

**Guidelines for the
Employment of Consultants
under the EDCF Loan**

***ECONOMIC DEVELOPMENT
COOPERATION FUND***

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Guidelines for the Employment of Consultants under the EDCF Loan

ARTICLE I General

Section 1.01. 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**") from the resources of the Economic Development Cooperation Fund (the "**EDCF**"), most Borrowers require the assistance of consultants. The Borrower under these Guidelines refers to the Project Executing Agency, as well.

(b) The purpose of these Guidelines 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 Borrowers in their use of consultants.

(c) How these Guidelines are 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 herein shall have the meanings ascribed to them in the General Terms and Conditions applicable to EDCF Loan Agreements.

Section 1.02. 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.

Section 1.03. 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.

Section 1.04. 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 Borrowers.

(b) Information in the Bank's files on consultants shall be available to Borrowers who wish to review and assess the experience and qualifications of consultants they are 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 consent to the appointment of the consultant for any specific Project.

Section 1.05. 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 these Guidelines 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) A Borrower undertakes such advance contracting at its own risk, and any consent of the Bank to 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.

Section 1.06. Bank's Review

The procedures for consultant selection by Borrowers 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 Annex 1 attached hereto.

Section 1.07. References to the Bank

(a) The Borrower shall use the following paragraph when referring to the Bank in the request for proposals 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 from the resources of the Economic Development Cooperation Fund of the Republic of Korea in the amount [●] (*loan amount*) toward the cost of the Project (*Name of the Project*), and intends to apply a portion of the proceeds of this loan to payments under the contract for which this invitation for proposals is issued.

(b) 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 EDCF Loan’. Except as the Bank may specially otherwise agree, no party other than the Borrower (*Name of the Borrower*) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.”

Section 1.08. 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 the agreed provisions of the Loan Agreement approved by the Bank. In such cases, the Bank shall declare misprocurement, and it is the Bank’s policy to cancel that portion 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 the Bank’s consent, the Bank may still declare misprocurement if it concludes that the consent was given 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 Bank’s consent.

Section 1.09. Fraud and Corruption

(a) It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as consultants under the EDCF-financed contracts, observe the highest standards of ethics during the selection and execution of such contracts. In pursuance of this policy, the Bank:

(i) shall reject a proposal for award and declare a consultant ineligible to enter into the contract in question if it determines that the consultant recommended for award has engaged in corrupt or fraudulent practices in competing for the contract;

(ii) shall declare a consultant ineligible, for a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF 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 EDCF loan;

(iii) notwithstanding the foregoing, shall declare a consultant ineligible, even after the end of a period determined by the Bank, to participate in any bid for, to be awarded, and to enter into a contract related to the project in question 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, the contract of the project;

(iv) shall recognize a firm as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the firm is debarred under the cross debarment decision by Multilateral Development Banks (MDBs). Such period of ineligibility shall be equated to the period determined by the MDBs. With regard to the participation in the bid, the base date of determination on the debarment status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of MDBs;

(v) shall recognize a consultant as ineligible to participate in any bid for, to be awarded, and to enter into a contract financed by an EDCF loan if the consultant constitutes any of the inappropriate business entities defined in the

Act on Contracts to Which the State is a Party, the Act on Contracts to Which a Local Government is a Party, and the Act on the Management of Public Institutions of the Republic of Korea. Such period of ineligibility shall be equated to the sanction period decided by the Korean government and public institutions. With regard to the participation in the bid, the base date of determination on the sanction status is the date of the deadline for submission of bids. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of the Korean government and public institutions. The Borrower may ask the Bank of the decisions of the Korean government and public institutions;

(vi) shall have the right to request the Borrower to suspend the procurement process if the Bank deems it necessary to conduct an investigation into any allegations of corrupt or fraudulent practices. Upon the Bank's request, the Borrower shall immediately suspend the relevant procurement process until the Bank notifies the Borrower of the outcome of the investigation; and

(vii) may request the Borrower to initiate an investigation upon receipt of any allegation or evidence of corrupt or fraudulent practices in connection with the procurement or execution of a contract financed by an EDCF loan, based on its assessment of the credibility and materiality of such information.

