

Project Administration Instructions

PAI No. 2.06
Issued in October 2010
Revised in March 2020
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CONSULTANT CONTRACT MANAGEMENT

A. Introduction

1. This Project Administration Instructions (PAI) provides guidelines for the management of consulting contracts. It should be read in conjunction with PAI 5.02 and 5.09

B. Consulting Services that ADB Administers

a) Implementation Responsibilities

2. The technical assistance (TA) supervising unit (or “user unit”) for each TA takes the main role in the supervision of consultants implementing the TA. The user unit makes sure that the TA’s purpose and objectives are achieved and that the consultant performs satisfactorily. The Procurement, Portfolio and Financial Management Department (PPFD) monitors and administers consultants’ contractual obligations; advises staff on contractual, financial and legal issues that arise during implementation; and reports to the ADB Management and Board on implementation progress. The Office of Cofinancing Operations (OCO) advises staff on issues that arise during the implementation of cofinanced TAs and coordinates with cofinanciers. The Loan Administration Division (CTLA) controls and monitors disbursements. The Office of the General Counsel (OGC) advises staff on contract issues.

3. Regional technical assistance (R-TA) may have components/outputs administered by different user units. In this circumstance, a coordinating user unit should be nominated with overall administrative responsibility for the R-TA. All administrative changes (extensions, changes in cost allocations, changes in implementation arrangements, and changes in scope) to a component/output of an R-TA should be prepared by the concerned user unit and sent to the coordinating user unit director for further processing.

4. The consulting contract does not become effective until the Notice to Proceed (NTP) is issued. The NTP must not be dated prior to the date the contract is signed and submitted in CMS to ADB. The user unit must not allow or compel the consultant to start the assignment under the contract until such contract has been signed by all the parties concerned, the NTP has been duly issued to the consultant, and the contract has been rendered effective. PPFD may consider suspension of Procurement Accreditation Skills Scheme (PASS) accreditation for ADB staff who violate the provisions of this paragraph for the first time. ADB staff who repeatedly violate this paragraph may be referred by PPFD to OAI for investigation of possible misconduct under AO 2.02, para. 2.10, and possible disciplinary action under AO 2.04.

b) Payments to Consultants

5. Payments to consultants shall be made in accordance with contract provisions.

6. Advances to consultants can be approved by user departments against specific out-of-pocket expenses (OPEs) stated in the contract. The advances generally shall not exceed OPEs

for 1 month, with an exception of expenses where market conditions stipulate other payment terms (e.g., prepayment of housing rent). Advances are not provided for remuneration.

c) Supervising Consultants' Outputs

7. The user unit is responsible for the results of the TA and should therefore supervise the consultant to ensure that the TA is successful. The user unit monitors the consultant's outputs against its targets, particularly its deadlines for producing the required reports. These targets are specified in the work plan and staffing schedule, and usually in the terms of reference (TOR) that is attached to the consultant's contract.

8. Consultants' contracts often require them to produce specific outputs (e.g., reports). The user unit reviews and comments on each output, and circulates it to the concerned divisions and EA, if necessary. The consultant submits hard copies of its final reports, as well as electronic copies on CD-ROM that the Information Resources and Services Unit (OAFA-IR) will retain in its archives. The user unit also retains copies of the consultant's reports and other important documents produced.

d) Review Missions

9. When required, the user unit fields review missions during TA implementation to check the consultant's progress, reassess the expected completion date and review the TA's finances. After receiving the consultant's reports, the user unit circulates copies of these before the next review mission to the project team, the relevant thematic committees, and the concerned departments and offices for comments.

e) Tripartite Meetings

10. The user unit arranges tripartite meetings with the EA and the consultant to ensure they have a common understanding of the progress of the TA and follow a participatory approach in reviewing the consultant's outputs. The user unit usually schedules a tripartite meeting shortly after it and the EA receive each major report. The anticipated schedule of tripartite meetings is shown in the consultant's work plan and staffing schedule. If a TA has been delegated to the recipient country, the EA arranges tripartite meetings with ADB and the consultant.

