

Selection and engagement of consultants

The use of consultants is a large and important part of the activities of the EBRD and its clients. In this, the Bank is expected to exercise due diligence to ensure transparency in procurement, economic use of resources and high quality of output from the consultants. The Bank has various sources to finance consultancy services, namely the Bank's consultancy budget, technical co-operation funds managed by the Bank, and loan proceeds. Selection and engagement of consultants from loan proceeds is the direct responsibility of the EBRD's borrowers. However, the Bank and its clients often require consultancy services in the course of preparation of investment projects or their implementation.

Health and Safety

Please note that there may be health and safety implications in relation to the project you are engaged to work on. Some countries require pre-travel approval and there are some training requirements for these countries. Please contact the Health & Safety Unit for advice and information.

Overview of the selection procedures

Basic selection process

The process for engagement of consultants involves the following steps:

1. Based on the underlying needs and objectives, preparing terms of reference (TORs), an estimated budget for the proposed assignment and determining the selection procedure to be followed
2. Identifying consultants that are qualified to perform the required services and preparing a short list of qualified firms
3. Inviting proposals from the short-listed firms
4. Evaluating and comparing capabilities and proposals and selecting the preferred consultants
5. Negotiating a contract with the selected consultant
6. Contract administration

For smaller amounts and for engagement of individuals, simpler procedures are followed for efficiency reasons.

Costs threshold for selection procedures

The selection procedure to be used when engaging consultants is determined with reference to the expected cost of the assignment. See tables below for the normal threshold amounts and corresponding procedures.

| Selection by direct agreement | Selection from a short list | Selection by evaluation of written proposals |
|---|--|---|
| Estimated cost: less than €0,000. | Estimated cost: €0,000 and above with individuals, €0,000 or more and less than €200,000 with firms | Estimated cost: €200,000 or more with firms |
| Selection is made directly, without a requirement to prepare a short list, and a contract is negotiated with the selected consultant. | (i) a short list of qualified consultants is prepared (after internet notice if TC Funds are used)(ii) selection is made based on an evaluation of the short-listed consultants without a requirement to submit written proposals (iii) contract is negotiated with the selected consultant | (i) publication of request for expressions of interest (ii) short-listing (minimum 3 and maximum 6 qualified consultants) based on expressions of interest (iii) invitation to submit written proposals (iv) proposal evaluation |

Procurement Rules

Procurement Policies and Rules (PP&R)

The basic rules for engagement of consultants are set out in Chapter 5 of the Bank's PP&R. These apply to all Bank financed operations as indicated in section 5.1 of the PP&R. For consultancy contracts financed with TC funds, the procedures set out shall be followed to the extent that they do not conflict with agreements reached with the donors of such funds (see below). The main procedural requirements of the PP&R are reflected in the tables above.

Rules of TC Funds Donors

Donors often put restrictions on the use of TC funds that are reflected in corresponding agreements with the Bank. In general, the restrictions occur when TC funds are tied, for instance in some cases only consultants who are nationals of the donor country can be engaged. The main effect of this is to cancel the provision of section 5.4 of the PP&R requiring that "short lists should normally comprise a wide geographic spread of consultants, including, wherever possible at least one qualified consultant from one of the Bank's countries of operations and normally no more than two from any one country".

Certain funds also have prescriptions concerning different selection procedures or for prior approval or reporting.

In most cases the selection of the consultant takes place in an environment of open competition, and the Bank then tries to make available the TC funds that match the consultant nationality. However, there are cases where the consultant selection is restricted to a particular country or region and competitive selection takes place within that country. This happens when the donors of TC funds have been identified at the outset of the assignment and the EBRD is confident that the required expertise is available in the donor's country.

Particular EU Rules

Certain rules and procedures must be followed when consultants are engaged by the EBRD or its clients using funding provided by the EU. Tendering, contracting and contract management has to be done, in principal, in accordance with the EU rules and procedures, as well as the general financial regulations of the Commission as agreed with the Bank. These are different from the Bank's PP&R, although similar in many respects.