(b) In the event that the Bank determines that corrupt or fraudulent practices have occurred during the execution of contracts financed by EDCF loans, the Borrower may request the Bank to require the consultant involved in such practices to submit a report on the impact of such practices on the Project and to propose prevention measures against any recurrence. In such case, the consultant shall submit the requested documents directly to the Bank, and the Bank shall share such documents with the Borrower.

ARTICLE II

Consulting Services

Section 2.01. 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;
- (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 Section 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 on the same Project. Therefore, only in special cases and only with clear justification, may the Bank and the Borrower agree to permit firms in category (iii) and/or their associates/affiliates to be invited to on the Project as contractors or suppliers, if they are also employed on the same Project as consultants.

(c) Paragraph (b) of this Section does not apply to those consultants, under a turnkey or design and build contract, whose work is limited to usual assignments of consultants.

Section 2.02. Types of Assignments

The services of consultants used by the Borrowers often include: (i) 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; (ii) Detailed engineering and design: including preparation of detailed designs, specifications, cost estimates and tender documents; and (iii) Project implementation: including supervision of project execution, assistance in project operation for an initial period, execution of training programs, and

institution building or financial studies for the successful implementation of projects.

Section 2.03. Responsibilities of Consultants

(a) The consultant shall at all times exercise all reasonable skill, care, and diligence in the discharge of its duties and shall be 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 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 judgement 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.

Section 2.04. 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 Projects clearly possess the necessary competence.

Section 2.05. Impartiality of Consultants

In order to ensure that the goods and services used for the Projects 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 Projects shall be demonstrably impartial.

ARTICLE III
Procedures for Selection of Consultants

Section 3.01. General

(a) The Bank requires Borrowers to select and employ consultants either through competitive bidding or through limited competitive bidding among short-listed consultants.

(b) When Borrowers select and employ consultants through competitive bidding, the Bank requires Borrowers to adopt the following procedures:

- (i) Preparation of the request of proposals including the Terms of Reference and cost estimates;
- (ii) Advertising;
- (iii) Evaluation of proposals; and
- (iv) Negotiation of a contract.

(c) When Borrowers select and employ consultants through limited competitive bidding among short-listed consultants, the Bank requires Borrowers to adopt the following procedures:

- (i) Preparation of the request of proposals including the Terms of Reference and cost estimates;
- (ii) Preparation of a Short List of Consultants;
- (iii) Invitation to submit proposals;
- (iv) Evaluation of proposals; and
- (v) Negotiation of a contract.

(d) 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 concerned, 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 concerned;
- (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.

(e) All documents relating to the selection and employment of consultants are to be in English. If another language is used in those documents, a full English text is to be incorporated in them and it shall be specified which is governing.

Section 3.02. 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 to be provided by the Borrower; and
- (iv) particulars of the output (i.e., reports, drawings, etc.) required by the consultant.

Section 3.03. Short List of Consultants

(a) When Borrowers select and employ consultants through limited competitive bidding among short-listed consultants, 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. Notwithstanding the foregoing, exceptions may be made based on the nature of each project.

(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.

Section 3.04. Invitation for Proposals

(a) When Borrowers select and employ consultants through competitive bidding, invitation for proposals shall be advertised in at least one newspaper of general circulation (in an English language newspaper if possible) in the Borrower's country. Copies of such invitations (or the advertisement therefor) shall also be sent promptly to the Bank.

(b) When Borrowers select and employ consultants through limited competitive bidding among short-listed consultants, after the completion of a Short List of Consultants, the request for proposals shall be sent to the "short-listed" consultants to submit their proposals.

(c) The request for proposals 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.

(d) Except as otherwise provided in Section 3.12, the request for proposals shall clearly indicate that financial terms are not to be included in the proposals at this stage, that the selection shall be made on the basis of qualifications to perform the work, and that financial terms shall be discussed and agreed only at the time of contract negotiations with the selected consultant.

(e) The request for proposals 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.

(f) Borrowers shall use the applicable Standard Request for Proposals under the EDCF Loan (Standard RFP) of the latest version issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific conditions.

