must be sent and responded to in writing and should be date-stamped.

NOTE: NEW PROVISION



Consulting Services – Request for Proposals (Loans) – Procurement-related complaints



- 31. Procurement-Related Complaint
- 31.1 The procedures for making a procurement-related complaint are as specified in the Data Sheet.

NOTE: NEW PROVISION



Consulting Services – Request for Proposals (Loans) – Procurement-related complaints



DATA SHEET: Procurement-Related Complaints

The procedures for making a procurement-related complaint are detailed in paragraphs 1.31 and 1.32 of the Procurement Regulations. If a Consultant wishes to make a procurement related complaint, the Consultant shall submit its complaint following these procedures, in writing....

In summary, a **procurement-related complaint may challenge** any of the following:

- (i) the terms of this Request for Proposal;
- (ii) the Client's decision to exclude a Consultant from the procurement process prior to the award of contract; and
- (iii) the Client's decision to award the contract.



Consulting Services – Request for Proposals (Loans) – Standards of Conduct



The Consultant shall ensure that its employees, Experts, and Sub-Consultants observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct, and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Consultant shall take appropriate action against any employees, Expert, or Sub-Consultants, including suspension or termination of employment, contract, or sub-contract, if any form of unethical or inappropriate behavior is identified.

The Consultant shall conduct training programs for its employees, Experts and Sub-Consultants to raise awareness on and prevent any form of bullying, discrimination, misconduct, and harassment including sexual harassment, and to promote a respectful work environment. The Consultant shall keep an up to date record of its employees and Sub-Consultants who have attended and completed such training programs and provide such records to the Client or ADB at their first written request.



Consulting Services – Request for Proposals (Loans) – Standards of Conduct



The following definitions shall apply in these Standards of Conduct:

(a) “**Bullying**” is a form of harassment consisting of repeated or persistent aggression or other malicious behavior in any form by one or more persons, which has the effect of humiliating, belittling, offending, intimidating, or discriminating against another person. It may include persistent, unwarranted, or unconstructive criticism, personal abuse and/or ridicule, either in public or private, which humiliates or demeans the individual targeted, gradually eroding or intending to erode the person’s self-confidence. Appropriately conveyed criticism, disapproval, negative performance assessment, and similar appraisal, by themselves do not constitute bullying or harassment.

(b) “**Discrimination**” is the inappropriate differentiation between individuals or groups. Such discrimination includes differentiation based on characteristics such as race, color, nationality, national, social or ethnic origin, religion or similar belief, language, political or other opinion or affiliation, gender, gender identity, sexual orientation, family or civil status, health status, size, or physical ability.



Consulting Services – Request for Proposals (Loans) – Standards of Conduct



(c) “**Harassment**” is any unwarranted or unwelcome behavior, whether verbal, psychological, or physical, that interferes with work or creates an intimidating, hostile or offensive work environment. Harassment includes, but is not limited to, bullying and sexual harassment.

(d) “**Integrity**” means a firm adherence to ADB’s Anticorruption Policy (1998, as amended to date), the Integrity Principles and Guidelines (2015, as amended from time to time), and to the highest ethical standards.



Consulting Services – Request for Proposals (Loans) – Standards of Conduct



(e) “**Misconduct**” is behavior, or an act or omission, which is unacceptable or improper, contrary to the principles or rules of ADB, or is illegal or unethical. Misconduct may not necessarily be intentional and can arise from neglect, recklessness or mismanagement. Misconduct includes, but is not limited to, (i) the failure to observe these standards or other rules, regulations, guidelines, or procedures; or (ii) conduct, actions, or omissions, within and outside ADB, that risk discrediting or disgracing ADB, bringing ADB into disrepute, or could undermine the integrity of ADB’s policies, processes, or procedures.

(f) “**Respect**” refers to interacting with all others in the work environment in a professional, positive, and inclusive manner, regardless of hierarchical role or rank. This includes treating others with due consideration, courtesy, dignity, and open-mindedness, as well as working without prejudice or bias toward individuals or institutions that have different characteristics, backgrounds, and viewpoints.



Consulting Services – Request for Proposals (Loans) – Standards of Conduct



(g) “**Retaliation**” is any detrimental act, direct or indirect, recommended, threatened, or taken against anyone who has raised or is considering raising a complaint of misconduct whether formally as whistleblower or witness or person associated with a whistleblower or witness or otherwise, in a manner material to the complaint because of a report of or cooperation with an ADB investigation into any form of (alleged) misconduct. Retaliation can include, but is not limited to, harassment, discriminatory treatment, assignment of work outside the corresponding job description, withdrawal of work assignments contained in the job description, inappropriate performance appraisals or salary adjustments, or the withholding of an entitlement.

(h) “**Sexual Harassment**” is any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature that results in physical, sexual, or psychological harm or suffering to another person, or which is made or suggested to be a condition of employment, promotion, or other personnel action or creates an intimidating, hostile, or offensive environment.



