



**Guidelines for the procurement of consultancy services financed by a loan
or cash advance from the West African Development Bank (BOAD)**

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DEFINITIONS

For the purposes of these guidelines, the following mean:

- **Loan agreement or loan contract:** any contract and any amendments between the borrower and the Bank, on account of the loan directly granted by the latter or funds managed by it for the benefit of the borrower; the loan agreement shall refer to a loan for a public sector entity; the loan contract shall refer to a loan granted to a private sector entity;
- **Request for proposals:** all the procedures involved in the request for proposals for the award of a contract that begins with the publication of a contract notice and ends with its approval and notification to the selected firm.
- **General procurement notice:** any document giving information on the borrower (or the prospective borrower) and indicating the amount and purpose of the loan (s), the object of the corresponding procurement plan for the award of contracts, as well as the name, telephone or fax number and address(es) of the agency(ies) of the borrower(s) responsible for the procurement as well as the address of online portal or website in normal use with free national and international access and where special notices of procurement in question will be posted;
- **Tender notice:** any document communicated to the public in order to bring to its attention the opening of a call for tenders;
- **Successful bidder :** the bidder whose proposal was selected before the approval of the contract;
- **Addendum:** document that modifies the elements and provisions of a contract;
- **Bank or B.O.A.D:** West African Development Bank;
- **Candidate:** the natural or legal person who has expressed interest in participating or who is selected by a contracting authority to participate in a procurement process;
- **Candidature:** act by which the candidate indicates an interest to participate in a procurement process, without any commitment or obligations binding on him with regard to the contracting authority;
- **Co-financing:** any joint financing between the Bank and one or several other financial institutions, of the same project; the co-financing may be joint or parallel;
- **General conditions:** general requirements that contain contractual clauses of administrative, financial, legal and technical nature relating to the execution of all contracts of a particular type;
- **Special conditions:** special requirements established by the contracting authority as part of the invitation to tenders/call for proposals, including the

amendments to the General conditions, the special contractual clauses and terms of reference (in a service contract) or technical specifications (in a supply or work contract);

- **Conflict of interest:** any event that influences the ability of a candidate, a bidder or a contractor to provide objective and impartial professional advice or prevent it from upholding, at any time, the interests of the contracting authority. Any consideration relating to future prospective contracts, or conflict with other past or current commitments of a candidate, a bidder, a contractor or a beneficiary of a grant, or any conflict with his own interests. These limitations shall also apply to the prospective subcontractor and staff of the candidate, the bidder or the contractor;
- **Consultants:** refers to a wide range of public and private entities, including offices, law firms, engineering firms, project managers, coordinators, business entities, organizational firms, procurement specialists, technical inspection companies, audit firms, merchant banks, universities, research institutes, government agencies, non-governmental organizations (NGOs) and individual consultants;
- **Deadlines:** deadlines indicated in the contract which starts to run from the day following the date of the action or the event selected as the starting point for the calculation of deadlines. Should the last day of the deadline fall on a non-working day, the deadline shall expire at the end of the first working day following the last day of the deadline;
- **Time or period:** period of time which starts to run from the day following the date of the action or event as a starting point for the calculation of the period in question. Should the last day of the period fall on a non-working day, the period shall expire at the end of the first working day following the last day of the period. When the last day of the period is not a working day, the period expires at the end of the first working day following the last day of the period;
- **Firm:** any natural or legal person responsible for executing works, providing services, or supplying goods under the contract;
- **Community entity:** any company whose head office is located in a member country of the West African Economic and Monetary Union (WAEMU) and in which is a tax resident.
- **Community space (countries of the):** W.A.E.M.U region: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo;
- **Member State : the eight (8) countries of the West African Economic and Monetary Union (W.A.E.M.U.)** and the following countries: France, Germany, Belgium, India and China. The African Development Bank (AfDB), the Central

Bank of West African States (BCEAO) and the European Union are shareholders of the Bank.

- **Joint funding:** funding jointly provided by the Bank and one or more co-financiers for the same project or the same lots of a project, using **the** same rules for procurement of goods, works and services;
- **Parallel financing:** any funding by the Bank and one or more co-financiers other than the Borrower, of separate lots of the same project or separate lots of a same component of the project, each according to its own rules for procurement of goods, works and services;
- **Contract:** any contract awarded by the borrower with the contract holder, for the purpose of executing services, works or delivery of supplies as part of implementation of the project;
- **Public contract:** any written agreement reached for consideration by a contracting authority to meet its requirement for works, supplies or services;
- **Disbursement:** any payment of all or part of the loan into the hands of the Borrower or a third party designated by him, under the terms and conditions of the loan agreement or contract;
- **Offer:** all of the technical and financial elements included in the bid;
- **Lowest bid:** bid that meets the technical and administrative specifications, whose price is the lowest among all the bids submitted;
- **Public entity:** a body created to meet specific needs of the general public interest having an industrial and commercial nature, with legal personality, and whose activity is funded mostly by the State, local authorities or other bodies governed by public law, or whose management is subject to government control, or whose governing body, management or supervisory body is made up of members of whom more than half are appointed by the government, local authorities or other bodies governed by public law;
- **Prohibited practices:** these refer to cases of violation of the rules on conflicts of interest, cases of fraud or corruption or related facts ;
- **Loan:** all repayable funding resulting from the loan agreement or loan contract between the West African Development Bank and the Borrower; this is refundable financing granted by the Bank to the Government, one of its agencies or private sector entity.
- **Project:** any project funded directly and indirectly by the Bank;
- **National:** any natural or legal person having the nationality of a particular country or registered in that country;
- **Bidding:** any act of written commitment at the end of which a bidder makes his conditions known and undertakes to comply with the applicable specifications;

- **Bid:** any action of making an offer for the conclusion of the contract;
- **Bidder:** any natural or legal person who makes an offer for the conclusion of the contract or a part of the contract; the term "bidding" shall be synonymous with the term "offer".
- **Subcontractor:** any person who has been either: i) included by the bidder during his bid in the pre-qualification or his offer given the specific and relevant experience and know-how he brings and which will enable the bidder to meet the conditions of selection of the tender; or ii) appointed by the Borrower during the performance of the contract;
- **Union:** West African Economic and Monetary Union (WAEMU).

I. INTRODUCTION

Purpose

1.1 The purpose of these guidelines is to define the Bank's policies and procedures for selecting consultants required: i) as part of cash advances provided by the West African Development Bank (BOAD); (ii) by projects funded through a loan resulting from the loan agreement or loan contract between the Bank and the Borrower.

1.2 The loan agreement governs the legal relationship between the Borrower and the Bank, and these guidelines shall apply to the selection and recruitment of consultants needed by the project as stipulated in the loan agreement. The rights and obligations of the Borrower¹ and the Consultant shall be governed by the specific request for proposals (RFP) issued by the Borrower and by the contract signed between the Borrower and the Consultant, and not by these guidelines or the loan agreement or loan contract.² No party other than the parties to the loan agreement shall derive any rights therefrom or have any claim to loan proceeds.

1.3: For the purposes of these guidelines, the term "consultants" refers to a wide range of public and private entities including offices, law firms, engineering firms, project managers, coordinators, business entities, organizational firms, procurement specialists, technical inspection companies, audit firms, merchant banks, universities, research institutes, government agencies, non-governmental organizations (NGOs) and individual consultants;³ Borrowers of the Bank rely on these entities as consultants to assist in a range of advisory, management and engineering services, supervision of works, financial services, bidding, environmental and social studies, for the identification, preparation and execution of projects.

General considerations

1.4 The Borrower is responsible for preparing and implementing the project and, therefore selecting the consultant and awarding and subsequently administering the contract. The Bank, on its part, shall be required to ensure that the proceeds of a loan are exclusively devoted to the purpose for which it was granted, with due regard to economy, efficiency, and not allow the interference of extra-economic considerations. The following detailed procedures have therefore been outlined. In practice, the rules and procedures for the use of consultants for a given project may vary according to the circumstances of the case, but five key considerations shall generally determine the choice of conditions required by the Bank:

- a) the need for high-quality services,
- b) the need for economy and efficiency,

¹In some cases, the Borrower acts only as an intermediary, and the project is run by another organization or entity.

²In case of differences between the loan agreement and these guidelines, the loan agreement shall prevail.

³See paragraphs 3.15 to 3.21 for consultants of a particular type and Section V for individual consultants.

- c) the need to give to all consultants who meet the eligibility criteria, the opportunity to compete for the award of consultant service contracts financed by the Bank,
- d) the Bank's interest in encouraging the development and use of consultants from countries within the community, and
- e) the need for transparency in the selection process.

1.5 The Bank considers that, in most cases, these considerations can best be addressed through competition among qualified short-listed firms in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided. Sections II and III of these guidelines describe the different methods of selection of consultants accepted by the Bank as well as the circumstances in which they apply. Given the fact that quality and cost based selection (QCBS) is the most commonly recommended method, Section II of these guidelines describes this method in detail. However, QCBS method is not the most appropriate method of selection in all cases. Section III therefore provides other selection methods and the circumstances under which they are more suitable than the QCBS method.

1.6 The particular methods that may be followed for the selection of consultants in a given project are provided in the loan agreement. The specific contracts to be financed under the project and their method of selection, consistent with the provisions of the Loan Agreement, shall be specified in the Procurement Plan, as indicated in paragraph 1.25 of these guidelines.

Applicability of guidelines

1.7 These guidelines shall be applicable to consulting services of an intellectual and advisory nature. They do not apply to other types of services for which the physical aspects of the activity predominate (installations, constructions, renovation or repairs, manufacturing goods, operation and maintenance of facilities or factories, cartographic surveys, exploratory drilling, aerial photography, satellite imaging and services to obtain a measurable material result).

1.8 The principles, rules and procedures outlined in these guidelines are applicable to all consulting services required i) as part of funds generally advanced by the Bank to member countries, and ii) projects financed through a loan resulting from the loan agreement between the Bank and the Borrower and executed by the Borrower.⁴ The provisions in this section apply to all other sections of the guidelines.

In the case of joint or parallel financing, an agreement between co-financiers may be established to determine the applicable procurement rules.

