FRAMEWORK AGREEMENTS FOR CONSULTING SERVICES

GUIDANCE NOTE ON PROCUREMENT

JUNE 2018

ASIAN DEVELOPMENT BANK

ADB

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In this publication, “$” refers to United States dollars.
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ABOUT THIS PUBLICATION

In April 2017, the Asian Development Bank (ADB) approved its new procurement framework, the ADB Procurement Policy: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time); and the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time). These replace the former Guidelines on the Use of Consultants (2013, as amended from time to time) and Procurement Guidelines (2015, as amended from time to time). The procurement policy and the procurement regulations address the procurement activities of project executing agencies and implementing agencies on projects financed in whole or in part by a loan or grant from ADB, or by ADB-administered funds. ADB designed the 2017 procurement policy to deliver significant benefits and flexibility throughout the project procurement cycle, as well as to improve project delivery through a renewed focus on the concepts of quality, value for money (VFM), and fitness for purpose.

This note is part of a series of guidance notes published by ADB in 2018 to accompany the 2017 procurement policy and the procurement regulations. Each note discusses a topical issue for borrowers (including grant recipients), bidders, and civil society under the new framework (see list below). The guidance notes cross-reference each other frequently and should be read in conjunction. All references to "guidance notes" pertain to these notes. The notes may be updated, replaced, or withdrawn from time to time.

List of Guidance Notes for the 2017 ADB Procurement Policy and the Procurement Regulations

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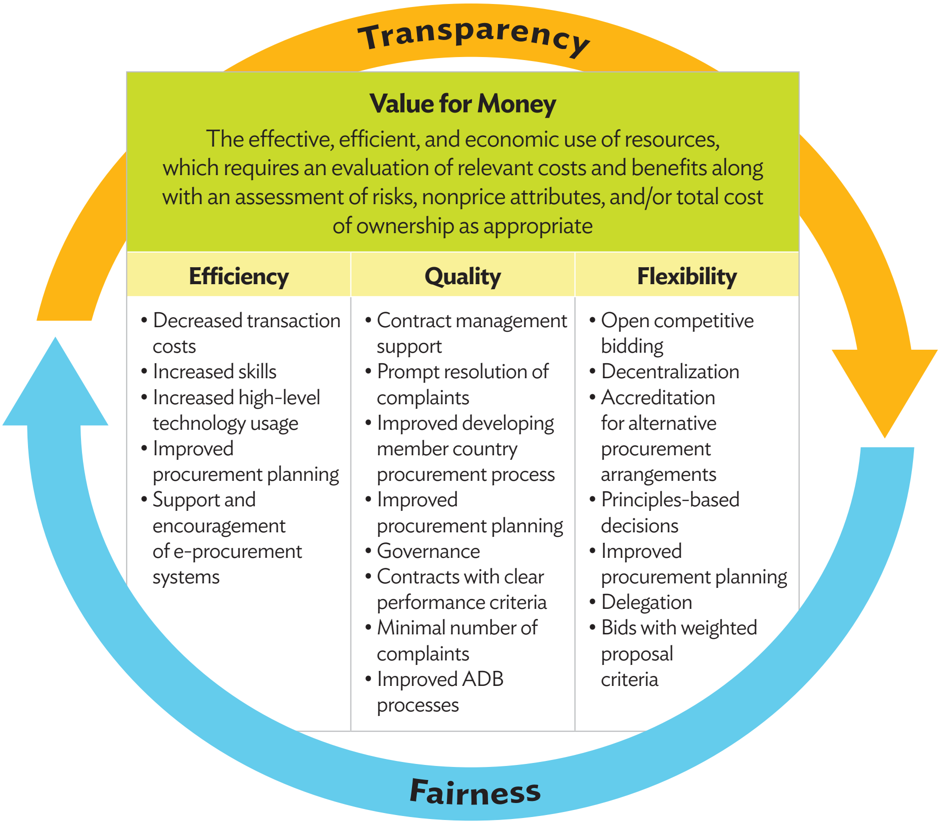
ADB procurement reforms intend to ensure VFM by improving flexibility, quality, and efficiency throughout the procurement cycle (see illustration below and the *Guidance Note on Value for Money*). VFM is part of a holistic procurement structure with three support pillars: efficiency, quality, and flexibility. The two key principles of transparency and fairness weave across all elements of the structure.



Value for Money

The effective, efficient, and economic use of resources, which requires an evaluation of relevant costs and benefits along with an assessment of risks, nonprice attributes, and/or total cost of ownership as appropriate

Efficiency	Quality	Flexibility
• Decreased transaction costs • Increased skills • Increased high-level technology usage • Improved procurement planning • Support and encouragement of e-procurement systems	• Contract management support • Prompt resolution of complaints • Improved developing member country procurement process • Improved procurement planning • Governance • Contracts with clear performance criteria • Minimal number of complaints • Improved ADB processes	• Open competitive bidding • Decentralization • Accreditation for alternative procurement arrangements • Principles-based decisions • Improved procurement planning • Delegation • Bids with weighted proposal criteria

Time

Time is an important element of VFM. When a project is delivered promptly or when a process is completed rapidly, greater value is created for all stakeholders. For example, a road project completed early provides economic benefit, security, or other value to the community it serves. It increases the return on investment to the executing agency and accelerates the project and payment cycle to the successful bidder. Likewise, a project delivered late loses significant value.

When considering VFM in the context of procurement, pay attention to anything that (i) shortens the procurement cycle time frame or (ii) accelerates delivery of the development project.

Objective

This guidance note is intended to assist readers by elaborating on and explaining ADB's 2017 procurement policy and procurement regulations for borrowers (including grant recipients).

This note identifies additional information for the reader to consider when applying ADB's procurement policy and procurement regulations to their circumstances.

Living Document

This guidance note is intended to be a living document and will be revised as required.

Be sure to check the ADB Business Center website for the latest version and updates, https://www.adb.org/business/main.

The Reader

In many circumstances, readers are expected to use this guidance note in a manner unique to their needs. For consistency throughout the suite of guidance notes, the following assumption is made about the reader:

The reader is a professional involved in activities financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

FAQs

Frequently asked questions, clarifications, examples, additional information, links to training, and other useful resources will be made available on the ADB website.

Be sure to check the ADB Business Center website for more information, https://www.adb.org/business/main.