f) Inception Meeting

11. For most TAs, the user unit's first review mission is an inception mission that culminates in a tripartite meeting with the EA and the consultant. The purposes of the inception mission and the tripartite meeting include:

- ensuring that the EA and the consultant understand the TA's outcome, approach and the consultant's TOR;
- reviewing the consultant's TOR in light of the first few weeks of implementation experience;
- reviewing and agreeing on the consultant's inception report and work plan, and requiring alterations, as necessary;

- resolving any difficulties that will impede the consultant in completing the assignment;
- confirming that the EA is providing adequate counterpart staff and facilities; and
- reconfirming the timetable for the completion of the assignment, including any further tripartite meetings.

g) Contract Variations

12. Contract variations are written changes to the consultant's contract on which ADB and the consultant agree. They may change an item in the contract or add a new item. Consultants generally propose most contract variations, but the user unit and other parties may also propose variations.

13. The changes that require contract variations include changes in the:

- scope or implementation arrangements (see also PAI 5.09 on changes in TA scope or implementation arrangements);
- experts performing the services;
- experts' remuneration;
- experts' TOR or staffing schedule;
- expenses, including the addition of new expenses;
- start or completion dates, or contract termination; and
- contact details or remittance instructions for payments.

14. Changes in the experts' remuneration always have cost implications. Changes in the scope, the implementation arrangements, the experts, their TOR, their staffing schedule or the completion date may or may not have cost implications. Contract variations without cost implications include changes in the:

- payment schedule,
- consultant's contact details or payment remittance instructions, or
- other administrative changes.

15. The user unit director endorses proposed contract variations, and then the user unit either processes them or requests PPF to process them, depending on the following:

- (i) The user unit processes variations in individual consultants' contracts that do not involve changes in remuneration rates and that either have no cost impact or a cost impact estimated at \$10,000 or less except as stated in (ii) below.
- (ii) PPF to approves and processes all variations to:
 - a. contracts with consulting firms regardless of cost;
 - b. lump sum¹ contracts with individual consultants;
 - c. contracts for individual consultants that involve changes to remuneration rates;

¹ User units may process variations concerning additional travel budget of \$10,000 or less for partial lump sum contracts without PPF to approval.

- d. contracts for individual consultants that involve a cost impact of more than \$10,000, and
 - e. all contract terminations, cancellations, and suspensions.
- (iii) The user unit processes variations that authorize advances of out-of-pocket expenses to consultants. Such advances shall be approved in accordance with procedures stipulated in ADB's TA Disbursement Handbook (2010, as amended from time to time).

16. When the user unit requests PPFD to process a variation with no cost implication, it states this in the request. When PPFD or the user unit sends variation orders without cost implications to consultants, they state this in the orders.

17. To process a variation, the user unit or PPFD enters the details into the Technical Assistance Information System (TAIS) and sends a variation order to the consultant. The user unit and PPFD send copies of their variation orders to each other and to CTLA. Copies will be sent electronically unless paper versions are specifically requested.

18. PPFD approves the consultant's remuneration during the contract negotiations, and both the levels of remuneration and the currencies of payment are fixed for the contract period. When the user unit extends an individual consultant's engagement to a total period of more than 1 year, PPFD may agree in special cases to a small increase in the remuneration to cover inflation and/or currency fluctuations.

19. The remuneration of replacement experts provided by consulting firms should not generally exceed the remuneration of the original experts, especially when a consulting firm is selected using quality-and cost-based selection (QCBS), fixed-budget selection (FBS) or least-cost selection (LCS).

20. When a consulting firm is selected using QCBS, FBS or LCS, PPFD pays the firm the per diem rates it stated in its financial proposal. For other engagements:

- PPFD publishes maximum per diem rates for international consultants working in major cities. The published rates apply only to continuous engagements of six months or less, and the rates for longer continuous engagements are lower.
- The per diem rates for national consultants working outside their home cities vary but may be about half the rates for international consultants. When national consultants are expected to stay in the same hotels as international consultants, PPFD may pay them the same per diem rates.

