

SECTION 3. INSTRUCTIONS TO CONSULTANTS

1. **Selection method and Applicable Policy** - ADB selects a Consultant from those that submit a Proposal in response to this Request for Proposals (RFP), in accordance with the selection method and Applicable Policy specified in the Data Sheet.
2. **Basis for contract** - Interested and eligible Consultants are invited to submit proposals for the Services. The Proposal serves as a basis for Contract negotiations.
3. **Site visit and pre-proposal conference** - Consultants should familiarize themselves with local conditions for the Services and consider them in preparing proposals, including attending a pre-proposal conference if one is specified in the Data Sheet. Attending any such pre-proposal conference is optional and is at the Consultants' expense. Minutes of any such pre-proposal conference will be shared with Consultants prior to the deadline for submitting proposals. To obtain first-hand information, Consultants may visit the Executing Agency (EA) before submitting a proposal. Consultants should contact the EA's representative named in the Data Sheet to arrange for their visit. Consultants should advise the EA well before the visit to allow the EA time to arrange for it.
4. **Cost of preparation of Proposal** - The Consultant shall bear all costs associated with the preparation and submission of its Proposal, and with Contract negotiations if selected, and ADB shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. ADB is not bound to accept any proposal and reserves the right to cancel the selection process at any time prior to Contract award, without thereby incurring any liability to the Consultant.
5. **Counterpart support** - Where specified in the Data Sheet and at no cost to the Consultant, ADB and/or an involved EA or implementing agency (IA) provides the counterpart support for contract implementation specified in the Data Sheet.
6. **Fair competition** - Fairness and transparency in the recruitment process require that Consultants, including any sub-consultants, competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, ADB shall endeavor to make available to all Consultants together with the RFP, all information that would have otherwise given a Consultant or sub-consultant a competitive advantage.
7. **Conflict of interest** - The Consultant, including any sub-consultants and all nominated personnel, is required to provide professional, objective, and impartial advice, at all times holding ADB's interests paramount, strictly avoiding conflicts with other assignments or its own interests, and acting without any consideration for future work.

ADB considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations and that such conflict of interest may contribute to or constitute a prohibited practice under ADB's [Anticorruption Policy \(1998, as amended to date\)](#). In pursuance of the Anticorruption Policy's requirement that borrowers (including beneficiaries of ADB-financed activity) as well as consultants under ADB-financed, -administered, or -supported activities observe the highest standard of ethics, ADB will take appropriate actions to manage such conflicts of interest or may reject

a proposal for award if it determines that a conflict of interest has flawed the integrity of any consultant selection process.

- 8. Conflicting activities** - Consultants, including any sub-consultants and all nominated personnel, are not recruited under circumstances including, but not limited to, the following:
- (a) Conflict between consulting activities and procurement of goods, works, or services: A Consultant, any sub-consultant, and/or a nominated personnel that has been engaged by ADB or a Beneficiary to provide goods, works, or nonconsulting services for a project, shall be disqualified from providing consulting services related to those goods, works, or nonconsulting services. Conversely, a Consultant, sub-consultant, and/or a nominated personnel hired to provide consulting services for the preparation or implementation of a project shall be disqualified from subsequently providing goods, works, or nonconsulting services resulting from or directly related to the consulting services for such preparation or implementation.
 - (b) Conflict among consulting assignments: A Consultant, any sub-consultant, and/or a nominated personnel shall not be hired for any assignment that, by its nature, may be in conflict with another of their assignments. As an example, a Consultant, sub-consultant, or nominated personnel hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent technical assessment for the same project. Consultants, sub-consultants, and/or nominated personnel assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of, such assets. Similarly, Consultants, sub-consultants, and/or their nominated personnel hired to prepare terms of reference (TOR) for an assignment shall not be hired for the assignment in question.
 - (c) Relationship with ADB or Beneficiary's personnel: A Consultant, any sub-consultant, and/or a nominated personnel that has a financial or familial relationship with an ADB staff member/consultant/contractor or with a Beneficiary's personnel who are directly or indirectly involved in any part of (a) the preparation of the TOR of the contract, (b) the recruitment process for such contract, and/or (c) supervision of such contract may not be awarded the Contract, unless the conflict stemming from this relationship has been addressed in a manner acceptable to ADB throughout the recruitment process and the execution of the Contract.
- 9. Disclosure of conflict of interest** - The Consultant, including any sub-consultants and/or nominated personnel, has an obligation to disclose to ADB any situation of actual, potential, or perceived conflict without delay. This obligation commences upon being invited to submit a Proposal for this RFP. Failure to disclose such situations may lead to the disqualification of the Consultant, the termination of its Contract, and/or imposition of remedial actions by ADB.
- 10. Disqualification of the Consultant** - ADB may disqualify a Consultant at any time prior to Contract award if it determines that the Consultant, including any sub-consultants and/or nominated personnel, has violated the conflict of interest provisions of this RFP, ADB's Anticorruption Policy (1998, as amended to date), [ADB's Integrity Principles and Guidelines \(2015, as amended from time to time\)](#), and/or ADB's Standards of Conduct (available in Appendix E of Section 8 of this RFP).