The Bank normally selects consultants based on technical merit only, but in some cases selection can be on technical and financial proposals. When this is the case the weighting of 80 per cent for technical proposal and 20 per cent for financial proposal is used.

The Bank is anxious to satisfy itself, its members and its clients, as well as TC fund donors, that funds entrusted to it are managed in a responsible way - with due consideration of economy, efficiency, transparency and accountability. For this reason, certain steps in the process of selection and engagement of consultants need to be documented and approved. Assignments must not be divided with the intent of getting below one of the cost thresholds for selection procedures. In addition, the first of a series of repetitive assignments shall be subject to selection procedures appropriate for the forecast accumulative value of these assignments. Therefore, as soon as it becomes apparent that a consultant may be engaged for a similar assignment, the more thorough procedures appropriate to the higher threshold should be used. Failure to observe this at the outset would require it to be remedied by opening up the selection for later assignments.

Principles and policies

Rules of the Bank and the clients

Distribution of tasks – Who selects and engages the Consultant

The party for the engagement largely depends on whether the Bank or one of its clients is the primary beneficiary of the consultancy services. It is the beneficiary of the services who should conclude the contract with the consultant. There are two main possibilities:

- the EBRD would engage the consultants for services under its responsibility for covering its own needs (thus essentially for project appraisal, in particular legal, financial, technical and commercial due diligence, as well as for some early work with project structuring and for monitoring implementation)
- the client would engage the consultants for services under its responsibility and covering the client's needs (thus for much of the project preparation such as feasibility and design studies or preparation of business plans, and for all the implementation, including early preparation of tender documents, tender evaluation and contract supervision)

In the first of the above cases, the Bank's staff are responsible for the selection, contracting and supervision of the consultants. In the second case, the client carries this responsibility with the Operations Leader in the Bank, supported by the EBRD's Consultancy Services Unit (CSU), having the same responsibility as in other cases of procurement, especially for ensuring that the client follows proper procedures.

It is where the responsibility exercise belongs, and not the source of funding or the stage in the projects cycle, which determines whether the Bank or its clients would engage the consultant for a particular set of tasks. This also applies to the case where the Bank may require a client to engage a consultant to assist in the performance of certain tasks, such as procurement, work supervision or reporting, and to do this when the Bank is providing financing from TC funds for the purpose of paying consultancy services. In the latter case, there is a particular situation that has to be considered. The Bank, as the source of financing of an investment project, has an interest in keeping a distance from activities which are the responsibility of the client, as discussed above. In an operation that is considered as "public sector" for procurement purposes, when a client engages consultants financed from the proceeds of a loan, the Bank would then only give it "no objection". However, the Bank as an administrator of TC funds has to exercise close control or therefore explicitly approve (or not) the various decisions taken by the client when engaging a consultant.

The EBRD also assists the client when the client is not sufficiently qualified and experienced to exercise its responsibilities for engagement of consultants. The Bank may also provide training to the client in the appropriate selection process. However, the client should make the actual selection. Such assistance is based on an explicit waiver of the Bank's liability.

Conflicts of interest

The independence and integrity of a consultant is a key condition for receiving full, fair and unbiased advice or assistance. Conflicts of interest must therefore be avoided. Typical cases of conflict of interest are when a consultant is engaged and supervised by one party but is supposed to work for the benefit of another party, when a consultant is required to serve two masters, or when a consultant is also a potential contractor or supplier. Generally, in

case of a conflict of interest, the consultant concerned should not be considered for an assignment, or the situation leading to a conflict of interest should be resolved.

If the EBRD engages a consultant for work that would normally be under the responsibility of the client, there is a risk that the Bank's liability may become engaged or that the Bank may otherwise suffer. A classic excuse by a client would be that "a consultant selected by the Bank gave us bad advice, so now we are not able to generate revenues needed to reimburse the loan". There would be another inappropriate conflict of interest if a consultant is engaged under one contract to both serve the Bank (for example, by carrying out due diligence on a company) and its client (for example, by drafting a business plan for the same company). A further case to avoid is when the Bank would engage a consultant for, say, due diligence on a client and that same consultant is already engaged by the client as auditor or advisor. For consultants engaged, the EBRD's conditions of contract would normally prevent conflicts of interest from appearing. If they do, it may be sufficient reason for terminating the contract.