New Approach to Consulting Services

Faster consultant selection

- Fewer transactions require ADB's prior review
- Fewer submissions to ADB
- Increased support for framework agreements
- Use of e-procurement systems to reduce procurement time and effort
- Shorter advertising periods (use of eGP)

Flexibility in selecting consultants

- Eligibility and shortlisting requirements have been relaxed
- Alternative procurement arrangements

VfM

- Supporting quality, value for money and high-level technologies
- 90:10 ratios for Quality- and Cost-Based Selection

Stronger support for planning and contract management

- ADB support for consulting transactions from beginning to end
- More planning up-front reduces review times later in the process
- Consultant complaint handling procedures are fairer and more transparent



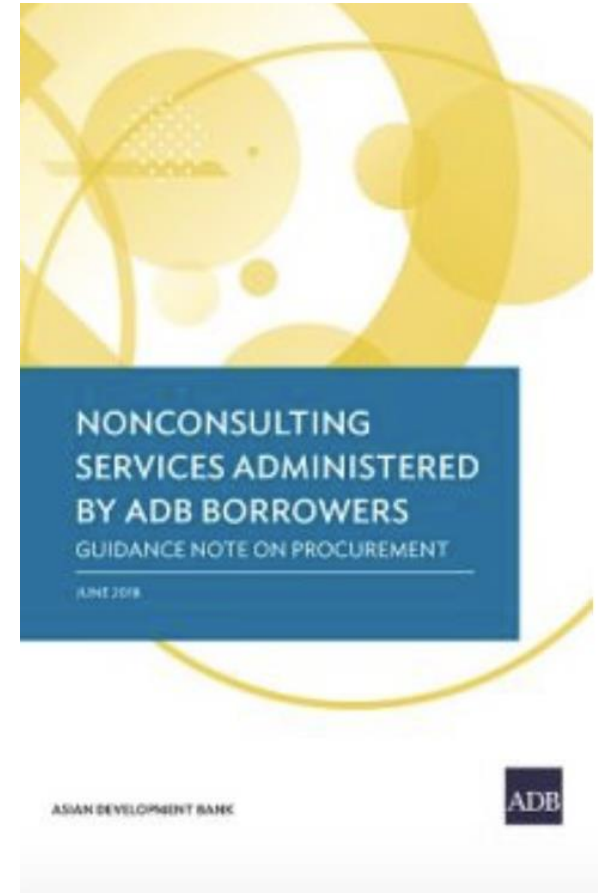
Non-Consulting Services

STAFF INSTRUCTIONS

PROCUREMENT

STAFF INSTRUCTIONS

**TECHNICAL ASSISTANCE PROCUREMENT OF GOODS, WORKS AND
NONCONSULTING SERVICES**





Key Changes



ADB defined nonconsulting services as a distinct category of services for the first time in its 2017 procurement policy and procurement regulations. Prior to this, short definitions of “service delivery assignments,” procurement and inspection agents, and auditors existed in the Guidelines on the Use of Consultants by ADB and Its Borrowers (2013, as amended from time to time). The Procurement Guidelines (2015, as amended from time to time) also discussed “related services” to goods and works. However, this framework did not differentiate between customized intellectual and advisory services that are generally considered to be consulting services and standardized services—well-defined by industry standards—that are generally considered to be nonconsulting services. The lack of clear distinction meant that complex consulting selection procedures were applied to standardized services, resulting in loss of efficiency, poor responses from the market, and project implementation delays.



Sourcing and Advertisement



Most nonconsulting services are likely to be sourced from within the borrower's country and national advertising will be the most sensible option in these circumstances. International advertising is recommended when required services are not available in the borrower's country. This may occur in small island economies and post-conflict or other fragile situations. In some jurisdictions, the existing legal and institutional framework may create barriers for some nonconsulting services to be procured from outside of the borrower's country—such as services that require local licensing (e.g., medical services) or local accreditation (e.g., vocational training leading to nationally recognized qualifications).



Procurement Methods



- **Open Competitive Bidding**
- **Limited Competitive Bidding**
- **Direct Contracting**
- **Framework agreements**



Limited Competitive Bidding



may be appropriate when

- (i) there are only a limited number of potential bidders,
- (ii) the amount of the contract is not large enough to attract sufficient bidders through OCB,
- (iii) the complexity of the services merit limiting participants to best in class providers, or
- (iv) there are other exceptional reasons that may justify departure from open advertisement.



Consulting versus non-consulting services key changes



- Clear definition of difference between consulting and non-consulting services (threshold – “standard” or “Non-standard” offer)
- **Ability to procure services with fit-to-purpose procurement procedures** (RFQ, RFP, Framework Agreements, Direct Contracting)
- Quality remains consideration factor in procurement of non-consulting services



For further information

www.adb.org

www.adb.org/business/main



Thank you