- 11. Current and former employees of the Beneficiary** - To avoid conflict of interest and ensure appropriate use of funds, current public sector employees of a government department or agency of the Beneficiary may only work as experts under the Services if: (i) they are on leave of absence and are duly authorized to work under an ADB consulting contract, (ii) they are not being recruited to work with the agency they were working for immediately¹ before going on leave, and (iii) their employment would not create a conflict of interest.

To avoid conflict of interest and ensure appropriate use of funds, former public sector employees of a government department or agency of the Beneficiary (including former employees of the EA and any involved IAs) may only work as experts under the Services if: (i) they are not being recruited to work with the agency they were working for immediately¹ before separating from service, and (ii) their employment would not create a conflict of interest.

To determine whether a conflict of interest exists, ADB's written approval must be sought before any of these current or former public sector employees of a government department or agency of the Beneficiary are recruited. A letter from the candidate's agency may be required to certify that the conflict of interest is mitigated. The Consultant invited to Contract negotiations provides ADB with the evidence of such certification prior to the commencement of Contract negotiations.

- 12. Anticorruption** - ADB requires all ADB staff, consultants, and sub-consultants (including their respective officers, directors, employees, and personnel) under ADB-financed, -administered, or -supported activity and beneficiaries of ADB-financed activities (including the EA and any IAs) to observe the highest standard of ethics during selection and in contract execution in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy,
- (a) ADB will reject a proposal for award if it determines that the Consultant recommended for award, or any of its officers, directors, employees, personnel, or sub-consultants, has directly, or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, or other integrity violations in competing for the Contract;
 - (b) ADB will cancel the portion of the financing allocated to the Contract if it determines that representatives of the Beneficiary of ADB financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, or other integrity violations, during consultant selection or contract execution, without the Beneficiary having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by failing to inform ADB in a timely manner at the time they became aware of the integrity violation(s);
 - (c) ADB may impose remedial actions against a Consultant or its successor at any time, in accordance with ADB's Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period, such Consultant or successor from participating in ADB-financed, -administered, or -supported activities, or to benefit from an ADB-financed, -administered, or -supported

¹ ADB has the authority to interpret the meaning of "immediately" in this clause, but generally applies the principle that the individual should have been separated from the agency for at least one year before they can be proposed as an expert to provide Services to that agency.

contract, financially or otherwise, if it at any time determines that the Consultant or successor has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, or other integrity violations, in competing for, or in executing, an ADB-financed, -administered, or -supported contract;

- (d) ADB requires Consultants to permit, and shall cause its sub-consultants and nominated personnel to permit, ADB or its representative to inspect their site, assets, accounts, records, and any other documents relating to this selection process, their proposals, and to the execution of the Contract, in case of award, and to have them audited by auditors ADB appoints; and
- (e) The Consultant and any sub-consultants, including their authorized representative, key officers and directors, and all nominated personnel, are required to cooperate fully in any investigation when requested by ADB to do so. As determined on a case-by-case basis by ADB, such cooperation is set out in detail in the Integrity Principles and Guidelines.

