

**GUIDELINES FOR THE EMPLOYMENT OF
CONSULTANTS UNDER THE EDPF LOAN**

*THE EXPORT-IMPORT BANK OF
KOREA*

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Guidelines for the Employment of Consultants under the EDPF Loan

1. GENERAL

1.1 Introduction

- (a) For the efficient and proper preparation and implementation of projects financed in whole or in part by the Export-Import Bank of Korea (the “**Bank**”) through the Economic Development Promotion Facility (the “**EDPF**”), most borrowers require the assistance of consultants. The term the “Borrower” as used in the Guidelines for the Employment of Consultants under the EDPF Loan (the “**Guideline**”) also refers to the Project Executing Agency, as well.
- (b) The purpose of this Guideline is to indicate the Bank’s views as to the proper selection and employment of consultants and to ensure the impartiality of consultants and, in addition, to set forth the general rules to be followed by the Borrowers in their use of consultants.
- (c) How the Guideline is to apply to a particular project financed by the Bank is to be stipulated in the Loan Agreement between the Bank and the Borrower. Terms not otherwise defined in this Guideline shall have the meanings ascribed to them in the Loan Agreement and General Terms and Conditions applicable to EDPF Loan Agreements of the Bank.

1.2 General Considerations

The Borrower is responsible for preparing and implementing the Project, and therefore for selecting the consultant, and awarding and subsequently administering the contract.

1.3 Applicability of Guidelines

- (a) The Guideline applies to the employment of consultants to be financed by the proceeds of the Loan. The application of the Guideline to a particular Project financed by the Bank shall be stipulated in the Loan Agreement between the Bank and the Borrower.
- (b) For the employment of consultants not financed out of the proceeds of the Loan, the Borrower may adopt its own employment procedures. In such

cases the Bank should be satisfied that the procedures to be used shall fulfill the Borrower's obligations to cause the Project to be carried out diligently and efficiently.

- (c) If the application of the Guideline in full or in part is prohibited under the laws and regulations of the Borrower's country, the Borrower undertakes to inform the Bank of these by written notice as soon as reasonably possible and before starting consultant selection procedure. After the notice to the Bank, the Borrower and the Bank may agree to make exception.
- (d) The Guideline is also intended to apply to case of a project co-financed by one or several other development partners. However, in such an event, a prior arrangement between the different co-financiers may determine the applicable rules of eligibility and the procurement procedures. Under such circumstances, the rules defined jointly with other development partners may, in all or in part, replace the Guideline.

1.4 Need for Consultants

The Bank and the Borrower shall agree on the need to employ consultants and the Terms of Reference for their services either prior to or in the course of the negotiations relating to the Loan. At the same time, the two parties shall agree on the approximate amount of funds required for such services and the schedule of selection of consultants.

1.5 Bank's Files on Consultants

- (a) The Bank maintains files of information supplied by a number of consultants concerning their capability and experience. Such information provides a basis for the Bank's assessment of the acceptability of consultants proposed or chosen by the Borrower.
- (b) Information in the Bank's files on consultants shall be available to the Borrower who wishes to review and assess the experience and qualifications of consultants it is considering for the Project. However, the information available in the Bank's reference files is limited, and it is frequently necessary for the Bank, or the Borrower, to request additional detailed information from a particular consultant in order to form a judgment of its capability to carry out a specific assignment.

- (c) The fact that the Bank has been supplied with or has supplied information about a consultant does not entitle that consultant to any contract connected with the Bank. Neither does it indicate that the Bank endorses the consultant's qualifications in general, nor that the Bank will approve that consultant's appointment for any specific project. The information about a consultant provided by the Bank does not mean that the Bank has a list of “approved” consultants.

1.6 Advance Contracting and Retroactive Financing

- (a) In certain circumstances, advance contracting, whereby the Borrower signs a contract before the signing of the related Loan Agreement may be acceptable in the interests of more rapid and efficient execution of the Project. The consultant selection procedures shall be in accordance with the Guideline in order for the eventual contracts to be eligible for the financing by the Bank, and the normal review process by the Bank shall be followed.
- (b) The Borrower undertakes such advance contracting at its own risk, and any concurrence of the Bank with the procedures, documentation or proposal for award does not commit the Bank to make a loan for the Project in question. The reimbursement by the Bank of any payments made by the Borrower under the contract prior to the Effective Date of the Loan Agreement is referred to as “Retroactive Financing”, and is only permitted within the limit of the Loan specified in the Loan Agreement.