Legal and Order of Priority

This guidance note explains and elaborates on the provisions of the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) applicable to executing (and implementing) agencies under sovereign (including subsovereign) projects financed in whole or in part by an investment loan from ADB (i.e., excluding ADB results- or policy-based loans), ADB-financed grant (excluding ADB-administered technical assistance and staff consultancies), or by ADB-administered funds.

In the event of any discrepancy between this guidance note and the procurement regulations, the latter will prevail. The financing agreement governs the legal relationships between the borrower and ADB. The rights and obligations between the borrower and the provider of goods, works, or services are governed by the specific procurement document issued by the borrower and by the contract signed between the borrower and the provider, and not by this guidance note.

ABBREVIATIONS

ADB	—	Asian Development Bank
CSRN	—	Consulting Services Recruitment Notice
EOI	—	expression of interest
QBS	—	quality-based selection
QCBS	—	quality- and cost-based selection
RFP	—	request for proposals
TOR	—	terms of reference
VFM	—	value for money

EXECUTIVE SUMMARY

This guidance note

(i) explains how a framework agreement for consulting services may be established and administered in accordance with best practice and applicable ADB policies;
(ii) brings the terminology for framework agreements in line with comparable institutions;
(iii) anticipates the borrower (or grant recipient) establishing and administering its own framework agreements and also using those of ADB and other entities;
(iv) highlights common advantages, disadvantages, and risks unique to the framework structure; and
(v) emphasizes the importance of cost control.

Effective use of framework agreements may yield the following benefits:

Increase Efficiency and Reduce Procurement Time

- Reduce delays by awarding contracts through call-offs.
- Reduce duplication of effort by avoiding the need to repeat near identical procurement processes.
- Reduce downstream negotiation time.

Ensure Quality

- Select the highest-quality consultants available for medium-term cooperation.

Reduce Risk

- Streamline and standardize specifications for users.
- Manage the risk of failure through agreements entered into with multiple, rather than single, consultants.

Deliver Value for Money

- Offer consultants repeat opportunities.
- Ensure price competition through secondary financial competition.
- Fix fee rates that do not require renegotiation.
- Ensure high-quality consultants while incorporating downstream price competition.

I. Introduction

A. Purpose

1.1 This guidance note by the Asian Development Bank (ADB) elaborates on the provisions in the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) relating to the use of framework agreements for consulting services by executing agencies under projects financed in whole or in part by an ADB loan or grant, or by ADB-administered funds.

1.2 This guidance note should be read in conjunction with the *Guidance Note on Consulting Services Administered by ADB Borrowers*, which details the procurement procedures that also generally apply to the procurement of framework agreement consultants. This guidance note, however, highlights certain differences and additional considerations inherent in the framework agreement structure. Framework agreements are planned and used throughout the ADB procurement cycle (Figure 1).

1.3 Framework agreements for ADB-administered technical assistance and staff consultancies, and framework agreements for goods and works, are beyond the scope of this guidance note. Framework agreements for nonconsulting services may be adapted from the principles contained in this note, where relevant.

B. Framework Agreements for Consulting Services—An Overview

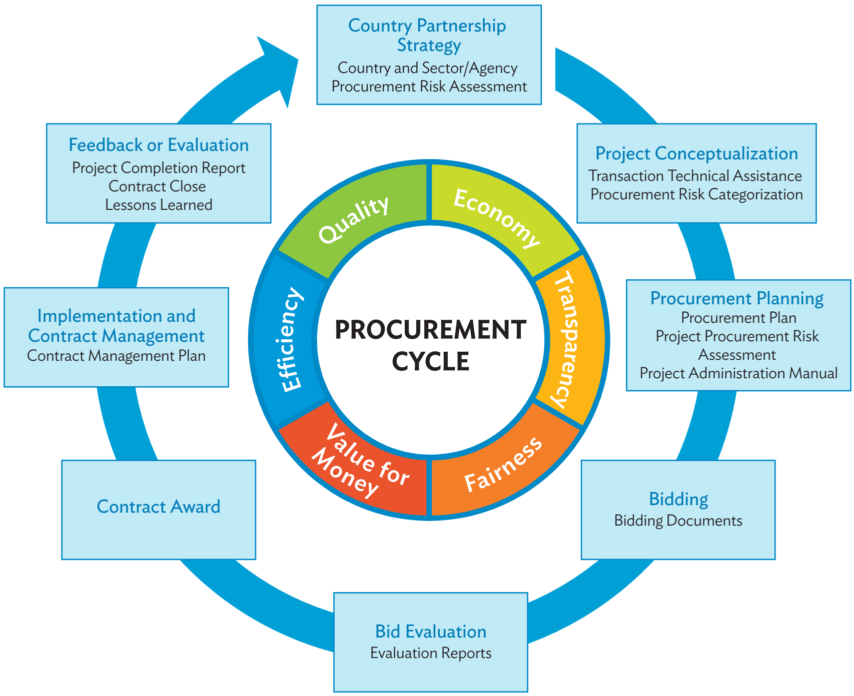
1.4 Consultancy framework agreements are arrangements that permit executing agencies[1] to retain one or more qualified individual consultants or consulting firms (collectively referred to as "consultants") for multiple, planned consultancy assignments that

(i) belong to a category of technically and thematically similar assignments;

[1] Framework agreements may be set up by an executing agency, by multiple borrower agencies for mutual benefit, or by a third party (such as ADB) for use by multiple borrower agencies. In this guidance note, the term "executing agency" refers to the party or parties that set up or use any of these arrangements, as the context dictates.

(ii) require similar expertise;
(iii) are repeatable;
(iv) can be described under a broad (generic) terms of reference;
(v) are for a predefined period; and
(vi) are to be performed in an identified location (ranging from a single country to multiple regions); but
(vii) where the precise scope, location, and duration are not known at the time of the award of the framework agreement.

Figure 1: The ADB Procurement Cycle



Source: Asian Development Bank.

1.5 After a competitive procurement process, one or several consultants may be awarded framework agreements with generic terms of reference (TOR) that broadly define the nature and scope of services that may be required for the duration of the framework agreement. The framework agreement may generally be used by the executing agency across multiple loan and grant projects, and/or technical assistance.

1.6 The framework agreement should establish as many of the terms and conditions between (or on behalf of) the executing agency and the consultant as possible. These should typically include the core contractual terms such as liability limits, ownership of deliverables, and the named experts that the consultant will make available, along with the agreed fee rates for these experts (or a method for establishing this).