The Consultant shall ensure that, in its contracts with its nominated personnel and sub-consultants, such personnel and sub-consultants similarly are required to cooperate fully in any investigation when requested by ADB to do so. This obligation also applies to the Consultant's and any sub-consultant's authorized representatives and key officers and directors. The Consultant understands that failing to fulfill this obligation may constitute obstructive practice that may result in debarment and/or contract termination and that ADB's right of inspection relating to the performance of the contract, if awarded, shall survive termination and/or expiration of the Contract.

- 13. Eligibility** - A Consultant (including any sub-consultant entities) must be a legal entity constituted, incorporated, or registered in an ADB Member and must operate in conformity with the laws of that Member.

Government-owned enterprises or institutions in the Beneficiary's country shall be eligible if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) that they are not dependent agencies of the Beneficiary.

Nominated personnel for this assignment must be citizens of an eligible country. Eligible countries for nominated personnel are defined in the Data Sheet, based on provisions of the Applicable Policy.

Consultants, including any sub-consultants and all nominated personnel, must not be on ADB's complete sanction or suspension lists due to integrity violations, cross debarment, or poor performance. Consultants, including sub-consultants and nominated personnel, may also be ineligible in cases where ADB complies with decisions of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations that prohibit any import of goods from, or payments to, a particular country, person, or entity in respect of goods or services originating in that country; or prohibit payments to a particular person or entity for particular goods or services.

- 14. Fees paid to agents or representatives** - Consultants must present information on fees, gratuities, rebates, gifts, commissions, and/or other payments, paid or to be paid to agents

and representatives relating to their Proposal and to the execution of the Services, as requested in the proposal submission letter.

- 15. Validity and extension of validity** - The Data Sheet indicates how long Consultants' proposals must remain valid after the submission date. During this period, the Consultant shall maintain its original Proposal without any change, including the availability of any sub-consultants and nominated personnel, proposed rates, and the total price. If it is established that any sub-consultant or key expert nominated in the Consultant's Proposal was not available at the time of Proposal submission or was included in the Proposal without the sub-consultant's or key expert's consent, the Proposal shall be disqualified and rejected for further evaluation, and may result in the imposition of remedial actions in accordance with Paragraph 12.

ADB will attempt to complete proposal evaluation and Contract negotiations within the proposal validity period. ADB may request through its Consultant Management System (CMS) for Consultants that submitted proposals prior to the submission deadline to extend their proposal validity periods. If the Consultant agrees to extend the validity of its Proposal, it shall be done without any change in the original Proposal. The Consultant has the right to refuse to extend the validity of its Proposal, in which case the Proposal will be considered withdrawn.

If any of the Consultant's nominated personnel become unavailable for an extended validity period, the Consultant shall provide a replacement expert with equal or better qualifications and experience than those of the originally proposed expert. The Proposal may be rejected if the Consultant fails to provide a replacement expert with equal or better qualifications.

- 16. Registration in the ADB Consultant Management System** - Consultants (including sub-consultants) must register in the CMS before the deadline for submitting proposals. Nominated personnel must register in the CMS before Contract negotiations but are strongly encouraged to register before the deadline for submitting proposals to expedite negotiations. Consultants with deactivated CMS profiles need to reactivate the registration by logging in.
- 17. Clarification of this Request for Proposal(s) (RFP)** - Consultants may request clarification of any contents of this RFP no later than the date indicated in the Data Sheet. Any request for clarification must be sent through CMS. ADB will respond through CMS. Consultants may access responses through CMS. Responses will not identify the source of the inquiry, which may include editing the inquiry to remove identifying details. Responses are disclosed to all Consultants except in cases where the inquiry relates to confidential or commercially privileged information. CMS access issues shall be referred to CMS Help (cmshelp@adb.org). Should ADB decide to amend the RFP as a result of a clarification, it will do so following the procedure under Paragraph 18. ADB will not discuss requests to negotiate conditions of contract during the clarification phase.
- 18. Amendment of RFP** - At any time before the deadline for submitting proposals, ADB may amend the RFP with an addendum in CMS. Any addenda issued in CMS are binding on the Consultants. To give Consultants reasonable time to incorporate addenda in their proposals, ADB may, if the addendum is substantial, extend the deadline for submitting proposals. ADB can, in any event, extend proposal deadlines at its discretion.