⁴This includes the selection of consultants by a procurement agent or construction manager employed by the Borrower under paragraph 3.17 of these guidelines.

Where funds are made through related financial assistance, the procurement procedures contained in in the agreements governing such loans shall apply.

Conflict of interest

1.9 The Bank's policy requires that consultants provide professional, objective and impartial advice and at all times hold the client's interest paramount, without any consideration for future work, and that in providing advice, they avoid conflicts with other assignments and their own corporate interests. The consultants shall not be engaged for assignments which would be in conflict with their prior and current obligations to other clients or which may place them in a position of being unable to carry out the assignment in the best interest of the Borrower. Any consultant who would prove to be in conflict of interest will not get a contract and shall be liable to the penalties provided for by these guidelines or any other regulation enacted by BOAD.

Without prejudice to the foregoing, consultants shall not be engaged in the following circumstances:

- a) Conflict between consultant activities and procurement of goods, works or services (services other than consultancy covered by these Guidelines): a company that has been engaged by the Borrower to provide goods, works or non-consulting services for a project, and any other affiliate that directly or indirectly controls, shall be disqualified from providing consulting services resulting from or directly related to those goods, works or non-consulting services. Similarly, a firm hired to provide consultancy services for the preparation (before loan effectiveness) or execution of a project, and any other affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm, shall be disqualified from subsequently providing goods or services (other than advisory services provided for by the guidelines) resulting from or directly related to consulting services for such preparation or execution. This provision does not apply to various firms (consultants, contractors or suppliers) which together are involved in the implementation of the contractor's obligations under a turnkey or design and build contract.
- b) Conflict among consultancy assignments: neither consultants (including their staff and subcontractors) nor any affiliate that directly or indirectly controls, is controlled by, or is under the common control with that firm, shall be hired for any assignment that, by its nature, may be in conflict with another assignment. Thus, consultants who assist a client to privatize public assets shall neither purchase, nor advise purchasers of such assets. Similarly, consultants hired to prepare the terms of reference of an assignment shall not be recruited to execute the said assignment.
- c) Relationship with the Borrower's staff: consultants (including their experts, staff and contractors) that have a close business or family relationship with a

professional staff of the Borrower (or project implementing agency or of a beneficiary of a part of the loan) who are directly or indirectly involved in (i) the preparation of the terms of reference for the assignment, (ii) the selection process for the contract, or (iii) the supervision of this same contract will not be given a contract unless the conflict stemming from this relationship has been resolved in a manner acceptable by the Bank throughout the selection process and the contract execution.

- d) A consultant shall submit only one proposal either individually or as a joint venture partner in another proposal. If a consultant, including a joint venture partner, submits or participates in more than one proposal, all such proposals shall be disqualified.

This does not however preclude a consulting firm to participate as a sub-consultant, or an individual to participate as a team member, in more than one proposal when circumstances justify and if permitted by the RFP.

Unfair competitive advantage

1.10 Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Borrower shall make available to all the short-listed consultants, together with the request for proposals, all information that would in that respect give a consultant a competitive advantage.

Eligibility

1.11 To foster competition, the Bank permits consultants (firms and individuals) from all countries, except those sanctioned by the United Nations, to offer consultancy services for the projects it finances.⁵

1.12 When a contract is fully or partially financed by the Bank, the Borrower shall not prevent the Bank's participation in a short list or a procurement procedure, or the award of a contract to a consultant, for reasons other than:

- i. The capacities and resources available to the consultant to successfully execute the contract, or
- ii. Situations of conflict of interest provided for by paragraphs 1.9 above.

1.13 As an exception to paragraphs 1.11 and 1.12:

- a) Consultants may be excluded if pursuant to a decision taken by the Security Council of the United Nations on the basis of Chapter VII of the United Nations Charter, the Borrower's country prohibits commercial relations with the

⁵The conditions of participation will be limited to those that are essential to ensure that the firm is capable of performing the contract in question.

consultant's country. When the Borrower's country prohibits any payments to any particular firm or for specific goods by such an act of compliance, the firm can be excluded.

- b) Public enterprises or institutions of the Borrower's country may participate, if they can establish:
- i. They are legally and financially independent;
 - ii. They operate under commercial law, and
 - iii. Are not dependent agencies of the Borrower or Sub-borrower.⁶
- c) As an exception to paragraph (b), when services of public universities, public research centres or other institutions of the Borrower's country are unique and exceptional, including the lack of a suitable private alternative, and whose participation is critical for the implementation of the project, the Bank can accept that these institutions are selected on a case-by-case basis. For the same reasons, university professors or scientists at research institutes can be selected individually as part of funding from the Bank.
- d) Government officials and civil servants from the Borrower's country may only be hired for consultancy service contracts in the Borrower's country either individually or as members of the team of experts proposed by a consultancy firm, provided that this is not inconsistent with the civil service code or other laws and regulations, or policies of the country of the borrower and (i) if they are on leave without pay, retired or resigned; (ii) if they are not engaged by the agency for which they worked prior to their departure on leave without pay, retirement or resignation; and (iii) if their involvement does not give rise to a conflict of interest (see paragraph 1.9).⁷
- e) A company, an individual, or a parent company, subsidiary, or any form of entity incorporated by one of these individuals sanctioned by the Bank under paragraph 1.20 (d) of these guidelines or under the rules and procedures of the Bank's sanctions may not be awarded a contract financed by the Bank, or

⁶In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's no objection, wish to proceed with the selection of consultants before the related Loan Agreement is signed. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these Guidelines, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any no-objection issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

⁷In the case of resignation or retirement, for a period of at least 6 (six) months, or the period established by statutory provisions applying to civil servants in the Borrower's country, whichever is longer. Professors or staff and experts in specialized fields from universities, educational institutions, and research institutes can be contracted individually on a part-time basis provided that they have been full-time employees of their institutions for a year or more before being contracted and such hiring is justified for the services required.

benefit financially or otherwise from a contract financed by the Bank during the period determined by the Bank.

- f) A company, an individual, or a company parent, or subsidiary or any form of entity incorporated by one of those persons excluded from participation in procurement contracts, under a decision by the disciplinary committee of a national procurement authority, or by a court of law, for violation of public procurement regulations cannot also be awarded a contract financed by the Bank during the period determined by the said committee or jurisdiction.

Advance contracting and retroactive financing

1.14 In certain circumstances, such as to accelerate project implementation, the Borrower may, with the Bank's no objection, wish to proceed with the selection of consultants before the related Loan Agreement is signed. This process is referred to as advance contracting. In such cases, the selection procedures, including advertisement, shall be in accordance with these guidelines, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any no-objection issued by the Bank with regard to the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

Associations between consultants

1.15 Eligible consultants may associate in the form of a consortium or as part of a subcontracting agreement to pool their respective expertise, strengthen the technical compliance of their proposals and provide access to a largest pool of experts, provide better approaches and methods and in some cases, offer lower prices. This may be a long term association (independent of any specific assignment) or a limited partnership with a given mission.

If the Borrower uses an association in the form of a joint venture, the association shall appoint one of the firms to represent the association. All members of such consortium or their representatives entrusted with a mandate must sign the contract. All members of the group shall be jointly and severally liable for the fulfilment of the overall mission. Once the shortlist is finalized and requests for proposals sent to the consultants on the short list, any formation of a consortium or subcontracting between the consultants on the shortlist shall only be possible with the consent of the Borrower.

Borrowers shall not require consultants to form associations with any specific consultant or group of consultants, or include a particular individual in their

proposals, but they can encourage the creation of associations with qualified consultants from the country.

In general, the Bank encourages associations or joint operations between non-African and African consultants, whenever the requirements of the mission show that such associations will be beneficial for the conduct of the works.

Misprocurement

1.16 The Bank does not finance expenditure for consultancy service contracts if the Bank concludes that the contract:

- a) Was not awarded in accordance with the loan agreement and subsequently detailed in the Procurement Plan to which the Bank issued a notice of no objection;
- b) could not be awarded to the consultant otherwise determined successful due to wilful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, or the successful proposal being no longer available, or the wrongful rejection of any proposal; or
- c) Involves the engagement of a representative of the Borrower, or a recipient of any part of a loan, who was involved in corrupt or fraudulent practices as defined in paragraph 1.21(c).

In such cases, during the due diligence process, the Bank declares a misprocurement, and has a policy to cancel that portion of the loan allocated to the services that have not been obtained in accordance with agreed procedures. The Bank may also perform other actions under the Loan agreement. Although the contract was awarded after issuing a notice of non-objection on its part, the Bank may still declare that the award did not comply and enforce all of its rules and its remedial measures whether the loan deal has been reached or not, if it concludes that the notice of no objection was issued on the basis of incomplete or misleading information furnished by the Borrower or that the terms and conditions of the contract have been substantially changed without notice of non-objection of the Bank.

Reference to the Bank

1.17 The Borrower shall use the following text when referring to the Bank in the request for proposals and contract documents:

"[Name of the Borrower] has received [or, where appropriate, 'has applied for'] a loan from the West African Development Bank [Bank], amounting to XOF..... to finance the cost of [name of project], and intends to use this loan for eligible payments under this Contract. The Bank shall only make payments at the request of [name of Borrower or designate] and upon approval of the payments, which shall be subject in all respects to the provisions of the Loan Agreement or Contract [Loan]. The Loan agreement or [Loan] contract prohibits a withdrawal from

the loan account for the payment of any natural or legal person, or any import of goods when, to the knowledge of the Bank, such payment or importation, fall under the scope of a ban imposed by the United Nations Security Council under Chapter VII of the UN Charter. No party other than [name of Borrower] shall derive any rights from the Loan Agreement or have any claim on the proceeds of the [loan]. "

Training or transfer of knowledge

1.18 If the assignment includes an important component for training or transfer of knowledge to Borrower staff or national consultants, the ToRs shall indicate the objectives, nature, scope and specific goals of this component, with specific details of trainers and beneficiaries of the training, skills to be imparted, timeframe and arrangements for monitoring and evaluation of this component. The cost of this component shall be included in the consultant's contract and in the budget of the assignment.