1.7 A framework agreement also sets out the procedure under which specific contracts, known as "call-offs," can be made during the term of the framework agreement when the actual consultancy services are required. A framework agreement is, therefore, not considered a contract, as it places no obligation on the executing agency to purchase, and no obligation on the consultant to supply. It puts in place contractual terms for call-offs expected to be awarded under the framework agreement. As the intention is eventually to procure at call-off level, the procurement and administration of the framework agreement is subject to the procurement rules of ADB.

1.8 The framework agreement and call-off structure will take more time and effort to establish than a single consultant selection. However, it permits downstream consultant mobilization in a significantly reduced time frame compared to initiating a new procurement process each time an executing agency consultancy requirement emerges.

1.9 Framework agreements are most appropriate in situations exhibiting some of the following characteristics:

- (i) multiple call-offs over an extended period are envisaged;
- (ii) the activity is repeatable;
- (iii) discrete, generally "upstream services" are required, where methodologies are fairly standardized;
- (iv) urgent and lengthy tendering processes are impractical or inefficient; and/or
- (v) contracts may individually be relatively small, making an expensive selection process inefficient (although in aggregate over the duration of the framework agreement, the value could be substantial).

C. Framework Agreement or Framework Contract?

1.10 Framework agreements may be awarded to multiple consultancy firms or individual consultants. There may be secondary competition, meaning that there will be competition between framework consultants for a given assignment at the call-off stage. A budget is estimated based on the number of contracts envisaged to be awarded under the agreement for its duration.

1.11 By contrast, a framework contract is awarded to a single consultancy firm or individual consultant. There is a fixed budget and no secondary competition, normally with fees agreed in advance and out-of-pocket expenses agreed at time of call-off. Framework contracts may be used where consultancy services are required from a single provider, but the timing and nature of the services to be delivered cannot be precisely defined at the outset.

1.12 Once a framework contract is in place, the executing agency may issue its requirements in a series of parts (call-offs) to manage its evolving needs carefully and to ensure cost control. The services must, however, remain within the scope set out in the generic TOR for the assignment.

1.13 The intention to use either a framework agreement or a framework contract should be clearly stated in the Consulting Services Recruitment Notice (CSRN). Unlike framework agreements, which may under certain circumstances be used by parties other than the original executing agency, framework contracts may only be used by the original executing agency. Table 1 compares framework agreements and framework contracts in further detail.

1.14 Despite the differences, there are many similarities in how they are procured. This guidance note will use the term "framework agreement" to encompass both framework agreements and framework contracts, and make it clear when it is referring only to one.

Table 1: Framework Agreements and Framework Contracts—A Comparison

Framework Agreement	Framework Contract
Awarded to multiple firms (generally at least three), normally following QBS (or QCBS)	Awarded to a single firm, normally following QBS (or QCBS)
May include secondary competition,[a] normally through QBS or QCBS	Does not involve secondary competition and rates are predetermined
An estimated budget is typically indicated in the CSRN	An actual budget is typically indicated in the CSRN
The framework is periodically readvertised and the least active consultant(s) are replaced with new entrants	If the consultant underperforms, the framework may be terminated and substitution is not possible
Not generally considered a contract	Has many similarities to a standard, phased contract Often issued immediately prior to or in conjunction with the first call-off, so it may be considered a contract, although the legal obligation still vests with the call-offs

CSRN = Consulting Services Recruitment Notice, QBS = quality-based selection, QCBS = quality- and cost-based selection.

[a] Commonly also referred to as a "mini competition."

Source: Asian Development Bank.

D. Framework Agreements on ADB Projects

1.15 Three categories of framework agreement may be utilized by executing agencies to support projects financed in whole or in part through ADB loans or grants, or by ADB-administered funds:

(i) For loans, grants, and delegated technical assistance financed in whole or in part by ADB, or by ADB-administered funds, the executing agency normally undertakes the consultant selection process. If it envisages a significant number of similar assignments, and ADB approves, the executing agency may set up its own framework agreement. Alternatively, the executing agency may have (or have access to) an existing framework agreement (including ones that may have been established by their procurement agents); or an equivalent arrangement that may be acceptable to ADB.[2] The *Guidance Note on Alternative Procurement Arrangements* and the 2017 procurement regulations (in paras. 1.9–1.10) explain the criteria ADB will use when considering procurement processes conducted by third parties.

(ii) As an alternative, when the executing agency is procuring consultants, ADB may already have an established framework agreement that the agency can use to procure consultants on an expedited basis using the terms ADB has established with the firms or individuals through the agreement (such as for audit or social survey consultancy firms). Rather than establishing the framework agreement itself, the executing agency may conduct a secondary competition based on project-specific TOR using the framework agreement established by ADB.

(iii) For technical assistance procurement, such as transaction technical assistance, ADB will be the procuring authority. In such circumstances, ADB may either establish a new framework agreement or draw from an existing one to procure consultants. This process will be governed by ADB's staff instructions and the borrower will not be directly involved in the procurement. However, the borrower may be consulted on the shortlist due to issues such as immunities and privileges granted under the contract, and its concurrence will be required prior to mobilizing the consultant. Further details on this are beyond the scope of this guidance note.

1.16 This guidance note gives more detailed explanations on the first and second options. Therefore, it focuses on how an executing agency may establish its own framework agreement and how it may call off from either its own framework agreements or one established by a third party (including ADB). Any framework agreements established or used by the executing agency, and any resulting call-

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[2] In some countries, the government may have a database of existing framework agreements that may be consulted. It may be necessary to add any new framework agreements to such a database.

offs, will be subject to ADB's post or prior review.[3] ADB may also perform ongoing monitoring of any framework agreement to ensure that contracts it finances are awarded in accordance with the agreement and ADB's relevant policies and procedures.

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3 Refer to the *Guidance Note on Procurement Review* for further details on when and how post or prior review arrangements will apply.

II. Planning the Framework Agreement

A. Strategic Considerations

2.1 Executing agencies will need to invest a substantial amount of time and effort to establish a successful framework agreement. Consultants also incur significant costs in participating in the procurement process without any assurance of revenues. There is, therefore, a "good faith" element to framework agreements. Poorly planned framework agreements may be underused and may cause reputational damage to the executing agency and ADB in relation to the consultancy market.