1.7 Procurement Plan

The Borrower shall prepare and furnish the Procurement Plan to the Bank for obtaining the Bank’s no objection. The Procurement Plan shall specify contract package, method of consultant selection and procurement of goods, works and non-consulting services and procurement schedule, etc. The Borrower shall submit the Procurement Plan before the signing of the Loan Agreement and update annually or as needed throughout the duration of a project.

1.8 Bank's Review

The procedures for consultant selection by the Borrower and the terms and conditions of the employment contract between the Borrower and the consultant

shall be subject to the review of the Bank. The procedures for the Bank's review are described in Schedule 1 attached hereto.

1.9 Monitoring by the Bank

- (a) The Borrower is responsible for supervising the consultants' performance and ensuring that the consultant carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Borrower or the consultant, the Bank may monitor the work as necessary in order to verify that it is being carried out in accordance with appropriate standards and acceptable data.
- (b) As appropriate, the Bank may engage in discussions between the Borrower and the consultant. However, the Bank shall not be liable in any way for the implementation of the project as a result of such monitoring or engagement in discussions. Neither the Borrower nor the consultant shall be released from any responsibility for the project as a result of Bank's monitoring or engagement in discussions.
- (c) The afore-mentioned provisions in Clause 1.9 shall be clearly stated in the contract between the Borrower and the consultant.

1.10 References to the Bank

The Borrower shall use the following paragraph when referring to the Bank in the Letter of Invitation and contract documents:

“*[Name of the Borrower]* has received (or in appropriate cases, ‘has applied for’) a loan from the Export-Import Bank of Korea through the Economic Development Promotion Facility in the amount of [●] (Loan Amount) toward the cost of *[Name of the Project]*, and intends to apply a portion of the proceeds of this loan to payments under the contract for which this Letter of Invitation is issued.

The terms and conditions of the contract and payments therefore by the Bank shall be subject in all respects to the terms and conditions of the Loan Agreement, including ‘Guidelines for the Employment of Consultants under the EDPF Loan’. Except as the Bank may specially otherwise agree, no party other than *[Name of the Borrower]* shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.”

1.11 Eligibility

All consulting services are eligible for the Loan regardless of the country of origin of the consultant. In other words, the Bank permits firms from any countries to be eligible to offer consulting services for the Loan.

1.12 Misprocurement

The Bank does not finance expenditures for consulting services if the consultants have not been selected or the services have not been contracted in accordance with this Guideline and the Loan Agreement. In such cases, the Bank shall declare misprocurement, and it is the Bank's policy to cancel or demand early repayment in full or in part of the amount of the loan allocated to the services that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after obtaining a no-objection from the Bank, the Bank may still declare misprocurement if it concludes that the contract was approved on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or that the terms and conditions of the contract had been modified without the Bank's no-objection.

1.13 Fraud and Corruption

It is the Bank's policy to require that borrowers (including beneficiaries of the Loan from the Bank), as well as consultants under the EDPF-financed contracts, observe the highest standards of ethics during the selection and execution of such contracts, in compliance with the international consensus on anti-corruption, the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" of the Organization for Economic Cooperation and Development (OECD). In pursuance of this policy, the Bank shall:

- (a) reject a proposal for award if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (b) declare a consultant ineligible, for a period determined by the Bank, to be awarded a contract financed through the Loan if it at any time determines that the consultant has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, a contract financed by an EDPF and/or EDCF loan;

- (c) recognize a consultant as ineligible to be awarded a contract financed through the Loan if the consultant is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall be equated to the debarment period decided by the Multilateral Development Banks. The Borrower shall confirm the eligibility of consultants taking the decisions of Multilateral Development Banks into full account;
- (d) recognize a consultant as ineligible to be awarded a contract financed through the Loan if the consultant has been convicted by a final court decision by the national authorities in the Borrower's country or in the Republic of Korea, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract;
- (e) recognize a consultant as ineligible to be awarded a contract financed through the Loan if the consultant is being listed for sanctions by the United Nations or the United States; and
- (f) cause the Borrower to include in the Letter of Invitation and EDPF-financed contracts, a provision which clearly states that the contractors will permit the Bank to carry out an inspection of their accounts and records relating to the selection process and performance of the contract, and to have them audited by auditors appointed by the Bank.