Language

1.19 The request for proposals must be prepared in French. The contract signed with the selected consultant will be in the language that has been so determined in the request for proposals and that language will govern the contractual relations between the Borrower and the selected consultant.

Fraud and corruption

1.20 It is the Bank's policy to require that Borrowers (including beneficiaries of the Bank loan), consultants and their agents (whether declared or not), subcontractors, service providers or their suppliers, as well as personnel of these entities, to observe the highest standard of ethics, during the selection and execution of such contracts financed by the Bank.⁸ In pursuance of this policy, the Bank:

- a) defines, for the purposes of this provision, the terms set forth below as follows:
 - i. "corrupt practice" is the offering, giving, receiving or soliciting⁹, directly or indirectly, anything of value to unduly influence the actions of another party or entity;
 - ii. "fraudulent practices" refers to any act or omission of facts, deliberately or recklessly, or attempts to mislead any person or entity in

⁸In this context, any action to influence the award procedure or performance of the contract for any benefit is prohibited, whether the action of a consultant or its employees, its representatives, subcontractors, service providers, suppliers and / or its employees.

⁹ The term "**another person or entity**" refers to a government official or a public authority acting in the context of the award or execution of a contract. In this context, this term includes Bank staff and employees of other organizations that make decisions on procurement.

order to obtain a financial benefit or of any other nature, or avoid an obligation;¹⁰

- iii. "collusive practice" means any person¹¹ or entities that conspire to achieve an improper purpose, including to unduly influence the actions of another party;
- iv. "coercive practice"; impairing or harming, ¹²or threatening to impair or harm, directly or indirectly, any party or the property of the party with a view to improperly influencing actions of a party.
- v. "obstructive practice":
 - (aa) deliberately destroying, falsifying, altering or deliberately concealing evidence material to an investigation or making a false statement to investigations in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive acts, and/or threatening, harassing or intimidating any party for the purpose of preventing them from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to prevent the exercise of the Bank's inspection and audit rights provided for under paragraph 1.21 (e) below.
- b) Will reject the proposal for the award of a contract if it determines that the consultant to whom it is recommended to award the contract, or any member of its staff, its representatives or its suppliers, services providers, or its sub-contractors and/or their employees is directly or indirectly guilty of corruption or has been involved in fraudulent, collusive, coercive or obstructive practices in competing for the contract;
- c) Will declare a non-compliant award and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or a loan beneficiary has been involved in corrupt, fraudulent, collusive, coercive or obstructive practices during the award procedure or performance of the contract in question without the Borrower having taken timely and necessary measures to remedy this situation, to the Bank's

¹⁰ The term "party or entity" means any participant or government official; **the** terms "**benefit**" and "**obligation**" refer to the award or execution process; and "acts or fails to act" refers to any act or omission to influence the award or performance of the contract.

¹¹For the purposes of this paragraph, the term "person or entity" means any participant in the procurement process (including government officials) who undertakes by himself or through another person or other entity that does not participate in the selection process or award to simulate a competitive process or establish bid prices at artificial or non-competitive level, or who maintains a collusive relationship with other participants or any other breach.

¹²For the purposes of this paragraph, the term "**party**" means any participant in an award procedure or during the performance of a contract.

satisfaction, including by failing in its duty to inform the Bank when it became aware of such practices;

- d) Will at any time sanction a company or an individual pursuant to the Bank's sanction procedures¹³, including by publicly declaring that the company or individual be excluded indefinitely or for a specified period: from i) any contract award financed by the Bank, and ii) the possibility of being selected¹⁴ as a subcontractor, consultant, supplier or service provider for the benefit of an company that is also likely to be awarded a contract financed by the Bank; and
- e) Will require that the request for proposals, the bid documents and contracts financed by the Bank contain a provision requiring consultants, bidders, suppliers, contractors and their subcontractors, representatives, employees, service providers or suppliers, to permit the Bank to review the accounts, accounting documents, records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the Bank; under these guidelines, consultants and their agents, employees, sub-consultants, subcontractors, service providers or suppliers shall fully cooperate with the Bank in its investigation. The Bank shall be entitled to also require that funded contracts contain a clause requiring consultants and their agents, personnel, subcontractors, service providers or suppliers:
 - (i) to maintain all documents and records related to the Bank-financed activities for ten (10) years after completion of the work under the contract in question;
 - (ii) to provide all the necessary documents for an investigation into alleged prohibited practices; and make available the agents, staff and any other person with knowledge of the Bank-financed activities to respond to questions from the staff of the Bank or any investigator, agent, auditor or duly appointed consultant for the purpose of the investigation. If the consultant, his agent, personnel, sub-contractor, service provider or supplier fails to cooperate and/or does not comply with the requests of the Bank or due to some other manner obstruct any investigation by the Bank, the Bank, in its sole discretion, may

¹³A firm or individual can be excluded from the award of contracts financed by the Bank following: i) the completion of the Bank's sanction procedures, including among others, the agreed cross-debarment with the other International Financial institutions including the multilateral Development Banks and the application of sanction procedures for fraud and corruption relating to the award of the Bank's contracts; and ii) a quick temporary suspension due to ongoing sanction procedures. It can also be excluded as a result of a sanction by the authorized bodies of the Borrower country.

¹⁴A contractor, supplier or service provider chosen is the one that has been either: i) included by the bidder in its proposal because of the unique and essential experience and expertise that have been included in the technical evaluation of the consultant's proposal; or ii) appointed by the Borrower under the contract.

take appropriate action against the consultant, his agent, staff, contractor, service provider or supplier;

- f) Shall require, when a Borrower selects a specialized agency to provide technical assistance services in accordance with paragraph 3.15 as part of an agreement between the Borrower and said specialized agency, that all the provisions of paragraph 1.20 on Sanctions and Prohibited Practices shall apply in their entirety to applicants, bidders, contractors, consulting firms and individual consultants, personnel, subcontractors, sub-consultants, service providers or suppliers (including their representatives, employees and agents, that they are expressly or implicitly their agents) or any other entity having signed contracts with the said specialized agency for the supply of goods or related services in connection with activities financed by the Bank. The Bank reserves the right to require the Borrower to invoke remedies such as suspension or termination. Specialized agencies should consult the list held by the Bank for suspended or excluded companies or individuals. In case of signing of a contract or purchase order between a specialized agency and a company or a person excluded permanently or for a specified period by the Bank, the Bank shall refuse to finance the expenditure involved and take other appropriate action, if any;

1.21 With regards to large contracts financed by the Bank, a Borrower may, with the express agreement of the Bank, included in its request for proposal, a provision whereby the consultant agrees to tender and execute a contract, by respecting the country's laws against fraud and corruption (including bribery), as listed in request for proposal.¹⁵ The Bank will accept the inclusion of such a provision at the request of the Borrower, provided the arrangements governing such undertaking are satisfactory to the Bank.

Procurement plan

1.22 Preparation of a realistic procurement plan is essential for the proper supervision and implementation of a project.¹⁶ As part of project preparation, the Borrower shall prepare a preliminary or even temporary procurement plan, for the entire project. The Borrower shall, at least prepare a detailed and comprehensive procurement plan covering all contracts for which the selection procedures will be initiated within eighteen (18) months of the project. An agreement with the Bank must be concluded at the latest during loan negotiations. For the duration of the project and at least

¹⁵This undertaking might read as follows: "We are committed to prepare and present our offer (and, if the contract is awarded to us, in executing), in compliance with the laws against fraud and corruption in force in the Client's country, laws whose list was included by the Client in the Request for Proposals relating to that contract. »

¹⁶The procurement plan and its updates, must establish at least i) a brief description of consultancy services for the project for which an invitation to Proposals must be prepared during the period in question; ii) the proposed screening methods as authorized in the Agreement or Loan Agreement; and iii) the timing of key selection procedures, and any information the Bank may reasonably request. If the project provides for the award of contracts for goods, works and/or services (other than consulting services), the Procurement Plan should also include the procurement methods for these markets under the Guidelines: Procurement supplies, works and services (other than consulting services) financed by a loan or BOAD cash advance.

once a year, the Borrower shall update the procurement plans of previously awarded contracts and those to be awarded within twelve (12) months. This procurement plan shall serve as the basis for the development of a general procurement notice which is also subject to an annual update. All procurement plans and the general notices, their updates and amendments shall be subject to prior review and no-objection of the Bank prior to their implementation.

After loan negotiations, the Bank must publish on its official website, the procurement plan of initial contracts and subsequent updates after issuing no-objection notifications.

II. QUALITY AND COST-BASED SELECTION (QCBS)

Selection process

2.1 The QCBS method involves setting up a competitive process include a short list drawn up after a notice for expressions of interest, using the quality of the proposal and the cost of services to select the consultant. The cost factor is a selection criterion to be used wisely. The relative weighting of quality and cost criteria is determined on a case-by-case basis, depending on the nature of the mission.

2.2 The selection process includes the following steps:

- a. Drafting of the terms of reference;
- b. Cost estimation, budgeting and the selection criteria on the shortlist;
- c. Publication of a notice for expression of interest;
- d. Establishment of the shortlist of consultants;
- e. Preparation and issuance of the request for proposal (RFP), which must include: the letter of invitation, the instructions on consultants (IC), the terms of reference and draft of the proposed contract.
- f. Receipt of proposals;
- g. Evaluation of technical proposals: emphasis on quality;
- h. Public opening of financial proposals;
- i. Evaluation of financial proposals;
- j. Final consolidated evaluation of quality and cost; and
- k. Negotiations and award of the contract to the selected consultant.

Terms of reference

2.3 It shall be the responsibility of the Borrower to develop the terms of reference of the mission. These terms of reference shall be prepared by one of the person(s) or a company specialized in the relevant field of the mission. The scope of the services

described in the ToRs must be consistent with the available budget. The ToRs shall clearly define the objectives, goals and scope of the mission, and provide general information (including a list of relevant studies and existing basic data) in order to facilitate the preparation of the proposals for their consultants. If the transfer of knowledge or training are the objectives of the mission, it should that be indicated precisely, with details of staff to be trained, to enable the consultants to estimate the measures to be put in place. The terms of reference will list the services and investigations needed to accomplish the mission and expected results (e.g., reports, data, maps, surveys, etc.). However, the ToRs should not be too detailed or rigid, so that the competing consultants will be able to propose the methodology and personnel of their choice. Consultants should be encouraged to comment on the terms of reference in their proposal. The respective responsibilities of the Borrower and consultants should be clearly defined in the terms of reference.