2.2 It is critical to the framework agreement's success that the executing agency plans it well, anticipates foreseeable problems, and transparently incorporates an acceptable level of flexibility into the process at the outset. When considering whether a new framework agreement is appropriate, the executing agency, well before the actual need for consultancy services, must make a realistic assessment of the consultancy services required. It must be confident that there is a likely pipeline of appropriate consultancy requirements that justify the effort and expense of setting up a framework agreement in preference to using stand-alone procurement.

2.3 Framework agreements are medium-term arrangements, meaning they should not generally cover a period in excess of 3 years. Thus, the executing agency must also consider whether it is able to define the requirements in generic terms, but with sufficient precision to accurately present to the consultancy market the scope of services required. The executing agency should consult ADB during the project's procurement planning stage on its intention to use a framework agreement, and any plan to use a framework agreement should be incorporated in the procurement plan (or its amendments).

2.4 The executing agency should ensure that there is sufficient interest within the market to establish a framework. It may be, for instance, that providers of niche services are unwilling to participate. The executing agency should also ensure that the framework agreement is established for a suitable period allowing for the volatility of the market, particularly, for instance, where there may be high price volatility.

2.5 To ensure value for money, the framework agreement should, where possible, establish a pricing mechanism. This does not mean executing agencies should always inflexibly fix actual prices, such as fee rates for all experts. Rather, there should be an agreed method applied to pricing particular requirements for call-offs for the duration of the framework agreement. See Appendix 1, paras. A1.11–A1.17, for an explanation of how such a pricing mechanism may be established.

2.6 Where the executing agency anticipates secondary competition, it is important to have an appropriate number of framework agreement consultants for the envisaged services to permit adequate competition at the call-off stage. Such framework agreements should include at least two framework agreement consultants. Where the scope of services envisages multiple call-offs over a diverse geographical area, more consultants should be chosen when possible. However, it is also important not to have too many framework agreement consultants for a particular purpose, as this may discourage consultants from applying if they consider the opportunities are too widely spread.

2.7 Due to the level of resources required, and depending on how they are designed, certain framework agreements may primarily attract large international firms that can conduct multidisciplinary assignments in multiple locations simultaneously. For this reason, the use of framework agreements could result in a reduced geographical spread of consultancy opportunities and reduced consultancy work being awarded to smaller consultancy firms, including those in the borrower's country. To avoid this, executing agencies may design the generic TOR of the framework agreement to encourage or mandate associations with small firms or local partners.

B. Closed or Open, and Exclusive or Nonexclusive Framework Agreements

2.8 As medium-term commitments, framework agreements must ensure that they remain relevant and can ably draw on the consultancy resources that the market has to offer. The executing agency should consider how the framework agreement can remain effective and maximize efficiency throughout its duration, adapting to the requirements of the executing agency as necessary. The CSRN should communicate (i) whether the framework agreement is closed or open to the addition of framework consultants, and (ii) whether contracts of the type envisaged under the framework agreement will be awarded exclusively to the framework consultants. Table 2 compares closed or open, and exclusive or nonexclusive framework agreements.

2.9 Closed framework agreements draw only on the originally selected consultants for the duration of the agreement. The executing agency closes the framework agreement to new providers, meaning that no new framework consultants may be added. This gives the framework agreement consultants strong prospects of being awarded call-offs.

2.10 Open framework agreements allow the award of additional framework agreements through a periodic or, for individual consultants, ongoing

Table 2: Closed or Open, and Exclusive or Nonexclusive Framework Agreements—A Comparison

Closed Framework Agreements	Open Framework Agreements
Only the originally selected consultants are drawn from for the duration of the framework agreement	Additional consultants may be added periodically, or continuously, for the duration of the framework agreement
and	
Exclusive Framework Agreements	**Nonexclusive Framework Agreements**
The executing agency intends to use only the framework agreement consultants for contracts of the type envisaged under the framework agreement	The executing agency reserves the right to award contracts of the type envisaged under the framework agreement outside of the framework agreement, at their sole discretion

Source: Asian Development Bank.

readvertisement.[4] They can be particularly useful where panels of individual experts are required and the market supply of experts is fluid. The disadvantage of the open framework agreement is the executing agency's increased administrative burden of considering new applicants.

2.11 Exclusive framework agreements show an intention by the executing agency to award contracts of the type envisaged under the framework agreement only to the framework agreement consultants for the duration of the agreement. This option may be too restrictive for the executing agency and is generally discouraged unless the framework is for a short period, or the consultants would otherwise be unlikely to participate on a nonexclusive basis.

2.12 Nonexclusive framework agreements reserve the right to award contracts of the type envisaged under the framework agreement outside of the agreement at the sole discretion of the executing agency. Nonexclusive framework agreements permit greater flexibility; however, the lack of a clear commitment on behalf of the executing agency may reduce the level of interest from the consultancy market.

C. ADB Approval

2.13 If, after due consideration, the executing agency wishes to use a framework agreement structure, it should discuss this with ADB as early as possible and incorporate it into the procurement plan or its relevant updates and/or amendments. The executing agency needs to work with ADB to ensure it obtains all necessary approvals for the use of a framework agreement, whether the agreement to be used is newly created by the executing agency or an existing one.

[4] This is also commonly referred to as a "refreshable" framework agreement.

D. Selection Method

2.14 The range of selection methods available for framework agreements is generally restricted to those listed in section III of the *Guidance Note on Consulting Services Administered by ADB Borrowers*, and are explained in the next section.

III. Procedures for Engaging Consultants under a Framework Agreement

A. Framework Agreements

3.1 The executing agency may, subject to ADB's review and approval, use a preexisting framework agreement from which to call off. The *Guidance Note on Alternative Procurement Arrangements* and the 2017 procurement regulations (in paras. 1.9–1.10) explain the criteria ADB will use when considering third-party procurement processes.

3.2 If the executing agency is to procure its own framework agreement, then various methods may be used. Figure 2 presents a flow diagram of a typical procurement process for a framework agreement for a consulting firm. Note that when recruiting individual consultants—or when recruiting firms where a single-stage process is permitted—negotiation would occur directly after the shortlist is established, so the fourth and fifth steps, indicated in darker background, are bypassed.

