

# Chapter 1: Guidelines for the Employment of Consultants under Japanese ODA Loans

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Sections of the Guidelines are stated in the boxes. Notes on the sections provided below the boxes shall also normally be respected since they represent appropriate interpretation of the sections of the Guidelines.

## Part I GENERAL

### Section 1.01 Introduction

(1) “Guidelines for the Employment of Consultants under Japanese ODA Loans” are applicable to the ODA Loans provided by JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as “JICA”), under Clause (a), Item (ii), Paragraph 1, Article 13 of the ACT of THE INCORPORATED ADMINISTRATIVE AGENCY-JAPAN INTERNATIONAL COOPERATION AGENCY.

(2) For the efficient and proper preparation and implementation of projects financed in whole or in part by Japanese ODA Loans, most Borrowers of Japanese ODA Loans require the assistance of consultants (In these Guidelines, the term "the Borrower" also refers to the Executing Agency of the project and the term "consultant(s)" includes a wide variety of private and public entities such as consulting firms, engineering firms, construction firms, management firms, procurement agents, multinational organizations, universities, research institutions, government agencies, nongovernment agencies (NGOs), and individuals).

(3) The purpose of these Guidelines is to indicate JICA's views as to the proper selection and employment of consultants and the full utilization of consultants' expertise, and to ensure their impartiality, and, in addition, to set forth general rules to be followed by Borrowers in their use of consultants. Main considerations in selecting consultants are quality, efficiency, transparency in the selection process and non-discrimination among consultants eligible for contracts. The application of these Guidelines to a particular project financed by Japanese ODA Loans is to be stipulated in the Loan Agreement between JICA and the Borrower.

#### <Notes>

##### Paragraph (1):

This paragraph defines the term “Japanese ODA Loans” and states that these Guidelines are applicable to Japanese ODA Loans.

##### Paragraph (2):

Since a majority of consultants employed under Japanese ODA Loans are private consulting firms, the term “a firm(s)”, wherever used in the following Sections in these Guidelines, may be interpreted as “an entity(ies)”, or “a consultant(s)” as appropriate.

### **Section 1.02 Need for Employment of a Consultant**

In most cases, the need to employ a consultant will be established jointly by the Borrower and JICA and the Terms of Reference for their services will be drawn up, either prior to or in the course of the negotiations on Japanese ODA Loans. At the same time, the two parties will agree on the approximate amount of funds required for such services and the schedule of selection of consultants.

#### **<Notes>**

The consulting services should be provided in such a manner as to comply with the schedule agreed between JICA and the Borrower. The Borrower may proceed with the selection of consultants before the Loan Agreement is signed, subject to international rules for Official Development Assistance (ODA), by consulting with JICA as to the selection procedures to which the Borrower can advance.

### **Section 1.03 Responsibilities of the Borrower in Selection of a Consultant**

The selection of a consultant for a project financed by Japanese ODA Loans is the responsibility of the Borrower.

In order to ensure the efficient and proper execution of the project as specifically required by the Loan Agreement, it is essential for the Borrower to note in the selection process that consultants employed on projects financed by Japanese ODA Loans clearly possess the necessary competence.

**Section 1.04 Eligibility**

(1) In order to be eligible under a contract funded with Japanese ODA Loans, a consultant shall:

(a) be a firm or an individual of the eligible source country stipulated in the Loan Agreement;

(b) be a firm or an individual selected based on its own capability;

(c) not be a firm or an individual stated in Section 1.06 (1); and

(d) not be a firm or an individual who has the conflict of interest stated in Section 1.07.

(2) A firm or an individual who does not meet any of the conditions stipulated in paragraph (1) of this Section shall be ineligible to be awarded a contract funded with Japanese ODA Loans.

### **Section 1.05 JICA's Review**

(1) JICA may review the Borrower's selection procedures, documents and decisions. The Borrower shall submit to JICA, for JICA's reference, any related documents and information as JICA may reasonably request. The Loan Agreement will specify the extent to which review procedures will apply in respect of consulting services to be financed by Japanese ODA Loans.

(2) JICA does not finance expenditures for services provided by consultants who, in the opinion of JICA, have not been selected in accordance with the agreed procedures and JICA will cancel that portion of the Loan allocated to such services provided by consultants who have not been properly selected. JICA may, in addition, exercise other remedies under the Loan Agreement.

#### **<Notes>**

1. Paragraph (1):

In general, decisions relating to employment of consultants subject to JICA's review and concurrence are as follows:

(01) Before proposals are invited from consultants, the Borrower shall submit to JICA a Short List of Consultants and the Request for Proposals (refer to Notes 1. of Section 3.05).

(02) When Quality- and Cost-Based Selection (QCBS) is adopted, the Borrower shall, before opening financial proposals, submit to JICA the Borrower's analysis of technical proposals.

(03) Before initiating contract negotiations with the highest-ranked consultant, the Borrower shall submit to JICA the results of the Borrower's evaluation of proposals.

(04) Promptly after executing a contract, the Borrower shall submit to JICA a duly certified copy of the contract.

2. Paragraph (2):

Additional remedies under the Loan Agreement may be executed by JICA at any time.

### **Section 1.06 Corrupt or Fraudulent Practices**

(1) It is JICA's policy to require that consultants, as well as Borrowers, under contracts funded with Japanese ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA;

(a) will reject the result of evaluation of proposals if it determines that the consultant evaluated as the highest-ranked has engaged in corrupt or fraudulent practices in competing for the contract in question;

(b) will recognize a consultant as ineligible, for period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the consultant has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with Japanese ODA Loans or other Japanese ODA;

(c) will recognize a consultant as ineligible to be awarded a contract funded with Japanese ODA Loans if the consultant or sub-consultant, who has a direct contract with the consultant, is debarred under the cross debarment decisions by the Multilateral Development Banks. Such period of ineligibility shall not exceed three (3) years from (and including) the date on which the cross debarment is imposed. The Borrower shall confirm the eligibility of consultants from this point of view.

(2) This provision shall be stated in the Request for Proposals.