1.14 Conflict of Interest

Consultants shall not be employed for any assignment that would be in conflict with their prior or current obligations to other borrowers, or that may place them in a position of being unable to carry out the assignment in the best interests of the Borrower. Without limitation on the generality of the foregoing, consultants shall not be employed under circumstances set forth below:

- (a) a consultant (or an affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant) that has been engaged by the Borrower to provide goods, works or non-consulting services for a project shall be disqualified from providing consulting services from, or directly related to, those goods, works or non-consulting services;
- (b) a consultant (or an affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant) that has been engaged

by the Borrower to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods, works or non-consulting services resulting from, or directly related to those consulting services. This provision does not apply to the various firms (consultants, contractors, or suppliers), only due to the reason that those firms together are performing the contractor's obligations under a turnkey or design and build contract. To make it clear, in the case of a turnkey or design and build contract, consultants hired to provide consulting services for the preparation or implementation of a project (or any of its affiliates), can be a contractor whose obligation is only providing consulting services, other than providing goods, works or non-consulting services;

- (c) neither a consultant (including personnel and sub-consultants), nor an affiliate (that directly or indirectly controls, is controlled by, or is under common control with that consultant), shall be hired for any assignment that, by its nature, creates a conflict of interest with another assignment of the consultant;
- (d) consultants (including their experts and other personnel, and sub-consultants), that have a close business or family relationship with a professional staff of the Borrower, or of the Project Executing Agency, or of a recipient of a part of the Bank's financing, or any other party representing or acting on behalf of the Borrower, that is directly or indirectly involved in any part of: i) the preparation of the TOR (Terms of Reference) for the assignment; ii) the selection process for the contract; or iii) the supervision of the contract, may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract; and
- (e) based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a consultant (or an affiliate that directly or indirectly controls, is controlled by, or is under common control with that consulting firm) shall not be allowed to submit more than one proposal. A consultant (including its affiliate), if acting in the capacity of a sub-consultant in one proposal, may participate in other proposals, only in that capacity.

A consultant having any other form of conflict other than (a) through (e) of this Clause shall be disqualified.

1.15 Grounds for Exclusion

- (a) EDPF-financed contract shall not be awarded to a consultant if, on the date of submission of an application or a proposal or on the date of award of a contract, a consultant:
 - (i) is a firm stated in Clause 1.13;
 - (ii) is a firm who has the conflict of interest stated in Clause 1.14;
 - (iii) is bankrupt, is being wound up or ceasing its activities, is having its activities administered by the courts, has entered into receivership, or is in any analogous position;
 - (iv) has been subject to a contract termination fully settled against the consultant due to significant and/or persistent failure to comply with the consultant's contractual obligations during contract performance, unless dispute resolution is still pending or has not confirmed a full settlement against the consultant;
 - (v) has not fulfilled the consultant's fiscal obligations on payments of taxes in accordance with the legal provisions of either the Borrower's country or the country where the bidder is constituted; or
 - (vi) has created false documents or has committed misrepresentation in documentation requested by the Borrower during the consultant selection process of the Project.
- (b) The Borrower has a sole responsibility for informing consultants about the exclusion criteria stated in Clause 1.13 through 1.15 by explicitly addressing the exclusion criteria in the Letter of Invitation and evaluating a consultant by the exclusion criteria at the earliest possible stage.

2. CONSULTING SERVICES

2.1 Types of Consultants

- (a) In general, consultants fall into one or more of the following categories:
 - (i) independent consultants;

- (ii) organizations of a public character, including public corporations and foundations, which also provide consulting services; and
 - (iii) firms which combine the functions of consultant with those of contractor, manufacturer, supplier, or which are associated with, affiliated to, or owned by contractors, manufacturers, suppliers.
- (b) To ensure professional impartiality, firms in category (iii) of paragraph (a) of this Clause shall normally be acceptable only if they agree to limit their role to that of consultant and to disqualify themselves and their associates/affiliates from working in any other capacity, such as providing goods, works and non-consulting services, on the same project.
- (c) Paragraph (b) of this Clause does not apply to those consultants, under a turnkey or design and build contract, whose work is limited to usual assignments of consultants.

2.2 Types of Assignments

The services of consultants often consist of the following endeavours for the Borrower:

- (a) Pre-investment studies: including studies to establish investment priorities and sector policies, to assess governmental operations and institutions for project formulation and implementation, and to determine the feasibility and justification of investment projects and to suggest recommendations related to environmental, social matters including implementation/review of environmental impact assessment;
- (b) Project preparation: including preparation of detailed designs, specifications, cost estimates and tender documents, pre-qualification of contractors, manufacturers or suppliers, support of evaluation of bids, recommendations regarding award of contract, and recommendations related to environmental, social matters and implementation of the project including implementation/review of environmental impact assessment;
- (c) Project implementation: including supervision of project execution, regular reporting of project implementation, assistance in project operation for an initial period, execution of training programs, institution building or financial studies for the successful implementation of projects, and recommendations related to environmental, social matters and

implementation of the project including environmental management, monitoring and audit; and

- (d) Other services necessary for the project: including assistance in implementation of recommendations, post-evaluation and impact studies of the project and other Borrower support services.