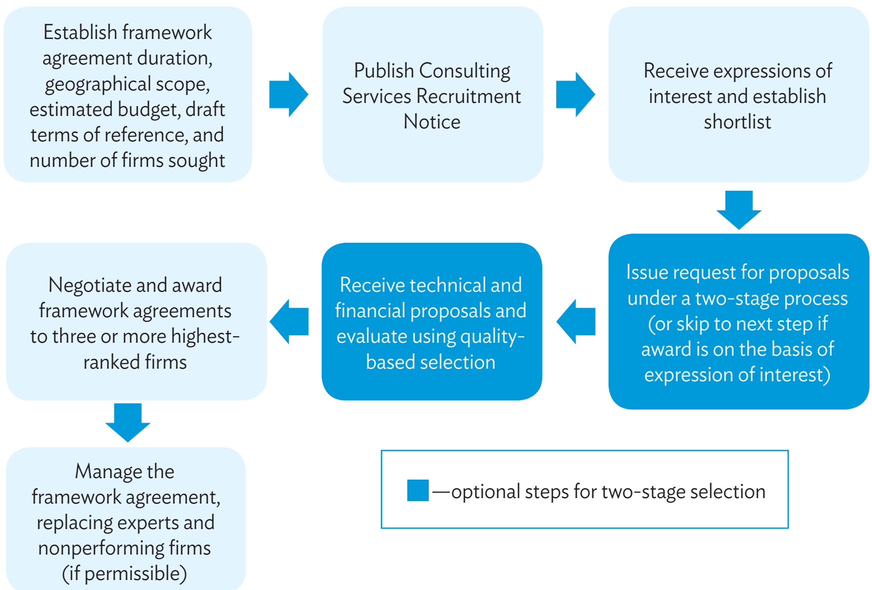
3.3 Appendix 1 sets out a procedure that the executing agency may follow for procuring framework agreements through open or limited competition, using the quality-based selection (QBS) methodology and based on section IV of the *Guidance Note on Consulting Services Administered by ADB Borrowers*. Appendix 1 highlights the additional concerns and considerations relating to the procurement of framework agreements.

3.4 The framework agreement document itself shall generally set out the following core elements:

(i) duration of the agreement;
(ii) names of the experts (or as many of them as possible) and the procedure for their replacement (if applicable);
(iii) broad description of the services to be provided under the agreement (generic TOR);
(iv) procedures and criteria to be followed for the award of call-off contracts to the consultants;
(v) contractual terms that are known at the time of the award of the agreement, and which shall apply throughout the execution;
(vi) a description of the circumstances that may lead to a firm being removed from the framework agreement, and the process to be used in securing the removal; and

(vii) contractual terms that shall be confirmed—or, in specific circumstances, refined—as part of the process for the award of call-off contracts.

Figure 2: Typical Framework Agreement Procurement Process for Consulting Firms



Source: Asian Development Bank.

3.5 The executing agency needs to monitor performance and participation of the consultants closely to ensure the framework agreement is effective. The agency should monitor consultants that

(i) consistently choose not to submit proposals for call-off contracts;
(ii) repeatedly fail to submit a technically qualified proposal;
(iii) receive unsatisfactory performance ratings; and/or
(iv) are debarred or temporarily suspended in accordance with ADB's Anticorruption Policy (1998, as amended to date)[5] and ADB's Integrity Principles and Guidelines (2015, as amended from time to time).[6]

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5 ADB. 2010. *Anticorruption and Integrity*. Manila. https://www.adb.org/sites/default/files/institutional-document/31317/anticorruption-integrity-policy-strategy.pdf.
6 ADB. 2015. *Integrity Principles and Guidelines (2015)*. Manila. https://www.adb.org/sites/default/files/institutional-document/32131/integrity-principles-guidelines.pdf.

3.6 The executing agency may then elect to change the composition of the framework agreement consultants by removing or replacing some and adding others, depending on whether the frameworks are established as closed or open. With respect to para. 3.5 (iv), if a contract variation is envisaged for a debarred or temporarily suspended consultant, the executing agency or the sanctioned entity should discuss any request for a contract variation with the concerned ADB project department, and the latter would seek endorsement from ADB's Office of Anticorruption and Integrity.

3.7 The executing agency may also need to amend the framework agreements for consulting firms from time to time to add and substitute their listed experts. The executing agency should not permit firms to set the fee rates of new experts above those awarded to comparable original experts, except in exceptional circumstances, such as when expensive niche expertise is required that was not originally envisaged. The TOR should not be fundamentally changed from that originally established in the framework agreement.

B. Call-Offs

3.8 Framework agreements in themselves do not guarantee work for the consultants and no retainer fees are generally paid. When a need for services under the framework agreement arises, the executing agency may issue a simplified contract, known as a call-off, to one of the consultants.

3.9 This call-off will refer to the framework agreement and draw upon any of the pre-agreed contractual terms it may contain. The executing agency may award the call-off following an accelerated competitive procurement process, if secondary competition is envisaged; or may award directly, for instance, where there is a framework contract. The approach to call-off procurement and award must follow what the executing agency communicated early in the procurement process for the framework agreement.

3.10 The executing agency will procure call-offs for individual consultants in one of two ways:

(i) The executing agency shortlists framework agreement consultants, assesses them on their skills and experience, and sends a noncommittal inquiry for contract award to the best-qualified individual. The shortlist will be comprised of the individual consultants whom the executing agency considers best qualified for the assignment. Evaluation will be on the basis of the curricula vitae supplied at the expression of interest (EOI) stage, which the consultant may update from time to time, and there will be no requirement to seek new EOIs.

(ii) For smaller assignments, or where a framework contract is used, the executing agency awards the call-off directly to one of the framework agreement consultants.

3.11 The executing agency may procure call-offs for consultancy firms using one or more of the following approaches, which should be transparently indicated to firms in the request for proposals (RFP) for the framework agreement:

(i) Approach all framework agreement consultants simultaneously and inviting them to submit a proposal.
(ii) Invite multiple framework agreement consultants that the executing agency reasonably believes to be qualified for a particular call-off to submit a proposal. It may be the case, in a regionwide framework agreement for instance, for certain consultants to possess proven strengths in certain countries, but others do not.
(iii) The framework agreement may have subdivided the pool of consultants into categories, referred to as "lots," each covering different, specialized services. The executing agency only needs to consult providers in the relevant lot.[7]
(iv) Invite a shortlist of framework firms rotationally (in accordance with a transparent formula) to submit technical proposals.
(v) Directly select the most appropriate framework agreement consultant. This is not generally considered as direct contracting or single-source selection if a competitive process has already been undertaken to establish the framework. This will always be the method of award for framework contracts.
(vi) Determine that none of the framework agreement consultants have the capacity or experience to perform a particular call-off, and elect to procure a consultant outside of the framework agreement.