21. When a consultant asks for a change in the payment remittance instructions in its contract, the user unit makes sure that:

- a new bank account is in the consultant's name; if the consultant is an individual, the account may also be in his/her firm's name; and
- the signature on the request is the same as the signature on the contract.

When a consultant asks for payment by bank draft, the user unit may ask the Treasury Department (TD) to endorse the request.

22. When a consulting firm requests a change of its authorized representative, it should support the request with a Board resolution, power of attorney or similar document.

h) Resolving Performance Problems and Terminating Contracts

23. When problems arise during the implementation of TA operations, the user unit should discuss these with the consultant and the EA, with the intention of reaching an agreement on solutions. When the user unit identifies a problem with the consultant's performance, the user unit director decides on the appropriate action. The user unit can follow a three-step procedure to resolve performance problems:

- First, the user unit discusses the problem with the consultant, describing the areas of the consultant's performance that it considers unsatisfactory; explaining the performance levels required; and directing the consultant toward ways to improve its performance, for example by replacing experts whose performance is unsatisfactory. The user unit documents such discussion. The consultant is requested to formally respond with an action plan to improve performance.
- Second, if the consultant's performance continues to be unsatisfactory and formal contractual action appears to be necessary, the user unit may consider suspending the consultant's contract. Contracts with consulting firms can be suspended in part or in whole.
- Third, if the consultant's performance has not improved following suspension, the user unit may consider terminating the consultant's contract. When the user unit believes that the consultant has not adequately responded to the written warning and decides to terminate the contract, it should consult the government and discuss with PPF the option of convening a special consultant selection committee (SCSC) to decide if termination is warranted. If the SCSC is not convened, the user unit director should decide if termination is warranted, in consultation with PPF, OGC, and other relevant departments and offices. PPF advises the consultant of the decision in accordance with the provisions of the contract. The user unit is responsible for ensuring that the provisions of the contract are applied, including the steps required to terminate the contract. The user unit advises the government, the EA or both, of the decision and prepares a summary of the remedial action required and a proposal for completing the assignment.

i) Turning Over or Disposing of Equipment and Vehicles

24. When the TA is completed, the consultant should promptly turn over any purchased equipment and vehicle to the government or dispose of these. The user unit will be responsible for transferring the ownership of vehicles. The consultant should then submit a certificate of turnover or disposal to the user unit (Appendix 1 provides the format of the certificate of turnover or disposal). The consultant is generally preferred to submit the certificate within one to two weeks from the completion of the assignment, together with its final claim. At the latest, the consultant's contract states that it must submit the certificate within 90 days from contract completion, if it is a

consulting firm; or within 60 days from contract completion, if the contract is with an individual consultant. If the consultant does not submit the certificate by the deadline, the user unit should confirm that the consultant has turned over or disposed of the equipment and vehicles and should itself complete the certificate.

j) Consultants' Final Claims

25. At the end of contract negotiations, PPF D provides consulting firms with a five-page format for the final claim, entitled *Final Statement of Eligible Costs*.

26. The consultant is preferred to submit the final claim to the user unit within 15 days from completion of the assignment. The consultant's contract states that it must submit a final statement of claims within 30 days of contract completion. Before the expiration of this period, the user unit should advise the consultant of the impending closure of the contract account. Appendix 2 provides a sample notice for this purpose, in case there is no dispute with the consultant.

27. In the event of a dispute between the consultant and the user unit, and after reasonable efforts have been made to resolve outstanding payment issues, the user unit should advise the consulting firm that the contract account will be closed unless the consultant issues a notice that it wishes to proceed to arbitration. Appendix 3 provides a sample notice for this purpose.