19. **Clarification of proposals** - From ADB's receipt of the proposals to award of Contract, ADB normally does not request the Consultant to clarify any matter about its Proposal. In exceptional cases, ADB may request minor clarifications or corrections of obvious errors or inconsistencies.
20. **Language** - The Proposal and all related correspondence between the Consultants and ADB shall be in English.
21. **One proposal** - A Consultant shall only submit one Proposal. However, a particular sub-consultant or nominated personnel may be proposed in more than one proposal subject to the restriction in Paragraph 23(d). If a Consultant participates in more than one proposal, all proposals in which that Consultant appears shall be disqualified.
22. **Compliance with RFP** - A Consultant whose Proposal does not meet RFP requirements may be disqualified, may fail the minimum qualifying technical score, or may have any offer of Contract negotiations conditioned on its submission of missing requirements or rectification of noncomplying requirements.
23. **Subcontracting and joint ventures (JVs)** - While preparing their Proposal, Consultants shall attend to the following:
 - (a) Subject to the restriction of Paragraph 23(d), a Consultant may supplement its expertise for the Services by
 - (i) subcontracting eligible entities or individual experts as sub-consultants, with the Consultant as the lead entity and solely liable under the Contract; and/or
 - (ii) forming a JV with eligible entities, or adding an eligible partner to its existing JV, with the partners of the JV jointly and severally liable under the Contract.

However, a Consultant cannot subcontract or form a JV with any entity that comprises another Consultant (i.e., another lead entity or JV partner invited to this RFP), in line with Paragraph 21.

- (b) If the Consultant constitutes a JV, the Consultant shall submit (i) a copy of the JV agreement and (ii) a power of attorney (executed by all partners) that authorizes the designated lead partner of the JV to act for the JV and to legally bind such JV in any contractual or similar documentation. The JV agreement and JV power of attorney are attached to the Consultant's Proposal. All partners in a JV sign the Proposal unless the lead partner is nominated to do so in the power of attorney. ADB will only correspond with the designated lead partner of the JV.
- (c) Following Proposal submission, the Consultant shall not drop a JV partner without ADB's prior consent, which is given only in exceptional circumstances, e.g., when a JV partner is sanctioned or has been declared bankrupt.
- (d) Full-time employees of a Consultant are ineligible to participate as sub-consultants or nominated personnel of another Consultant.
- (e) The Consultant shall not propose to subcontract the whole of the Services.

- 24. Proof of legal status** - Prior to the deadline for submitting proposals, the Consultant must update or confirm in CMS its legal status as necessary. Proof of legal status may include certificate of incorporation (or registration, for a partnership or JV) or any document required by the laws of the applicable country establishing the Consultant's status to operate as a legal entity.
- 25. Former ADB staff** - Consultants may propose former ADB staff in their nominated personnel if the former staff:
- (a) has separated from ADB for at least 12 months;
 - (b) has not been directly involved in matters related to the Services;
 - (c) has no performance issues and has no disciplinary action during previous service with ADB; and
 - (d) has no close relatives (other than spouse) as current ADB staff.

Prior to commencement of Contract negotiations, ADB will not entertain questions from Consultants on whether a former ADB staff member is eligible to be included in their nominated personnel.

Former executive directors and alternate executive directors of the ADB Board of Directors may not be proposed as nominated personnel less than one year after their effective termination dates (except when waived by the President).

Former vice presidents may not be proposed as nominated personnel less than three years after their effective termination dates (except when waived by the President).