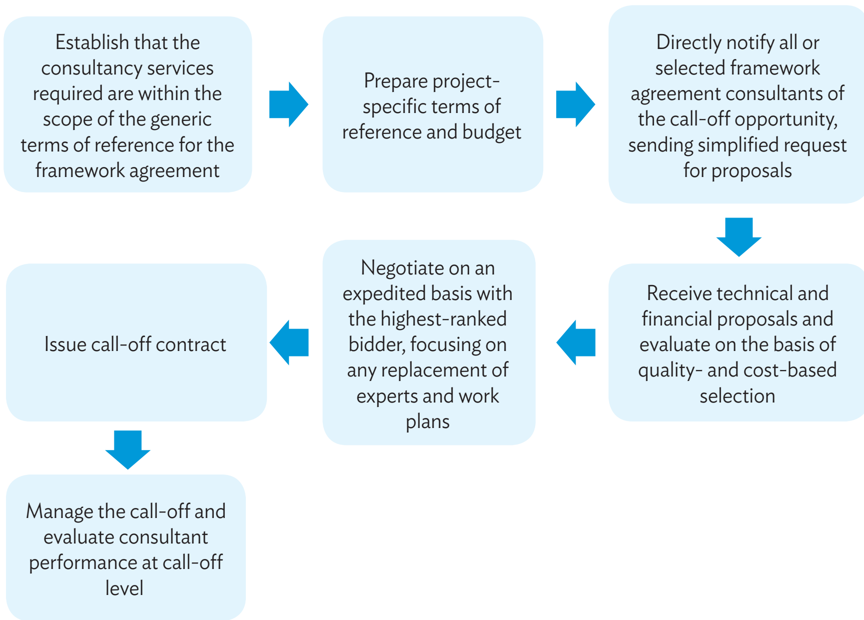
3.12 For consulting firms, the first four options above should normally follow a process similar to that shown in Figure 3.[8]

3.13 Appendix 2 sets out a quality- and cost-based selection (QCBS) procedure that the executing agency may follow for procuring call-offs, based on section IV of the *Guidance Note on Consulting Services Administered by ADB Borrowers*. The appendix highlights additional concerns and considerations relating to the procurement of call-offs. Other procurement methods, particularly those that contain a price component such as fixed budget selection and least-cost selection may be considered, particularly where the consultancy services required are highly standardized.

7 Splitting a larger, multifaceted framework agreement into lots can help the market by allowing consultants to focus on the specific requirements they are interested in and the strengths they have. It can also make the framework attractive to smaller consulting firms by opening opportunities that otherwise might have been out of their reach.

8 Framework contracts will not have secondary competition. Framework agreements may have secondary competition depending on the basis of the award.

Figure 3: Typical Process Flow for Competitively Awarded Call-Offs for Consulting Firms under a Framework Agreement



Source: Asian Development Bank.

3.14 The executing agency may contract the successful firm or consortium using a lump sum, partial lump sum, time-based, or performance-based contract, depending on the nature and scope of the call-off, using the fee rates established in the framework agreement. Other expenses and costs, including travel and per diems, will be set in accordance with the terms of the framework agreement.

IV. Advantages and Disadvantages of Framework Agreements

A. Advantages

4.1 The benefits of a well-conceived framework agreement can be numerous. Once established, they allow the executing agency to mobilize consultants more rapidly than can be achieved under a full, stand-alone procurement process. Benefits related to time savings include the following:

(i) Framework agreements avoid duplication of effort. The executing agency does not have to repeat near-identical procurement processes.
(ii) There is no requirement to publish a CSRN for call-offs, saving several weeks from a typical stand-alone process.
(iii) Parties to the contract pre-agree on the key contractual terms (such as lists of experts, their fee rates, and contractual terms on matters such as liability and ownership of deliverables), saving time in negotiations.
(iv) When secondary competition is used, the framework agreement justifies a reduction in the period required for preparation of proposals.
(v) Framework agreements enable faster consultant deployment, and the executing agency can conduct most of the contractual negotiations when there is no operational urgency.

4.2 In addition to time savings, framework agreements may include these other benefits:

(i) They may achieve value for money through establishing predetermined rates during the term of the framework agreement, i.e., framework agreement consultants may offer a “discount” relative to their standard rates in the anticipation of volumes of work and commit themselves to current rates for an extended period.
(ii) High-caliber consultants may be more inclined to participate in framework agreements where they believe they will receive large volumes of contracts and there is limited downstream competition for call-offs.
(iii) They allow flexibility to determine precise requirements during call-off stage.
(iv) They may enable delegation within the borrower’s organization. Senior staff can make higher-level decisions during the establishment of the framework agreement, while more junior staff may be permitted to award and administer call-offs, particularly if they are of lower value or lower risk.

(v) Carefully planned framework agreements can push small national consultants to collaborate with larger international firms, improving their skill sets and providing valuable experience. For instance, an international consultant may need local regulatory advice that a small national consultant can provide.

B. Disadvantages

4.3 As with any method of procurement, there are potential disadvantages associated with framework agreements:

(i) Framework agreements may be too broad in scope and take a "one size fits all" approach, making it difficult to satisfy the procurement objectives for each call-off.
(ii) Most framework agreements do not guarantee that consultants will get any business from them.
(iii) Framework agreements may come to rely too heavily on one consultant (e.g., a particular framework consultant dominates call-off awards).
(iv) The call-offs for framework agreements are less competitive than a selection that is open to the entire marketplace.
(v) Framework agreements can lock certain consultants into long-term arrangements to the exclusion of others.
(vi) Framework consultants may "price in" uncertainty and projected inflation, thus resulting in higher fee rates than those that may have been achieved through open competition.

