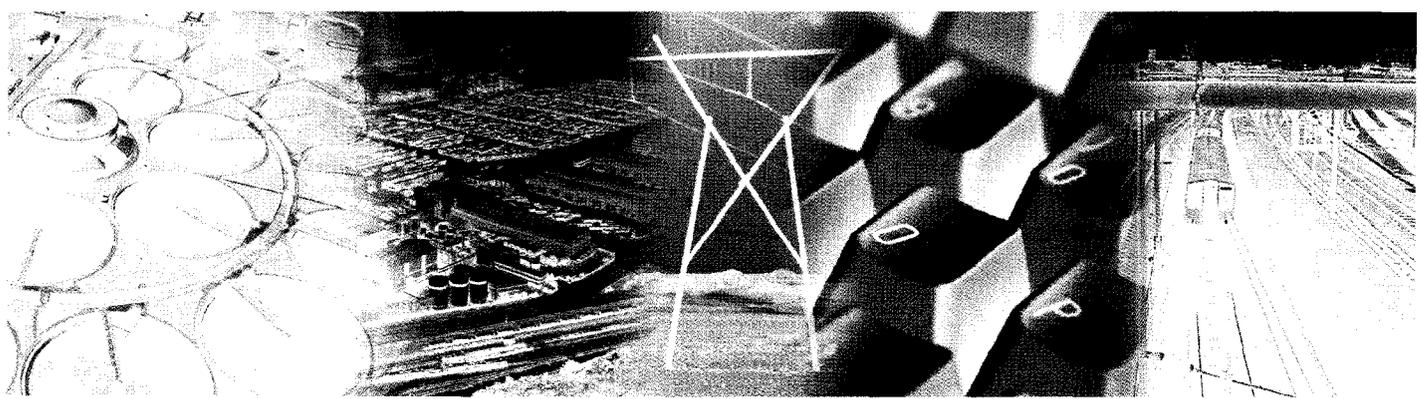


Toolkit:

A guide for hiring and managing advisors for private participation in infrastructure



How to select and manage PPI advisors



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Toolkit: A Guide to Hiring and Managing Advisors for Private Participation in Infrastructure

For questions about this Toolkit or information about ordering more copies, please contact The Public-Private Infrastructure Advisory Facility by email at info@ppiaf.org

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7. Selecting advisors

Outline of this Module

What this Module does:

The Module presents the competitive tendering process and alternative approaches to selecting advisors. It describes the steps that need to be taken in order to implement an effective process, including how to advertise, to evaluate proposals and finalize contracts. It also describes the circumstances when other approaches may be appropriate.

Who should read this Module:

This Module should be read by officials who will be involved in, and perhaps responsible for, selecting their preferred advisors. This includes the task manager assigned to coordinate and manage the advisory selection process as well as any core government stakeholders who would serve on an evaluation or project management team.

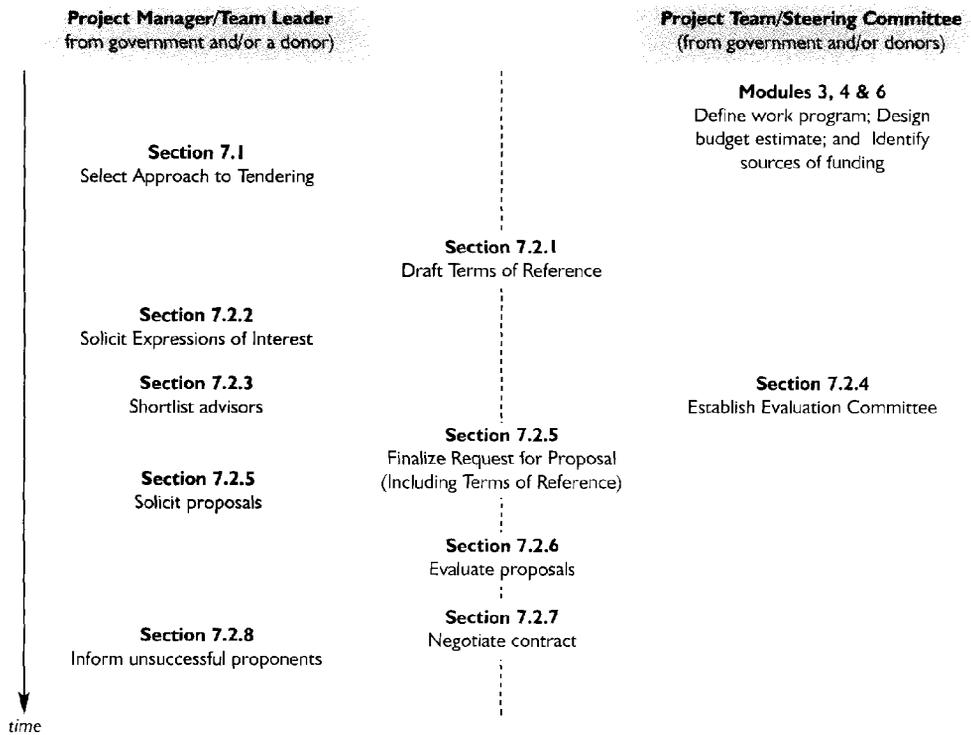
Module 4 in *Volume I* emphasized the importance of carefully defining a project prior to deciding on the form of tendering. After outlining the scope of the project, which should include a careful definition of the project objectives, four main steps were presented:

- (1) Deciding on the appropriate phasing of advice, namely when the advisors should be brought on board.
- (2) Grouping the tasks, clearly defining what the advisors should do.
- (3) Identifying the appropriate timescales, including estimated times for the advisors to complete each task.
- (4) Setting an indicative budget for the consultancy work, including the costs of the hiring process itself— indicative fee rates and costs are provided in Module 4 in *Volume I*.

Once the scope of the project has been defined, and funding sources have been identified and contacted, it is then possible to decide on the appropriate tendering process. This module focuses on the process for selecting, hiring and managing advisors.

Figure 7.1 illustrates the key steps in the competitive tendering process. On the left are those steps which are primarily the responsibility of the project manager or team leader. Tasks on the right will involve a committee or team of key stakeholders from the government and/or the donor community. Those tasks placed in the middle of the diagram are the responsibility of both the project manager and the team of official stakeholders.

Figure 7-1
Key steps in the competitive tendering process



7.1 The principles of the tendering process

The process of hiring advisors begins once the advisory work program has been defined, the budget prepared and sources of funds identified (see Modules 3, 4 and 6). Staff assigned to manage these initiatives will find that there is a variety of payment mechanisms and selection processes available from which to choose when tendering for consultants and other specialists. Most advisory assignments related to PPI require advance policy formulation and planning on the government's side. Because of the time required for these preparatory activities, officials are generally in a position to benefit from competitive tendering for advisory services, whether the advisors are expected to define the market structure for competitive service provision, develop the regulatory framework, undertake institutional strengthening and capacity building, explain policy to key stakeholders or carry out the transaction. This section describes the advantages of competitive tendering and provides alternative approaches to the competitive tendering process, focusing on different methods for selecting and grading proposals as well as optional mechanisms for contracting the advisors.

