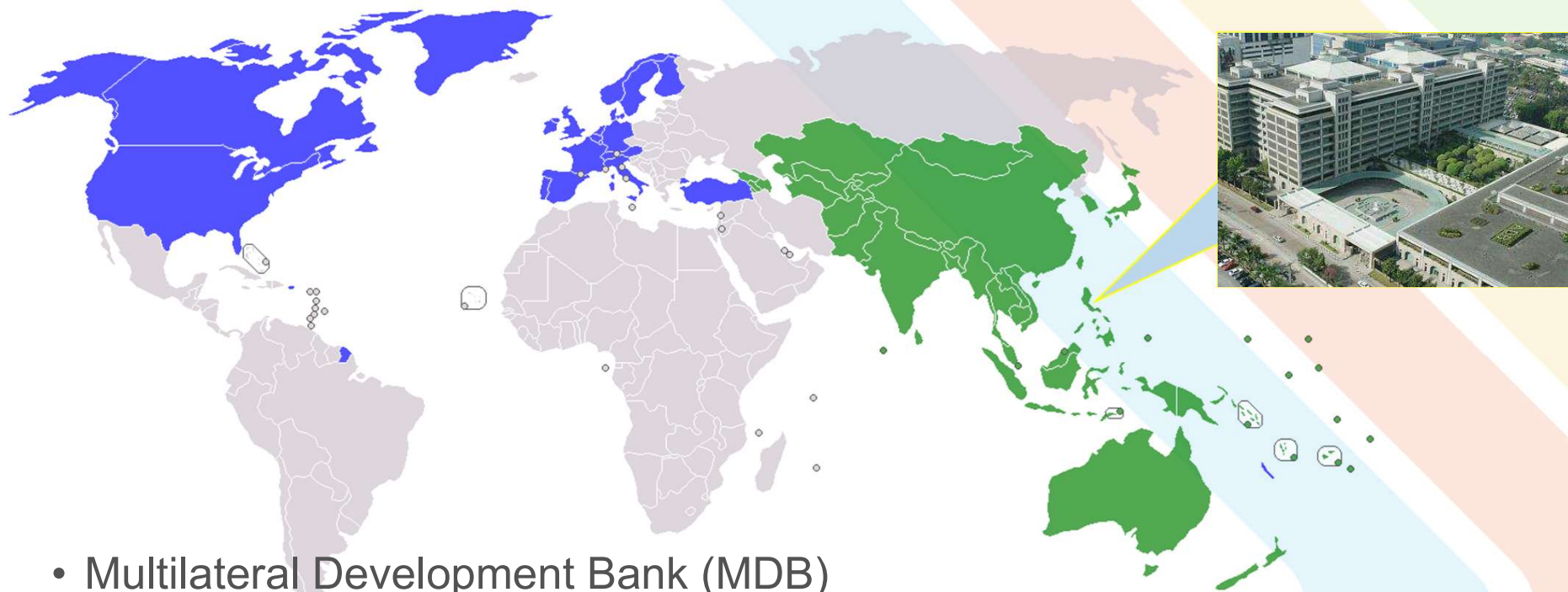




# Administration of Consulting Contracts

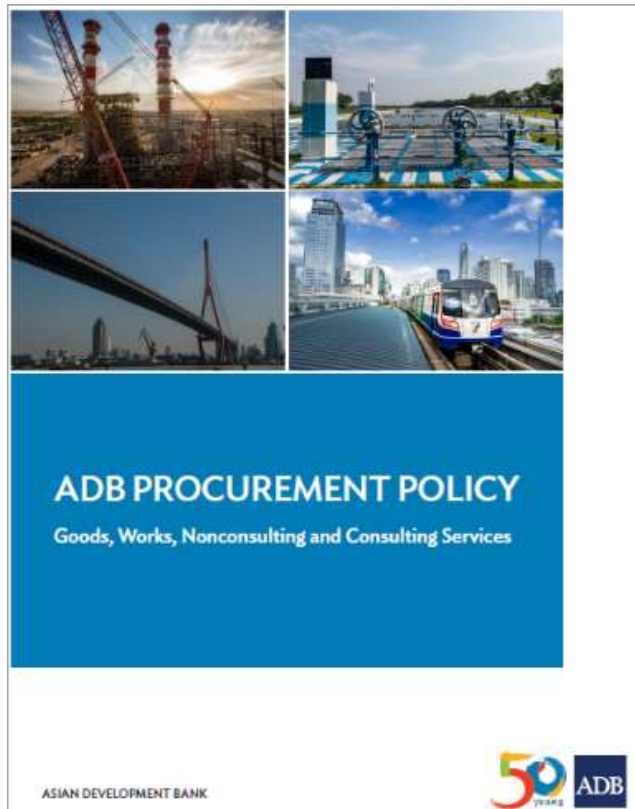
Mohsen Islam Khan [PE, PMP, LLB]  
Senior Procurement Officer, ADB  
Karachi, 2023