28. If the consultant fails to submit its final claim by the required deadline, or if the consultant submits its claim on time but provides incomplete documentation, or if the user unit and the consultant cannot reach an agreement on the amount of the final payment, the user unit should decide the amount that CT LA will pay the consultant. CT LA will effect final payment based on the user unit's assessment of the amounts due, except when the consultant has given a notice of intention to arbitrate. The contract with the consulting firm expressly states that any claim submitted by the consultant to ADB after consultant contract closure will be denied, and that the consultant waives any such claims unless it has filed a notice of intention to arbitrate.

k) Evaluating the Consultant's Performance

29. After the consultant completes the assignment and submits the final report, the user unit evaluates the consultant's performance and submits a report to the relevant director, PPF D. PAI 2.07 provides guidelines on evaluating the performance of consultants.

C. Staff Consultancy Contracts

a) Implementation Responsibilities

30. ADB user units are responsible for supervising consultants on staff consulting assignments. PPF D is generally responsible for administering the staff consultants' contracts.

b) Staff Consultant's Status

31. Consultants on staff consulting assignments are regarded as experts performing missions for ADB and are entitled to certain privileges and immunities in accordance with the provisions in the *Agreement Establishing the Asian Development Bank*.

32. Consultants on staff consulting assignments must not represent ADB or sign documents on behalf of ADB.

c) Staff Consultant's Mission Travel

33. When a user unit requires a consultant on a staff consulting assignment to visit a project area or join an ADB mission, the user unit obtains approval for the consultant's travel in the mission authorization request.

d) Extending Individual Staff Consulting Assignments

34. PPFD treats proposals for individual consultants on staff consulting assignments to perform additional work as extensions if there has been a period of less than 30 calendar days from the consultant's completion of a previous assignment, and if the new assignment is similar to the previous one. PPFD treats other proposals for additional work as new assignments.

35. Proposals to extend individual staff consulting assignments with cumulative cost implications in a 12-month period of \$10,000 and below are approved by the user unit director. For extensions with cumulative cost implications in a 12-month period above \$10,000, approval is required from the user unit director and Director, PPFD. When the total engagement inputs including the extension is more than 66 working days, the Director, Budget and Management Services Division, endorses the extension proposals. Proposals to extend an individual staff consulting assignment to a total period of 1 year or more are endorsed by the head of the user department or office, and approved by the Director General, Budget, Personnel and Management Systems Department.

36. Long-term assignments with a period of 1 year or more that do not have specific time-bound outputs will be approved only in exceptional circumstances. The memorandum requesting for an extension of a long-term assignment should include a detailed justification of the rationale and purpose, establishing that the assignment is important and no staff member can perform the work. The user unit should attach the terms of reference, cost estimates and consultant's curriculum vitae to its request memorandum.

37. The user unit will process all extensions that cost \$10,000 or less; while PPFD will process all extensions that cost more than \$10,000. When it writes to PPFD, the user unit attaches copies of the approval, terms of reference and cost estimates.

e) Terminating Contracts for Individual Staff Consulting Assignments

38. When problems arise during an individual staff consulting assignment, the user unit should follow the procedures stipulated in the contract. When the division proposes to terminate the contract, it should first consult PPFD and, if necessary, OGC. After consultation, if the user unit decides to terminate the contract, it should notify the consultant in writing of its intention to terminate the contract. The user unit then asks PPFD to send a written notice to the consultant in accordance with the provisions in the consulting contract. The implementation of the contract provisions remain the responsibility of the user unit.

D. Consulting Services that EAs Administer

a) Implementation Responsibilities

39. The borrower's EA is responsible for supervising and administering consultant contracts signed by the EA. It is important for the EA to monitor the consultants' progress and promptly discuss any problems that arise.

40. The ADB project unit should advise and assist the EA, as necessary, during the recruitment process and while the consultants are completing their assignments.

b) Contract Variations

41. Contract variations are written changes to the consultant's contract on which the EA, consultant and ADB agree. They may change an item in the contract or add a new item. Consultants generally propose most contract variations, but the EA may also propose variations.

42. The EA approves all variations in consultants' contracts and may consult the user unit and ADB procurement staff on an as-needed basis. The EA shall seek ADB's no-objection, from the director of the user unit, where any modification would individually or in aggregate increase the original price of the contract by more than 15%. To ensure that the contract variation is not considered an attempt to circumvent sanctions, OAI endorsement should be sought and obtained prior to approving any contract variation to a sanctioned firm or individual.