7.1.1 Competitive tendering

The decision about the manner in which advisors should be appointed is important since this process will determine whether the government receives the correct balance of quality and price. Properly designed competitive bidding processes provide the greatest chance of selecting the company that best meets the government's objectives.

Both the government and the companies incur up-front costs. The government must prepare the requests for proposals, co-ordinate the process and evaluate the submissions. The companies must spend time and effort preparing the proposal, attending any pre-bid conferences and other activities¹. Therefore, prior to deciding on a competitive process, it is important to evaluate the advantages that these costs create.

Many of the options available to governments for conducting the selection process are defined by the country's procurement and competition regulations and by procurement guidelines for consultants stipulated by the donor agencies. Usually, when donors are funding technical assistance, the competition for advisory services must be open to firms or individuals from abroad. Even if there is not a specific requirement of the PPI advisory services process, it is generally in the interest of the government to pursue as open a competition as possible.

International competitive bidding refers to any process in which more than one company from more than one country is invited to submit an offer on a particular project. It is likely, in the context of developing countries, that such competitions will involve companies from overseas because of the shortage of specialist advisors in the country where the advice is needed, and because of the importance of international experience in the PPI context.

There are a number of important reasons for using a competitive process²:

- **Transparency** A nontransparent process leads to suspicion of the parties involved and can lead to legal or other challenges that may result in slower project implementation than beginning with a competitive process.
- **Creativity** Competition can provide the government with a wide range of approaches to a particular project, revealing methods and ideas that may not have been considered and may not be developed in a sole-source context. For competitive tendering to generate this benefit it is important that companies feel confident that their ideas remain their intellectual property and that the government will not use the process to generate new ideas which subsequently are used by other advisors or internally³. It has the additional benefit of revealing the price at which advisors are willing to provide the services.
- **Confidence** Contrary to common perception, many advisors are likely to have greater confidence in a competitive process because of its transparency. Governments that repeatedly sole source projects are unlikely to attract the best advisors because they will assume that the process is fixed.

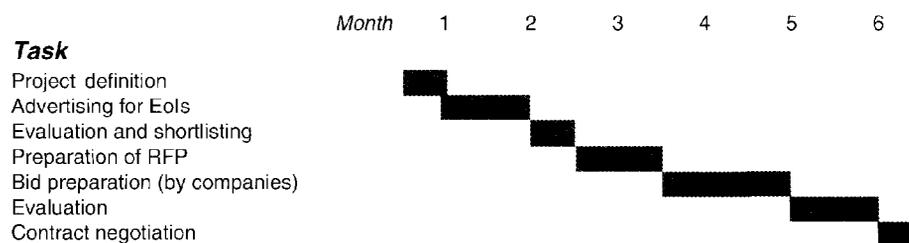
The main disadvantages of competitive tendering are the time and costs involved. However, it is often less costly and time consuming than the consequences of sole sourced projects (e.g., failure to find the best qualified company resulting in bad advice).

¹ For an overview of transactions costs for the provision of advisory services during a specific transaction, see Module 6, *The Role of Donor Agencies in PPI*.

² See Trivedi, P *How to Implement Privatization Transactions*, Routledge, 2000.

³ There is an important difference between firm specific methodologies and general approaches to workplans. Governments may learn a great deal from proposals but cannot take specific ideas from proposals without hiring the advisors — firms will quickly stop bidding for projects put forward by such governments. However, governments can learn new ideas and about new publications or procedures that are not owned by any one company.

Figure 7-3
Indicative timeline



Recommendation 7.1: Officials should favor a competitive bidding approach under most circumstances. Where competitive bidding is not used (e.g., for small projects or PPI-related emergencies), then officials should be able to justify their means of selection of advisors.

7.1.2 Approaches to proposal selection

Regardless of the proponents' nationalities, the competition may be designed in a variety of ways. The choice of selection method should be based upon the level of importance that the government wishes to assign to cost. If there is ample budget for the assignment and the terms of reference are clear, then the approaches which emphasize the firms' technical capability over low-cost proposals may be the most appropriate.

- **Technical** The final evaluation may be based solely on the technical merit of the bids based on a pre-defined marking scheme. Under fixed budget selection, companies are informed of the overall maximum budget available for the project.
- **Technical and Financial** The evaluation may be based on a weighting of the technical proposal and a price to undertake the work. (Table 7-2 outlines the differences between the different weighting schemes.)
- **Financial** The evaluation may be based solely on the final price, with the lowest price being awarded the contract.

In practice, it is difficult to penalize companies for poor performance since it is difficult to:

- define and evaluate performance criteria accurately enough – the provision of advice is an area where assessments of poor performance are very subjective;
- recover the administrative and contractual costs of firing the company and re-hiring another one, even if it is possible to penalize the company for the actual poor performance; and
- value and then prove to the satisfaction of a court the damages caused by improper advice.

Moreover, the political and social consequences of implementing a reform program based upon poor PPI advice extend far beyond the monetary value of the advisory services. Consequently, competitive bidding for advisory services is rarely based purely on price. Instead some combination of technical and financial bids are required. There are several possibilities:

- **Quality-based selection** Evaluation based purely on a technical proposal followed by a negotiated financial contract.
- **Fixed budget selection** Evaluation based purely on a technical proposal followed by a negotiated financial contract based on an initial sealed financial proposal.
- **Least-cost selection with technical hurdle** Final evaluation based solely on the financial bids for all companies that cross an initial technical threshold, such as 70 out of 100 points.
- **Quality and cost-based selection or weighted technical and financial selection** Final evaluation based on a weighted average of a technical score and a price bid, such as 80:20 or 90:10 depending on the importance attached to the financial component. This approach is often combined with the minimum technical threshold used in least cost selection.

Table 7-1 outlines the potential benefits and constraints associated with each approach. In practice, the approach to selecting an advisory firm or consortium will be determined by the type of work required, budgetary constraints, confidence levels in the available advisors and the procurement requirement of the funding agencies. Consequently, there is no single form of evaluation that is appropriate for all occasions. Instead, the method of selection depends on the requirements and characteristics of the project in question.

Table 7-1

Benefits and constraints of different approaches to evaluating proposals

	Benefits	Constraints
Quality-based selection	<p>Provides high likelihood that the highest quality proposal will be selected</p> <p>Provides incentives for potential contractors to be innovative</p>	<p>Provides few incentives for potential contractors to reduce costs and no basis for the comparison of prices among companies</p>
Fixed budget selection	<p>Ensures the highest quality proposal will be selected and provides incentives for potential contractors to be innovative</p> <p>May provide some opportunity for government officials to negotiate costs down</p>	<p>Limited incentives for potential contractors to reduce costs, so likely to be costly</p> <p>Difficult to back out of selection</p>
Least-cost selection with technical hurdle	<p>Provides incentives for contractors to lower costs and be innovative</p> <p>Minimum technical hurdle encourages firms to offer better quality technical proposals</p>	<p>If the technical hurdle is not set properly and the evaluation is not stringent then risk selecting a low price, low quality firm or consortium</p>
Quality and cost-based selection or weighted technical and financial selection	<p>Provides an opportunity for officials to signal their preferred trade off between cost and quality</p>	<p>Unlikely to result in lowest cost bid emerging as winner, although it should result in the best value bid winning</p>
Least cost selection	<p>In theory provides incentives for companies to bid for the true value of the contract</p> <p>Evaluation is straightforward and rapid</p>	<p>Advisors do not commit to providing specific resources or reveal staffing or project management and approach to implementation.</p> <p>High quality firms are unlikely to submit proposals</p>

Recommendation 7.2: The choice of selection method should be based upon the level of importance that the government wishes to assign to cost. If there is ample budget for the assignment and the TOR are clear, then approaches which emphasize the firms' technical capability over low-cost proposals may be the most appropriate.