# Asian Development Bank (ADB)



- Multilateral Development Bank (MDB)
- 68 member countries, 49 from the Asia & Pacific, 19 non-regional
- Headquarter in Manila, Philippines, and 40 Field Offices
- 3,500+ staffs from 60 nationalities

# ADB Procurement Policy

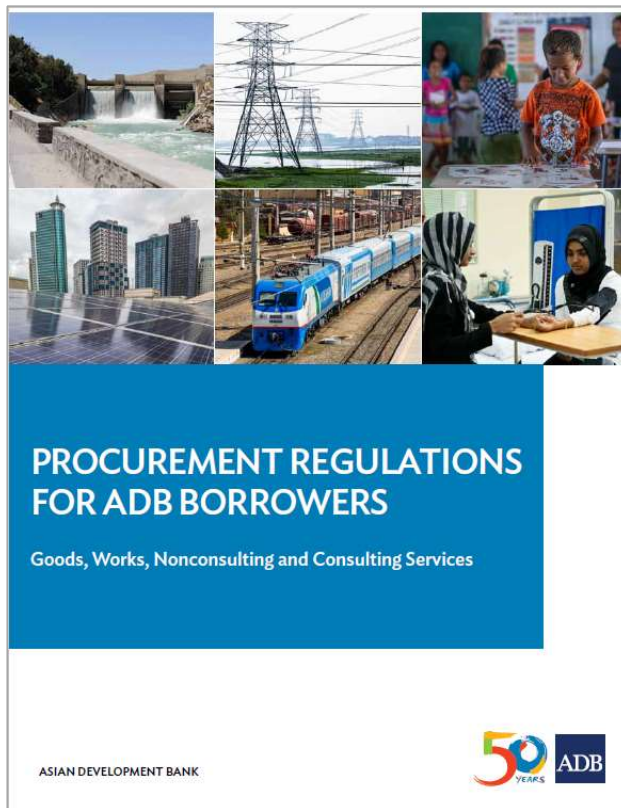


- Approved by ADB Board of Directors, representing member countries of ADB
- Core procurement principles
- Required for project financed by ADB



ADB Procurement

# ADB Procurement Regulations



- Issued by ADB President
- Details of policies, procedures
- Prior review or Post review
- International best practices



ADB Procurement

# ADB Procurement Regulations – Contents

- **Introduction**

*Purpose; General Considerations; Fitness for Purpose; Alternative Procurement Arrangements; Applicability of These Regulations; Procurement of Contracts Not Financed by the Asian Development Bank; Eligibility; Conflict of Interest; Unfair Competitive Advantage; Advance Contracting and Retroactive Financing; Asian Development Bank Review; Noncompliance, Complaints; Integrity; E-procurement; Procurement Plan. Procurement for Non-sovereign Operations*

- **Procurement Methods and Arrangements**

*Open Competitive Bidding; Limited Competitive Bidding; Framework Agreements; Request for Quotations; Electronic Reverse Auction; Direct Contracting; Force Account; Particular Types of Procurement Arrangements (Selection of Consultants, Selection of Individual Consultants, Procurement from Specialized Agencies, Procurement in Fragile and Conflict-Affected Situations, Procurement Agent, Support to Governments for Public–Private Partnerships, Procurement of High-Level Technology, Performance-Based Procurement, Community Participation in Procurement, Procurement under Loans Guaranteed by the Asian Development Bank)*