Cost estimate (budget)

2.4 It is essential to estimate the costs in a careful manner in order to provide realistic budget allocations. This estimate will be based on the assessment by the Borrower of the resources needed to accomplish the mission: working time of experts, logistics and equipment support (vehicles, laboratory equipment, for example). Costs must first be broken down into two broad categories:

- a. Fees or remuneration (depending on the type of contract), and
- b. Reimbursable expenses.

They must then be divided between costs in foreign currency and costs in local currency. The remuneration of experts should be based on a realistic assessment of the national and international expertise required. The request for proposals shall indicate the estimation of volume and time of work expected from the experts or the estimated total cost of the contract but not the detailed estimates, such as rates.

Advertising

2.5 For all projects, the borrower shall be required to prepare and submit a general procurement notice to the Bank. To obtain "expressions of interest", the Borrower will insert the list of missions of consultants contained in the general procurement notice and will publish a request for expressions of interest for each contract in a newspaper of wide national distribution in the country of the Borrower and on the website of the Bank and, where appropriate, on an electronic portal with free national and international access in the French language.

The notice for expression of interest will be published well in advance: (fourteen (14) days at least) so that interested consultants will have time to prepare their expression of interest.

Also, missions whose estimated cost is equal to or exceeds community publication thresholds defined by the WAEMU Commission shall be published on WAEMU

Commission website and other channels indicated by the Commission. In such cases, the WAEMU Commission shall publish procurement notices not later than twelve (12) working days after their receipt by the Commission. In an emergency, this period shall be reduced to five (5) working days.

The publication of the notice, in accordance with the regulatory provisions of the borrower, must not be carried out before the publication by the Commission of WAEMU.

However, failure by the WAEMU Commission to publish within the time limits stipulated by these guidelines, the Borrower may proceed with the publication.

For contracts subject to an international publication, Borrowers must also publish requests for expressions of interest in a newspaper with international readership.

The information requested in the publications must be limited to the minimum needed to determine the consultants' qualifications for the mission in question and should not, by its complexity, deter the consultants from indicating their interest. Requests for expressions of interest include at least the following information applicable to the mission:

- The required qualification and experience of the firm, excluding personal data relating to the experts;
- The selection criteria on the shortlist; and
- Provisions regarding conflict of interest.

Shortlist of consultants

2.6 The Borrower shall be required to make the shortlist. The Borrower will give priority attention to consultants that have shown their interest and who possess the relevant qualifications.

The shortlists will include six (6) consultants from geographical diverse origins, including i) up to two from the same country, unless it was unable to identify other consultants that met the selection criteria; and (ii) at least two from the community, unless it was unable to identify consultants that meet this criterion.¹⁷ When none of the above criteria was satisfied by expressions of interest received, the Borrower can directly solicit the interest of qualified consultants that it knows, or request the assistance of the Bank in accordance with the Directives on procedures for the control of the Bank. Exceptionally, the Bank may accept a shortlist with a reduced number of consultants when there are not enough qualified consultants who have expressed their interest for the specific mission, when there were not enough qualified consultants identified, or when the size of the contract or the nature of the project

¹⁷For the purpose of establishing the shortlist, the nationality of the consultant will be that of the country where it is registered or incorporated, and in the case of a consortium, the nationality of the firm appointed to represent the said group.

does not warrant a wider search. Once the Bank has issued a no-objection notification on the shortlist, the borrower must not change it without the Bank's no-objection. The final shortlist will be forwarded to the consultants that expressed interest, as well as to any other company or entity which will have sent a proposal to the Borrower.

2.7 The shortlist may include only consultants from countries in the community space (consultants whose capital is majority owned by citizens of the community and which are registered or incorporated in the community space), provided that it has a sufficient number of qualified companies available in the community for a shortlist and when there is no initial justification or reason to expand the request to consultants outside the community space or when they have not expressed interest in the mission.

2.8 The shortlist usually includes consultants of the same category and whose business objectives, capabilities, experience and area of expertise are similar, and who have executed projects of similar nature and complexity. Institutions and businesses as well as non-profit organisations (NGOs, universities, UN agencies, etc.) should normally not be included in the shortlist as private sector consultants, unless they are managed as commercial entities satisfying the requirements of paragraph 1.13 (b) of this guidelines. If there is such a mix, the selection should normally take place using the quality-based selection method or selection based on consultants' qualifications (CQS) (for projects of a lower amount).¹⁸ The shortlist will not include any individual consultants. If the borrower intends to select the same consultant in the shortlist for a separate project, it must assess the overall ability of the consultant to run several contracts before including them in more than one shortlist.

Preparation and issuance of requests for proposals (RFPs)

2.9. The request for proposals (RFPs) should include:

- a. A letter of invitation;
- b. Instructions to consultants (IC) and specific data;
- c. The terms of reference; and
- d. Type of contract proposed. As much as possible, Borrowers shall use one of the models of requests for proposals issued by the Bank, if necessary, with minor changes acceptable by the Bank, to take account of the specific conditions relating to the project. Such changes can be done only with specific data from the request for proposals.

Borrowers must list the documents contained in the request for proposals. The borrower may use an electronic system to publish the request for proposals, provided

¹⁸The thresholds expressed in FCFA that define what is meant by "small amount" will be determined in each case taking into account the nature and complexity of the assignment.

that the Bank considers it appropriate. If the request for proposals is published electronically, the electronic system will be protected to prevent changes to the request for proposals and to avoid restricting access to consultants who are on the shortlist.

Letter of invitation (LOI)

2.10. The letter of invitation indicates the Borrower's intention to enter into a contract for consultant services. It provides information on: the origin of funds, client, date, time and address to which proposals must be sent.

Instructions to consultants and data sheet (ITC)

2.11 This document must include all information that could help the consultants to prepare compliant proposals. It must make the selection procedure as transparent as possible, by providing information on the evaluation process and indicating the evaluation criteria and their respective relevance, as well as the score corresponding to the minimum quality required. The IC will provide an estimate of the amount of work expected of key experts (in persons x month) or the budget estimate, but not both. If, as part of previous contracts, the services were routine or did not require an innovative approach, the Borrower may after the notice of no objection from the Bank, request consultants to include the same volume of work expected of such experts indicated during the request for proposals, without which their financial proposal must be adjusted for the purpose of comparison of proposals and the decision on the contract award. The IC will specify the validity period of the proposal which should be sufficient to allow the assessment of the proposals, the award decision, the review by the Bank and the finalization of contract negotiations. A detailed list of information to be included in this document is provided in Appendix 1.

Contract

2.12 Section IV of these guidelines briefly analyses the most common types of contracts. Borrowers must use the most appropriate types of contracts as published by the Bank and only make changes that are absolutely necessary, with the agreement of the Bank, in order to adapt it to the needs of the country and the project. These changes will be introduced exclusively through the contract data or the specific conditions of the contract, and not through the amendments to the general conditions of the contract appearing in the contract model published by the Bank. The Bank's contract models cover most of the consultant services; when they are not usable (for example, in the case of contracts for inspection prior to shipping, the departments specialised in procurement, training of university graduates, advertising operations for privatization, or twinning), the Borrowers must use other contract models deemed acceptable by the Bank.

Receipt and opening of proposals

2.13 The borrower will allow consultants sufficient time to prepare their proposal. This period must not be less than thirty (30) calendar days for contracts above the national thresholds for the Borrower, and forty-five (45) calendar days for contracts above the community threshold, from the date of publication of the notice.

During this period, the consultants will be able to seek clarification on the information provided in the request for proposals. The Borrower will provide these clarifications in writing and circulate them to all consultants on the shortlist (which have indicated their intention to submit proposals). If necessary, the borrower shall extend the deadline for submission of proposals. Technical and financial proposals should be submitted at the same time.

No amendment to the technical or financial proposal will be accepted after the deadline for submission of proposals, but amended proposals may be submitted prior to this date. To preserve the integrity of the process, technical and financial proposals should be submitted in separate sealed envelopes. An opening and evaluation committee whose composition and functions shall be defined by the national rules applicable to procurement, to be designated and made up of persons belonging to the departments concerned (technical, financial and legal services, as the case may be) shall open all envelopes containing the technical proposals received by the deadline for submission of proposals and at the place indicated in the request for proposals when a minimum of three proposals is received by the date fixed for bid submission.

Failing this, the Borrower shall open a new advertising period of fifteen (15) days prior to the opening of the bids. The first proposals received should be sent to bidders before the opening of this new period of advertising. The Borrower will then open the proposals received whatever their number at the end of the second period of advertising.

At the opening of the envelopes containing the technical proposals, in the presence of the consultants wishing to attend, the borrower must neither take a decision on the merits of the proposals, nor reject any of the proposals. All proposals received after the deadline will be declared out of time, rejected and promptly returned without having been opened. The committee will read aloud the names of the consultants who submitted a proposal, the presence or absence of duly sealed envelopes containing the financial proposals, as well as any other information deemed appropriate. Financial proposals will be sealed and will be deposited with an auditor or an independent, trustworthy entity until their opening in accordance with paragraph 2.23¹⁹. Borrowers may have systems that enable consultants to submit their proposals electronically, provided that the Bank considers that such systems are adequate, including, among other things, that they are protected, guarantee the

¹⁹An independent body should have no direct or indirect interest or participation in the assignment in question.

integrity, confidentiality and authenticity of the submitted proposals, and use an electronic signature system or its equivalent to ensure that consultants are bound by their signature.

Clarification and alteration of proposals

2.14 Except in the cases referred to in paragraphs 2.27 to 2.29 of Section II, the consultants can be neither authorized nor required to amend their proposal in any way after closing the proposals.

During the evaluation of proposals, the borrower will make the assessment on the basis of the technical and financial proposals submitted only, and will not request any further clarification from consultants, except for minor issues and with prior notice of no objection from the Bank.