When deciding whether sole-sourcing is an appropriate way forward, government officials will need to balance the costs and benefits of doing so on a case-by-case basis.

Table 7-2
Advantages and disadvantages of sole-sourcing

Advantages	Disadvantages
Sole-sourcing is cheaper than competitive tendering	Sole-sourced projects do not provide the government with an opportunity to evaluate the technical or financial merits of alternative bids and leave the government open to criticisms of non-transparency and prone to costly mistakes.
Sole-sourcing provides a good way of securing advice quickly – this can be particularly relevant when advice requiring a particular skill or expertise (such as Geographical Information Systems modelling) is required and there is insufficient time available for other companies to acquire that expertise	Sole-sourced projects are nontransparent, creating scope for corruption or the perception of corruption.
Sole-sourcing can be an appropriate option when there are relatively few firms operating in the market and their track-records are well known	Sole-sourcing opens up the possibility of the government being open to court challenges, opposition from other politicians and the public and demonstrations, all of which will delay the project and increase its cost.

7.2 Steps in the competitive bidding process

This section outlines the key steps and documents that make up the competitive bidding process as outlined in Figure 7-1. It assumes that the officials involved will decide upon the approach to the selection of advisors before beginning with the next set of tasks.

7.2.1 Drafting the Terms of Reference (TOR)

A clear set of TOR is crucial to ensure that the potential advisors fully appreciate the aims and objectives of the government and how their support would fit into the overall process of reform. However, an overly prescriptive TOR runs the risk of stifling innovative ideas that advisors might be able to bring to the work plan.

One issue that will need to be considered is the level of detail of the TOR. As discussed in Module 4, the TOR must reflect the budget for the work. But even for a given scope of work, it is possible to vary the degree of detail included in the TOR.

While the level of detail in the TOR may vary according to the needs and status of the PPI initiative, the following information should be provided in the document:

- Background information (including information about the origins of the funds for technical assistance; the political environment; state of the economy and sector in question and major indicators; sectoral reform process and major indicators; existing legal and regulatory framework; and condition of the enterprise undergoing PPI).
- Indicative work plan (including description of the tasks to be undertaken; the expected milestones related to deliverables and government decisions; gantt

- charts providing an indicative schedule).
- Deliverables/outputs required (including presentations, models, reports, training and even availability for negotiation).
- Level of effort (by key personnel and major task) and/or the maximum budget available (depending upon the approach to selection).
- Evaluation criteria (including weights for technical and financial proposals; level of technical threshold to advance, if relevant; and the sub-criteria for technical evaluation – discussed below).
- Conditions for submission (number of copies, separation of envelopes, time and day of delivery deadline).

The draft version of the TOR should be provided to all other members of the Project Team or Evaluation Committee, and other relevant stakeholders. They should be given sufficient time to review the document and comment on it. Those comments will be incorporated and the final version of the TOR will be disseminated to the shortlisted firms as part of the full Request for Proposals (as described in section 7.2.7).

Recommendation 7.3: Points should be given for creativity that results in meeting the requirements of the TOR in a more logical, more complete or more effective manner. Lead advisors, if available, should be able to assist in the drafting. Examples of TOR are presented in Annex I.

Technical proposals

Although potential bidders are usually shortlisted on the basis of their technical capability, it is normal practice for bidders to be asked to provide proof of their technical capability in much greater detail.

The purpose of the technical bid is to provide potential bidders with an opportunity to demonstrate their suitability for undertaking the work. It also provides an opportunity to suggest changes or alterations to the TOR that the bidder believes are worthwhile and scope to prove that the issues raised have been thought about and the method to finding a solution decided upon. Technical bids will usually comprise the following components:

- comments on the TOR;
- a methodology describing the approach to the project;
- information about the company proposing to provide the advice and relevant company experience;
- the proposed team to work on the project – their experience, individuals' roles within the team and the time that each will devote to the project; and
- a work or management plan.

Financial proposals

The financial or cost proposal will typically contain a detailed breakdown of the cost of the advisory services. This would cover:

- the daily rates of each team member;
- the time inputs for each team member; and

- a breakdown of reimbursable expenses (e.g., travel costs, hotel costs, meals).

The total cost must be clearly stated. Depending on the form of proposal, other information to be included may cover:

- success fees;
- costs of producing training or other manuals; and
- communications costs.

The financial proposal should also state whether the overall bid is inclusive or exclusive of tax, in accordance with the letter of invitation (see Section 7.2.5).

Figure 7-4 provides an indication of the way in which advisory service companies will build up their budgets for a project—analogueous to the way in which the government should build up its budget for a particular project (see Modules 2 and 4).

Combining technical and financial criteria

Section 7.1 outlined the reasons for including both technical and financial criteria in awarding the bid. If a weighting system is selected, a decision must be taken on the appropriate weights. Most weight is usually placed on the technical proposal. Typically, out of a total score of 100, 70 to 90 points will be allocated to the technical proposal with the remainder for the financial.

<i>Fees</i>	<i>Team</i>	<i>Days in Country</i>	<i>Days at home</i>	<i>Total Days</i>	<i>Fee rate</i>	<i>Cost</i>
<i>Directors</i>						
	Overall Director	25	10	35	2,000	70,000
	Director in charge of Task 1	5	5	10	1,800	18,000
	Director in charge of Task 2	15	0	15	1,800	27,000
<i>Core Team</i>						
	Economist	40	10	50	1,500	75,000
	Sector Specialist	10	5	15	1,000	15,000
	Country Specialist	50	0	50	1,000	50,000
	Lawyer	5	7	12	2,000	24,000
	Technical Expert	40	20	60	1,000	60,000
	Analyst	10	15	25	800	20,000
	Total	200	72	272		359,000

Time inputs and daily fee rates give the total fee budget

It is vital to ensure consistency: number of flights should match number of trips, number of days for which per diems are payable should match days in country, each individual should have enough time to carry out tasks assigned in the workplan

<i>Reimbursables</i>	<i>Unit cost</i>	<i>Units</i>	<i>Total</i>
Flights	2,500	14	35,000
Per Diem	170	240	40,800
In/Out	100	14	1,400
Communications	500	5	2,500
Other	250	2	500
		Total	80,200

TOTAL COST	
Fees	359,000
Reimbursables	80,200
Grand Total	439,200

The fee budget plus reimbursables gives the total cost

Flights, per diems and other expenses give the total reimbursable budget

Figure 7-4 Example budget (numbers only illustrative—see Module 4 for indicative numbers)

7.2.2 Shortlisting advisors

The purpose of the pre-qualification of prospective advisors is to minimize the cost to the government of evaluating proposals and to provide companies with an incentive to prepare proposals. The absence of a shortlist, which would indicate a large number of proponents, reduces the chance of winning and may deter the best candidates from preparing proposals. In certain circumstances, it may be that pre-qualification is not required – for example, if there is a small number of potential bidders for the contract all of which have a strong track record in undertaking work in the area concerned.