- **Appendices**

*1. Value for Money; 2. Procurement Planning; 3. Open Competitive Bidding Procedure; 4. Consulting Services Selection using Open Competitive Bidding; 5. Evaluation Criteria and Methodology; 6. ADB Review of Procurement Decisions; 7. Bidding-Related Complaints; **8. Contract Management**; 9. Roles and Responsibilities in ADB-Financed Projects*

# Guidance Notes

- To operationalize ADB Procurement policy and Regulations.
- Grouped based on themes



## GUIDANCE NOTES

Preparation and Planning	Procurement Methods	Bidding Procedures	New Principles and Practices	Complaints, Compliance, and Eligibility	Specialized Areas
<ul style="list-style-type: none"> <li>• Procurement Risk Framework</li> <li>• Strategic Procurement Planning</li> <li>• Procurement Review</li> <li>• Alternative Procurement Arrangements</li> </ul>	<ul style="list-style-type: none"> <li>• Open Competitive Bidding</li> <li>• Consulting Services Administered by ADB Borrowers</li> <li>• Non-consulting Services Administered by ADB Borrowers</li> <li>• Framework Agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Price Adjustment</li> <li>• Prequalification</li> <li>• Subcontracting</li> <li>• Domestic Preference</li> </ul>	<ul style="list-style-type: none"> <li>• Value for Money</li> <li>• Quality</li> <li>• <b>Contract Management</b></li> <li>• Abnormally Low Bids</li> </ul>	<ul style="list-style-type: none"> <li>• Bidding-Related Complaints</li> <li>• Noncompliance in Procurement</li> <li>• Standstill Period</li> <li>• State-Owned Enterprises</li> </ul>	<ul style="list-style-type: none"> <li>• Fragile, Conflict-Affected, and Emergency Situations</li> <li>• E-Procurement</li> <li>• Public-Private Partnerships</li> <li>• High-Level Technology</li> <li>• Sustainable Public Procurement</li> <li>• Use of Merit Point Criteria for Bid Evaluation</li> </ul>

# OBJECTIVES



## Increase Efficiency and Reduce Procurement Time

- Preparing, from the onset, a contract management strategy and mobilizing the relevant resources for it.
- Supporting ongoing monitoring of the contractor's performance.
- Operating a robust contract administration system, including maintaining a
- robust record management system.