2.3 Responsibilities of Consultants

- (a) The consultant shall at all times:
 - (i) provides professional, objective and impartial advice;
 - (ii) holds the Borrower's interests paramount, without any consideration of future work;
 - (iii) provides advice avoiding conflicts with other assignments and own corporate interests;
 - (iv) exercises all reasonable skill, care, and diligence in the discharge of its duties; and
 - (v) is responsible for the accuracy and completeness of its work.
- (b) In all professional matters the consultant shall act as a faithful adviser to the Borrower. The Borrower may, however, delegate to the consultant the authority to act on its behalf and to make final decisions on certain matters, especially as to design, tests, certification of invoices, acceptance of equipment, and certification of completion of work. The nature of and the limits to such delegation of authority to the consultant shall be clearly defined in the TOR (Terms of Reference) and in the contract between the Borrower and the consultant.
- (c) In case of differences of opinion between the Borrower and the consultant on any important matters involving professional judgment that might affect the proper evaluation or execution of the Project, the consultant shall promptly submit to the Borrower a written report, which the latter shall forward to the Bank with its comments, in time to allow the Bank to study it and communicate with the Borrower before any irreversible step are taken in such matters. In cases of urgency, the consultant shall have the

right to insist that the matter be raised immediately with the Bank for discussion.

2.4 Competence of Consultants

In order to ensure the efficient and proper execution of the Project as specifically required by the Loan Agreement, it is essential that consultants employed on the Project clearly possess the necessary competence.

2.5 Impartiality of Consultants

In order to ensure that the goods and services used for the Project are suitable and their cost reasonable, and in order to ensure also that designs and specifications in no way limit the Bank's requirements regarding competitive bidding, it is also essential that consultants employed on the Project shall be demonstrably impartial.

3. PROCEDURES FOR SELECTION OF CONSULTANTS

3.1 General

- (a) The Bank normally requires the Borrower to adopt the following procedures in the selection and employment of consultants:
 - (i) Preparation of the TOR (Terms of Reference) and cost estimates;
 - (ii) Preparation of a Short List of consultants;
 - (iii) Invitation for proposals;
 - (iv) Evaluation of proposals; and
 - (v) Negotiation of a contract.
- (b) The Bank may, however, accept the Borrower's employment of a specific consultant in cases of the following:
 - (i) where the consultant has already satisfactorily carried out services for the Project, such as preparation of a pre-investment study;
 - (ii) where the consultant has satisfactorily carried out services on a project closely related and/or similar to the Project;
 - (iii) where the consultant is considered to be the only firm qualified to provide the services required; or

- (iv) where the consultant is considered to be the best for the services required for other adequate reasons.
- (c) All documents relating to the selection and employment of consultants are to be in English. If other language, such as national language, is used in those documents, a full English translation is to be incorporated in them and, in this case, the English translation will prevail.

3.2 Method of Selection

In most case, the Bank deems either of the following methods appropriate in most cases for the selection of consultants under the Loan.

- (a) Quality and Cost Based Selection (“**QCBS**”), which is a method that takes into account the quality of the proposal and the cost of the services, is most commonly recommended method.
- (b) Quality-Based Selection (“**QBS**”) is a method that evaluates only the quality of the technical proposals and the subsequent negotiation of the financial terms and the contract with the highest ranked consultant. QBS should be applied only for the following types of assignments:
 - (i) complex or highly specialized assignments for which it is difficult to define precise Terms of Reference and the required input from the consultants;
 - (ii) assignments where the downstream impact is so large that the quality of the service is of overriding importance for the outcome of the project (for example, engineering design of major infrastructure);
 - (iii) assignments that can be carried out in substantially different ways such that financial proposals may be difficult to compare; or
 - (iv) assignments including supervision of large and complex construction works for which it is particularly important to take safety measures.
- (c) The submission and evaluation of the proposals through both methods stated paragraph (a) and (b) of this Clause will be carried out in single stage, two envelope procedure.