There are three main steps to a standard pre-qualification process. However, as discussed below, in some instances some steps may be omitted:

- advertise the opportunity;
- short-list on the basis of expressions of interest; and
- inform short-listed companies.

Companies should be required to provide a brief summary of their technical abilities and brief details of senior staff who would be available for the project. Given the large number of such submissions the advertisement (discussed below) should stress the importance of brevity, perhaps indicating a maximum page length (e.g., 20 pages).

There is a wide range of criteria that could be used to determine whether companies or individuals ought to go forward to the short-listing stage. However, the most important criteria at this stage is the technical capability of the company and individuals. This may include relevant experience, both at a company level and for individuals, and also ideas about how best to approach the project.

When considering the issue of qualifications at this stage, it is important to look at both the company experience and that of any named individuals. Given the diverse range of considerations, it will also be worthwhile considering whether individuals and companies have the relevant sector and regional experience. This will be particularly important when assessing technical experience.

As a general rule, the approach adopted to determining the short list ought to reflect the size and level of the transaction. Typically it will be sufficient to evaluate those who express interest on the basis of their written submissions. As indicated in *Volume II*, shortlists usually range from 3 to 7 companies, with most shortlists consisting of 4 or 5 companies.

Alternatively, informal screening over the telephone might also offer a less time consuming option for identifying potential companies that might feature on the short list, particularly for small contracts. If appropriate (for example, if local advisors are being used), government officials could meet with potential advisors. This will provide an opportunity to assess whether advisors should be short-listed and for potential companies to acquire information about whether they ought to invest time and effort in preparing a proposal. However, both of these should be undertaken with great caution because they may be perceived as non-transparent. If they are undertaken, there should be a full reporting of the meeting.

Finally, officials may take up references, in writing, in person or over the telephone, to find out whether a company or individual is sufficiently qualified to be placed on the short list.

Shortlisted companies should be contacted, either in person or by post, email or fax, to let them know they have been shortlisted. At the same time they should be given the full bidding documents, also known as the Request for Proposals.

Recommendation 7.4: Officials will need to decide on the appropriate number of advisors to be included on the shortlist – this will depend upon their capacity to handle proposals, the size and nature of the technical assistance required and the importance of the specific PPI project. In any case, the shortlist should not be less than 3 companies, or more than 7.

7.2.3 Soliciting Expressions of Interest

For all but relatively small, emergency or highly specialist projects (for which all the relevant companies can be contacted), it is wise to advertise for advisory services in one or two prominent publications. This helps to:

- ensure that the process is transparent; and
- increases the field of potential proponents.

Otherwise the only companies to hear about the projects are likely to be those with contacts close to the contracting agency.

Furthermore, many donor agencies who are providing the funding for the technical assistance may have procurement procedures that must be followed (see *Volume II*) with regard to public announcements. Similarly, the officials' own governments may have procurement guidelines that require advertising. If so, officials have no choice about whether to advertise.

If a decision not to advertise is taken, officials will need to identify potential advisors from other sources. Lead advisors may be able to suggest potential specialist advisors who might be appropriate for the short list. Donor agencies may also be of assistance.

Issues in finding work: local contacts

International advisory firms sometimes commission local companies, or specialist agencies, to look out for upcoming work and put their name forward for any potential shortlistings in their area of expertise. These local companies are then paid a commission for every shortlisting they manage to achieve and receive a further commission if the project is won.

While this is a good way for international companies to ensure that upcoming projects are brought to their attention, there is a danger that the resulting shortlist is composed simply of companies with the best local contacts rather than those best able to carry out the work. In recognition of this, some donor agencies have strict guidelines about the use of local companies and the payment of such commissions. In particular, the company must declare in its proposal the amount that has been or will be paid in the form of a commission. This also argues strongly in favor of advertising upcoming projects outside the country in which they will take place—each of the multilateral agencies has specialist publications in which they advertise upcoming projects (see *Volume II*).

Frequently used outlets for advertising include:

- local newspapers;
- government websites;
- donor agency websites; and
- donor agency procurement publications such as UN's "Development Business"(see *Volume II* for details).

Figure 7-5 provides an example of a typical call for expressions of interest for a hypothetical country and funding agency.

Figure 7.5

Example of a request for expressions of interest

Country: Robinsonia
Project: REGULATION IN THE WATER SUPPLY AND WASTEWATER SECTOR
Sector: Consultants
Product: CONSULTANT SERVICES

The Government of Robinsonia has received a grant from the Council for the Development of Island Economies (CDIE), and intends to apply part of the proceeds of this grant to payments under the contract for Robinsonia-Technical Assistance for the Regulation Of the Water Supply and Wastewater Sector. The CDIE is a multi-donor technical assistance facility aimed at helping island countries improve the quality of their infrastructure through private sector involvement.

The services required comprise four areas: (i) review of existing legal framework; (ii) analysis and proposal for quality regulation; (iii) analysis and proposal for economic regulation; and (iv) a proposal for the creation, staffing, and funding of the regulator. The consultant's final report will outline a clear proposal to develop the regulatory framework and to create a regulator. The report will propose specific modifications of existing laws, development of new legislation, the details for the establishment and operation of the regulating body. The report will be used by the Robinsonian law makers to draft necessary amendments and regulations. The implementation period is approximately 22 weeks. The cost cannot exceed US\$ 500,000.

The CDIE now invites eligible consultants to indicate their interest in providing the services. Interested consultants must provide information indicating that they are qualified to perform the services (brochures, description of similar assignments, curriculum vitae of available staff, and experience in similar conditions). Consultants may associate to enhance their qualifications. A consultant will be selected in accordance with the procedures set out in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997 (revised September 1999).

Interested consultants may obtain further information at the first address below. Expressions of interest must be delivered to the second address below by 15:00 hours, 30 October 2000.

For Information: Government of Robinsonia Cabinet Committee on Sectoral Reform Watertown, West Island Robinsonia Facsimile: 83(8)-141-00	Submit to: CDIE PO Box 12 Geneva. Switzerland Att: Robinsonia Water Regulation Project
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7.2.4 The evaluation committee

The evaluation process is likely to be based on a selection panel evaluating the proposals against pre-agreed criteria. It will be necessary for the selection panel to meet in advance of receiving the proposals to agree the criteria on which the proposals will be judged, how they will be applied and the basis on which decisions are to be reached. The panel must agree on the marking scheme – see the discussion below.

Several factors should be examined in determining the composition of the evaluation committee:

- (1) Size
- (2) Competence
- (3) Transparency
- (4) Acceptability

Evaluation and Selection Committee

In some donor agencies, evaluation and selection committees perform distinct tasks. The evaluation committee, usually composed of three people one of whom will eventually manage the project (the task manager), undertakes the initial scoring of the proposals and puts forward their recommendation to the selection committee. The selection committee, usually composed of the immediate superior of the task manager, someone from the procurement division and a member of the in-country office, then verifies that appropriate procedures were followed and approves or rejects the recommended proposal.