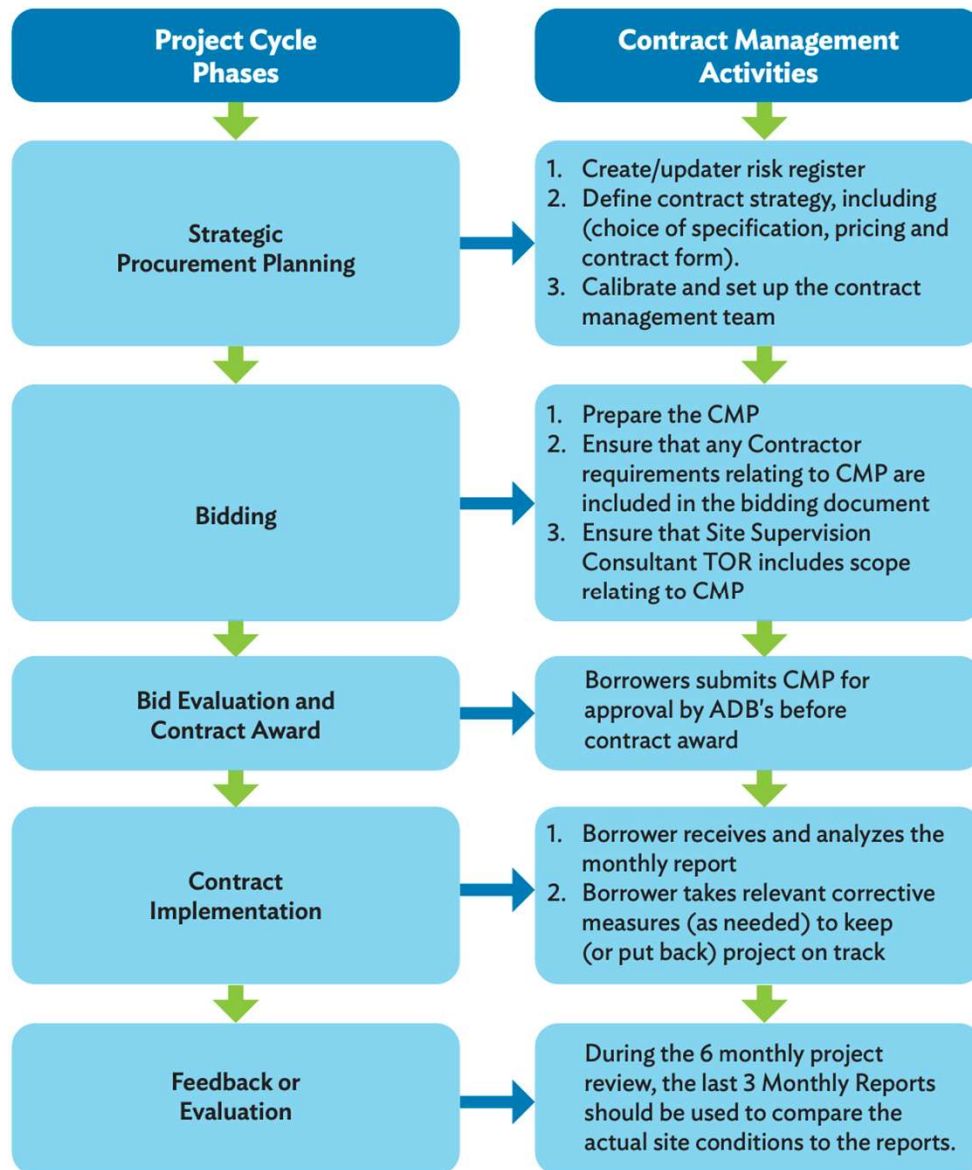
## Reduce Risk

- Anticipating what could go wrong, e.g., payment delays, right of access to site.
- Putting in place mitigation measures to address any identified risks.
- Managing the closure of the project, ensuring that no pending issues or
- obligations remain unaddressed.



## Deliver Value for Money

- Through the contractor meeting requirements of the project.
- Completing the project on time or earlier.
- Complying with applicable legislation.







# Typical Contract Management Issues In Consulting Contracts

# Typical Issues (1)

- ❖ Key personnel lack practical experience of the specific field of expertise.
- ❖ Practical knowledge and experience of the consultants in the areas of expertise are found to be not consistent as mentioned in their CVs.
- ❖ The team leader fails to maintain good relations with the borrower contract team, other officials, or with the team members.
- ❖ Delays in mobilization of the consultant team.
- ❖ Unjustified claims with time and/or cost impacts.
- ❖ Frequent replacement of personnel.

## Typical Issues (2)

- ❖ Lack of capacity of the borrower to manage the consultant performance and outputs and consultant's delay in the timely delivery of the agreed deliverables by increasing expert inputs, in case of a time-based contract.
- ❖ Substandard quality of deliverables.
- ❖ Deviations from agreed terms of reference.
- ❖ Late processing of interim and final payments by the borrower.
- ❖ Delays in actioning dispute resolution mechanisms.



# **ADB's SRFP & CoC**

# ADB Business Center

All you need to work with us—in one place.

🏠 > [Work with Us](#) > [Working with ADB](#)

## Working w

### Information for...

#### Consultants

[Contractors and suppliers](#)

[Governments](#)

[Executing and implementing agencies](#)

[Development institutions](#)

### How-Tos

[Can you provide a guide to all those AI](#)

[COVID-19: Frequently Asked Question](#)

[How can I become an ADB transaction](#)

[How can I become an individual ADB c](#)

[How can my company consult for ADB](#)

## Procedures and Guidance

[Cost Estimation in Sovereign Operations: Technical Guidance Note](#) →

[Glossary of Terms: Sovereign and Non-Sovereign Operations](#) →

[Guidance Notes on Procurement](#) (for projects with concept papers approved on or after 1 July 2017) →

[Problem Solving: Guidebook for ADB-Assisted Projects](#) →

[Summary of ADB Financial Instruments and Approval Procedures](#) →

## Documents and Forms

[Documents for Recruitment of Firms and Individual Consultants by Executing Agencies](#) →