- 26. Spouses of current ADB staff** - Consultants may propose spouses of current ADB staff in their nominated personnel if
- (a) the proposed position is not in the same division or unit as their staff spouse, or staff spouse would not supervise the work of his/her spouse;
 - (b) the proposed position could not be perceived to involve an actual or potential conflict of interest by the ADB staff or spouse;
 - (c) the spouse is not a spouse of the President, Vice President, Managing Director General, or Head of an office or department, except with special approval from the ADB President. If the candidate is the current President's spouse, the ranking vice president may approve the recruitment.
- 27. Close relatives of ADB consultants** - Close relatives of consultant personnel currently engaged by ADB may not be proposed as nominated personnel if there is actual, potential, or perceived conflict of interest.
- 28. Clearance** - Engaging former ADB staff and spouses of current ADB staff requires ADB's clearance prior to the commencement of Contract negotiations.

- 29. Disqualification of nominated personnel** - A nominated expert receives a zero rating if the expert
- (a) is not a citizen of an eligible country as described in Paragraph 13, as determined from the expert's curriculum vitae (CV); or
 - (b) is proposed for a national position but is not a citizen or a legal resident (with right to work) of that country; or
 - (c) failed to state citizenship in his/her CV; or
 - (d) his/her CV is not certified and signed in line with the CV template and submission requirements specified in CMS for this RFP process; or
 - (e) is a current or former employee of the EA, IA, or other entity of the Beneficiary involved in the Services and would not meet the conditions specified in Paragraph 11; or
 - (f) is ineligible under Paragraph 13; or
 - (g) has failed to disclose any situation of actual, potential, or perceived conflict of interest; sanctions; or other information that would make the expert ineligible under Paragraph 13; or
 - (h) is a close relative (other than spouse) of a current ADB staff member.
- 30. Technical aspect of the Proposal** - Consultants are required to submit the technical aspect of their Proposal in line with the submission requirements specified in CMS for this RFP process and with the required minimum personnel inputs specified in the Data Sheet. Consultants should note that certain text boxes have character limits and CMS will prevent entries in excess of the character limit.
- Unless indicated otherwise, alternative experts for a designated position may not be proposed. Only one CV may be submitted for each position.
- 31. Financial aspect of the Proposal** - Consultants are required to submit the financial aspect of their Proposal with the expenditure items specified in the Data Sheet, in line with the submission requirements specified in CMS for this RFP process. All activities and items described in the technical aspect of the Proposal must be priced. For non-remuneration (e.g., out-of-pocket) related omissions, any activities or items described in the technical aspect of the Proposal but not priced are assumed to be included in the prices of other activities or items in the financial aspect of the Proposal. For remuneration related costs, the minimum number of person months specified in the Data Sheet for international and national experts must be provided in the personnel schedule specified in CMS.
- 32. Contract type** - The Data Sheet indicates the form of contract for this assignment. It may be lump sum, time-based, fixed rate, performance-based, or others.
- 33. Expected deliverables** - The Data Sheet indicates the expected deliverables for the Services. The TOR describes these deliverables.

- 34. Maximum or estimated budget** - The Data Sheet indicates whether the budget available for the Services is “estimated” or “maximum”, which is inclusive of any provisional sums and contingency specified in the Data Sheet. The financial aspect of a Consultant’s Proposal, inclusive of the specified provisional sums and contingency, is allowed to exceed the budget figure if the figure is “estimated”. The financial aspect of a Consultant’s Proposal is not allowed to exceed the budget figure if the figure is “maximum”—CMS will not allow the Consultant to submit its Proposal in this case. The budget figure and other cost items specified in the Data Sheet are quoted in US Dollars.
- 35. Currencies** - Consultants may express their prices for undertaking the Services in any of the following eight currencies: (i) AUD (Australian Dollar), (ii) CAD (Canadian Dollar), (iii) EUR (Euro), (iv) GBP (British Pound), (v) JPY (Japanese Yen), (vi) NZD (New Zealand Dollar), (vii) PHP (Philippine Peso), and (viii) USD (US Dollar), singly or in combination provided that the financial aspect of a Consultant’s Proposal includes no more than four (4) currencies inclusive of the US Dollar.
- 36. Exchange rates** - ADB will provide Consultants through CMS the US Dollar equivalent exchange rates for preparing and evaluating the financial aspects of their proposals. The exchange rates will be online 10 days before the deadline for submitting proposals through CMS and will be automatically inserted into the Proposal when applicable.
- 37. Submission of proposals** - The Consultant’s authorized representative electronically signs the proposal submission letter within CMS and submits the Proposal through CMS before the proposal submission deadline indicated in the Data Sheet. The authorization is a written power of attorney accompanying the Proposal or any other form demonstrating that the representative is authorized to sign the Proposal and to negotiate and sign the Contract on behalf of the Consultant. Separate authorizations may be submitted if the representative authorized to sign the Proposal is different from the representative authorized to negotiate and sign the Contract.