#### **<Notes>**

1. This Section conforms to the international consensus on anti-corruption (the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" of the Organization for Economic Co-operation and Development (OECD) and anti-corruption clauses of procurement and consultant guidelines under loans of the World Bank and Asian Development Bank) and the relevant rules and regulations of Japan.
2. Paragraphs (1)(a) and (b):  
Concrete measures to be taken against a party engaged in corrupt or fraudulent practices under this Section are prescribed in the relevant rules of JICA.
3. Paragraph(1)(c):



- (01) “cross debarment decisions by the Multilateral Development Banks” is a corporate sanction in accordance with the agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and the World Bank Group signed on 9 April, 2010 (as amended from time to time). From an operational viewpoint, JICA will recognize the World Bank Group’s debarment of which period exceeds one year, imposed after 19 July, 2010, the date on which the World Bank Group started operating cross debarment, as “cross debarment decisions by the Multilateral Development Banks”.
- (02) JICA will recognize a consultant as ineligible to be awarded a contract funded with Japanese ODA Loans if the consultant is debarred by the World Bank Group for the period starting from the date described in (a) through (c) below, up to the signing of the contract, unless (i) such debarment period does not exceed one year, or (ii) three (3) years have passed since such debarment decision:
- (a) Issuance of the Request for Proposals, if a consultant is selected through Quality- and Cost-Based Selection or Quality-Based Selection;
  - (b) Appointment, if a consultant is selected through single-source selection; or
  - (c) Commencement of actual selection process, if the Borrower wishes to adopt a method of selection other than (a)(b) above.
- (03) If it is revealed that the consultant was ineligible to be awarded a contract according to (02) above, JICA will, in principle, impose sanctions against the consultant.
- (04) If it is revealed that the sub-consultant, who has a direct contract with the consultant, was debarred by the World Bank Group on the sub-contract date, JICA will in principle require the Borrower to have the consultant cancel the sub-contract immediately, unless (i) such debarment period does not exceed one year, or (ii) three (3) years have passed since such debarment decision. If the consultant refuses, JICA will require the Borrower to declare invalidity or cancellation of the contract and demand the refund of the relevant proceeds of the loan or any other remedies on the grounds of contractual violation.
- (05) (01), (02), (03), and (04) of this Note 3 above shall be stated in the Request for Proposals.
- (06) The Borrower shall require consultants to include in their proposals and contract documents a letter of acknowledgement to declare that the consultant is eligible in accordance with the applicable Guidelines for the Employment of Consultants under Japanese ODA Loans.

## **Section 1.07 Conflict of Interest**

A consultant shall not have a conflict of interest. A consultant shall not be employed under any of the circumstances set forth below, where it is determined to have a conflict of interest throughout the selection process and/or the execution of the contract unless the conflict has been resolved in a manner acceptable to JICA.

(1) Conflict between consulting activities and procurement of goods or non-consulting services: A consultant that has been engaged to provide goods or non-consulting services for a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be disqualified from providing consulting services resulting from or directly related to those goods or non-consulting services. Conversely, a consultant hired to provide consulting services for the preparation or implementation of a project, or any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be disqualified from subsequently providing goods or non-consulting services resulting from or directly related to the consulting services for such preparation or implementation. This provision does not apply to the various firms (consultants, contractors, or suppliers) only due to the reason that those firms together are performing the Contractor's obligations under a turnkey or design and build contract.

(2) Conflict among consulting assignments: Neither consultant nor any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultant.

(3) Relationship with Borrower's staff: A consultant that has a close business relationship with the Borrower's professional personnel who are directly or indirectly involved in any part of: (i) the preparation of the Terms of Reference for the assignment, (ii) the selection process for the contract, or (iii) the supervision of such contract, shall be disqualified.

(4) Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, a consultant, and any affiliate that directly or indirectly controls, is controlled by, or is under common control with that consultant shall not be allowed to submit more than one proposal. A consultant (including its affiliate), if acting in the capacity of a sub-consultant in one proposal, may participate in other proposals, only in that capacity.

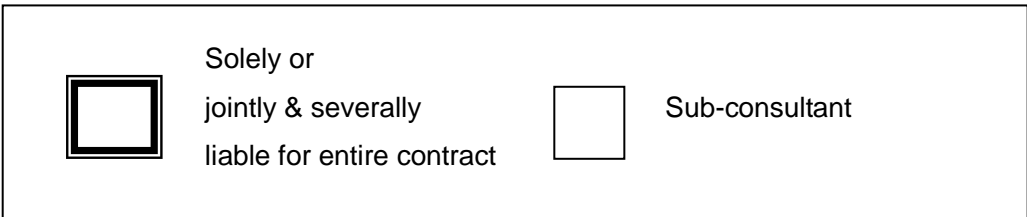
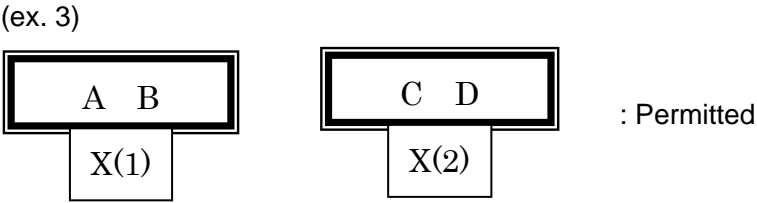
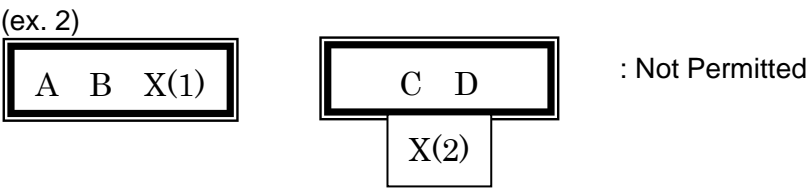
(5) A consultant having any other form of conflict of interest other than (1) through (4) of this Section shall be disqualified.

**<Notes>**

1. “The conflict of interest provision” herein should be incorporated into the Request for Proposals.

2. Paragraphs (1),(2), and (4):  
 In relation to “affiliate” and “control”: The ability to exercise the control is normally, but not limited to, deemed to exist when one party has, whether directly or indirectly, not less than 20% of all the subscribed shares or other equity interests or the total capital of the other party.

3. Paragraph (4):  
 The diagram below shows the idea of “One Bid Per Bidder” stipulated in Paragraph (4). “X(1)” and “X(2)” in the diagram stand for the same firm or the affiliates.



4. Paragraph (5):

As an example, exchange of personnel in a form of secondment between a consultant and a Contractor engaged in the same project (e.g. in a case where a consultant lends or temporarily seconds its personnel to the Contractor and any of the personnel is directly or indirectly involved in any capacity in the same project, that consultant shall be disqualified from the selection for the consulting services resulting from the goods and non-consulting services delivered by the Contractor. On the contrary, in a case where the personnel of the consultant are not involved in the project in question, such exchange of personnel will not constitute a reason for disqualification of the consultant. Likewise, it is recognized that conflict of interest does not exist when the personnel have resigned from the consultant).