4.4 Table 3 summarizes the advantages and disadvantages of framework agreements.

Table 3: Summary of Strengths and Weaknesses of Framework Agreements Linked to Procurement Principles

	Strengths	Weaknesses
Value for money	• Enhanced value for money through bundling and economies of scale • Reduced time for mobilization of consultants due to pre-agreements on key contractual terms • Reduced cost to consultancy firms in bidding for call-off contracts (secondary competition)	• Significant up-front investment of time and effort by executing agencies in establishing the framework agreement • Could limit participation of smaller or local firms • Requires good planning to avoid underuse or nonuse due to poor TORs, which can lead to reputational damage for ADB or the executing agency

continued on next page

Table 3 *continued*

	Strengths	Weaknesses
	• Multiple executing agencies can use the agreement for call-off contracts • Avoids duplication of tendering for similar services by multiple executing agencies • No need for repeat EOIs • Can be used for repeat contracts with similar TORs • Key contractual terms are pre-agreed and do not require renegotiation	• May discourage consultancy firms from applying if opportunities are too widely spread (which may occur in open and nonexclusive framework agreements) • May result in a "one size fits all" approach • Potential distortion in the marketplace through lack of competition • Potential overreliance on one consultant • Contract management of several consultants, which may be onerous and time-consuming, for instance, needing to issue multiple variations to framework agreements • Framework agreements do not guarantee that consultants will get work
Flexibility	• Not contractually binding; executing agencies can elect to contract outside of the framework agreement • Agreements can be closed or open, and exclusive or nonexclusive • Fine-tuning may occur at the call-off stage	• If not well constructed, the framework agreement may not be usable, e.g., if not broad enough in scope to meet actual needs • Can duplicate procurement efforts if the framework agreements are not used • Can be complex to manage if open or nonexclusive • May discourage participation if too many out-of-framework bidders are invited
Transparency	• Increased transparency based on fair procedures • Medium-term objectives presented to the market	• Transparency may suffer if the executing agency allows the scope of the original framework agreement to spread beyond that originally advertised
Quality	• High-quality consultants attracted by the volume of opportunities • Improved process because of pre-agreed contractual terms	• If a particular firm is too successful at winning call-offs, key experts may be too thinly spread across their respective call-offs • If a firm establishes an effective monopoly on call-offs, quality may drop through lack of competition • Testing the whole market for each consultancy requirement is likely to achieve higher quality

ADB = Asian Development Bank, EOI = expression of interest, TOR = terms of reference.

Source: Asian Development Bank.

Appendix 1: Procurement Process for Framework Agreements

A1.1 The detailed procedures for procurement of a framework agreement are similar to those set out by the Asian Development Bank (ADB) in section IV of the *Guidance Note on Consulting Services Administered by ADB Borrowers.* The following paragraphs focus on the key additional considerations when using a framework agreement.

A. Advertisement

A1.2 Executing agencies should publicly advertise all framework agreements financed in whole or in part by ADB, or by ADB-administered funds, through a Consulting Services Recruitment Notice (CSRN), in accordance with the Procurement Regulations for ADB Borrowers: Goods, Works, Nonconsulting and Consulting Services (2017, as amended from time to time) and the *Guidance Note on Consulting Services Administered by ADB Borrowers.*

B. Request for Expressions of Interest

A1.3 For executing agency-administered framework agreements, ADB generally recommends a two-stage selection process for consulting firms, with the first stage being the prequalification (shortlisting) of bidders through a request for expressions of interest (EOIs).

A1.4 For individual consultants, ADB recommends conducting the selection based on EOIs alone. ADB may allow this approach for firms with justification acceptable to ADB.

A1.5 The CSRN should contain certain information specific to framework agreements. It should

(i) provide a link to generic terms of reference (TOR) (rather than contract-specific TOR);
(ii) indicate how many framework agreements the executing agency intends to award;
(iii) indicate the intended duration of the framework agreement;
(iv) specify which geographical area(s) the framework agreement covers;

(v) provide an estimate of the total value of assignments anticipated to be issued and/or, estimated total person-months (national and international);[1]
(vi) transparently explain how secondary competition (if any) will be conducted; and
(vii) specify the intentions in terms of whether the framework agreement will be closed or open, and exclusive or nonexclusive.

The CSRN should also include any specific additional questions to be included to permit direct comparison of EOIs against the TOR.

A1.6 The selection process must allow sufficient time for interested consultants to submit EOIs. A CSRN standard template is typically used and the relevant provisions of the *Guidance Note on Consulting Services Administered by ADB Borrowers* apply. Due to the complexity of establishing a framework agreement, 30 calendar days is usually recommended for receiving EOIs, rather than the 15 calendar days used for stand-alone procurement.

A1.7 After the framework agreement is issued, it may be the case that some consultants elect not to compete for some or all call-off assignments, consistently underperform, or fail to put forward their strongest experts, diminishing the effectiveness of the framework agreement structure. Therefore, it is important at this stage to ensure that sufficient frameworks are awarded to permit adequate secondary competition downstream, should some framework agreement consultants prove to be uncooperative or unusable. It is also good practice to make framework agreements nonexclusive. The executing agency may then invite consultants outside the framework to participate in procurement processes for specific assignments where expertise of the existing pool of framework agreement consultants may be insufficient. The executing agency should transparently communicate to the market in the request for EOIs the number of consultants to which it intends to issue framework agreements.

A1.8 The executing agency evaluates EOIs received in one of two ways, depending upon whether a one- or two-stage selection process is applied:

(i) In a one-stage process, the executing agency awards the agreement based on the EOIs alone. Detailed negotiations are conducted at call-off stage and the following steps (paras. A1.10–A1.16) are skipped, with negotiations (para. A1.17) being the next stage.
(ii) In a two-stage process, the executing agency conducts a full request for proposals (RFP) procedure on shortlisted EOIs, and the following steps apply.

[1] Refer to the *Guidance Note on Consulting Services Administered by ADB Borrowers* for guidance on preparation of TOR and cost estimates.

A1.9 The advantage of the two-stage approach is that financial proposals are received and fee rates may be negotiated for inclusion in the framework agreement. However, this takes more time and may not be appropriate for straightforward or low-value consultancy requirements.

C. Shortlisting

A1.10 The shortlisting procedure is the same as that set out in the *Guidance Note on Consulting Services Administered by ADB Borrowers*. However, when multiple framework agreements are to be awarded, it will be prudent to shortlist more firms than for a stand-alone procurement or framework contract. For instance, if the executing agency seeks six framework agreement consultants, at least 10 firms should be shortlisted to ensure adequate competition.

D. Request for Proposals

A1.11 The RFP procedure is similar to that set out in the *Guidance Note on Consulting Services Administered by ADB Borrowers.* Rather than preparing a proposal for a particular contract assignment, however, the shortlisted firms prepare a proposal based on the generic TOR. A simplified technical proposal with an outline methodology will usually be sufficient, as the detailed approach will be requested at the call-off stage. Thus, there is typically no work plan at framework agreement level and no detailed allocation of resources. In addition, the financial proposal will only contain fee rates, not an overall budget.