Proposals are submitted online through CMS after the exchange rates become available on CMS (see Paragraph 36). CMS will not accept any Proposal after the submission deadline indicated in the Data Sheet, or any extension to this date. Proposals submitted through CMS will be encrypted until the designated opening date. Consultants should be aware that completing the proposal forms and required attachments within CMS may take a significant amount of time and should not be left until the final moments before the deadline. ADB is not liable in cases where a Consultant is unable to submit its Proposal before the deadline because the Consultant left itself insufficient time to resolve issues encountered within CMS.

- 38. Copy of proposal to the Beneficiary** - If the Data Sheet indicates a Beneficiary/ies other than ADB, then ADB may permit the Beneficiary/ies to view the proposals through CMS for information as soon as the proposals are received and opened in CMS.
- 39. Right of the Beneficiary to object to the opening of a Consultant’s Proposal** - Where the Consultant is expected to conduct the Services in an ADB Member for the benefit of one or more Beneficiaries, ADB will submit the longlist of Consultants that have submitted a Proposal through CMS to the relevant Beneficiary/ies for no objection prior to opening the proposals. If a relevant Beneficiary objects to the opening of the Proposal of any Consultant in the longlist, that objection must be supported by adequate documentation and shall be assessed by ADB to determine whether to agree with it. If ADB agrees with the objection, the Consultant’s Proposal will not be opened, will remain encrypted until completion of the

selection, and will be deleted thereafter. In this case, CMS will inform the Consultant that its Proposal was not decrypted because of a justified government objection. Deliberations between ADB and its Beneficiary/ies are confidential and the details of and reasons for such a justified objection shall not be disclosed to the Consultant.

- 40. Opening of Proposals** - ADB opens the Consultant's Proposal through CMS after the deadline for submitting proposals. After the deadline for submitting proposals, proposals submitted remain encrypted in CMS until ADB decides upon the date to decrypt them. Prior to this decryption date (but not after it), ADB may decide at its sole discretion to reissue the RFP. Reissuing may occur to collect additional proposals and/or to reflect modifications to the assignment. Consultants who submitted a Proposal prior to the original deadline will be notified through CMS about any reissuance and new submission deadline. A Proposal submitted through CMS shall remain valid unless the Consultant chooses to withdraw or modify it accordingly. After decryption, ADB shall not reissue the RFP and must either evaluate the proposals decrypted toward a Contract offer or cancel the selection process.
- 41. No influence on evaluation** - From the deadline for submitting proposals to Contract award, the Consultant should not contact ADB on any matter related to its Proposal. ADB will not consider any unsolicited attempt by a Consultant to rectify any error(s) or clarify any matter(s) in its Proposal. Information relating to the evaluation of proposals and award recommendations shall not be disclosed to the Consultants who submitted proposals or to any other party not officially concerned with the process, until the publication of the Contract award information.

Any attempt by Consultants or anyone on behalf of the Consultant to improperly influence ADB in the evaluation of proposals or Contract award decisions may result in the rejection of its Proposal and/or the imposition of remedial actions in accordance with Paragraph 12.

Notwithstanding the above provisions, from the deadline for submitting proposals to Contract award, if a Consultant wishes to contact ADB on any matter related to the selection process, it should do so only in writing.