5. In principle, if it is found that a firm or consultant is in violation of this Section, that firm or that consultant shall be disqualified from the bidding or the selection. However, there are cases where the Borrower may suffer a disadvantage, even if there is no fault on the part of the Borrower (e.g. due to false information provided by the consultant and/or its affiliate, the Borrower did not recognize the relation between them and the affiliate is awarded a contract). In such cases, JICA will take the Borrower's interests into consideration, while paying due attention to the overall project implementation and the procurement policy of JICA as a whole.

### **Section 1.08 Language**

All documents relating to the selection and employment of consultants, including the contract, shall be prepared in one of the following languages, selected by the Borrower: Japanese, English, French or Spanish. Although the Borrower may issue translated versions of these documents in the national language of the Borrower's country for the Borrower's reference, the Japanese, English, French or Spanish documents shall take precedence.

#### **<Notes>**

Similarly, the proposals shall be prepared in Japanese, English, French or Spanish. In cases where, as a result, a domestic consultant is awarded, the authenticated contract documents may be prepared in the national language of the Borrower's country. Even in that case, the Borrower has to prepare a translated version in Japanese, English, French or Spanish for JICA's review and concurrence.

## Part II CONSULTING SERVICES

### Section 2.01 Types of Assignment

(1) In general, the services of consultants can be grouped into the following five broad categories:

(a) Preinvestment studies, including:

- (i) determination of the relative priority to be accorded a project;
- (ii) preparation and comparison of alternatives, and recommendations as to the best solution;
- (iii) general engineering layout and preliminary design of major structures;
- (iv) estimates of costs, benefits and construction period;
- (v) evaluation of economic and technical soundness, financial and commercial viability, suitability of organizational and managerial arrangements and social and environmental impact;
- (vi) studies and/or recommendations related to environmental and social matters, including implementation/review of environmental impact assessments; and
- (vii) other recommendations concerning implementation of the project.

(b) Preparation services, including:

- (i) detailed investigations and review of preinvestment studies;
- (ii) preparation of detailed designs, specifications and contract documents;
- (iii) pre-qualification of contractors, suppliers or manufacturers (hereinafter collectively referred to as "Contractor(s)");
- (iv) evaluation of bids and recommendations regarding award of contract; and
- (v) studies and/or recommendations related to environmental and social matters, including implementation/review of environmental impact assessments.

(c) Implementation services, including:

- (i) supervision of construction work;
- (ii) technical and administrative services for the implementation and management of the project; and
- (iii) studies and/or recommendations related to environmental and social matters, including environmental management, monitoring and audit.

(d) Assistance in the start-up of facilities and operation:

Assistance in operation and maintenance of the facilities after the project completion and the start-up of facilities and their operation for an initial period.

- (e) Other services necessary for the project, including:
- (i) advisory services, in connection, for example, with national and/or sectorial development plans and institution building;
  - (ii) assistance in implementation of recommendations, post-evaluation and impact studies of the project; and
  - (iii) other Borrower support services.
- (2) Taking into account the advantages of continuity of a basic technical approach, it is advisable that functions (b), (c) and (d) above be carried out by the same consultant. If a consultant has already satisfactorily carried out function (a), it shall not be excluded from the short list for a consultant to carry out functions (b), (c) and (d) because of its prior involvement in the project.

**<Notes>**

1. Paragraph (1):

- (01) All these studies in (i) to (vi) of (a) are termed “feasibility studies.”
- (02) “Technical and administrative services for the implementation and management of the project” in (ii) of (c) refer to overall organizational operations, financing, production management, market research (marketing), sales, information management, and labor management.
- (03) (d) refers to instruction and technical training associated with the operation of the project.

2. Paragraph (2):

Among those referred to in (ii) of (e) of paragraph (1), post-evaluation (including evaluation of the consultant’s performance) should be carried out by a consultant other than the consultant referred to in (b) or (c).

## **Section 2.02 Responsibilities of Consultants**

(1) Consultants are at all times to exercise all reasonable skill, care and diligence in the discharge of their duties. Consultants are responsible for the accuracy and completeness of their work.

(2) In all professional matters a consultant is to act as a faithful adviser to the Borrower. The Borrower may, however, in the case of supervision of work and/or management aspects, delegate to a consultant a variable range of authority to act on its behalf, from full responsibility to make final decisions as an independent engineer, to that of advisor to the client with less authority to make decisions. The nature of and the limits to such delegation of authority to the consultant, as well as the scope and the nature of the responsibilities which the consultant is to assume shall be clearly defined in the contract between the Borrower and the consultant.

(3) In the case of a difference of opinion between the Borrower and the consultant on any important matters involving professional judgment that might affect the proper evaluation or execution of the project, the Borrower shall allow the consultant to submit promptly to the Borrower a written report and, simultaneously, to submit a copy to JICA. The Borrower shall forward the report to JICA with its comments in time to allow JICA to study it and communicate with the Borrower before any irreversible steps are taken in the matter. In cases of urgency, a consultant shall have the right to request the Borrower and/or JICA that the matter be discussed immediately between the Borrower and JICA. This provision shall be stated in the contract between the Borrower and the consultant.

### **<Notes>**

#### **1. Paragraph (2):**

(01) In this context, the consultant's authority to act on the Borrower's behalf is mainly over the contractors, manufacturers and suppliers, and in some cases, the Borrower's staff (counterpart staff). To ensure the project proceeds smoothly, it is important to clarify the scope of the consultant's work for the supervision/monitoring, for example, the authority to approve changes in the scope of the contractor's work. Since the scope of the consultant's work depends on the conditions of contract to be used for the Contractors, it is essential that the appropriate forms of contract should be chosen before the selection of the consultant, considering the nature of the works/services .



(02) In general, it is advisable to delegate to the consultant a wide range of authority, such as “the Engineer” as defined in the forms of contract of FIDIC red/yellow book. The Engineer is not a signer of or a party to the contract, but his name is specified in the contract and he assumes duties and responsibilities requiring special knowledge of technical design and management. In this case, the Engineer is considered a person who is authorized to give instructions and directions, to exercise options determined appropriate, and to express his views. However, in no case should the Engineer be authorized to change the contract between the employer and the contractor. The Engineer may only be authorized to have the contract performed in accordance with the terms and conditions agreed upon between the employer and the contractor.

2. Paragraph (3):

Implicit in this paragraph is the point of view that “JICA should be informed of important matters in a timely manner in order to enhance its monitoring of projects.” When there is a difference of opinion between the Borrower and the consultant, JICA, with due respect for the Borrower’s opinion, may play a catalytic role very carefully to consolidate the opinions of the both parties. This matter shall be specified in the contract.

### **Section 2.03 Impartiality of Consultants**

It is essential that consultants employed in the projects financed by Japanese ODA Loans shall be demonstrably impartial in providing any consulting services so that the requirements regarding procurement under Japanese ODA Loans will fully be met.