Size of the committee

The evaluation committee should not be so large so that it becomes unwieldy. To the extent that the size and complexity of the assignment require greater expertise on the committee, the size of the committee will vary. While using a single individual would probably be faster than a multi-person committee, the process may be viewed as less transparent and it may be difficult to ensure that a single individual has all of the required skills. Balancing these requirements would suggest an evaluation committee ranging in size from two to five people, depending on the requirements of the project in question. Larger, more complex or more politically sensitive projects require larger evaluation committees.

Skills of the committee

It is important to have people on the committee who are able to assess the technical, financial, legal and economic areas being considered. For example, for a project leading to the introduction of PPI in roads, when appointing technical advisors, it would be desirable to have transport department engineers on the evaluation panel who will be able to appraise the technical merit of the proposals. Similarly, economists and legal specialists may be required to participate in the evaluation committee.

Under this approach, each expert evaluates different sections of the proposals and the scores are added to form an aggregate score. An alternative approach is for each individual to come up with an aggregate score themselves—marking both the section in which they have expertise and those in which they have less knowledge. A well written proposal should be understandable by intelligent committee members who are not experts in every aspect of the project. If the latter approach is adopted then

it may be worthwhile having the experts present their views on particular sectors to the evaluation committee, who can then decide on how to score the proposals themselves.

Transparency of the committee's approach

In order to maintain integrity in the procurement process in general, it is vital that the evaluation is itself transparent. Part of this, discussed above, is the inclusion of the marking scheme in the request for proposals. Another component is ensuring that the basis for the evaluation (e.g., relative or absolute grading) is clearly understood.

The final components include ensuring that:

- all committee members evaluate the proposals independently;
- if there is general discussion to reach a final decision, then minutes are taken at the meeting by an independent party (i.e. someone other than a committee member); and
- those who lose receive a clear explanation of why they were not successful if it is requested⁴.

The final element is also important in ensuring that losing companies or consortia will be willing to submit bids for future projects in similar areas.

Stakeholder acceptability

A large part of ensuring acceptability is ensuring transparency. However, another component is to ensure that the stakeholders who will be affected by the results of the study are involved in the process of selecting the advisors. This may be accomplished by including some or all of the stakeholders on the evaluation committee, depending on the number of stakeholders. An alternative may be to ask the stakeholders to nominate someone who they would all like to see as part of the evaluation, for example a non-governmental organization working in the area.

Ensuring acceptability

A private utility in Africa hiring advisors to help them during a tariff review decided to try to ensure acceptability by allowing the regulator to play a role in the evaluation process. The company first shortlisted four advisory companies and evaluated their proposals. It then submitted its two preferred companies to the regulator and allowed the regulator to select the winning firm. This ensured that both parties had a role in selecting the firm—trying to ensure that the company was satisfied with its advisors while the regulator was also bought into the process and felt comfortable working with the selected firm.

Recommendation 7.5: The evaluation committee should reflect the appropriate mix of specialist skills and key stakeholders – but at the same time the committee should not be so large that it is difficult for it to reach a decision.

⁴ This raises the question of whether these explanations should also be given at the shortlisting stage to companies not shortlisted. This may create a lot of work because many companies will often submit expressions of interest. Therefore, in general, unless a specific request is sought, explanations need not be given at the shortlisting stage.

7.2.5 Finalizing the Request for Proposals

Once the shortlist of potential advisors has been drawn up, requests for proposals (sometimes referred to as the RFP or the Invitation to Tender, ITT) should be sent out to the shortlisted companies. The request for proposals should include:

- (i) a letter of invitation;
- (ii) the terms of reference (ToR); and
- (iii) a draft contract.

Some donor agencies and governments separate the information differently and add a separate background section on the project, or a “data sheet” which provides details about the selection criteria and proposal logistics. Alternatively, this information can be included in the letter of invitation or TOR itself.

7.2.5.1 Letter of invitation

A letter of invitation should accompany the packet of material in the RFP. The letter normally includes:

- the deadlines for receiving proposals;
- the way in which they should be sent;
- format of the proposal (e.g., written, oral presentation);
- details of the evaluation process, with a listing of the evaluation criteria and description of how they will be used;
- the timetable for making decisions;
- the name and contact details of the person to whom any questions about the request for proposals should be addressed (along with a statement indicating that any questions, and the answers, will be copied to all the shortlisted companies and a deadline for the submission of any questions);
- whether or not teaming up with other shortlisted companies is required;
- whether it is possible to bid for parts of the project or only the project in its entirety;
- request for response on intention to bid;
- any relevant financial information (e.g., whether the costs of preparing the proposal are reimbursable, whether the financial proposal should include local taxes); and
- a list of the other companies that have been invited to bid.

Some of these issues require further comment.

Forming consortia

The letter should specify whether companies on the shortlist will be allowed to form consortia and submit proposals together. The advantage of allowing companies to do this is that the request for proposals provides much more detail about the project than the initial advertisement. Upon seeing the full TOR, companies may discover that they are only able to cover all the issues to the required standard by forming teams with other firms or individuals. However, allowing shortlisted companies to form consortia among themselves rapidly decreases the size of the shortlist and reduces competition. A typical shortlist of 5-6 companies only requires two or three companies to form a team before the competitive element is endangered.

Consequently, forming teams among the shortlisted companies is often prohibited but shortlisted companies are allowed to create consortia using companies that have not been shortlisted. The firm that was originally placed on the shortlist should serve as the lead firm in the newly formed consortia.

Recommendation 7.6: Companies should be encouraged to form consortia in order to ensure that they can provide the full range of skills required by the project. Companies on the shortlist should generally not be allowed to form partnerships among themselves because of the risk of decreasing competition.

Task coverage

Companies should be instructed about whether their proposal must cover the entire request for proposals or whether they can bid for the parts of it in which they specialize. While the latter may allow the government to select the best firm for each particular task, it exposes the government to a number of risks: some tasks may not receive any bidders⁵ and project management rests with the government (unless this is bid out as a separate task—see Module 3 in *Volume I*). Given these risks, in general the government should carefully consider a project once it is defined. If it contains relatively large, discrete components then the government can consider undertaking a different competitive tender for each component. Alternatively, if the components are inter-related then a single tender that explicitly instructs companies to form consortia is likely to be the best approach, provided the linkages do not lend themselves to conflicts of interest (e.g., regulatory design and transaction advice – see section 7.3.3).

Proposal format

Most proposals continue to be submitted in written form, however interviews and formal presentations might, under certain circumstances, be considered as an addition.

The advantages of a presentation are that the evaluation committee can ask detailed and clarifying questions and can get a better idea about the people that they would be hiring.

Intention to bid

Finally, the letter of invitation may also require that companies confirm whether or not they intend to bid. This allows the government to keep track of the companies which will be proposing, to ensure that sufficient proposals will be received to make the process competitive and conform with requirements of procurement guidelines (see *Volume II*).

Firms are generally provided with one or two weeks to respond with a confirmation letter regarding their intention to bid.

⁵ This could easily happen for a standard shortlist of 5-6 companies covering a relatively large advisory program.