Evaluation of proposals: Consideration of quality and cost

Evaluation of proposals: taking account of the quality and the cost Persons responsible for evaluating the technical proposals will have access to the financial proposals as well as the outcome of the technical evaluation, including reviews and notices of no objection by the Bank. Only then will the financial proposals be opened. The evaluation will be conducted in full compliance with the provisions of the request for proposals.

Evaluation of the quality

2.16 Given the need for high quality services, the quality of technical evaluation will be a determining factor. The Borrower shall evaluate each technical proposal involving an opening and evaluation committee, whose composition and functioning are spelt out in accordance with the principles of its rules on public procurement. No member of the Committee shall be in a situation of conflict of interest under paragraph 1.9 (c) and shall indicate non-involvement in conflict of interest before participating in the evaluation. If the Bank determines that the technical evaluation is not compatible with the provisions of the RFP or does not adequately assess the strengths and weaknesses of the proposals, or that the Committee fails to resolve the situation in a timely, the Bank may ask the Borrower to appoint international experts to assist the committee to perform its task if deemed necessary.

2.17 The Technical evaluation will take into account the criteria in paragraph 2.18 and the sub-criteria indicated in paragraphs 2.19 and 2.20 and as specified in the RFP. The RFP will describe each criterion and sub-criteria and their respective maximum rating, and disclose the overall minimum technical score below which the proposals will be rejected as non-compliant. The indicative range for the overall minimum technical score is between 70 and 85 (seventy and eighty-five) on a scale of 1 to 100 (one to hundred percent). The maximum score for each criterion and the minimum overall technical score will be determined depending on the nature and complexity of the mission.

2.18 The criteria will include:

- a. Relevant experience of the consultant for the task in question;
- b. Quality of the proposed methodology;
- c. Qualifications of the key experts proposed;
- d. Knowledge transfer, if required by the ToRs; and
- e. Level of participation of experts from the community space among the key experts proposed for the mission. Any exceptions subject to the Bank's notice of non-objection will be included in the indicative range. The maximum score for the "participation of experts from the community space" as indicated below shall not exceed ten (10).

Consultant's relevant experience for the task:	0 to 10
Methodology:	20-50
Key Experts:	30-60
Knowledge transfer: ²⁰	0 to 10
Participation of experts from the Community area: ²¹	0 to 10
(Shall not exceed 10 points)	
Total :	100

2.19 The Borrower normally divides the assessment criteria into sub-criteria. Each criterion will be scored on the basis of the weight assigned to each sub-criterion. For example, the sub-criteria for the methodology will be innovation and level of detail. However, it is appropriate to limit the number of sub-criteria: the Bank warns against the use of exceedingly detailed lists of sub criteria that may render the professional evaluation of proposals a purely mechanical exercise. The weight given to experience can be relatively small, since this criterion has already been taken into account in shortlisting the consultants. Methodology will attract a higher score once the task is complex (for example, multidisciplinary feasibility or management studies).

2.20 Only the key experts must be evaluated. Insofar as they will ultimately determine the quality of services, more weight should be given to the criterion if the proposed mission will be complex. The Borrower shall review the qualifications and experience of the key experts proposed from the curriculum vitae, which must be accurate,

²⁰Knowledge transfer can be the main objective of some assignments; in such cases it will be specified in the ToRs and may be given a higher weight to reflect its importance only after prior no-objection of the Bank

²¹Measured by the participation of experts from the community space among key experts (presented by national or foreign companies) and calculated by the ratio of the volume of work of key experts in the country (per person x months) compared to the total volume working experts in the proposal.

complete, and signed by an official authorized by the consultant and the person proposed. The persons will be judged based on the following three sub-criteria:

- a. General qualifications: education and training, years of experience, positions held, duties performed as an expert, experience in developing countries, etc. ;
- b. Qualifications for the task: education, training and experience in the sector, the subject in question, etc., relevant to the mission; and
- c. Experience in the region: knowledge of the language, its culture, its political and administrative organization, etc.

2.21 The Borrowers shall evaluate each proposal on the basis of its compliance with the ToRs. Any proposal that does not meet the important elements of the RFP will be considered unacceptable and rejected at this stage. Technical proposals containing any kind of financial information will be declared non-compliant.

2.22 The members of the evaluation committee will evaluate the proposals in accordance with the evaluation criteria specified in the RFP, independently of each other and of any outside influence from any person or entity. A proposal will be rejected if it does not obtain the minimum technical score to be obtained as indicated in the request for proposal. Following the evaluation process, the Borrower shall prepare a technical evaluation report using the standard form of the Bank relating to the assessment report or a report acceptable to the Bank. The report shall justify the results of the evaluation and the total score of each technical proposal describing the strengths and weaknesses of the proposals. The significant differences between individual scores given by different members to a proposal for a criterion or sub-criterion will be considered and a justification shall be provided in the technical assessment report. The technical evaluation report, including detailed evaluation sheets for each member of the committee, will be submitted to the Bank for consideration and issuance of a notice of no objection. All documents relating to the evaluation, such as individual mark sheets, shall be retained.

Opening of the financial proposals and evaluation of costs

2.23 When the technical evaluation report is completed (and the Bank has issued its notice of no objection), the Borrower shall inform the consultants whose proposals did not obtain the minimum overall technical score or had been found not compliant with the RFP and ToRs, that their financial proposals will be returned unopened after the signing of the contract. In addition, the Borrower shall inform each of the said consultants of their overall technical score as well as scores for each criteria and sub-criteria if necessary. The Borrower, at the same time, shall notify the consultants that have secured the minimum overall technical score of minimum qualification of the date, time and place of the opening of the financial proposals. This date will be set to allow the consultants to make arrangements to attend the opening of the financial

proposals. Financial proposals will be opened in the presence of representatives of the consultants who choose to attend (in person or online). The name of the consultant, the technical scores, including breakdown by criteria, and total bid prices will be read aloud (and posted online if the proposals were submitted electronically) and documented at the opening of the financial proposals. The Borrower shall prepare the minutes of the opening and a copy sent to the Bank and to all consultants who submitted proposals. This document will be published as soon as possible in a national newspaper of wide circulation and on the Bank's website.

2.24 The Borrower shall then evaluate and compare the financial proposals in accordance with the following procedures. Prices will be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) as stated in the RFP. The Borrower shall make this conversion by using the selling rates of those currencies provided by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions. The RFP will specify the source to be used in determining these exchange rates as well as the relevant date; provided, however, that this date may not be earlier than four weeks from the deadline for submission of proposals, nor later than the original date of expiry of the validity of the proposals. For simple time-based contracts, any calculation error will be corrected, and prices will be adjusted if they fail to reflect the inputs included in each of the technical proposals. For lump-sum contracts, the consultant is supposed to have included all prices in their financial proposal, so that no arithmetical correction and no price adjustment will be made and the total price, net of tax as defined in paragraph 2.25 below, included in the financial proposal, will be considered the price offered.

2.25 For purposes of assessment, the offered prices exclude local identifiable indirect taxes of the contract and income tax payable to the country of the Borrower on for services rendered in the country of the Borrower by experts and other non-resident staff of the consultant.²² In exceptional cases, where the borrower cannot fully identify indirect taxes at the time of evaluating financial offers, the Bank may agree that prices for the purposes of evaluation only, include all taxes payable to the country of the Borrower. The total price offered will include all remuneration of the consultant as well as other expenses such as travel expenses, translation, printing of reports or administrative expenses. The proposal offering the lowest total price may be given a financial score of one hundred (100) and the other proposals of the financial scores inversely proportional to their cost. The financial scores can also be determined using other methods (linear or other variations). The method to be used will be indicated in the RFP.

²²All indirect taxes levied on bills, the national and municipal levels, such as sales tax, VAT, excise taxes and other similar taxes.

Combined quality and cost evaluation

2.26 The total score shall be obtained by adding the technical and financial scores, after introducing a weighting. The weight for the "cost" will be determined in light of the complexity of the mission and the desired level of technical quality. Except for the type of services specified in Section III, the weight for cost shall normally be twenty (20) points on a total score of one hundred (100). The proposed weightings for the technical quality and cost shall be specified in the RFP. The firm obtaining the highest total score will be invited for negotiations.

Negotiations and award of the contract

2.27 The negotiations will be based on the ToRs, the methodology proposed for the mission, the means available to the consultant by the Borrower, and the particular contract conditions. These discussions will not substantially alter the scope of services provided for in the initial Terms of Reference or contract conditions, to avoid affecting the quality of the final product, its cost, and the relevance of the initial evaluation. Staff resources provided shall not be reduced significantly with the sole purpose of complying with available or estimated budget. The final TORS and the agreed methodology shall be incorporated in the "Description of Services," which will be part of the contract.

2.28 The selected firm will not be allowed to substitute key experts, unless both parties agree that this replacement was made inevitable due to a long delay in the selection process, or that such replacement(s) is (are) essential (s) in achieving the mission objectives.²³ If this is not the case, and if it is established that the company included key experts in its proposed without ascertaining their availability, the firm may be disqualified and the process continued with the consultant ranked second.

The key experts proposed as a replacement must have the same or better qualifications than the experts initially proposed.

2.29 Financial negotiations shall include clarification on the tax obligations of consultants in the country of the Borrower (if any) and how this tax liability will be reflected in the contract. The lump-sum contracts shall be based on delivery of outputs (or products), the price offered will therefore include all costs (experts' working time, overheads, travel, accommodation, etc.).