43. The principles expressed in paragraphs under Section B of this PAI are also applicable to the variation of contracts signed by EAs.

c) Terminating a Consultant's Contract

44. When problems arise during the contract implementation, the project unit advises the EA to generally follow the procedures stipulated in the contract. The principles expressed in paragraph 23 under Section B of this PAI are also applicable to the termination of contracts signed by EAs.

45. If the EA proposes to terminate a consultant's contract, the EA should submit to the project unit for approval:

- adequate background information and justification for the proposed termination;
- a summary of the required adjustments or remedial action; and
- a proposal on how the assignment will be completed.

46. The project unit discusses the proposal with the EA and the consultant, if possible. Based on the available information, the project unit then discusses with PPFD whether to convene an SCSC meeting to decide if termination is warranted. If an SCSC meeting is not convened, the project unit decides if termination is warranted, in consultation with PPFD, OGC, and other

relevant departments and offices. The project unit advises the EA of the decision reached on this matter. The EA then informs the consultant of the decision, in accordance with the provisions in the contract.

TA no. - country: title

Certificate of Turnover/Disposal of TA Equipment and Vehicles

Date: _____

This is to certify that the equipment and vehicles listed below were turned over to the recipient government/agency or disposed of in accordance with ADB's instructions.

Item/Description	Quantity	Unit

Certified by:

Equipment received by:

[representative of consultant/ADB staff member] [signature over printed name]

[representative of recipient government agency] [signature over printed name]

Confirmed by:

Date: _____

*[ADB staff member]
[signature over printed name]*

Date: _____

Note: Consultants normally submit this certificate with their final claim, within a week or two of completing the assignment. At the latest, you must submit this certificate within 90 days of completion if you are a consulting firm or within 60 days of completion if you are an individual consultant.

**TEMPLATE TO BE USED FOR CLOSING CONTRACTS WITH CONSULTING FIRMS
IN THE CASE OF NO DISPUTE**

[ADB LETTERHEAD]

[Consultant's Address]

Dear [name of consultant's representative]:

TA [number and name]: Contract No. [number of contract]

We are writing to advise you that ADB intends to close this TA account, as the assignment has been completed.

It is our understanding that you have no outstanding claims under the captioned contract. If you have any further claims we request you to submit them at the earliest possible time but, in all events, within sixty (60) days from the date hereof. ADB will consider any submission we receive by _ [date 60 days after the date of this letter]. However, if no submission is received by that date, we will close the TA account.

Please note that ADB will not consider claims from your firm under this TA after the deadline stated above and we will no longer be able to make payments after the TA account has been closed.

Finally, please complete and sign the attached Certificate of Turnover/ Disposal of TA Equipment and Vehicles, if you have not already done so, and return the signed certificate to us within thirty (30) days from the date hereof.¹

Yours sincerely,

[name of director]
[user division]

cc: PFP1 or PFP2/CTL

¹ Attach Appendix 1 from letter if applicable

**TEMPLATE TO BE USED FOR CLOSING CONTRACTS WITH CONSULTING FIRMS
IN THE CASE WHERE THERE IS A DISPUTE**

[ADB LETTERHEAD]

[Consultant's Address]

Dear [name of consultant's representative]:

TA [number and name]: Contract No. [number of contract]

We are writing to advise you that ADB intends to close this TA account, as the assignment has been completed.

We have made every effort to resolve your pending claims, but, regrettably, we have been unable to do so. You have not accepted our proposed liquidation of your eligible claims in final settlement of the matter. Therefore, if you wish to proceed to arbitration according to the terms of the captioned contract, we request you to provide us with notice thereof within 60 days from the date hereof. If you fail to provide us with such notice within such period, we will close the TA account.

Please note that ADB will not consider claims from your firm under this TA after the deadline stated above, and we will no longer be able to make payments after the TA account has been closed.

Yours sincerely,

[name of director]
[user division]

cc: PFP1 or PFP2/CTL