#### **<Notes>**

1. Concerning “the requirements regarding procurement under Japanese ODA Loans”:  
Section 1.01 of the Guidelines for Procurement under Japanese ODA Loans stipulates “The proceeds of Japanese ODA Loans are required to be used with due attention to considerations of economy, efficiency, transparency in the procurement process and non-discrimination among bidders eligible for procurement contracts.”
2. Regarding impartiality, it is necessary to pay due attention to the stipulations of Section 1.07 of these Guidelines.

#### **Section 2.04 JICA's files on Consultants**

(1) JICA maintains files of information supplied by a number of consultants concerning their capability and experience.

(2) Information in JICA's files on consultants can be made available to the Borrowers who wish to review and assess the experience and qualifications of consultants they are considering for their projects. However, the information available in JICA's reference files is limited, and it is frequently necessary for the Borrowers to request additional detailed information from a particular consultant in order to judge its capability to carry out a specific assignment.

(3) The fact that JICA has been supplied with information about a consultant does not entitle that consultant to any contract to be financed by Japanese ODA Loans. Neither does it indicate that JICA endorses the consultant's qualifications in general, nor that JICA will accept the consultant's appointment for any specific project. JICA has no list of "approved" consultants.

## **Section 2.05 Monitoring by JICA**

(1) The Borrower is responsible for supervising the consultant's performance and ensuring that the consultant carries out the assignment in accordance with the contract. Without assuming the responsibilities of the Borrower or the consultant, JICA may monitor the work as necessary in order to satisfy itself that it is being carried out in accordance with appropriate standards and is based on acceptable data.

(2) As appropriate, JICA may take part in discussions between the Borrower and the consultant. However, JICA shall not be liable in any way for the implementation of the project by reason of such monitoring or participation in discussions. Neither the Borrower nor the consultant shall be released from any responsibility for the project by reason of JICA's monitoring or participation in discussions.

(3) This provision shall be clearly stated in the contract between the Borrower and the consultant.

### **<Notes>**

1. This Section clearly specifies that JICA also can monitor the performance of a consultant, who plays an important role in project implementation. JICA pays attention to the consultant's performance, since JICA's participation in discussions between the Borrower and the consultant will contribute to improved communication through the sharing of information.
2. Should a problem arise between the Borrower and the consultant, attempts should first be made to solve it by the efforts of the two parties. Paragraph (2) shows that JICA shall not be held legally liable due to participation in discussions concerning such or similar.
3. Paragraphs (1) and (2):  
These paragraphs shall be specified in the contract between the Borrower and the consultant.

## Part III SELECTION PROCEDURES

### Section 3.01 General

(1) JICA normally requires Borrowers to adopt the following procedures in the selection and employment of Consultants.

(a) Preparation of a Short List of Consultants;

(b) Preparation of the Request for Proposals;

(c) Invitation to submit proposals;

(d) Evaluation of proposals; and

(e) Negotiation and conclusion of a contract.

(2) Should two or more consultants jointly submit a proposal for consulting services, the same procedures as outlined in this Part are to be followed.

(3) If the procedures stated in paragraph (1) of this Section or the selection methods listed in 3.02 are not applied, the selection procedures and methods shall be agreed by the Borrower and JICA before the start of the selection process.

(4) Single-source selection (SSS) shall be used only in exceptional cases. The justification for SSS shall be examined in the context of the overall interests of the Borrower and the project, and JICA's responsibility to ensure efficiency and transparency in the selection process and non-discrimination among eligible consultants for contracts. SSS may be appropriate only if it presents a clear advantage over competition:

(a) for tasks that represent a natural continuation of previous work carried out by the consultant;

(b) in emergency cases, such as in responses to disasters;

(c) for very small assignments; or

(d) when only one consultant is qualified or has experience of exceptional worth for the assignment.

#### <Notes>

1. Paragraph (2):

Evaluation of proposals should be conducted solely for the purpose of comparing the contents of the proposals. It is inappropriate to adopt different criteria in evaluating a proposal submitted by a single firm and one submitted by a joint venture.

2. Paragraph (3):

The sections of 3.01 and 3.02 basically stipulate the selection method for the consulting firms. Selection of other types of consultants such as individual consultants, nongovernmental organizations, etc. should be implemented with due attention to the main considerations stated in paragraph (3) of the Section 1.01 (quality, efficiency, transparency in the selection process and non-discrimination among eligible consultants for contracts), and the Borrower should consult with JICA on the selection procedures to be adopted.

3. Paragraph (4):

In reference to (a), if the downstream assignment is substantially larger in value, a competitive process acceptable to JICA shall normally be followed, in which the consultant carrying out the initial work is not excluded from consideration.

### **Section 3.02 Method of Selection**

(1) JICA deems any of the following methods appropriate in most cases for the selection of consultants under Japanese ODA Loans:

(2) Quality- and Cost-Based Selection (QCBS), a method that takes into account the quality of the proposal and the cost of the services, is the commonly recommended method.

(3) Quality-Based Selection (QBS) is a method based on evaluating only the quality of the technical proposals and the subsequent negotiation of the financial terms and the contract with the highest ranked consultant.

QBS should be applied only for the following types of assignments:

(a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants;

(b) assignments where the downstream impact is so large that the quality of the service is of overriding importance for the outcome of the project (for example, engineering design of major infrastructure);

(c) assignments that can be carried out in substantially different ways such that financial proposals maybe difficult to compare; or

(d) assignments including supervision of large and complex construction works for which it is particularly important to take safety measures.

#### **<Notes>**

JICA considers that, in the majority of cases, main considerations as referred in Section 1.01 (3) can best be addressed through competition among qualified short-listed consultants in which the selection is based on the quality of the proposal and, where appropriate, on the cost of the services to be provided.

### **Section 3.03 Preparation of the Terms of Reference**

(1) The first step in the engagement of a consultant is for JICA and the Borrower to agree on the need to use a consultant, on the Terms of Reference for its services, on the type of consultant to be employed and on the approximate amount of funds required for the consulting services.

(2) The Terms of Reference shall describe the scope of the consulting services in as much detail as possible, especially as regards alternative solutions the consultant is expected to explore in the course of its work and as to how much authority will be delegated to it to act on the Borrower's behalf. In addition, the Terms of Reference shall provide information on the background of the project, on the availability of relevant basic data\* , on national and/or other standards and the specifications to be used in the design of the project, and on the conditions under which the work shall be performed. (See Annex I)

(3) In the case of projects classified into specific categories in accordance with the relevant environmental guidelines published by JICA, consulting services related to environmental consideration, such as those described in Section 2.01, shall be included in the scope. (See Annex I)

(4) Safety shall be emphasized in the implementation of the project. The consulting services related to safety measures shall be specified, if necessary, in the Terms of Reference.