3.3 Terms of Reference

- (a) The Terms of Reference are the initial statement to the consultant of the work that is required to and, with eventual modifications, form an integral part of the contract which governs the work that the consultant is to perform.
- (b) Normally, the Terms of Reference should contain the following:
 - (i) a precise statement of the objectives of the assignment;
 - (ii) the scope and timing of the required services;
 - (iii) the inputs, data and other available information to be provided by the Borrower; and
 - (iv) particulars of the output (i.e. reports, drawings, etc.) required by the consultant.
- (c) In case of the projects classified into specific categories in accordance with the relevant environmental and social standards of the Bank for EDPF-financed projects (See EDCF Safeguard Policy), consulting services related to social and environmental consideration, such as those described in Clause 2.2, shall be included in Terms of Reference.

3.4 Short List of Consultants

- (a) The selection of a consultant for a particular assignment usually begins with the preparation of a Short List of consultants to be invited to submit proposals.
- (b) Such a Short List shall normally consist of not less than three and not more than five consultants.
- (c) Should the Borrower find it difficult to compile a satisfactory Short List of qualified consultants from the information available to it from its own past experience and other sources, the Bank shall, at the request of the Borrower, make available information on consultants, from which the Borrower may draw up its own Short List.

3.5 Invitation for Proposals

- (a) After finalizing a Short List of consultants, the Letter of Invitation shall be sent to the "short-listed" consultants to submit their proposals.
- (b) The Letter of Invitation shall include the Terms of Reference and any other supplementary information (which may include estimated man-months) concerning the proposed work and the conditions under which the work is to be performed.
- (c) It should be clearly indicated in the Letter of Invitation that:
 - (i) in case of QCBS, a technical proposal and a financial proposal are submitted simultaneously but in separate envelopes; and
 - (ii) in case of QBS, the selection of the consultant to be invited for a negotiation on a contract will be made solely on the basis of the ranking of the technical proposals.
- (d) The Letter of Invitation shall also stipulate the details of the selection procedure to be followed, including the technical evaluation categories and an indication of the weight to be given to each technical evaluation category.
- (e) Since it is recommended that consultants who received the Letter of Invitation be able to visit the project site and the country before submitting their proposals, the invitation shall, as a rule, allow 45-60 days from the date of the actual mailing of the Letter of Invitation to the deadline for submission of proposals.

3.6 Evaluation of Technical Proposals

- (a) When QCBS is applied, consultants shall be required to submit technical and financial proposals in separate sealed envelopes at the same time. Until the evaluation of the technical proposals is completed, the financial proposals shall remain sealed. When QBS is applied, the financial proposal of the highest-ranked consultant is opened after the evaluation of the technical proposals during contract negotiations.

- (b) Technical proposals received by the Borrower in response to the Letter of Invitation shall be evaluated in accordance with the criteria stipulated in the Letter of Invitation. Such criteria shall normally include:
 - (i) the consultant's general experience and performance record in the field covered by the Terms of Reference;
 - (ii) the adequacy of the proposed approach, methodology and work plan; and
 - (iii) the experience and records of the staff members to be assigned to the work.
- (c) The relative importance of the above-mentioned three factors will vary with the type of consulting services to be performed, but in the overall rating of the proposals most weight shall normally be given either to the qualifications of the staff members to be assigned to the Project or to the approach and methodology, rather than to the reputation or fame of the consultant.
- (d) The qualifications of the staff members to be assigned to the Project should be evaluated on the basis of the following three criteria:
 - (i) general qualifications (education, length of experience, types of position held, duration of service with the consultant, etc.);
 - (ii) suitability for the Project (experience in performing the duties which will be assigned to them in the Project); and
 - (iii) familiarity with the language and the conditions of the country in which the work is to be performed, or experience in similar environments.
- (e) In its evaluation of the proposals, the Borrower shall use numerical ratings and prepare an evaluation report. Such evaluation report should normally give detailed information on the organization responsible for the evaluation, selection criteria and relative weight distribution, such as:
 - (i) selection committee or other similar organization, if any, responsible for the evaluation, and the domestic laws, ordinances or orders which

govern the establishment and/or functioning of the committee or other similar organization;

- (ii) selection criteria and relative weight distribution, with reasons for adopting each criterion and the basis for deciding the weight distribution; and
- (iii) rating: reason for arriving at the rating given for each item for each consultant.

- (f) After the technical quality is evaluated, consultants whose technical proposals did not meet the minimum qualifying score, or were considered non-responsive to the invitation requirements, will be advised and their financial proposals will be returned unopened.

3.7 Public Opening of Financial Proposals

(Applicable only to QCBS)

- (a) Only the consultants that have obtained the minimum qualifying scores for their technical proposals will be advised of the location, date, and time for opening of financial proposals.
- (b) The name of the consultants, the technical quality scores, and the proposed prices shall be announced, and recorded when the financial proposals are opened.
- (c) For the purpose of evaluation, “cost” in the proposal shall exclude local identifiable indirect taxes (all indirect taxes levied on the contract invoices, at national, state (or provincial) and municipal levels) and income tax payable to the country of the Borrower on the remuneration of services rendered in the country of the Borrower by non-resident staff of the consultant.