Eligibility restrictions

The Bank's PP&R contain certain general eligibility restrictions, which apply to the engagement of consultants. Further limitations on eligibility may appear in individual cases as a consequence of conflicts of interest. The PP&R explicitly restrict the engagement of an affiliate of a client. As stated in Paragraph 5.5 of the PP&R: "No affiliate of the client shall be included on the short list unless it can be demonstrated that there is not a significant degree of common ownership, influence or control between the client and the affiliate and that the affiliate would not be placed in a position where its judgement in the execution of the assignment may be biased". Normally, a consultant working for a client must not be engaged by the Bank to work on the same project. The PP&R also restrict a company from appearing, directly or indirectly, both as a consultant and as a supplier or a contractor for the same project. Paragraph 3.28 of the PP& R states: "Where a firm, its affiliates or parent company, in addition to a consultant, also has the capability to manufacture or supply goods or to construct work, that firm, its affiliates or parent company normally cannot be a supplier of goods or work on a project for which it provides consultancy services, unless it can be demonstrated that there is not a significant degree of common ownership, influence or control..." .

Nationality restriction

Except for most donor-funded assignments, the EBRD places no restrictions on the nationality of consultants. Engagement of consultants on contracts financed whole or in part from the Bank's budget or from the proceeds of a loan or other facility provided by the Bank to its client (in operations, which are classified as public sector for procurement purposes) must therefore be done without preference for or exclusion of consultants of any other particular nationality. (The requirement for a short list normally not to have any more than two consultants from one and the same country is not a nationality restriction, but a measure to ensure that an appropriate range of approaches, methods and technologies are considered during selection.)

On the other hand, most TC funds have restrictions on the nationality of consultants (tied funds). A consultant first engaged on financing from such tied funds normally cannot continue working under a contract financed by a loan to a client (with the exception of operations that are classified as private sector for procurement purposes), as these two cases systematically require open procurement without nationality restrictions.

How to participate in the Bank's consulting opportunities

The EBRD does not have a central register of consultants. Opportunities for consultant contracts with the Bank are published in the form of procurement notices in the Bank's publication *Procurement Opportunities*, which is available free of charge on the Bank's website www.ebrd.com. This publication provides information on procurement opportunities at all stages of Bank projects, from the point that a potential operation has been identified by the Bank, through to its approval and implementation. If the consultants believe they, or their organisation, are qualified to undertake any of these contracts they should express interest by following the instructions in the appropriate notice.

Opportunities for contracts less than €200,000 are posted directly on the website following approval by the Bank. Projects are reviewed weekly and notification of Bank approved projects is posted on the website as soon as possible thereafter. If a consultant is interested in such contracts, (s)he should respond to the separate short notice on the website under "Technical Cooperation Projects", where more detailed instructions are also located.

Strategy for getting contracts

Consultants should consider the following:

- Are the consultant's product or services needed?
- Where are the opportunities?
- Be focused and selective as this provides a comparative advantage.
- Monitor the EBRD's website page "Procurement Opportunities".
- Contact the client agency and compete. Adhere to the selection process, submit responsive proposals.
- Explore sub-contracting opportunities, joint venture opportunities and local consultant participation.
- Identify the opportunity at an early stage.
- Request additional information if needed and submit expressions of interest.
- Be clear and concise.
- Acknowledge receipt of letter for invitation and proposals, confirm whether or not a proposal will be submitted, prepare a proposal (after clarification, if necessary), ensure the form and contents meet the requirements
- Make sure that the submission is made within the deadline.

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- Do not interfere with the evaluation process and be ready to negotiate and sign the contract and start working.
- If unsuccessful, ask for a brief explanation as to why.

Consultants should contact the Consultancy Services Unit at the EBRD for any additional information on how to participate in the Bank's selection and engagement processes: telephone +44 20 7338 6124, fax +44 20 7338 7451, e-mail: [**macitd@ebrd.com**](mailto:macitd@ebrd.com).