\* Coverage, scale and accuracy of the available maps and aerial photographs, data on climate, hydrology and subsoil, facilities available (office space, housing, transportation, counterparts), etc.

#### **<Notes>**

1. The need to employ a consultant and the Terms of Reference for the services will be fully discussed during the appraisal by JICA.

Refer to Section 4.07 of these Guidelines for details concerning costs.

2. Paragraph (2):

If necessary, training and technology transfer should be explicitly stated in the Terms of Reference.



### **Section 3.04 Preparation of Short List of Consultants**

(1) Once JICA and the Borrower have agreed on the Terms of Reference for the consulting services required, as described in Section 3.03, the Borrower shall prepare a Short List of Consultants to be invited to submit proposals, taking into account the factors mentioned in Parts I and II. (See Annex II)

(2) Such a Short List shall normally consist of not less than three and not more than five consultants. There is usually little advantage in inviting more than five consultants to submit proposals, because with a larger number some are likely to be less interested and the quality of proposals is likely to suffer.

(3) Should the Borrower find it difficult to compile a satisfactory Short List of qualified consultants from the information available to it from its own past experience and other sources, JICA will, at the request of the Borrower, make available information on consultants, from which the Borrower may draw up its own Short List.

#### **<Notes>**

1. In principle, the consultants shall satisfy the following conditions to be listed in the Short List:
  - (01) The consultants have satisfactory overseas experience of the consulting services concerned (e.g. detailed design, supervision) in the sector in question (in a narrow sense, e.g. ports other than fishing ports, irrigation). However, if the consultant is from a developing country and is to provide the consulting services in that country, it need not have any overseas experience in the area of the consulting services concerned.
  - (02) Consultants must have experience in a developing country.
  - (03) Experience with Japanese ODA projects is preferable.
2. The reasons why the number of consultants normally needs to be 3 to 5 are:
  - To encourage consultants to prepare well elaborated proposals by giving certain level of opportunity to be awarded.
  - To increase the probability of a well-qualified consultant being selected.
  - To allow for an intense and meaningful evaluation of proposals.
  - To reduce the opportunity for outside influence.
3. Any consultant from a country other than the eligible source countries must not be

listed on the Short List, neither as a single participant nor a member of a joint venture.

4. The Short Listed consultants may undertake works in association with other consultants listed or not listed in the Short List as long as the Short Listed consultants execute a major portion of the required services.
5. Prior to the preparation of a Short List, it is not necessary to invite Expressions of Interest. However, if Expressions of Interest are invited, the invitation shall be advertised in at least one newspaper of general circulation in the Borrower's country, The information should be the minimum required to make a judgment on the consultant's suitability, and should not be too complex as to discourage consultants from expressing interest. In addition, no consultant shall be excluded by a factor outside their competence.

### **Section 3.05 Preparation of the Request for Proposals**

(1) The Request for Proposals shall request consultants to cover at least the points specifically mentioned in the Terms of Reference.

The Request for Proposals shall also stipulate the details of the selection procedure to be followed, including the evaluation criteria and include conditions of contract.

(2) Borrowers shall use the applicable Standard Request for Proposals (Standard RFP) of the latest version issued by JICA with minimum changes acceptable to JICA, as necessary to address project-specific conditions. Any such changes shall be introduced only through the Standard RFP data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of JICA's Standard RFP. When the Standard RFP cannot address project specific conditions, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to JICA.

(3) When QBS is applied, the Request for Proposals shall clearly state that the selection of the consultant to be invited to negotiate a contract will be made solely on the basis of the ranking of the technical proposals.

(4) Since it is advisable that consultants invited to submit proposals be able to visit the country and the project site before submitting their proposals, the invitation shall, as a rule, allow 45-60 days from the date of the actual mailing of the Request for Proposals to the deadline for submission of proposals.

(5) The Request for Proposals shall also request consultants to notify the Borrower in writing within a specified time whether or not they intend to submit proposals.

#### **<Notes>**

1. The Request for Proposals includes:
  - (01) Letter of Invitation
  - (02) Instructions to Consultants
  - (03) Technical Proposal-Sample Forms
  - (04) Financial Proposal-Sample Forms
  - (05) Terms of Reference
  - (06) Sample Form of Contract
  - (07) List of Eligible Source Countries
  
2. Paragraph (1):

(01) The obligation to associate with a local consultant shall not be imposed, as this restricts the prime consultant referred to in the Short List from making a free choice.

(02) In case of QCBS, minimum man-month for both international consultants and local consultants shall be specified in the Request for Proposals.

(03) In case of QBS, estimated man-months for both international and local consultants shall be specified in the Request for Proposals.

(04) For instance, weight is given to Section 3.08 (3) (a), (b) and (c), and (5) (a), (b) and (c).

(05) In light of the principles of non-discrimination between the consultants, as stated in Section 1.01(3), the Borrower should not impose excessive requirements in terms of the domestic procedures or documentations of the Borrower's country, which lead to a decline in the motivation of prospective consultants.

3. Paragraph (2):

No such modifications from the Standard Request for Proposals shall impair the fair allocation of risk and liability between the parties to the contract.

4. Paragraph (4):

At least 15 to 20 days must be allowed for correspondence and a further 25 to 30 days for visiting the site and preparing the proposal.

5. Paragraph (5):

The Borrower should indicate adequate communication methods such as fax, e-mail, etc. for its convenience in the Request for Proposals.

6. Consultants on the Short List, in principle, are allowed to submit their best proposals in any form of joint venture by their own choices, provided that each member of such joint venture is from an eligible-source country and that members executing a major part of the work are going to be those consultants on the Short List. The Borrower is allowed to refuse the formation of such joint venture only if such an action is highly likely to be a serious impediment for competition or if such an action is prohibited by an Anti-trust Law, etc. In no case may the Borrower force consultants to form a certain composition of joint venture.

### **Section 3.06 Reference to JICA**

The Request for Proposals shall normally refer to JICA using the following language:  
“.....(name of Borrower).....has received (or where appropriate, ‘has applied for’) an ODA Loan from JAPAN INTERNATIONAL COOPERATION AGENCY (hereinafter referred to as “JICA”) in the amount of ¥ \_\_\_\_\_ toward the cost of (name of project, date of Loan Agreement), and intends to apply (where appropriate, ‘a portion of’) the proceeds of the loan to eligible payments under this contract. Disbursement of a Japanese ODA Loan by JICA will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the ‘Guidelines for the Employment of Consultants under Japanese ODA Loans’. No party other than (name of Borrower) shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. As for the remaining portion, (name of Borrower) will take appropriate measures for finance.”