Therefore, if the selection method for a lump-sum contract included cost as a factor, the offer price cannot be negotiated. In the case of time-based contracts, payment is based on inputs (working time of experts and reimbursable expenses) and the offer price shall include experts' remuneration and the estimated reimbursable expenses. If the selection method includes cost as a factor, the remuneration of experts cannot be

²³Setting a realistic period of validity of offers in the RFP and carrying out an efficient evaluation minimizes this risk.

negotiated, except in exceptional circumstances, for example, where the remuneration of experts is available at much higher rates than those usually charged by consultants for similar contracts. This is why the prohibition of negotiation does not take away the client's right to ask for clarification and if the rates are very high, to request changes in pay after consultation with the Bank. Refundable fees must be paid on the basis of costs actually incurred by receipts; they therefore cannot be negotiated. However, if the client wants to define ceilings for unit prices of certain reimbursable expenses (such as travel or accommodation), it should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

2.30 If negotiations with the consultant ranked first fail, the Borrower shall inform the said consultant in writing, about all the problems and unresolved disagreements and offer him a final opportunity to respond in writing. The negotiations will not be broken for budgetary considerations. If the disagreement persists, the Borrower shall inform the applicant in writing of their intention to break off negotiations. Negotiations will then only be broken after the issuance of the notice of non-objection from the Bank, and the consultant ranked second will be invited to negotiate. The Borrower shall submit the report of the negotiations and all relevant correspondences, as well as the reasons for the breakdown of negotiations to the Bank for review. These negotiations cannot be resumed once the negotiations with the consultant ranked second will be carried out. Upon successful conclusion of negotiations, and after issuance of no-objection from the Bank relating to the signed negotiated contract, the Borrower will notify other firms on the shortlist that they were unsuccessful, and this must be done as soon as possible.

Publication of the award of contract

2.31 Within two (2) weeks of receipt of no-objection notification of the Bank on the recommendation of contract award, the Borrower shall publish in a national newspaper with wide circulation and on the Bank website, or possibly on the WAEMU Commission website for contracts above the community threshold, the results with the identification of the tender and the following information:

- a. Name of each bidder who submitted a bid;
- b. Bid prices as read out at bid opening;
- c. Name and evaluated prices of each bid that was evaluated;
- d. Names of bidders whose bids were rejected and the reasons for their rejection; and
- e. Name of the successful bidder and the offer price, as well as the duration and summary scope of the contract awarded.

2.32 The Borrower shall ensure that the procedure for the publication of the award of contracts, as indicated in paragraph 2.31 is complied with.

Debriefing by the Borrower

2.33 In the publication of contract award referred to in paragraph 2.31, the Borrower shall specify that any consultant, who wishes to ascertain the reasons why their proposal was not selected, should make a formal request to the Borrower. The Borrower shall promptly provide a written explanation of the rejection of the proposal. If the bidder requested to attend a debriefing meeting, they must bear all the related costs.

Rejection of all proposals and re-invitation

2.34 The Borrower will be justified in rejecting all proposals only if i) they are not consistent because they do not meet the important aspects of the ToRs or have major deficiencies regarding the ToRs under paragraph 2.21; or ii) all do not obtain the minimum technical score specified in the RFP; or iii) if the price offered for the selected proposal is substantially higher than the budget available or the recent updated estimate of the cost.

In the latter case, there will be the need to consider a new invitation as an alternative, in consultation with the Bank, if it is possible to increase the budget or reduce the scope of services. However, in accordance with paragraph 2.27, a substantial reduction of the scope of services is not acceptable and will require re-inviting new proposals. If cost is a factor for evaluating a time based contract, the number of people per month proposed by the consultant may be negotiated, provided that this does not compromise the quality or does not affect the mission. Even in such cases, the remuneration of the experts should normally not be negotiated in accordance with paragraph 2.29.

2.35 Before rejecting all proposals and requesting new ones, the Borrower shall notify the Bank the reasons for rejection and obtain the Bank's a notice of no objection. The new selection process will be based on a review of the RFP, including the ToRs, the short list and budget. These revisions will be agreed with the Bank.

Confidentiality

2.36 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the selection process, until the publication of the award, except as provided in paragraphs 2.23 and 2.30.

III. OTHER MODES OF SELECTION

General

3.1 This section describes the selection methods other than the quality and cost-based procedure, and cases in which they are acceptable. All the provisions of Section II (QCBS) shall apply to other selection methods provided for in Section III, unless a

special provision of Section III provides otherwise and in which case the latter shall apply.²⁴ Borrowers shall use the applicable standard RFP issued by the Bank and will provide, with the agreement of the Bank, that the changes that are very necessary to adapt the project-specific conditions, except as otherwise provided in paragraphs 3.8, 3.10, 3.11 of this Section.

Quality-based selection (QBS)

3.2 The method of selection based on quality is suitable for the following types of assignments:

- a. Complex or highly specialized assignments for which it is difficult to precisely define the terms of reference of the consultants and what they are supposed to provide, and for which the client expects the consultants to demonstrate innovation in their proposals (e.g. economic or sectoral studies on a given country, multisectoral feasibility studies, design of a hazardous waste treatment plant or of an urban master plan, financial sector reforms);
- b. Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility studies and structural engineering design of such major infrastructure projects such as large dams, policy studies of national significant, management studies of government agencies); and
- c. Assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, general or sectoral policy studies for which the value of the services depends on the quality of the analysis).

3.3 In QBS, the RFP may request submission of a technical proposal (without the financial proposal), or request the submission of both technical and financial proposals but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or key experts working time estimates, specifying that this information is given as an indication only and that consultants are free to propose their own estimates.

3.4 If the RFP requires alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Borrower shall ask the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The

²⁴For example, when the Borrower: i) uses a single envelope procedure rather than a double-envelope procedure under QBS; ii) does not indicate in the RFP the estimated number of persons x month as part of the FBS method; iii) did not use expressions of interest in connection with the SQD method; iv) does not use the Bank's standard RFP and model contracts for the procurement of low value in the context of methods such as COS method; v) enter into negotiations on such price as allowed under the QBS methods, SQC or business practices; vi) uses a criteria of price greater than 20% (twenty percent) to engage an agent specializing in procurement, an inspection officer, an investment bank or auditor; vii) does not apply the QCBS procedures under commercial practices, etc.

Borrower and the consultant shall then negotiate the financial proposal and the contract.²⁵ All other aspects of the selection process shall be identical to those of QCBS, including the publication of the award of contract, as described in paragraph 2.31 and the guidelines on procedures for controls by the bank, except that only the contract price of the winning firm is published. If consultants were initially requested to provide financial proposals, safeguards shall be built in as in QCBS to ensure that the financial proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection under a fixed budget (FBS)

3.5 This method is suitable only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the consultants to provide their best technical and financial proposals, in separate envelopes, within the budget. The ToRs should be particularly well-prepared to make sure the budget is sufficient for the consultants to perform the expected tasks. The Request for Proposals should clearly indicate whether the budget includes all taxes and taxes payable in the Borrower country and the price of any input provided by the client. Technical proposals shall be evaluated first, as in the QCBS method. Then the financial proposals shall be opened as stipulated in paragraph 2.23. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract. The award of contract shall be published as described for the QCBS method.

"Least cost" selection (LCS)

3.6 This method is generally applicable to the selection of consultants for standard or routine assignments (audits, engineering design of noncomplex works etc.) where well-established practical and standards exist. Under this method a « minimum qualifying mark for the quality » is established. Proposals to be submitted in two envelopes are invited from a shortlist. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected, and the financial proposals of the rest are opened as stipulated in paragraph 2.23.²⁶ The proposal with the lowest price shall be selected. When following this method, the minimum qualifying mark shall be established, with the understanding that all the proposals above the minimum compete only on "cost." The minimum qualifying mark shall be specified in the RFP. The award will be published as in the case of QCBS described above.

²⁵Financial negotiations within the framework of selection based on quality (QBS) include negotiating compensation and other expenses of all consultants.

²⁶This method will not be used to replace the method of QCBS, but only for the specific cases of very standard and routine technical nature where the intellectual component is minimal. For this method the minimum qualifying mark will be seventy (70) points or more.

Selection based on consultants' qualifications (CQS)

3.7 This method may be used for small assignments or emergency situations declared by the Borrower and recognized by the Bank, for which there is no justification to issue a request for proposals and establish or evaluate competitive proposals.²⁷ The Borrower shall prepare the ToRs and obtain expressions of interest that include information on the experiences and qualifications of at least three qualified consultants. Consultants with the required experience and skills relevant to the assignment, will be evaluated and compared, and the best qualified and experienced firm will be selected. Only the selected firm shall be invited to submit a technical and financial proposal and, provided that this proposal is consistent and acceptable, be invited to negotiate a contract.

Single-source selection (SSS)

3.8 A contract is awarded by single source selection when the Borrower, without formality, holds important discussions with a consultant.

The use of a single source selection procedure notwithstanding the tendering process will be motivated by the Borrower and expressly accepted by the Bank. The latter in particular will ensure that the resulting contract is in line with initial estimates and the commonly practiced price and contractual terms are fair and reasonable.

3.9 Single-source selection may be appropriate in the following cases:

- a) with competition between candidates capable of performing the contract
 - In cases of extreme urgency, for works, supplies or services that the contracting authority must execute in lieu of a defaulting consultant;
 - In cases of extreme urgency prompted by unforeseen circumstances or force majeure not to meet the deadlines in the bidding procedures, requiring immediate action and when the contracting authority had not foreseen the circumstances that are causing the need;
 - Where the works, supplies or services are made only as of research, testing or development.
- b) with competition between candidates capable of performing the contract
 - When the needs cannot be met by the provision requiring the use of a patent, a license or exclusive rights held by a single firm or a single provider;

²⁷The thresholds below which the contracts are considered "a small amount" are determined on a case-by-case basis, taking account the nature and complexity of the mission.

- When contracts can be executed only by a particular service provider for technical or artistic reasons;
- When a firm is the only one to have appropriate qualifications or experience for the exceptional assignment;
- Tasks that are a natural continuation of previous work carried out by the firm;

When continuity for downstream work is essential, the initial RFP shall outline this prospect and, if practicable, the factors used for the selection of the consultant shall take the likelihood of a continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the same consultant, may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Borrower shall ask the initially selected consultant to prepare technical and financial proposals on the basis of ToRs furnished by the Borrower, which shall be negotiated.

If the initial assignment was not awarded on a competitive basis or was awarded under tied financing, or if the downstream assignment is substantially large in value, a competitive process acceptable to the Bank shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. The Bank will consider exceptions to this rule only in exceptional cases and only when a new process is not applicable.