- 42. Technical evaluation** - The evaluation committee evaluates the decrypted proposals' technical responsiveness to the TOR, assessing general responsiveness in line with Paragraph 22 and then evaluating responsive proposals in line with the summary evaluation criteria in Section 5 of this RFP. Each responsive proposal receives a technical score. A proposal is rejected at this stage if it does not respond to important aspects of the RFP or if it fails to achieve the minimum qualifying technical score, which is 750 points unless otherwise specified in the RFP.
- 43. Notification of technical evaluation results** - After the technical evaluation, ADB notifies Consultants by CMS e-mail the technical assessment of each decrypted proposal, indicating those Consultants whose proposals did not meet the minimum qualifying technical score or were considered non-responsive to the RFP. Only Consultants that scored at or above the minimum qualifying technical score will have their score displayed in the CMS e-mail and will thereby be ranked in order from highest score to lowest. The Consultant with the highest technical score that was considered responsive to the RFP will be invited to negotiate the Contract, provided its evaluated total price is within the maximum budget available for the Services as specified in the Data Sheet.

- 44. Financial evaluation** - ADB reviews the submitted financial aspects of the Consultant's Proposal that will be invited to Contract negotiations to ensure completeness, including if the Consultant has priced all items of their corresponding technical aspects as in the Data Sheet. The evaluated total price (ETP) is then determined. The ETP includes non-competitive components (contingencies and provisional sums). The ETP is converted to US dollars using the exchange rate discussed in Paragraph 36. If the ETP of the Consultant's Proposal is above the maximum budget available for the Services as specified in the Data Sheet, then the Proposal is disqualified and the Consultant with the next highest technical score that was considered responsive to the RFP will be invited to negotiate the Contract, again provided its ETP is within the maximum budget available for the Services.

ADB then reviews the financial details and may seek clarification or request additional information from the Consultant (see Paragraph 47).

- 45. Negotiations** - ADB issues an invitation to Contract negotiations through CMS following its completion of evaluation. This invitation date may differ from, and supersedes, the expected date estimated in the Data Sheet. Negotiations may be held through an in-person or online videoconference meeting at the date and address specified in the invitation, or through correspondence via e-mail and/or the CMS messaging function. The invited Consultant, as a prerequisite for attending, confirms through CMS the availability and CMS registration of all its nominated personnel. The invitation may also specify other necessary requirements for the Consultant to fulfil prior to commencement of negotiations, in line with Paragraph 22. To confirm eligibility, the Consultant, if selected, will be required to submit to ADB copies of all passports or government-issued identification for its nominated personnel prior to or during Contract negotiations, but is strongly encouraged to attach these files to their Proposal to the extent possible to expedite negotiations. Failure to do so may result in ADB initiating negotiations with the next-ranked Consultant. Representatives conducting negotiations for the Consultant must have written authority to negotiate and conclude the Contract.

To ensure rapid mobilization, the Consultant agrees to accept and be bound by the Standard Form of Contract as presented in Section 8 of this Request for Proposal(s) in its entirety. The Consultant should review Section 8 prior to Proposal submission and may raise specific points for negotiation, along with proposed drafting, within the "Comments on the TOR" form of Section 6. Such proposed changes must be restricted to fundamental concerns that, if not addressed, would potentially prevent the Consultant's participation. The Consultant agrees not to introduce any other concerns on Section 8 apart from those raised within its Proposal, if invited to negotiate the Contract. The Consultant also agrees to respond promptly to all requests during negotiations. ADB reserves the right to terminate negotiations and proceed to the next-ranked Consultant if, in the opinion of ADB, the Consultant has requested excessive changes, unreasonably delays the process or if the Consultant proposes additional changes to Section 8 during the negotiations.

- 46. Technical negotiations** - Technical negotiations may discuss the proposed technical approach and methodology, work plan and schedule, organization and personnel, and any Consultant suggestions to improve the TOR and counterpart support. ADB and the Consultant update and finalize the TOR to include any agreed changes or value-adding propositions from the Consultant's Proposal, along with the personnel schedule, work schedule, logistical arrangements, and reporting arrangements. These documents are then incorporated into the Contract as the "scope of services/TOR". Clearly defining the inputs,

deliverables, and counterpart support receives special attention to ensure satisfactory implementation of the Services.