3.8 Evaluation of Financial Proposals and Ranking of Proposals

(Applicable only to QCBS)

- (a) The Borrower shall review the consistency of the technical and financial proposals, make appropriate adjustments, and correct arithmetical or computational errors.

- (b) The total score shall be determined by weighting and adding the technical and financial scores; this will establish the overall ranking of the consultants' proposals. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. It shall be weighted between 5% and 50%.

3.9 Contract Negotiations

- (a) After the completion of the evaluation of the proposals, the Borrower shall invite the highest-ranked consultant to negotiate on the conditions of a contract. When QCBS is applied, the proposed unit rates for remuneration shall not be altered since they have been taken into account in the selection process.
- (b) When QBS is applied, discussions regarding costs and other financial matters shall be conducted only with a consultant who has been selected to enter into contract negotiations.
- (c) If the two parties are unable to reach agreement on a contract within a reasonable time, the Borrower shall terminate the negotiations with the first-ranked consultant and invite the consultant who ranked second in the evaluation to enter on negotiations. This procedure will be followed until the Borrower reaches agreement with a consultant.
- (d) When a contract has been successfully negotiated, the financial envelopes of the remaining consultants must be returned to them unopened.
- (e) While there shall be some flexibility in work plans, staff assignment and major work inputs which have been previously agreed as appropriate for the assignment should not be materially modified to meet a budget.

3.10 Notification of Intention to Award

Once the Borrower has decided whom the contract will be awarded to, it shall promptly and simultaneously provide, by quickest means available (e.g., by email), all the short-listed consultants with a written notification of the Borrower's intention to award ("**Notification of Intention to Award**").

3.11 Standstill Period

- (a) In order to allow unsuccessful consultants an opportunity to understand why they were not successful (they may request debriefing), and provide

them an opportunity to submit a complaint about the decision to award the contract, the Borrower shall initiate a Standstill Period for ten (10) business days, which commences on the day following the transmission of the Notification of Intention to Award to all the short-listed consultants and expires at midnight on the tenth day (unless extended). During this period, the Borrower cannot enter into a contract with the successful consultant.

- (b) A Standstill Period may not apply in the situations where (i) only one bid/proposal was submitted in an open competitive process, (ii) the Borrower has undertaken direct selection, or (iii) it is an emergency situation that is recognized by the Bank.
- (c) During the Standstill Period, an interested party has three (3) business days (on the receipt of the Notification of Intention to Award) to request a debriefing from the Borrower. The Borrower should provide the debriefing, either in writing and/or in a debriefing meeting, within five (5) business days of receiving the request. If there is a justifiable reason, the Borrower may provide the debriefing later than five (5) business days deadline. If this happens, the Standstill Period is automatically extended to a date that is five (5) business days after the date of the last debrief. All the short-listed consultants will be promptly notified, by the quickest means available, of the extended Standstill Period. The requesting consultant should bear all the costs of attending such a debriefing.

3.12 Contract Award

Upon expiry of the Standstill Period, the Borrower may proceed with award and sign the contract with the successful consultant. The Borrower does this by transmitting the notification of award to the successful consultant.

3.13 Other Selection Procedures

- (a) The application of the general procedures for selection of consultants set forth in Clause 3.1 through 3.12 above may be waived by the Bank in exceptional cases if there is adequate justification, such as where only one firm may be invited to submit proposals. The invitation of a single consultant may be appropriate only if it presents a clear advantage over competition:

- (i) for tasks that represent a natural continuation of previous work carried out by the consultant;
 - (ii) for very small assignments; or
 - (iii) when only one consultant is qualified or has exceptional experience worth for the assignment.
- (b) Before initiating a negotiation with a prospective consultant pursuant to paragraph (a) of Clause 3.13 above, the Borrower shall review the capability of the prospective consultant to perform the particular contract satisfactorily. The Bank shall be furnished with a copy of the report including the selection method for its review.
- (c) Other methods that are generally used by Multilateral Development Banks can be applied to the selection of consultants under a Loan if the Borrower requests.

4. CONTRACT

4.1 General

The contract between the Borrower and the consultant shall be prepared in such detail as to adequately protect the interests of both parties to the contract. As a rule, the contract shall, *inter alia*, include the principal clauses outlined below.

4.2 Scope of Project and of Consulting Services

The contract shall describe in detail the scope and duration of the Project and of the services to be rendered by the consultant.