#### **<Notes>**

This Section describes the need to state explicitly in the Request for Proposals that a Japanese ODA Loan is being provided. The need to observe the provisions of these Guidelines is specified so that the selection process should be compliant with such provisions. This will enable consultants to fully understand the existence of and the need to observe JICA’s Guidelines for the Employment of Consultants.

### **Section 3.07 Sending of the Request for Proposals to Consultants**

After preparing the Short List and the Request for Proposals in accordance with the provisions of the foregoing Sections, the Borrower shall invite all the consultants on the Short List to submit proposals by mailing to them the Request for Proposals.

#### **<Notes>**

In principle, it is considered that a competition has taken place even if only one consultant has submitted a proposal, because at the moment of submission, that consultant does not know it is the only one submitting an offer. Therefore, the Borrower can proceed to the evaluation of the proposal and, if the proposal is satisfactory, to contract negotiations. When all consultants on the Short-List form a joint venture and only one proposal is submitted, however, it is evident that competition did not take place. In such a case, the Borrower should consult with JICA on further procedures.

### **Section 3.08 Evaluation of Technical Proposals**

(1) Consultants shall be required to submit technical and financial proposals in separate sealed envelopes at the same time. The financial proposals shall remain sealed until evaluation of the technical proposals is completed. When QBS is applied, a financial proposal can be requested to submit only to the highest-ranked consultant for contract negotiation.

(2) Proposals received by the Borrower in response to the invitation shall be evaluated in accordance with the criteria stipulated in the Request for Proposals concurred by JICA.

(3) Such criteria shall normally include:

(a) The consultant's general experience and record in the field covered by the Terms of Reference;

(b) The adequacy of the proposed approach, methodology and work plan; and

(c) The experience and records of the staff members to be assigned to the work.

(4) The relative importance of the three above-mentioned factors will vary with the type of consulting services to be performed, but in the overall rating of the proposals most weight shall normally be given either to the qualifications of the staff members to be assigned to the project or to approach and methodology, rather than to the fame or reputation of the consultant.

(5) To assess the qualifications of the staff members to be assigned to the project, their curricula vitae shall be evaluated on the basis of the following three criteria:

(a) General qualifications (education, length of experience, types of position held, length of service with the firm, etc.);

(b) Suitability for the project (experience of performing the duties which will be assigned to them in the project); and

(c) Familiarity with the language and the conditions of the country in which the work is to be performed or experience in similar environments.

(6) In its evaluation of technical proposals, the Borrower shall use numerical ratings and prepare an evaluation report including a summary evaluation sheet as soon as possible. The evaluation report shall normally give detailed information on the following items, supplementing the summary evaluation sheet:

(a) Selection Committee or other similar organization, if any, responsible for the evaluation, and the domestic laws, ordinances or orders which govern the establishment and/or functioning of the Committee or other similar organization;

(b) Selection criteria and relative weight distribution, with reasons for adopting each criterion and the basis for deciding the weight distribution;

(c) Rating: reason for arriving at the rating given for each item for each consultant.

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

**<Notes>**

1. Paragraph (1):

It is recommended that the submitted financial proposals be deposited with a reputable public auditor or independent authority.

2. Paragraph (3):

(01) As the consultant's experience and record should have already been considered satisfactory at the stage of preparing the Short List, experience of the personnel in the relevant field and quality of the proposal (approach, methodology and work plan) should be stressed at the evaluation stage.

(02) The term "approach" refers to general and technical policies for performing services, depending on the Terms of Reference concerned, "methodology" means the service system, flow of services, and technical methods for consolidating the "approach," and the "work plan" includes a specific staff assignment plan, though the lines of demarcation separating one from another are not necessarily clear. For instance, the general approach and its methodology include: cooperation with the project-executing agency; the establishment of a project office; and the utilization of local consultants. On the other hand, technical approach and its methodology include: the method of updating data; the implementation of further studies and the formulation of plans; the selection/preparation of design standards and design formulae; the presentation of alternative plans; technological transfer; the type, method, and frequency of quality inspection; and the utilization of computers and model simulations.

(03) As a rule, alternative experts shall not be proposed or evaluated.



3. Paragraph (5):

As the project manager is a major factor in determining the success of the consulting services, his/her ability should be of the highest order.

**Section 3.09 Public Opening of Financial Proposals**

(Applicable only to QCBS)

(1) Consultants that have secured the minimum qualifying technical score will be advised of the location, date, and time for opening of financial proposals.

(2) The name of the consultants, the technical quality scores, and the proposed prices shall be announced, and recorded when the financial proposals are opened.

(3) For the purpose of evaluation, “cost” shall exclude local identifiable indirect taxes (all indirect taxes levied on the contract invoices, at National, State (or Provincial) and Municipal levels) on the contract and income tax payable to the country of the Borrower on the remuneration of services rendered in the country of the Borrower by non-resident staff of the consultant.

### **Section 3.10 Evaluation of Financial Proposals and Ranking of Proposals**

(Applicable only to QCBS)

- (1) The Borrower shall review the congruency of the technical and financial proposals, make adjustments as appropriate, and correct arithmetical or computational errors.
- (2) The total score shall be obtained by weighting and adding the technical and financial scores; this will determine the overall ranking of the consultants' proposals. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. It shall normally be 20%.

#### **<Notes>**

1. The minimum man-months required for the assignment (both international and local), the weight for quality and cost, and the methodology to calculate the total score shall be expressed in the Request for Proposals.
2. Paragraph(2):  
The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.
3. If financial proposals contain unreasonably low price, the Borrower should ask the consultant concerned for clarification of such an offer and should receive answers from the consultant to ensure appropriate execution during the contract stage, before concluding the evaluation.

### **Section 3.11 Contract Negotiations**

(1) After evaluation of the proposals has been completed, the Borrower shall invite the highest-ranked consultant to enter into negotiations on the conditions of a contract between them. When QCBS is applied, proposed unit rates for remuneration shall not be altered since they have been factors in the selection process.

(2) When QBS is applied, discussions concerning costs and other financial matters shall be conducted only with a consultant who has been selected to be invited to enter into contract negotiations.

(3) If the two parties are unable to reach agreement on a contract within a reasonable time, the Borrower may terminate the negotiations with the highest-ranked consultant and invite the consultant who ranked second in the evaluation to enter into negotiations. The Borrower shall consult with JICA prior to taking this step. This procedure shall be followed until the Borrower reaches agreement with a consultant.

(4) While there should be some flexibility in work plans, staff assignment and major work inputs which have been previously agreed on as appropriate for the assignment shall not be materially modified to meet a budget.