47. **Financial negotiations** - The financial negotiations generally fine-tune the duration of the consultancy inputs. The details of an expert's remuneration and specific unit rates for out-of-pocket expenditures will not generally be negotiated.
48. **Availability of personnel** - Having selected the Consultant by evaluating proposed personnel, ADB expects to negotiate a contract for the personnel nominated in the Proposal. Prior to commencement of Contract negotiations, ADB requires written assurance from the Consultant that its nominated personnel are available and ready to undertake the Services. ADB will not consider personnel substitutions prior to or during Contract negotiations, unless both parties agree that undue delay in the selection process made such substitution unavoidable or for other exceptional reasons such as death or medical incapacity. ADB may also request the invited Consultant to replace any nominated personnel who (i) received a personnel evaluation score below 70% (average); (ii) is deemed unsuitable for a proposed position; or (iii) has received an "unsatisfactory" performance evaluation rating from ADB on another consulting assignment within the last five years.

If ADB requests replacement(s), such replacement(s) shall have a remuneration rate not exceeding the rate proposed for the original expert in the Consultant's Proposal. Any proposed replacement must have equivalent or better qualifications and experience than the original expert. The Consultant must submit the replacement within the time specified in the invitation to negotiate or negotiation correspondence. Failure to meet either of these requirements may result in disqualification.

49. **Conclusion of the negotiations** - Negotiations conclude by finalizing the draft Contract. To complete negotiations, ADB and the Consultant sign the agreed Contract. If negotiations fail, ADB invites the next-ranked, qualifying Consultant to negotiate the Contract.
50. **Award of Contract** - After completing negotiations, ADB awards the Contract to the selected Consultant and notifies the other Consultants who were unsuccessful or whose proposals were considered non-responsive. The selected Consultant is expected to commence Services as specified in the Contract, which may differ from, and supersede, the expected commencement date estimated in the Data Sheet.
51. **Debriefing** - Consultants whose proposals scored at or above the minimum qualifying technical score and that were not awarded the Contract may request an oral debriefing on their proposals from ADB after contract award.
52. **Confidentiality** - Information on the evaluation of proposals and recommendations concerning awards are not disclosed to the Consultants who submitted proposals or to other persons not officially concerned with the process.
53. **CMS security** - CMS uses an advanced encryption solution with industry standard encryption algorithms and key management to encrypt sensitive proposal data.
54. **Access to CMS** - Each Consultant uses a password to log into CMS (see detailed instructions on the CMS log-in page). Two-factor authentication using e-mail verification is also available for added log-in security. Using the username and password of the Consultant's primary contact or authorized representative, the Consultant has access to its

own registration profile and proposals, in addition to the data and information provided by ADB to all consultants. The Consultant does not have access to any other consultant's registration profile and proposals. The Consultant takes responsibility to protect its password. ADB is not liable for any loss of data and information or any cost or damage resulting from such loss due to an unsecured password.

- 55. System downtime** - Consultants should be aware that, like any IT system, CMS may occasionally require downtime for regularly scheduled maintenance and may encounter technical difficulties or malfunctions in ADB's server that hosts it. Periods of scheduled downtime for maintenance are announced on the CMS home page so that Consultants can plan their proposal preparation and submission accordingly. When technical difficulties or malfunctions occur, ADB takes immediate measures to restore the system and reduce possible delays in the selection process. If the problems cannot be overcome quickly, ADB implements a manual system and informs the Consultants with detailed instructions in order to continue the selection process. ADB is not liable for any loss or damage claimed by any party due to these technical difficulties or malfunctions.
- 56. Procurement-related complaints** - The procedures for making a procurement-related complaint are set out in the Applicable Policy. In summary, the Consultant shall submit its complaint using the form to this effect available on the ADB website with all required information included: <https://www.adb.org/forms/complaints>.