Section 3.05. Evaluation of Proposals

(a) Proposals received by the Borrower in response to the invitation shall be evaluated in accordance with the criteria stipulated in the request for proposals. 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.

(b) 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.

(c) 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.

(d) 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.

Section 3.06. Rejection of All Proposals

(a) The request for proposals generally provides that the Borrower may reject all proposals. Such rejection is justified when (i) all proposals submitted are non-responsive because they fail to respond to important aspects of the Terms of Reference or present major deficiencies in complying with the Terms of Reference, or (ii) all proposals fail to achieve the minimum technical score.

(b) If all proposals are rejected, the Borrower shall review the causes justifying the rejection before inviting new proposals.

(c) The Bank's prior consent shall be obtained for rejecting all proposals or reinviting proposals.

Section 3.07. Contract Negotiations

(a) After the evaluation of the proposals has been completed, the Borrower shall invite the first-ranked consultant to enter on negotiations on the conditions (including costs and financial terms) of a contract between them.

(b) 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.

(c) 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.

Section 3.08. Notification of the Intention to Award

If Standstill Period is applied, promptly after completion of negotiations with the

selected consultant, the Borrower shall promptly and simultaneously provide, by the quickest means available and as further specified in the request for proposals, Notification of Intention to Award to the successful consultant and the other consultants who submitted proposals that they have been unsuccessful.

Section 3.09. Standstill Period

(a) To give consultants time to examine the Notification of Intention to Award and to assess whether it is appropriate to submit a complaint, the Bank may permit the use of the Standstill Period by consenting to the request for proposals in which the use of the Standstill Period is specified.

(b) Standstill Period will not be applied under the following conditions:

- (i) only one bid was submitted in a competitive bidding process; and
- (ii) direct contracting.

(c) Transmission of the Borrower's Notification of Intention to Award, begins the Standstill Period. The Standstill Period shall last ten (10) Business Days after such transmission date, unless otherwise extended in accordance with the Section 3.11. The contract shall not be awarded either before or during the Standstill Period.

(d) If the Borrower does receive a complaint from an unsuccessful consultant within the Standstill Period, the Borrower shall not proceed with contract award until the complaint has been resolved. The borrower will keep the Bank duly informed and updated.

Section 3.10. Informing Unsuccessful Consultants

Promptly after completion of negotiations with the selected consultant, or after the resolution of the complaint, if the Standstill Period is applied, the Borrower shall notify the other consultants who submitted proposals that they have been unsuccessful.

Section 3.11. Debriefing

(a) If Standstill Period is applied, on receipt of the Borrower's Notification of Intention to Award, an unsuccessful consultant has three (3) Business Days to make a written request to the Borrower for a debriefing. The Borrower shall provide a debriefing within five (5) Business Days to all unsuccessful consultants whose request is received within this deadline. If the Borrower decides, for justifiable reasons, to provide the debriefing outside the above timeframe, the Standstill Period shall automatically be extended until five (5) Business Days after such debriefing is provided. The Borrower shall promptly inform, by the quickest means available, all consultants and the Bank of the extended Standstill Period. The Borrower may extend the debriefing timeframe only once.

(b) Where a request for debriefing is received by the Borrower later than the three (3) Business Day deadline, the Borrower should provide the debriefing as soon as practicable. Request for debriefing received outside the three (3) Business Day deadline shall not lead to an extension of the Standstill Period.

(c) In a nonstandstill situation, in the notification referred to in Section 3.10, the Borrower shall inform the consultants who submitted proposals that any consultant who wishes to ascertain the grounds on which its proposal was not selected, shall request an explanation from the Borrower. The Borrower shall promptly provide the explanation as to why such proposal was not selected, either in writing and/or in a debriefing meeting, at the option of the consultant. The requesting consultant should bear all the costs of attending such a debriefing.