In this case, the total value of such contracts may not exceed 50% of the initial contract.

Single source selection can be approved only with contractors, suppliers or service providers that agree to undergo a specific price control during the execution of services.

The contract shall specify the accounting obligations of the firm, including the requirement to present balance sheets, income statements, and its cost accounting or, failing this, any documents that will facilitate the determination of production costs.

Selection of consultants under loans to finance intermediary institutions and entities

3.10 When the loan provides funds to a financial intermediary institution or entity (or its designated agency) to be on-lent to beneficiaries such as individuals, private sector enterprises, small and medium-sized enterprises or autonomous commercial enterprises of the public sector –for the partial financing of sub-projects, the selection of consultants is usually undertaken by the respective beneficiaries in accordance with well-established private sector procurement methods or commercial practices that

shall be acceptable by the Bank.²⁸ When the loan funds are on-lent to public sector beneficiaries or for complex assignments, consideration shall be given to the use of a competitive method set forth in these guidelines.

Selection of consultants under loans and payment obligations guaranteed by the Bank

3.11 If the Bank guarantees the repayment of a loan made by another lender, the consulting services financed by the loan shall be procured with due attention to the principles and procedures that meet the criteria in paragraph 1.8. The Bank may conduct a review of the procurement transaction carried out under the loan until closure of the latter.

Use of non-governmental organizations (NGOs)

3.12 NGOs are not-for-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the shortlist if they express interest and provided that the Borrower and the Bank are satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the shortlist may entirely comprise NGOs. If so, an appropriate selection method (QCBS, FBS, LCS, or CQS), based on the nature, complexity, and size of the assignment, shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as local knowledge, scale of operation, and prior relevant experience. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in paragraph 3.9 of these guidelines are fulfilled

Procurement agents and construction managers

3.13 When a Borrower lacks the necessary organisation, resources or experience, it may be efficient and effective for it to employ, as its agent, a firm that specialises in handling procurement. When procurement agents are specifically used as 'agents' handling the procurement of specific items and generally working from their own offices, they are usually paid a percentage of the value of the procurements handled, or a combination of such percentage and a fixed fee. In such cases, Procurement agents shall be selected using QCBS procedures with cost being given a weight up to fifty percent (50%). However, when a procurement agent provides only advisory services or act as "agents" for the entire project in a specific office for the project, they are usually paid on time basis and in such cases, they shall be selected following the appropriate procedures for other consulting assignments using QCBS procedures and a time-based contract specified in these guidelines. The agent will follow all the procurement procedures outlined in the loan agreement and in the procurement plan approved by the Bank on behalf of the Borrower, including use of Bank's

²⁸For further details, see paragraph 3.16 of the Guidelines for procurement of goods, works and services (other than consulting services) by the Borrowers of the West African Development Bank.

standard request for proposals, reviews and documentation. The above provisions shall also apply to the construction managers.

Inspection services

3.14 Borrowers may wish to employ specialized service providers to inspect and certify goods prior to shipment or on arrival in the Borrower country. The inspection generally covers the quantity and quality of supplies in question, and reasonableness of the price. Inspection service providers shall be selected using QCBS procedures, giving cost a weight up to fifty percent (50%), and using a contract format with payments based on a percentage of the value of goods inspected and certified.

Banks

3.15 The investment and commercial banks, financial institutions and fund managers hired by Borrowers for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization programmes must be selected under QCBS. The RFP shall specify selection criteria relevant to the activity -for example, experience in similar assignments or network of potential purchasers - and the cost of services. In addition to the conventional remuneration (called a "provision" or "retainer fee" compensation for these services includes a "success fee" ("retainer fee"), the compensation includes a 'success fee' which can be fixed but is usually expressed as a percentage the value of assets and other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the "success fee", either in combination with the retainer fee or alone. If alone, a standard retainer fee shall be prescribed for all shortlisted consultants and indicated in the RFP, and the financial scores shall be based on the success fee. For the combined technical and financial evaluation (notably for large contracts, cost may be accorded a weight higher than recommended in paragraph 2.26. The RFP shall clearly specify how proposals will be presented and how they will be compared.

Auditors

3.16 Auditors typically carry out auditing tasks under professional standards and well-defined ToRs. They shall be selected using QCBS, with cost as a substantial selection factor (40-50 points) or by the "least cost selection" method outlined in paragraph 3.6. For small assignments, the CQS method may be used.

Service delivery contractors

3.17 The projects may involve hiring large numbers of people who deliver services on a contract basis.

Their selection, as individual consultants or through a firm, shall be carried out in accordance with Section V of these guidelines. The job descriptions, minimum qualifications, terms of employment, selection procedures when through a contract with a firm, and the extent of Bank review of this documentation and methods, shall

be described in the project documentation. The contract shall be included in the procurement plan to be reviewed by the Bank.

IV. TYPES OF CONTRACTS AND IMPORTANT PROVISIONS

Types of contract

Lump-sum contracts

4.1 This type of contract is used mainly for assignments in which the scope of services, duration and required output of the consultants are clearly defined. It is widely used for simple planning or feasibility studies, environmental studies, detailed design of standards or common structures (deliverables) such as reports, drawings, bill of quantities, bidding documents or software programs. The contract shall include a fixed price for the activities to be carried out by the consultant and shall not be subject to any price adjustment, except as provided for in paragraph 4.7 of these Guidelines. Lump sum contracts are easy to administer since it is based on the principle of a fixed price for a fixed scope and payments are due on clearly specified outputs and milestones.

Time-based contract

4.2 This type of contract is appropriate when it is difficult to define or determine the extent or duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. It is widely used for complex studies, supervision of construction, advisory services, and most training activities. Payments are based on agreed hourly, daily, weekly or monthly rates for experts and/or agreed unit prices. The rates for experts include remuneration, social costs, overhead, profits and, where appropriate, special allowances. The contract shall include a ceiling amount of total payments to be made to the consultants. This ceiling amount will include a provision for physical contingencies for unforeseen services and duration, and a provision for price adjustments for inflation as provided in paragraph 4.7 of the guidelines. A time based contract need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate.

Retainer and/or contingency (success) fee contract

4.3 Retainer and contingency fees are commonly used when consultants (banks or financial institutions) are preparing companies for mergers, especially in privatization operations. The remuneration of the consultant includes a "retainer" or a "success fee", the latter being normally expressed as a percentage of the sale price of the assets.

Percentage contracts

4.4 These contracts are commonly used for procurement of inspection service providers. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated person-month costs for the services or competitively bid. It should be born in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (but not for example, works supervision).

Indefinite delivery contract (IDCs) or price agreement

4.5 This type of contract is used when Borrowers need to have quick and continuous access to 'on call' specialised advisory services for a particular activity, the extent and timing of which cannot be defined in advance. They are commonly used to retain "advisers", expert adjudicators, members of panels or experts, to participate in the design or execution of sub projects or complex tasks during the execution of projects financed by the Bank (e.g. dam panel, dispute resolution board, institutional reforms, procurement advice, technical troubleshooting, evaluation of safeguard issues etc.), normally for a period of at least a year. Services are provided by qualified firms, through a list of proposed experts, they commit to make available in letters of intent in response to an REOI setting criteria focusing on the relevant qualifications and expertise of the required experts. Borrowers must then establish a long list of qualified experts. In such cases, the Borrower and firms agree on pre-established fees to be paid for the experts and on standard contract conditions and payments are made on the basis of actual working time. The experts shall be selected on a long list based on a "call off" request with specific ToRs for the assignment, based on the qualitative evaluation/comparison of the CVs of the proposed experts or the amount of fees and a specific contract is signed for each assignment.

Important provisions

Currency

4.6 Requests for proposals must clearly state that firms may express the price of their services in any fully convertible currency. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so provided that the proposal includes no more than three foreign currencies. The Borrower may require consultants to state the portion of the price of their price representing local costs incurred in the currency of the Borrower's country. Payments under the contract shall be made in the currency of countries in the WAEMU space (FCFA) and the appropriate currency for consultants based outside the WAEMU.

Price adjustment

4.7 To adjust the remuneration rates in time-based contract for foreign and/or local inflation, a price adjustment provision shall be included in the contract if by applying the official national price indices and, foreign ones, where appropriate.

Such a clause may be included in a time-based contract when the local or foreign inflation is expected to be high and unpredictable.

Lump sum contracts shall not generally be subject to automatic price adjustment when their duration is expected to be than eighteen (18) months, except for small-value multi-year contracts (for example, with auditors).

The price of a lump sum contract may be exceptionally amended when the scope of the services are extended beyond what was envisaged in the original ToRs and in the contract.

Payment provisions

4.8 Payment provisions (amounts, schedule of payment and payment procedures) shall be agreed upon during the contract negotiations. Payments can be made at regular intervals (as under time-based contracts) or for agreed outputs (as in the case of lump sum contracts). Payment for all advances (for example, mobilisation costs) shall be secured by an advance payment security or guarantee, except in the case of small contracts. If the amount of the advance is equal to or less than ten percent (10%) of the contract, the Borrower may decide not to require such a security or guarantee, in which case this should be specified in the draft contract included in the RFP.

4.9 Payments must be made promptly in accordance with the contract provisions. To this end:

- a. consultants can be paid directly by the Bank at the request of the Borrower or exceptionally through a letter of credit;
- b. only disputed amounts will be withheld, with the remainder of the invoice paid in accordance with the contract; and
- c. The contract shall provide for the payment of financing charges (default interest) if payment is delayed through the fault of the client, beyond the time allowed in the contract; the rate of charges shall be specified in the contract.

Proposal and performance securities and liquidates damages

4.10 Proposal and performance securities are not recommended for consultants' services, but shall, if required, be in a reasonable amount. Their enforcement is often subject to judgment calls, they can be easily abused, and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed

on to the Borrower. In addition, because the timely delivery of services of an intellectual and advisory nature is contingent in many ways upon actions by the client, thereby rendering difficult establishing the sole responsibility of the consultant, when there are delays, the application of liquidated damages is not recommended for consulting services.