A1.12 One possibility to assist in the evaluation of proposals is for the executing agency to require the shortlisted firms to prepare a detailed work plan for an indicative, typical assignment of the type envisaged under the project. This allows the agency to see how the shortlisted consultant would approach and resource an assignment. The agency should note, however, that there are limitations to this request, as the consultant may not demonstrate the same approach to an actual assignment.

A1.13 An important feature of the framework agreement is the ability to incorporate fee rates for experts used, or to agree on mechanisms for establishing fee rates for future experts. While the initial framework agreement lists experts that the executing agency may call upon for the duration of the agreement, the reality is that the framework agreement covers a lengthy period with no guarantee to the consultant of continuous or predictable deployment. More so than for a stand-alone consultancy contract, addition and substitution of experts will, therefore, be inevitable. This can negate some time savings made through the framework agreement structure.

A1.14 Therefore, the executing agency should consider how to add experts into the agreement when needed. One useful approach is to require shortlisted consulting firms to categorize their experts into a limited number of “bands” by expertise and experience. In this way, the executing agency may permit the firm to add new experts into existing bands at existing fee rates to minimize secondary negotiation time. For instance, one category could be “senior international road engineers with 20 or more years of relevant experience.” If the executing agency permits the firm to add a new expert to the list or replaces an existing expert, that new expert will be included at the agreed rate.

A1.15 The executing agency may elect to include mechanisms for inflationary annual increases in fee rates. This may be appropriate for long-term framework agreements. The executing agency may, alternatively, require consultants to commit to a certain fee rate for the duration of the framework agreement. The same approach to inflation must be used for all framework consultants.

E. Evaluation

A1.16 A key aim of framework agreements is to establish a cost mechanism for use at call-off stage. As the precise consultancy services carried out under these agreements is only determined at call-off stage, it is generally not practical to incorporate price into the evaluation process for the framework agreement itself. The quality- and cost-based selection method is not generally used and executing agencies usually procure framework agreements for consultancy firms using the quality-based selection (QBS) method, where the quality of the consultants is the sole determinant for the procurement of the agreement. Financial proposals will, however, still be required from the shortlisted consultants, which will detail the fee rates of the named experts. The executing agency opens the financial proposals of all firms with which the agency intends to enter framework agreements and negotiates.[2]

F. Contract Negotiations

A1.17 The negotiation process follows that set out in the *Guidance Note on Consulting Services Administered by ADB Borrowers*. As the selection method for the framework agreement is EOIs for a one-stage process and QBS for a two-stage process, there is no financial element in the evaluation. For agreements to be effective where the executing agency envisages secondary competition, it is important that none of the framework agreement consultants propose fee rates that severely restrict their chances of future success. Part of the negotiation process should be to persuade bidders to keep their expert fee rates competitive. The executing agency reserves the right to dialogue or negotiate the fee rates proposed by the highest-ranked bidders because, if their fee rates are excessive, they may

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[2] This happens in typical “two-envelope” submissions under QBS, when candidates submit technical and financial proposals at the same time in separate sealed envelopes. However, in some cases, the executing agency and ADB may agree to request submission of technical proposals only under QBS, and subsequently request the firm receiving the highest technical score to submit a financial proposal to negotiate.

have limited opportunities to succeed in secondary competition against other high-quality consultants with lower fee rates. In any such dialogue, the executing agency must not reveal the actual proposed fee rates of the other highest-ranked bidders, but should explain if the bidder in question is significantly more expensive than average. The executing agency should reserve the right to terminate negotiations with any bidder with which it cannot reach agreement, including on this point.

A1.18 Where there is to be secondary competition, the executing agency should minimize negotiations on framework agreement terms, because if different consultants agree to different terms (e.g., liability caps), this may unduly disadvantage the secondary competition.

Appendix 2: Procurement Process for Call-Offs Where Secondary Competition Is Required

A2.1 The detailed procedures for procurement of a framework agreement are similar to those set out by the Asian Development Bank (ADB) in section IV of the *Guidance Note on Consulting Services Administered by ADB Borrowers.* The following paragraphs focus on the key additional considerations when using a call-off.

A. Establish the Scope and Competence of the Framework Agreement

A2.2 Before starting the call-off process, the executing agency must first establish that the consultancy services required are within the geographical and technical scope of the framework agreement. It should also satisfy itself that there is sufficient interest and technical competence from within the existing framework agreement consultants to hold meaningful competition. If not, the agency must procure the contract outside of the framework.

B. Shortlisting and Request for Proposals

A2.3 There is no requirement to advertise for call-offs or otherwise seek new expressions of interest (EOIs), as the framework agreement constitutes a pre-selected list of consultants. The executing agency establishes the shortlist using one of the methods described in para. 3.11. The request for proposals process follows that set out in the *Guidance Note on Consulting Services Administered by ADB Borrowers*, in which the agency invites each of the framework agreement consultants to submit proposals. As the consultant has already prepared an EOI based on the generic terms of reference (TOR) and as expert lists are already in place, this reduces the period for submission to 15 days. Assignment-specific TOR must be prepared for each call-off, rather than the generic TOR that was applied at the framework level.

C. Evaluation

A2.4 The evaluation process should follow the *Guidance Note on Consulting Services Administered by ADB Borrowers*. Evaluation of call-offs will generally be on the basis of quality- and cost-based selection, consisting of an evaluation of the technical proposals followed by evaluation of the financial proposals, and then computing a combined final score for each bidder, with applicable weightings. Firms are required to prepare their proposals based on the list of experts and may offer substitute experts if necessary. The executing agency then negotiates the fee rates of the experts based on the agreed rates as set out in the framework agreement. The executing agency should generally resist attempts by the consultant to increase fee rates during the agreement.

Framework Agreements for Consulting Services

Guidance Note on Procurement

A framework agreement is a procurement modality that can yield value for money and time savings where a significant volume of related consultancy services are envisaged. This guidance note sets out the advantages and limitations of the framework agreement structure and the key factors to consider when establishing a framework agreement. It also explains how an executing agency may establish its own framework agreement, or draw off from one established by ADB, and how single contracts or "call-offs" from a framework agreement are made and administered.

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Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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