Section 3.12. Two-Envelope System

Notwithstanding the Bank's general policy, set forth in Section 3.04 above, that proposals be invited from consultants without financial terms, the Borrower may, if it so prefers, invite price proposals together with technical proposals, by utilizing a "two-envelope system" according to the following procedures:

- (i) A technical proposal and a financial proposal shall be obtained simultaneously but in separate envelopes from each of the consulting firms. The financial proposals shall be submitted in sealed envelopes;
- (ii) The technical proposals shall first be evaluated and ranked, and the

financial proposals shall be kept separate and unopened;

(iii) The first-ranked firm shall then be invited for contract negotiations and the financial envelope of this firm shall be opened in the presence of the firm;

(iv) If acceptable financial terms cannot be agreed upon with the first-ranked firm, negotiations shall be terminated with the concurrence of the Bank, and the firm next in ranking shall be invited for negotiations (and so on, if necessary until an agreement is concluded); and

(v) When a contract has been successfully negotiated, the financial envelopes of the remaining firms must be returned to them unopened.

Section 3.13. Other Selection Procedures

(a) The application of the general procedures for selection of consulting firms set forth in Sections 3.01 to 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 because of its previous involvement in the same Project or in a closely related project.

(b) Before initiating a negotiation with a prospective consultant pursuant to paragraph (a) of Section 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.

ARTICLE IV

Contract

Section 4.01. 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.

Section 4.02. 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.

Section 4.03. 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 whether 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.

Section 4.04. Contract Amount

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

Section 4.05. 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) 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 the written approval of the Borrower.

Section 4.06. Currency

Costs and fees shall normally be expressed in Korean Won, provided that costs and fees to be disbursed in US Dollars, Euros or the Local Currency under the provisions of the Loan Agreement may be expressed in that currency.

Section 4.07. Conditions and Methods of Payment

(a) The contract shall specify the conditions and 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.

Section 4.08. Services to be Provided by 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.

Section 4.09. 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.

Section 4.10. Reports

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

Section 4.11. Modifications

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

Section 4.12. Force Majeure

The contract shall provide that 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.

Section 4.13. 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.

Section 4.14. 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.

Section 4.15. Applicable Laws

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

Section 4.16. Language

The contract shall normally be prepared in English. If another language is used in the contract, a full English text shall be incorporated in the contract and it shall be stipulated which is governing.

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 consent.

(a) Before proposals are invited from consultants, the Borrower shall submit to the Bank, for the Bank's consent, the Terms of Reference, Short List of Consultants (in the case of limited competitive bidding among short-listed consultants), and draft request for proposals.

(b) Before inviting the highest-ranked consultant to enter on contract negotiations, the Borrower shall send to the Bank, for the Bank's consent, the results of its evaluation of proposals received.

(c) When, as provided for in Section 3.07 (b) of the Consultant Guidelines, 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.

(d) If the Borrower wishes, as provided for in Section 3.01 (d) of the Consultant Guidelines, to employ a specific consultant, the Borrower shall inform the Bank in writing of its reasons, for the Bank's consent.

(e) Promptly after executing a contract, the Borrower shall submit to the Bank, for the Bank's prior consent, one certified copy of the Contract.

Any modification or cancellation of a contract consented to by the Bank shall require the prior written consent of the Bank thereto, provided, however, that any change which does not constitute a modification of the Loan Agreement and which does not affect the portion of the contract price provided by the Bank shall not require such consent of the Bank.

GUIDANCE TO CONSULTANTS

Purpose

1. This annex provides guidance to consultants wishing to provide consulting and professional services financed from the resources of the EDCF.

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 Section 1.02 of these Guidelines, 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 request for proposals, 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 Annex 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 section 1.08. However, if the Borrower has awarded a contract after

obtaining the Bank's consent, the Bank shall declare misprocurement only if the consent 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 section 1.09 of these Guidelines.

Consultants' Role

4. When consultants receive the request for proposals, 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 request for proposals 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 request for proposals for seeking clarifications.

5. In this connection, it shall be emphasized that the specific request for proposals issued by the Borrower governs each selection, as stated in these Guidelines. If consultants feel that any of the provisions in the request for proposals are inconsistent with these Guidelines, 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 request for proposals. 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 announcement of contract 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 after contract award, 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 section 3.11.