Once shortlisted, companies may decide not to submit a proposal. There is a wide range of reasons why companies who submit expressions of interest may, when shortlisted, decide not to propose:

- upon learning more details in the full TOR they may decide they are no longer technically suited for the project;
- staff may be occupied on other projects and unavailable should they win;
- the firm may fear that a particular competitor has a strong advantage;
- the indicative budget is viewed as too low;
- the probability of winning may appear too low when the number and quality of competitors is weighed against the cost of preparing the proposal; and
- project may no longer fit within the broader strategy of the company.

The competitive nature of the process will be endangered if too many companies decide not to submit a proposal. It is usually not advisable to add a new company to the shortlist if one of the shortlisted companies drops out. First, the original shortlist was made up of the best companies therefore the new company is, by definition, inferior. Second, the new company will have less time to prepare its proposal. For these two reasons, the new company is unlikely to be seen as a genuine challenge to other companies and so does not enhance the competition. Consequently it is important to try and prevent companies from dropping out once they have been shortlisted. In order to minimize this risk, it is important that:

- the budget reflects the quantity of work which is detailed in the TOR;
- the TOR contain no major surprises (i.e. they follow logically from the call for expressions of interest to which the short listed companies originally responded);
- the shortlist does not contain a mix of firms that may frighten away one or more bidders⁶;and
- companies respond to the letter of invitation to confirm whether they will proceed and submit a proposal.

It is theoretically possible to impose financial penalties for non-submission of proposals by forcing shortlisted companies to submit a bid bond within a few days of receipt of the TOR. This bond is a sum of money deposited with the agency running the selection process and returned (along with any accrued interest) to the companies once proposals are received.

7.2.5.2 Background information

The background information should cover general information about the context in which the PPI initiative is being undertaken, including:

- the political and historical context;
- sector background to the project and the aims of the reform;
- role of the procuring government department and its relationship with other bodies relevant to the project;
- importance and relevance of the project to the government; and
- description of existing service provision and why it is being updated, replaced or reformed.

⁶ For example, a shortlist for PPI work which contains two large international firms and three local firms and which is heavily weighted toward the financial proposal may result in a no-bid decision from the international firms since they know that their costs will be much higher than the local firms. Conversely, if the selection criteria are heavily weighted toward firm experience, the local firms may choose not to compete, especially if they are unable to locate an international partner to join them.

The TOR may also contain a list of background documents that companies can consult for further details and contact details for members of government who may be available to answer questions about the sector in question⁷.

7.2.5.3 Finalizing the Terms of Reference

At this stage, the TOR should be finalized incorporating suggestions from the Evaluation Committee (which may be the same as the Project Committee). In particular, the project manager should be careful to make sure there is consensus on the suggested workplan and on the evaluation criteria since the same individuals reviewing the TOR are likely to share responsibility for evaluating proposals.

7.2.5.4 Draft contract

This should cover the terms and conditions of employment of the winning company or consortium. Depending upon government procurement regulations and the reliance on donor funds, there may be a standard contract that must be used.

Otherwise, key elements that the contract ought to contain include:

- A contract number and model title page, explaining the submission and signature obligations of both parties;
- The Term or duration of the contract;
- Description of the role of related documents spelling out the scope of work (typically the final proposal, attached as an Annex);
- Provisions for modifications to the scope of work;
- Responsibility for contract administration and project management (both substantive review/management and handling of invoices) on the government or donor's side;
- Responsibility for project management on the contractor's side, and definition of specific task responsibilities;
- Definitions of Conflicts of Interest, including such sub-items as: definition of inappropriate commissions or discounts; requirements to abide by procurement rules of donors or government agencies; moratorium on related project work, defining the term of the moratorium and the conditions; definitions of conflicting assignments; and warnings about bribery of officials or related stakeholders.
- Confidentiality requirements;
- Provisions for changes or modifications to the contract itself;
- Rights to audit related documents and financial statements of advisory service provider;
- Penalties and conditions for reimbursement in the case of non-performance;
- Rights or restrictions for the assignment of contractual obligations to third parties, including sub-contracts or informal arrangements;
- Ownership of property used by contractor during the course of the project;
- In the case of donors, the use of the institutions name or logo;
- Insurance requirements with specified levels of coverage;
- Indemnification of the client;
- Exemption of liability from consequential damages;

⁷ If the latter is included it is important to emphasize both to the proponents and the officials in question that they should only provide background information (e.g., current state of the sector in question, current legislation pertaining to the sector) and not information about the bidding process itself. Any questions about the bidding process should be addressed to the issuing department, as outlined in the letter of invitation (see Section 7.2.5).

- Dispute resolution, including the use of local, foreign or UNCITRAL rules for arbitration;
- Definitions of Force Majeure, and detailed descriptions of compensatory measures to be taken in the case of Force Majeure;
- Conditions for Termination for Convenience, including notification period;
- Conditions for Termination for Default on commitment to perform specific services with explicit resources. This clause may include definitions of "corrupt" or "fraudulent" practices that would lead to a Termination for Default;
- Contract price and payment schedule detailing all milestones as negotiated in the final proposal. This should include documentation requirements and obligations of the client to approve and deliver payments;
- Copyright as it pertains to the deliverables resulting from the contract;
- Limitation on the contractor to make reps and warranties against the client;
- Requirements for the contractor to provide notification to the client; and
- Designation of appropriate signatures and signature page.

Including a contract allows companies to understand the terms and conditions under which they will be required to operate. It may also shorten the negotiation process with the top ranking company by informing bidders that, unless they object to particular clauses in their proposal, they will be deemed to have accepted the outline contract. The main disadvantage of this approach is that it will force all the companies to spend time reading and outlining their objections to the contract, rather than writing other parts of the proposal. The contract should clearly spell out the nature of conflicts of interest and the penalties (usually disqualification) for companies that are in conflict (see Module 4, *Volume 1*, for more detail on conflicts of interest).

Recommendation 7.7: Officials should ensure that the request for proposals documentation is both clearly written and specific in terms of the outputs required. At a minimum it must contain a letter of introduction and a clear TOR.

7.2.6 Evaluating the proposals

Figure 7-6 provides an illustration of a scoring sheet given to evaluators of a bid.

Figure 7-6

Illustrative scoring sheet

Scoring Category	Company 1			Company 2			Company 3		
	Score	Weight	Weighted Score	Score	Weight	Weighted Score	Score	Weight	Weighted Score
Understanding of problem	4	10%	0.4	7	10%	0.7	3	10%	0.3
Approach and methodology	20	25%	5	25	25%	6.25	28	25%	7
Team	30	35%	10.5	33	35%	11.55	27	35%	9.45
Workplan	6	10%	0.6	5	10%	0.5	8	10%	0.8
Originality	3	10%	0.3	2	10%	0.2	5	10%	0.5
Local participation	8	10%	0.8	7	10%	0.7	4	10%	0.4
Weighted Total Score (20)	17.6			19.9			18.5		

Main categories may contain sub-categories (e.g. the team score is likely composed of the scores on several CVs)

Scoring system should be clear and explained before hand. Evaluators should conduct initial evaluation separately but may meet at etc to ensure consistency.