4.3 Duration of Contract

The duration of the contract from the commencement of the services to its completion shall be specified in the contract.

4.4 Conditions relating to Validity of Contract

The contract shall include a clause specifying conditions under which the contract will be valid.

4.5 Responsibilities of Parties to Contract

- (a) The contract shall clearly describe the responsibilities of the Borrower and the consultant and the relationship between them.

- (b) Where the consultant is a joint venture or other form of association of several firms, the contract shall clearly state whether they will be "jointly and severally" responsible for performance under the contract, or one firm will be "solely" responsible, and shall state which firm will be acting on behalf of the joint venture (or other type of association of firms) in all its relations and communications with the Borrower.

4.6 Contract Amount

The contract should clearly state the total amount, or ceiling, of fees to be paid to the consultant.

4.7 Description of Consultant's Fees

- (a) The personnel costs and fees necessary for fulfillment of the contract shall normally be expressed in terms of fixed "man-month rates" for each expert staff member to be provided by the consultant. The "man-month rate" shall cover the basic salary of the staff member, the firm's overheads (including financial, social security and other benefits payable to, or for, the staff member, such as vacation pay, sick leave pay, insurance, etc.) and the consultant's fee.
- (b) For extended periods of field service in the country concerned, the contract may also provide for overseas allowances in addition to the "man-month rates" mentioned in paragraph (a) of this Clause.
- (c) The contract shall clearly stipulate the number of working or calendar days of vacation and sick leave to which each consultant or any staff member who is involved in the consulting services of a project will be entitled.
- (d) In addition to the personnel costs described in Clause 4.7(a) above, the contract shall provide for reimbursement at actual cost or agreed "unit cost" for travel, equipment and other items necessary for the consulting services specified in the contract.
- (e) The contract shall normally include an amount set aside for contingencies, such as unexpected work and rising costs, which the consultant may not use, however, without prior written approval of the Borrower.

4.8 Currency

The financial proposal shall be expressed in Korean Won or in other internationally convertible foreign currencies acceptable to the Bank, such as US dollar or Euro. Both the financial proposal and the contract price shall be expressed in the same currency that was used to denominate the Loan in the Loan Agreement.

4.9 Conditions and Methods of Payment

- (a) The contract shall specify the conditions, methods of payment, the currency or currencies in which payment is to be made, and the rate of exchange for any currency conversions, if required.
- (b) Payments to the consultant should be scheduled in such a manner as roughly to keep pace with its expenditures. In line with this concept, the contract may, when appropriate, provide for the following:
 - (i) an advance payment to the consultant at the time the contract becomes effective that will approximately cover its initial reimbursable expenses; and
 - (ii) withholding of the final payment until all services covered by the contract have been completed, or certain performance guarantees have been given.

In case of (ii) above, however, the final payment shall be made within the disbursement period stipulated in the Loan Agreement.

4.10 Services to be provided by the Borrower

The contract shall clearly specify the services and facilities to be provided by the Borrower, such as counterpart staff, maps, aerial photographs, data and statistics, office space, housing, vehicles and equipment.

4.11 Serious Hindrances

The contract shall require the consultant to report to the Borrower promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the Project in accordance with the agreed schedules, and indicate what steps should be taken to meet the situation. When the Borrower receives such a report from the consultant, the Borrower shall immediately forward a copy of it to the Bank with its comments.

4.12 Reports

The contract shall specify the scope, number, type and frequency of the reports to be submitted by the consultant to the Borrower.

4.13 Copyright

The contract shall specify whether the copyright of documents prepared by the consultant under the contract rests with the consultant or the Borrower.

4.14 Modifications

The contract shall provide that it may only be modified by an agreement in writing between the parties to the contract.

4.15 Force Majeure

The contract shall clearly specify:

- (a) the force majeure conditions that the failure on the part of either party to perform its obligations under the contract would not be considered a default if such failure is due to force majeure as defined in the contract;
- (b) the procedures to be followed by the consultant regarding determination and notification of any such conditions; and
- (c) the Borrower's and the consultant's rights and obligations (e.g., as to payments following termination, including, if appropriate, reimbursement of movement expenses) in force majeure situations.

4.16 Termination

The contract shall include a clause specifying in detail on what conditions either party may terminate the contract and a clause stipulating procedures to be followed by the party wishing to terminate the contract. The contract shall clearly state the rights and obligations of both parties in the event of termination of the contract.

4.17 Settlement of Disputes

The contract shall establish the procedures to be followed in case of a dispute arising between the Borrower and the consultant in connection with the contract.