#### **<Notes>**

1. Discussions on the work program, staff assignment plan, and services to be provided by the Borrower should be completed during contract negotiations. Contract negotiations will not substantially alter the TOR attached to the Request for Proposals.
2. Paragraph (3):  
Contract negotiations with the second-ranked consultant require prior consultation with JICA.
3. Financial negotiations may include discussions of the consultant's tax liability in the Borrower's country (if any) and the quantities of reimbursable items in the consultant's financial proposal but shall be reasonable in order to keep consistency between the quality and the price of the services.
4. Before or after the contract, any change of the proposed staff should not affect the quality of services and undermine the effectiveness of the selection procedures. Therefore, if a change of staff is necessary, it should be examined in a discreet

manner with its reasons. In case such a change is reasonably underpinned, the staff to be assigned shall be qualified at the same or higher level as required in the evaluation criteria.

**Section 3.12 Notification to Unsuccessful Consultants and Debriefing**

(1) Promptly after completion of negotiations with the selected consultant, the Borrower shall notify the other consultants on the Short List that they have been unsuccessful.

(2) If any consultant who submitted a proposal wishes to ascertain the reasons why its proposal was not selected, such consultant may request an explanation from the Borrower. The Borrower shall promptly provide an explanation as to why its proposal was not selected.

**<Notes>**

Explanation should include the scores that the consultant concerned obtained for each of evaluation criteria and the reason of scoring. It shall be provided in writing or in a meeting.

**Section 3.13 Information to be Made Public**

(1) After a contract is determined to be eligible for JICA's financing, the names of all consultants who submitted proposals, the technical points assigned to each consultant, the offered prices of each consultant, the overall ranking of the consultants, the name and address of successful consultant concerning the award of contract, and the award date and amount of the contract may be made public by JICA.

(2) The Borrower shall have all provisions and measures necessary to ensure that the above information shall be available for being made public incorporated in documents related to selection, such as the Request for Proposals and contracts.

**Section 3.14 Process to be Confidential**

No information relating to the evaluation of proposals and recommendations concerning award shall be disclosed to any persons not officially concerned with this process until a contract has been awarded to a consultant.

## **Part IV CONTRACT**

### **Section 4.01 General**

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

#### **<Notes>**

The consultant's proposal is usually excluded from the contract. However, the Terms of Reference revised in line with the proposal will be included.



**Section 4.02 Scope of the Project and of the Consulting Services**

- (1) The contract shall describe in detail the scope and duration of the project and of the services to be rendered by the consultant.
- (2) The consultants shall review the content of the plan for safety measures prepared by the Contractor for the project, if necessary.

**Section 4.03 Duration of Contract**

The contract shall specify the duration of the contract from the commencement of the services to its completion.

**<Notes>**

A bar chart is normally used for the schedule.

**Section 4.04 Conditions relating to Validity of Contract**

The contract shall include a clause specifying on what conditions it will be valid.

**<Notes>**

If JICA's concurrence is required for the contract under the Loan Agreement, that concurrence should be a condition for effectuation of the contract.

#### **Section 4.05 Responsibilities of the Parties**

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

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

#### **<Notes>**

Paragraph (2):

(01) The terms "joint venture," "joint operation," "association," etc., are used to describe forms of association between firms, but their definitions vary from country to country. As the definitions are not uniform internationally, the responsibilities/obligations of the members should be clearly stated in the contract.

(02) "Jointly and severally" means that, in the case of one member breaching the contract, the other members shall have the capacity to perform the contract and assume the responsibility therefor.

**Section 4.06 Contract Amount**

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

**<Notes>**

1. The form of payment outlined in the contract for consulting services is in most cases time-based, and JICA recommends the use of the time-based payment method. Other forms of payment outlined in the contract are lump-sum or cost-plus-fixed-fee. Separate ceilings are normally set for the domestic currency and foreign currency portions.
2. A time-based payment method is recommended for the contracts in which the duration and quantity of services depends on variables that are beyond the control of consultants such as supervision work, or TOR/output cannot be established/assessed with sufficient precision such as management, training, etc.

#### **Section 4.07 Description of Consultants' Costs and Fees**

(1) The personnel costs and fees necessary for fulfillment of the contract shall normally be expressed in terms of fixed "man-month rates" for each expert staff member to be provided by the consultant. The "man-month rates" will include the basic salary of the staff member, the firm's overheads (including financial, social security and other benefits payable to, or for, the staff member, such as vacation pay, sick leave pay, insurance, etc.) and the firm's fee.

(2) For extended periods of field service in the country concerned, the contract may also provide for overseas allowances in addition to the "man-month rates" mentioned in paragraph (1) of this Section.

(3) The contract shall stipulate clearly the number of working or calendar days of vacation and sick leave to which each staff member will be entitled.

(4) In addition to the personnel costs described under paragraph (1) of this Section, the contract shall normally provide for reimbursement, at actual cost or agreed "unit cost" for travel, equipment and other items necessary for the consulting services covered by the contract.

(5) The contract shall normally include an amount set aside for contingencies, such as work not foreseen and rising costs, which the consultant may not use, however, without the written approval of the Borrower.

#### **<Notes>**

1. Paragraph (4):

Direct costs include airfare, communication/transport costs, daily allowance (per diem), accommodation charges, cost of vehicles and office supplies, office rent, costs involved in preparing reports, further investigation costs, data-processing costs, equipment-delivery costs, and costs for employing local staff.

2. Paragraph (5):

Physical contingencies normally account for 5 to 10% of the amount of the contract. For contracts with a duration of more than 18 months, it is recommended to include a price adjustment clause. It is advisable that contracts of a shorter duration include a provision for price adjustment if sharp fluctuation of prices is expected.

**Section 4.08 Currency in which Costs and Fees are to be Expressed**

(1) A Japanese ODA Loan is denominated in Japanese Yen and the costs and fees should normally be stated in Japanese Yen. Whenever necessary, however, other international trading currencies may also be permitted.

(2) In addition, any portion which the consultant expects to spend in the Borrower's country may be stated in the currency of the country of the Borrower.

**<Notes>**

The term "international trading currency" refers to the so-called "hard currencies," such as the US dollar or the Euro.

#### **Section 4.09 Conditions and Methods of Payment**

(1) The contract shall specify the conditions and methods of payment, the currency or currencies in which payment is to be made, and the rate of exchange for any currency conversion.

(2) Payment to the consultant shall be scheduled in such a manner as roughly to keep pace with its expenditures (i.e. the consultant shall not receive payments substantially in advance of its actual expenses for its services nor shall it have to wait long for payment for services already rendered). In line with this concept, the contract may, when appropriate, provide for the following:

(a) An advance payment to the consultant at the time the contract becomes effective that will approximately cover its initial reimbursable expenses;

(b) Withholding of the final payment until all services covered by the contract have been completed.