Once the panel of selectors has read through and considered the proposals and graded them independently, a second meeting may be arranged in which each of the proposals are discussed in a systematic way. Depending on the complexity of the proposals, written reports evaluating the proposals might be prepared by the relevant specialists.

It will be important for those evaluating the proposals to recognize a number of trade-offs:

- There will often be a trade-off between the level of experience of individuals and the amount of time that they will have available to devote to providing advice. More experienced individuals will tend to be more in demand, and hence will be less involved in the day-to-day aspects of providing advice. In addition, as discussed in Module 4 of *Volume 1*, more experienced individuals will be more expensive. Therefore, it is not necessary for all work to be undertaken by the most senior members of the team. More junior members are likely to be equally capable of doing some parts of the work and less expensive.
- The technical proposal should describe how the problems will be tackled but should not be expected to provide a solution.
- Larger teams provide scope for greater expertise but are also more difficult to manage.
- A single company offering to cover all the requirements may find management easier but is unlikely to have the best experts in each area (for a more detailed discussion of the formation of consortia see Module 4).
- Longer proposals may contain more detail but not necessarily better ideas.

Of utmost importance to a successful appointment process is transparency in the evaluation process. There are a number of key elements in an evaluation process.

- **Public opening of the advisors' proposals** A public opening, especially of the financial bids, reduces the potential for fixing the result. A second motivation is that a public opening of the advisors' bids presents a useful public relations opportunity for the government, allowing it to publicise the project in question. If companies are invited to attend public openings they should be given at least 2 weeks warning and the person named as being in charge of the overall project should be invited. They may subsequently delegate another person—either from the same company or another company—to attend. Companies should not be penalised for not attending the public opening of documents.
- **Evaluation criteria** Details of these should be included in the request for proposals. Such an approach was described in the earlier sections. The main advantage of adopting this approach is that it is open and therefore less prone to challenge. It will also make the process of debriefing unsuccessful bidders more straightforward (see Section 7.2.8).
- **Independent justifiable scoring** It is important to ensure that officials marking the technical proposals are able to justify the scores they attribute to each bidder and mark the proposals independently.

A transparent method of evaluating technical and financial proposals is illustrated below.

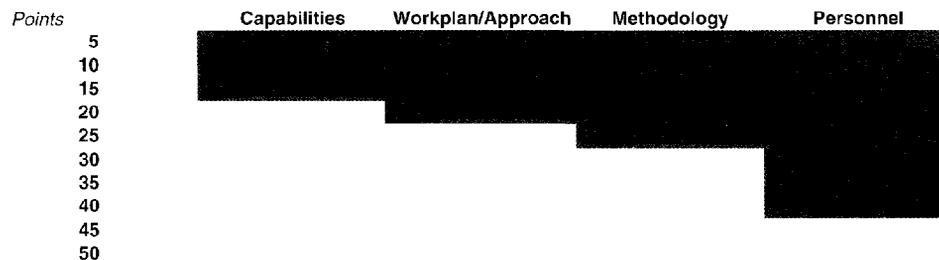
The range of factors (together with an indicative scoring system) which the selection panel might consider when assessing different technical proposals include the following (numbers in brackets provide only indicative measures):

- Overall company capabilities (10-15 points)⁸.
- The quality of the proposed work plan and approach to project management (10-20 points).
- Quality and innovativeness of the methodology (10-25 points).
- The numbers, qualifications and competence of the personnel proposed for the assignment (30-50 points), broken-down into:
 - general qualifications (6-8 points)
 - adequacy for the assignment including experience in the required areas of expertise, and working as part of a similar team (10-15 points); and
 - relevant country or regional experience (14-17 points).

Figure 7-7 illustrates the relative weighting of the different categories.

Figure 7-7

Weighting of categories



Before the request for proposals is issued, it is crucial that a scoring system is agreed which reflects the relative importance of each of the individual criteria and that it is clearly presented to all the bidders in the request for proposals.

Of critical importance is the approach to marking the bidders. There are two potential approaches and it must be agreed at the outset which will be used.

- (1) **Relative scoring** Companies are given scores depending on the relative rankings—for example, in the case of 3 companies bidding for a project, the best company would receive 9/10 in a particular category, the next best 8/10 and the final company a 7/10.
- (2) **Absolute scoring** Companies are given scores based on an assessment of the quality of the proposal itself, in this case the best company may only score 6/10 in a given category but everyone else happens to be worse.

⁸ Relatively few points are given for this category because companies were initially shortlisted based on their overall capabilities.

Evaluators must be clear which system is being used because otherwise it is not possible to reach a consistent decision. An important disadvantage of the relative scoring system is that it is not possible to derive a meaningful average score from the scores of the individual evaluators— i.e. it is not possible to add up their scores and divide by the number of evaluators and award the contract to the top ranking firm. Rather, another means of accounting for different rankings must be found. One alternative is to award points depending on the rankings of each individual and to award the contract to the firm with the most points. Another is to make relative ranking a group decision, after individuals have formed their own initial judgements.

Effect of different approaches to scoring

To simplify the problem, suppose that three companies submit proposals each of which must be scored out of 20. Below is the assessment of three evaluators:

	Evaluator 1	Evaluator 2	Evaluator 3	Average Score
Firm A	18	16	15	16.3
Firm B	16	18	10	14.7
Firm C	20	20	7	15.7

Evaluators 1 and 2 use a relative system in which the best firm is given 20 then next best 18 and the third place firm 16. Evaluator 3 uses an absolute scoring system in which companies are graded based on how well they replied to the requirements— giving even the best firm only a 75% score. As a consequence of this mixture of methods for grading, Firm A wins (has the highest average score) despite the fact that 2 of the 3 evaluators believe that Firm C is the best. In addition, had evaluator 3 used the same method as the other 2 (giving 20 points to Firm A, who evaluator 3 rates highest, 18 point to B and 16 points to C) then Firm C would still win. Therefore, simply because different people used different approaches to evaluation, Firm A wins when the selection panel actually believes that Firm C is the best.

The same point arises when all evaluators use the same method (i.e. relative or absolute) but use a different range of values (e.g., one evaluator gives an excellent proposal a 19 or 20 and a good proposal a 17 or 18 while another gives an excellent proposal something between 18 and 20 and a good proposal something between 15 and 18).

One method to overcome both of these problems is to agree scoring bands beforehand. Scoring bands are ranges that all the evaluators will use in assessing the evaluated categories.

Recommendation 7.8: The scoring system, including appropriate ranges for each category being evaluated, must be agreed upon prior to opening any proposals.

Interviewing proponents

Interviews may be a useful way to discriminate among potential candidates. However, they are only effective if the process is carefully thought out, questions framed and marking schemes agreed. If they are an addition to the written proposal process then they will add to the cost of the proposal preparation—adding not only time but also the cost of travelling and staying at the location of the interviews⁹. Therefore, it is

⁹ Ultimately companies will seek to recover these costs and may do so simply by increasing the cost of undertaking the project should they win.

important to decide prior to issuing the request for proposals whether interviews will be required and their place in the evaluation process.