4.18 Applicable Laws

The contract shall stipulate the laws which are to govern its interpretation and performance.

4.19 Language

The contract shall normally be prepared in English. If other language is used in the contract, a full English translation shall be incorporated in the contract and, in this case, it shall be stipulated which language prevails.

SCHEDULE 1

REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS

Except as the Bank may otherwise agree, the following procedures shall be subject to the Bank's review and no-objection.

- (a) Before Letter of Invitation is sent to short-listed consultants, the Borrower shall submit to the Bank, for the Bank's review and no-objection, the Terms of Reference, Short List of consultants, and draft Letter of Invitation and any documents relating the consultant selection.
- (b) When QCBS is applied, the Borrower shall submit to the Bank, for the Bank's review and no-objection, the evaluation report of technical proposals before opening financial proposals.
- (c) When QBS is applied, the Borrower shall submit to the Bank, for the Bank's review and no-objection, a detailed report on the evaluation and comparison of proposals received before inviting the highest-ranked consultant to enter on contract negotiations.
- (d) When, as provided for in Clause 3.9(c), the Borrower wishes to terminate the contract negotiations with the highest-ranked consultant and invite the second-ranked consultant to enter on negotiations, the Borrower shall inform the Bank of this fact, stating its reasons for the Bank's reference.
- (e) If the Borrower wishes, as provided for in Clause 3.1(b), to employ a specific consultant, the Borrower shall inform the Bank in writing of its reasons, for the Bank's review and no-objection.
- (f) Promptly after executing a contract, the Borrower shall submit to the Bank, for the Bank's review and no-objection, one certified copy of the contract.

Any modification or cancellation of a contract shall require the prior written consent of the Bank thereto, provided, however, that any change which does not constitute an important modification of the contract and which does not affect the contract price shall not require such consent of the Bank.

SCHEDULE 2
GUIDANCE TO CONSULTANTS

Purpose

1. This schedule provides guidance to consultants wishing to provide consulting and professional services financed through the EDPF of the Bank.

Responsibility for Selection of Consultants

2. The responsibility for the implementation of the Project, and therefore for the payment of consulting services under the Project, rests solely with the Borrower. Disbursements of the proceeds of a loan are made only at the Borrower's request. Supporting evidence that the loans 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, (b) directly to a third party (to the consultant). As emphasized in Clause 1.2, the Borrower is responsible for the selection and employment of consultants. It invites, receives, and evaluates proposals and awards the contract. The contract is made between the Borrower and the consultant. The Bank is not a party to the contract.

Bank's Role

3. The Bank reviews the Letter of Invitation, the evaluation of proposals, award proposal, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. For all contracts subject to Bank's review, the Bank reviews the documents before they are issued, as described in Schedule 1. Also, if at any time in the selection process (even after the award of contract) the Bank concludes that the agreed procedures were not followed in any substantial respect, the Bank may declare misprocurement, as described in Clause 1.12. However, if the Borrower has awarded a contract after obtaining a no-objection from the Bank, the Bank shall declare misprocurement only if the no-objection was issued on the basis of incomplete, inaccurate, or

misleading information furnished by the Borrower. Furthermore, if the Bank determines that the consultant recommended for the award has engaged in corrupt or fraudulent practices, the Bank may reject a proposal for award set forth in Clause 1.13.

Consultants' Role

4. When consultants receive the Letter of Invitation, and if they can meet the requirements of the terms of reference and the commercial and contractual conditions, they shall 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 Letter of Invitation 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 shall seek clarification from the Borrower, in writing, within the period specified in the Letter of Invitation for seeking clarifications.
5. In this connection, it shall be emphasized that the specific Letter of Invitation issued by the Borrower governs each selection, as stated in the Guideline. If consultants feel that any of the provisions in the Letter of Invitation is inconsistent with the Guideline, they shall also raise this issue with the Borrower.
6. Consultants shall ensure that they submit a fully responsive proposal including all the supporting documents requested in the Letter of Invitation. It is essential to ensure accuracy in the curricula vitae of key staff submitted with the proposals. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, the key staff, and so forth. Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth.

Confidentiality

7. The process of proposal evaluation shall be confidential until the Notification of Intention to Award, except for the disclosure of the technical points as indicated. Confidentiality enables the Borrower and the Bank to avoid either the reality or

perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the Borrower, the Bank, or both, they shall do so in writing.

Debriefing

8. If, during the Standstill Period, a consultant wishes to ascertain the grounds on which its proposal was not selected, it shall address its request to the Borrower as indicated in Clause 3.11.