[Documents on Consulting Services for Technical Assistance and Staff Consultants](#) (Expression of interest, recruitment, delegated technical assistance, and contract administration) →

[User's Guide on the Selection of Consulting Services for Borrowers](#) →

# Documents for Recruitment of Firms and Individual Consultants by Executing

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The Sum

- Summary and Pre-qualification sheets

- Full Technical Proposal (FTP)

- Simplified Technical Proposal (STP)

**Section 7: Terms of Reference (TOR) ..... 126**

This section describes the scope of services, objectives, goals, specific tasks required to implement the assignment, and relevant background information; provides details on the required qualifications of the key experts; and lists the expected deliverables. This section shall not be used to overwrite provisions in Section 2.

**Section 8: Conditions of Contract and Contract Forms ..... 128**

This section includes two types of standard contract forms for large or complex assignments: a Time-Based Contract and a Lump Sum Contract. Each type includes General Conditions of Contract that shall not be modified, and Special Conditions of Contract. The Special Conditions of Contract include clauses specific to each contract to supplement the General Conditions.

Each standard form of contract incorporates ADB's Anticorruption Policy; Standards of Conduct (Section 6) in a form of Attachment 1.

Harmonized Standard Form of Contract: Consultant's Services—Time-Based ..... 129

Harmonized Standard Form of Contract: Consultant's Services—Lump Sum ..... 190

**Special Topics ..... 243**

Executing Agency (EA)-Administered Loan/Grant Selections Delegated to ADB ..... 243

Summary of Tax Provisions in the Request for Proposals (RFP) ..... 244



# Obligations

## D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

### 29. Description and Obligations of Key Experts

29.1 The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B**.

29.2 If required to comply with the provisions of Clause GCC 20 'Standard of Performance,' adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided that (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of these adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 41.2.

29.3 If additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by agreement in writing between the Client and the Consultant. When payments under this Contract exceed the ceilings set forth in Clause GCC 41.1, the Parties shall sign a Contract amendment.

29.4 The Consultant shall require all Experts and Sub-consultants to observe the highest level of ethical and behavioral standards and shall refrain from any form of bullying, harassment, discrimination and misconduct, including sexual harassment and abuse, and shall, at all times, behave in a manner that creates an environment free of bullying, harassment, discrimination and misconduct.

29.5 If the Consultant becomes aware that an Expert or Sub-consultant may have been involved in any form of bullying, harassment, discrimination or misconduct, the Consultant shall immediately inform the Client of the issue and provide the Client with (a) as much information concerning the issue as is reasonably available to the Consultant, (b) a description of what investigation, review or other steps the Consultant is taking with respect to such issue, and (c) any additional information that the Client may require. If the Consultant receives or becomes aware of any allegation or report of possible bullying, harassment, discrimination or misconduct by any Expert or Sub-consultant, the Consultant shall take reasonable and immediate steps to investigate or verify such incident rigorously, diligently and expeditiously, and shall ensure that it has the power and legal authority to suspend or terminate such Expert or Sub-consultant. If the Client determines in its sole discretion that any possible allegation or report of possible bullying, harassment, discrimination or misconduct by any Expert or Sub-consultant could adversely affect people working at or associated with the project or the reputation of the Client or Government (or agency of the Government), then the Consultant shall, forthwith at the request of the Client, suspend or physically separate such Expert or Sub-consultant from the project and such persons.

# Replacement of Experts

## 30. Replacement of Key Experts

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding GCC 30.1, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In this case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

## 31. Approval of Additional Key Experts

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within 22 days from the date of receipt of the CVs, the additional Key Experts shall be deemed to have been approved by the Client.

## 32. Removal of Experts or Sub-Consultants

32.1 If the Client or the Consultant finds that any of the Experts or Sub-Consultant has breached Clause 29.4 or has been charged with having committed a criminal action, or if the Client determines that Consultant's Expert or Sub-consultant has engaged in corrupt, fraudulent, collusive or coercive *[or obstructive]* practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.

32.2 In the event that any of Key Experts, Non-Key Experts, or Sub-Consultants is found by the Client to be incompetent or incapable in

## 33. Replacement/ Removal of Experts – Impact on Payments

discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-Consultants shall possess better qualifications and experience and shall be acceptable to the Client.