#### **<Notes>**

1. Paragraph (2):

Interim payments are normally made on a quarterly, bi-monthly or monthly basis for the smooth implementation of the services.

2. Paragraph (2) (a):

Initial costs that are particularly likely to accrue include airfare, transport costs, equipment-delivery costs, and rent. Normally, an advance payment is less than 15% of the amount of the contract.

3. Paragraph (2) (b):

Normally, the final payment accounts for 5 to 10% of the amount of the contract. Performance securities are not recommended for consulting services, and are given only in exceptional cases where the final product can easily be calculated.

**Section 4.10 Ownership and Disposal of Equipment**

The contract shall stipulate the ownership of equipment to be procured, and the manner of disposal of any equipment remaining after the services have been completed.

**Section 4.11 Services to be provided by the Borrower**

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

**<Notes>**

The services and facilities agreed in the contract to be provided by the Borrower shall be securely offered so that the consultant can commence and provide services in a smooth and efficient manner.

#### **Section 4.12 Privileges and Immunities of the Consultant**

The contract shall state clearly what privileges and immunities the consultant will be accorded, especially as regards visas and work permits, corporate and personal income taxes and other dues, customs duties, etc.

#### **<Notes>**

1. The scope of the tax-exemption should be explicitly stated in the contract.
2. The Borrower should give due attention to the payment of taxes when the consultant is not tax-exempt, as taxes are not eligible for payment under the loan.

#### **Section 4.13 Serious Hindrances**

(1) The contract shall require the consultant to report to the Borrower and JICA promptly the occurrence of any event or condition which might delay or prevent completion of any significant part of the project in accordance with the agreed schedules and to indicate what steps shall be taken to meet the situation.

(2) When the Borrower receives such a report from the consultant, the Borrower shall immediately forward a copy of it to JICA with its comments.



**Section 4.14 Reports**

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

**<Notes>**

Examples of such reports include the monthly Progress Report and the Final Report that is to be submitted upon the completion of services. In the case of Feasibility Studies, Inception Reports, Interim Reports and Draft Final Reports are also used.

**Section 4.15 Copyright**

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

#### **Section 4.16 Modifications**

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

#### **<Notes>**

1. This includes changes in staff. In other words, the Borrower has the right to request changes in staff where the staff are unsatisfactory or inappropriate, with the consultant to bear any expenses resulting from such changes. The Borrower's consent is necessary for the consultant to change/substitute any staff members on the grounds of illness, etc., at the consultant's expense.
2. Regarding the change of staff, refer to Note 4 of Section 3.11 of these Guidelines.

#### **Section 4.17 Force Majeure**

The contract shall clearly establish:

- (1) The force majeure conditions which would release the consultant, temporarily or permanently, from all or part of its obligations under the contract;
- (2) The procedures to be followed by the consultant regarding determination and notification of any such conditions; and
- (3) The Borrower's and the consultant's rights and obligations (e.g. as to payments following termination, including, if appropriate, reimbursement of movement expenses) in force majeure situations.

#### **Section 4.18 Termination**

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

#### **<Notes>**

1. For example, the Borrower may terminate the contract for such reasons as the failure of the consultant to provide satisfactory services. On the other hand, the consultant may terminate the contract for such reasons as the failure of the Borrower to make payment.
2. Provisions relating to necessary notification and advance notice (e.g. 30 to 60 days before termination) to the other party should be established.
3. The consultant should be guaranteed payment of up to termination and expenses for demobilization.

#### **Section 4.19 Settlement of Disputes**

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

(2) Provisions dealing with the settlement of disputes shall be included in the conditions of contract. International commercial arbitration administered by an international arbitration institution in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the use of this type of arbitration shall be stipulated as a condition of the contract unless JICA has specifically agreed to waive this requirement for justified reasons or the contract has been awarded to a consultant from the Borrower's Country.

#### **<Notes>**

"Rules of Arbitration" of the International Chamber of Commerce are recommended as the most widely used international arbitration rules.

**Section 4.20 Applicable Laws**

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

**<Notes>**

In addition to applicable laws, the contents of the Exchange of Notes and the provisions of the Loan Agreement will be taken into consideration in execution of the project by the Borrower.

## **Annex I TERMS OF REFERENCE**

(The Terms of Reference shall include the items mentioned below. The relevance of an item will depend on the nature of the project.)

### **1. Project Information**

- (1) Background information -- history of the project's evolution and the reason(s) why it is necessary to implement the project.
- (2) Location of the project and information on the surrounding area.
- (3) Stage reached in the project's preparation and summary of the findings of studies to date.
- (4) Implementing organization.
- (5) Details of the major problem areas.

### **2. Other Relevant Information**

- (1) Technical information -- availability of relevant basic data, technical standards or specifications to be used, etc.
- (2) Relevant laws and regulations.
- (3) Related projects

### **3. General Terms of Reference**

- (1) Objectives
- (2) Scope of consulting services -- Categories of consulting services to be provided, nature of consulting work (the latter in detail, including equipment and materials to be supplied by the consultant). In the case of projects classified into specific categories in accordance with the relevant environmental guidelines published by JICA, consulting services related to environmental consideration, such as those described in Section 2.01, shall be included in the scope.
- (3) Nature of and limit to the responsibilities which the consultant is to assume.
- (4) Estimated time required to complete (a) the project, (b) the consulting work; number and qualifications of experts; man-months as estimated by the Borrower for budget purposes.

(5) Scope, number, type and frequency of the reports to be presented by the consultant.

(6) Other necessary provisions regarding the obligations between the Borrower and the consultant which are stipulated in Guidelines for the Employment of Consultants under Japanese ODA Loans (e.g. Section 2.02(3), Section 2.05).

#### 4. Specific Terms of Reference

(1) Methodological details relating to the consulting services mentioned above.

(2) Review of previous studies and for possible additional studies.

#### 5. Services and Facilities to be provided by the Borrower

#### <Notes>

1. Paragraph 1 (5):

The details of main problems related to the project.

2. Paragraph 3 (2):

For the classifications, refer to Section 2.01 (1) of these Guidelines.

3. Paragraph 3 (4):

This will enable the consultants to easily understand what the Borrower requires. It will also make it easier for the Borrower to compare various proposals and evaluate them in concrete terms.

4. Paragraph 4:

This will be stated if necessary.

**Annex II SHORT LIST OF CONSULTANTS**

Names	Country of Registration	Address	Name of Chairman (or equivalent)	Major Projects undertaken (countries)	Clients
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1.

2.

3.

4.

5.