Borrower's contribution

4.11 The Borrower may assign members of its own professional staff to the assignment in different capacities. The contract between the Borrower and the consultant shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the Borrower, such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the consultant can take if any of the items cannot be provided or have to be withdrawn during the assignment, and the compensation the consultant will receive in such a case.

Conflict of interest

4.12 The consultant shall not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates shall not engage in consulting or other activities that conflict with the interest of the client under the contract. The contract shall include provisions limiting future engagement of the consultant for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of paragraphs 1.9 and 1.10 of these guidelines.

Professional liability

4.13 The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the Borrower will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that and:

- a. (a) there must be no such limitation in case of the consultant's gross negligence or wilful misconduct ;
- b. the consultant's liability to the Borrower may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the special conditions of the contract (the amount of such limitation will depend on each specific case); and²⁹
- c. any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

²⁹Beyond these limits, the borrower is encouraged to take out insurance against potential risks. The multiplier must be greater than 1 (one). Where the requirements of professional responsibility are not necessary, the Borrower shall explain the reasons when submitting the RFP to the Bank for issuance of no-objection.

Substitution of experts

4.14 During an assignment, if substitution is necessary (for example, because of ill health or because an expert proves to be unsuitable or becomes otherwise ineligible), the consultant shall propose other experts of at least the same level of qualifications for approval by the Borrower.

Applicable law and settlement of disputes

4.15 The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Consultants' contracts shall always include a clause for settlement of disputes. International commercial arbitration in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the Bank requires that Borrowers use this type of arbitration in contracts awarded to foreign consultants unless the Bank has specifically agreed to waive this requirement for justified reasons, such as equivalent national regulations and arbitration procedures. The Bank shall not be named an arbitrator or be asked to name an arbitrator.

V. SELECTION OF INDIVIDUAL CONSULTANTS

Selection of individual consultants

5.1 Individual consultants are employed on assignments for which:

- a. a team of experts is not required;
- b. no additional outside (home office) professional support is required ;
and
- c. the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2 Advertisement for seeking expressions of interest (EOI) is encouraged, particularly when the Borrower does not have knowledge of experienced and qualified individuals or of their availability, or the services are complex, or there is potential benefits from wider advertising, or if it is mandatory under national law. It may not, however, be required in all cases and should not take place for small value contracts. All invitations for EOIs should specify selection criteria that are solely based on experience and qualifications. When firms are invited to propose individual consultants, EOIs shall clarify that only the experience and qualifications of individuals shall be used in the selection process, and that their corporate experience shall not be taken into account, and specify whether the contract would be signed with the firm or the proposed individuals.

5.3 Individual consultants are selected on the basis of their relevant experience, qualifications, and capability to carry out the assignment. They do not need to submit proposals and shall be considered if they meet minimum relevant requirements which shall be determined by the Borrower on the basis of the nature and complexity of the assignment, and assessed on the basis of academic background and relevant specific experience, and as appropriate, knowledge of local conditions such as national language, culture, administrative systems, and government organization. The selection shall be carried out through the comparison of the relevant overall capacity of at least three qualified candidates among those who have, directly or through a firm, expressed interest in the assignment or have been approached directly by the Borrower. Individuals selected to be employed by the Borrower shall be the most experienced and best qualified, and shall be fully capable of carrying out the assignment. The Borrower shall negotiate a contract with the selected individual consultant or the firm as the case may be, after reaching agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.

5.4 The selection of individual consultants is normally not subject to prior review. The Borrower shall, however, obtain the Bank's no objection:

- a. When it has not been able to compare at least three qualified candidates before hiring, in which case it shall provide the reasons;
- b. Before it invites firms to offer the services of individual consultants as per paragraph 5.1 of these guidelines;
- c. In case negotiations with the selected individual fail before proceeding to negotiate with the next best individual, or firm as the case may be; and
- d. In case of single-source selection as per paragraph 5.6 of these guidelines.

5.5 When a contract is signed with a consulting firm to provide individual consultants, either its permanent staff or associates or other experts it may recruit, the conflict of interest provisions described in these guidelines shall apply to the parent firm. No substitution of any individual who was initially proposed and evaluated shall be permitted, and in such a case, the contract will be signed with the next ranked consultant.

5.6 6 Individual consultants may be selected on a single-source basis with due justification in exceptional cases such as:

- a. tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively ;
- b. In case of an emergency situation following a natural disaster, and
- c. When the individual is the only consultant qualified for the assignment.

The Borrower shall submit to the Bank for its review and no objection the TORS of the assignment, a sufficiently detailed justification, including the rationale for single-source selection instead of a competitive selection process, and the basis for recommending a particular individual consultant in all such cases, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the procurement plan.

APPENDIX 1. INSTRUCTIONS TO CONSULTANTS AND DATA SHEET (ITC) OF THE RFPs

1. The Borrower shall use the standard RFPs issued by the Bank, which include the ITC, covering relevant instructions as applicable for most of the methods of selection. If under exceptional circumstances, the Borrower needs to amend the standard ITC, it shall do so through the technical data sheet and not by amending the main text. The ITC shall include adequate information on the following aspects of the assignment:

- a. brief description of the assignment;
- b. standard formats for the technical and financial proposals;
- c. the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary;
- d. details of the selection procedure to be followed, including: (i) a description of the two-stage process, if appropriate; (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the opening of financial proposals;
- e. an estimate of the level of key experts' inputs (in person-months) required of the consultants or the total budget, but not both;
- f. indication of minimum experience, academic achievement, and so forth, expected of key experts;
- g. details and status of any external financing;
- h. information on negotiations and financial and other information that shall be required of the selected firm during negotiation of the contract;
- i. the deadline for submission of proposals;
- j. currency(ies) in which the costs of services shall be expressed, compared, and paid;
- k. reference to any laws of the Borrower's country that may be particularly relevant to the proposed consultants' contract;
- l. a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the Bank's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- m. the method in which the proposal shall be submitted, including the requirement that the technical proposals and financial proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;

- n. a request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs the Borrower whether or not it will be submitting a proposal;
- o. The short list of consultants being invited to submit proposals and whether or not associations between short-listed consultants are acceptable;
- p. The period for which the consultants' proposals shall be held valid and during which the consultants shall undertake to maintain, without change, the proposed key experts, and shall hold to both the proposed rates and total price; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal. If the consultants agree to extend the validity of their proposal, they shall do so without any change in their original proposals and also confirm the availability of all key experts as originally proposed except as provided hereunder. If any of the key experts is unavailable at this time and the consultants, while extending the validity of their proposal, request to replace such expert with another one, they shall provide adequate justification and evidence to the satisfaction of the Borrower. The proposal shall be rejected if it is established that the unavailable expert was proposed without his/her confirmation, if the provided reasons for the replacement or the justification is unacceptable, or the qualifications and experience of the replacement expert are not equal or better to those of the originally proposed expert. If acceptable, no other changes in the technical or financial proposal shall be permitted. The technical evaluation scores based on key experts, the financial proposals, and other details of the original proposal shall remain unchanged.
- q. the anticipated date on which the selected consultant shall be expected to commence the assignment;
- r. a statement indicating (i) whether or not the consultants' contract and personnel shall be tax-free or not; and if not, (ii) what the likely tax burden will be or where this information can be obtained in a timely basis and a statement requiring that the consultant shall include in its financial proposal a separate amount clearly identified, to cover taxes;
- s. if not included in the TORS or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Borrower;
- t. the timing of the mission (phases), if any, and the likelihood of follow-up assignments;
- u. the procedure for clarification on the information given in the RFP;
- v. any conditions for the delegation of part of the mission to subcontractors.

APPENDIX 2. RECOMMENDATIONS TO CONSULTANTS

Purpose

1. This appendix provides guidance to consultants wishing to participate in Bank-financed consulting services.

Responsibility for the 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. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from a Bank loan only as expenditures are incurred. Disbursements of the proceeds of a loan or a grant are made only at the Borrower's request. The Borrower submits withdrawal applications to the Bank together with required supporting documentation to demonstrate that the funds have been or are being used in accordance with the Loan Agreement and the Procurement Plan. As emphasized in paragraph 1.4 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 between the Borrower and the Consultant. The Bank is not a party to the contract.

Bank's role

3. The Bank reviews the RFP, the evaluation of proposals, award recommendations, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement and further elaborated in the Procurement Plan. For all contracts subject to the Bank's prior review, the Bank reviews the documents before they are issued to the consultants. 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 paragraph 1.16. However, if a Borrower has awarded a contract after obtaining the Bank's no objection, the Bank will 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 corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the consultant, the Bank may impose the applicable sanctions set forth in paragraph 1.20 of these Guidelines

4. The Bank publishes standard RFPs and contracts for different types of consulting services. As stated in paragraphs 2.9 and 2.12 of these Guidelines, it is mandatory for the Borrower to use these documents, with minimum changes acceptable to the Bank to address project-specific issues. The Borrower finalizes and issues these documents as part of the RFP.

Consultants' role

5 When consultants receive the RFP, and if they can meet the requirements of the TORS and the commercial and contractual conditions, they should 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 RFP 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 should seek clarification from the Borrower, in writing, within the period specified in the RFP for seeking clarifications.

6. In this regard, it should be emphasized that the specific RFP issued by the Borrower governs each selection, as stated in paragraph 1.2 of these guidelines. If consultants feel that any of the provisions in the RFP are inconsistent with these guidelines, they should also raise this issue with the Borrower

7. Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key experts submitted with the proposals. The *curricula vitae* shall be signed by the consultants and the individuals and dated. Once technical proposals are received and opened, consultants shall not be required nor permitted to change the substance, the key experts, and so forth. Non-compliance with important requirements will result in rejection of the proposal.

Similarly, once financial proposals are received, consultants shall not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP. If an extension of validity of proposals was the reason that key experts were not available for a company, a change of key experts with equivalent or better qualification might be possible as per paragraph 2.28 of these Guidelines.

Confidentiality

8. As stated in paragraph 2.36, the process of proposal evaluation shall be confidential until the publication of contract award, except for the disclosure of the technical points as indicated in paragraphs 2.23 and 2.30. Confidentiality enables the Borrower and the Bank's reviewers 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 should do so in writing.