33.1 Except if the Client agrees otherwise, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the replacement Experts shall not exceed the remuneration that would have been payable to the Experts replaced or removed.



# Effectiveness & Commencement

## B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

### 11. Effectiveness of Contract

11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.

### 12. Termination of Contract for

12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than 22 days written notice to the other Party, declare this Contract to be null and void, and in the event of

### Failure to Become Effective

such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

### 13. Commencement of Services

13.1. The Consultant shall confirm the availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.

### 14. Expiration of Contract

14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.

### 15. Entire Agreement

15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

### 16. Modifications or Variations

16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

16.2. In cases of substantial modifications or variations, the prior written consent of the Bank is required.

# Effectiveness & Commencement (PCC)

<p>11.1</p>	<p>This Contract shall come into force and effect on the date (the “Effective Date”) of the Client’s notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the <b>SCC</b> have been met.</p>	<p><b>SCC 11.1 – Note</b> List here any conditions of effectiveness, examples below: approval of the Contract by the Bank; effectiveness of the Bank [loan/grant]; receipt by the Consultant of an advance payment; or an advance payment guarantee by the Client (Clause SCC 45.1(i)).</p> <p><b>Sample:</b> <u>Conditions of Effectiveness of Contract</u> <i>Effectiveness of the Bank loan.</i></p> <p>Note: If there are no effectiveness conditions, state “N/A”</p>	<p>13.1</p> <p>The Consultant shall confirm the availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the <b>SCC</b>.</p> <p><b>SCC 13.1 – Note</b> The confirmation of Key Experts availability should be in accordance with the agreed schedule, which shall be submitted to the client in writing by each Key Expert as a precondition to start the assignment.</p>	<p><b>Sample:</b> <b>Commencement of Services:</b> The number of days shall be 10 days after the effective date of the Contract.  Confirmation of Key Experts’ availability to start the Assignment shall be submitted to the Client in writing as a written statement signed by each Key Expert.</p>
<p>12.1</p>	<p>If this Contract has not become effective within such time period after the date of Contract signature as specified in the <b>SCC</b>, either Party may, by not less than 22 days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.</p>	<p><b>SCC 12.1 – Note</b> Suggested time frame is four (4) months to allow for the conditions to be met. This may be varied depending on the conditions of effectiveness and the time anticipated by the Client to meet those conditions.</p> <p><b>Sample:</b> <b>Termination of Contract for Failure to Become Effective:</b>  The time period shall be 4 months from the date the Contract was signed.</p>	<p>14.1</p> <p>Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the <b>SCC</b>.</p>	<p><b>SCC 14.1 – Note</b> Indicate contract duration. Contract period should be consistent with the TOR and to end before the loan closing date.</p> <p><b>Sample:</b> <b>Contract Period</b>  Expiration of Contract: The time period shall be 12 months after the effective date of Contract.</p>

# Breach, Suspension & Terminations

- (u) "Services" refers to the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.

## **18. Suspension**

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including carrying out of the Services, provided that the notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy the failure within a period not exceeding 30 calendar days after receipt by the Consultant of the notice of suspension.

# Breach, Suspension & Terminations (2)

## 19. Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

### a. By the Client

19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause occurs. In this case, the Client shall give at least 30 calendar days' written notice of termination to the Consultant for events referred to in (a) to (d); at least 60 calendar days' written notice in case of the event referred to in (e); and at least 5 calendar days' written notice for the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members) becomes insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 49.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 calendar days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract; or
- (f) If the Consultant fails to confirm the availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive *[or obstructive]* practices or other integrity violations, in competing for or in executing the Contract, the Client may, after giving 14 calendar days' written notice to the Consultant, terminate the Consultant's employment under the Contract.

# Misc. Clauses

- ❖ Liability of Consultants
- ❖ Ownership of Outputs
- ❖ IP Rights
- ❖ Price Adjustment
- ❖ Taxes & Duties --- Indirect vs Direct
- ❖ Direct Payments by ADB
- ❖ Arbitration
- ❖ Local --- The Arbitration Act of 1940
- ❖ International --- UNCITRAL Rules, ICC Rules, Role of ICSID
- ❖ Nationality & No. of Arbitrators



Thank You

Q&A