If an interview, or beauty parade, is used to select the winning company or consortium then the interview should include a number of stages. A successful interview (i.e. one that allows the evaluators to effectively discriminate among the companies and select a winner) should:

- (1) Allow the team being interviewed to present itself, its qualifications and management (if a written proposal has not been submitted in advance).
- (2) Allow the team to outline its methodological approach.
- (3) Provide considerable time for detailed questions that the panel should decide on ahead of time (although follow-up questions may be framed on the spot depending on answers to the set questions).

It is particularly important that the interviewing panel contain at least one person with sufficient expertise to ask technical questions of each company. This often means that the panel will rarely be composed solely of civil servants or government officials.

A consistent structure for the interview should be developed and sent to each of the competing companies to ensure a fair process. As much as possible the time allowed under each category and the number of questions should be the same for each company.

If this method of selection is used it is important to be aware of its shortcomings when evaluating teams. In particular, companies will often send their best speaker when, in fact, the project will be undertaken by a large number of people. The ability to speak well at an interview may or may not be an important skill for the project in question and the person may or may not have a large role in the project team.

7.2.7 Negotiating the advisory contract

After the evaluation process has been completed, the evaluation panel should be agreed on the preferred advisor. The evaluation panel is encouraged not to inform the other leading bidders until a preferred bidder has been selected and a contract agreed. Once a contract has been signed, unsuccessful bidders should be given full and honest feedback in order that they may improve their bids in future. A useful test that can be applied to assess whether the selection process has been fair is that the feedback given to unsuccessful companies should link the reasons for lack of success with the selection criteria.

Concluding terms with a preferred advisor should be undertaken by those in procuring organisations who have experience in negotiating contracts, fees and appointment arrangements. It must take account of relevant legal requirements with respect to post-tender negotiations, where applicable. Where money has been granted or borrowed from a multilateral or bilateral agency, they may provide support in negotiating the final contract—and in some cases the final contract will be between the donor and the advisory firm, rather than the government and the advisory firm.

Ideally, the amount of post-bidding negotiations should be kept to a minimum, since doing so places significant power in the hands of the preferred advisor. One of the reasons for sending out a draft contract to potential advisors is that it should reduce the scope for extensive negotiation. However, there is a possibility that some changes will need to be made to the draft contract, relating to the fees or the range of deliverables that the advisors agree to provide. This is a further argument in favor of a selection procedure that forces bidders to submit a price for their services. Procedures that depend on negotiating a price with the highest scoring technical team are inevitably much longer and more arduous.

Recommendation 7.9: Post contract negotiations should be kept to a minimum. To maintain some pressure on the preferred bidder, lower ranked companies should not be told they have lost until a contract has been signed, at which point they should be informed of the reasons for losing. This explanation should, ideally, link the reasons for losing to the selection criteria.

7.2.8 Informing unsuccessful proponents

As outlined in Module 2 in *Volume 1*, one of the most important factors in successful procurement is ensuring a high quality shortlist. This depends on convincing companies that they have a realistic chance of winning. If the government is planning to let multiple contracts for advisory services (a very likely occurrence) then ensuring companies continue to bid requires that they be briefed when they lose.

The purpose of the briefing is to encourage the companies that lost to bid for future projects, and to improve the quality of the bids. Therefore, the briefing should focus on the reasons they lost (e.g., too expensive, lacking someone with a particular expertise, methodology that did not meet the requirements in the TOR) in order to allow them to submit subsequent proposals while keeping these factors in mind.

Recommendation 7.10: Briefing unsuccessful companies provides a way of improving the quality of proposals in the future. Again this explanation should link the reasons for losing with the selection criteria.

7.3 Advisors' proposal strategies

When appointing advisors it is useful for government officials to be aware of the strategies that potential consultants might employ when bidding for government advisory contracts. In the case of selection criteria that are heavily weighted toward price, proponents may offer a low bid to secure the extra points. In order to minimize costs and maximize profits, firms may be tempted to offer senior staff in the proposal stage and then replace them with more junior and cheaper staff once the project is underway.

7.3.1 Low bidding

When cost is a significant part of the selection criteria, advisory firms may find it to their advantage to bid at an aggressively low rate – even below their expected costs. This type of strategy may be employed for a number of reasons:

- **Market entry strategy** One common strategy that some companies have adopted when they are keen to develop a new area of activity is to bid below

cost to ensure success. Their motivation will be to use the project to build up their track record in a new area that they can then use as a springboard for winning other work of this type.

- **Geographic expansion strategy** A similar strategy to the market entry strategy is a geographic expansion strategy. Rather than wanting to develop a new area of activity, a company may wish to expand the number of areas in which it operates. Again the company will have an incentive to bid below cost to ensure success.
- **Prestige projects** Companies may have incentives to bid below cost for projects that will bring them prestige benefits and may heighten their profile. An example of such a project might be a large privatisation in a country that is introducing PPI for the first time.
- **Predatorial bids** An incumbent company operating in a market may bid below cost because it is reluctant to let a potential competitor into the market.

Generally, government officials should treat low bids with caution. While the purpose of the low price may be to build up a reputation in an area, once the project has been won, there is a strong temptation either to renegotiate for an adequate budget or to undertake below quality work. In addition, problems of conflict of interest are much more prevalent: it is in the company's interest to try to increase the size of the contract in order to recover the money it has lost. Furthermore, only companies that are able to cross-subsidize certain activities will be in a position to use this strategy, which immediately limits the types of expertise available to the government.

7.3.2 Downgrading quality of inputs

A strategy that consultants might use to reduce costs and maximize profits, is naming a strong team in the proposal but using less experienced advisors to actually undertake the work. This is sometimes known as "bait and switch". This strategy is likely to be more prevalent amongst advisory companies who are unlikely, or reluctant, to seek repeat business.

Elements can be built into the contracts between the government and advisors to ensure that only the people named on the proposal work on the project. For example, contracts typically stipulate that only named personnel are permitted to undertake work on the project, and that team members can only be changed with the written permission of the government. Alternatively, the scheduling of presentations and workshops into the timetable can offer a way of checking whether the people named on the team have actually undertaken the work themselves.

The use of contractual elements to prevent "bait and switch" will need to be credible and carefully thought out. It should be noted that there are costs (for example, the costs of retendering) associated with the cancellation of contracts which may make government officials reluctant to do so.

It is also vital that the marking scheme for the technical proposal takes account not only of the expertise of the named individuals but also the amount of time they will actually spend working on the project, especially within the client's offices or country.

Recommendation 7.11: Be cautious of low bids, which may lead to pressure for renegotiation, or unsatisfactory outputs, and ensure experienced staff will actually be used on the project.

7.4 Advisors' conflicts of interest

Advisors may seek to protect their profits by inappropriately serving two clients on the same project, by providing advice which affects their own fees or even by accessing confidential information during the bidding process. These actions fall under the category of conflicts of interest. In the area of PPI advisory services such conflicts may occur when:

- advisors working for the regulator or the government are also working for potential private sector investors;
- an advisory firm has any relationship or ties with the operators (or their subsidiaries) who will subsequently apply to undertake the PPI;
- a transactions advisor is being paid a success fee by the government or public sector sponsor while also advising on issues that would affect sale value (e.g., regulatory framework, tariffs) unless these are issues (such as sale design) where the government's objectives are purely financial;
- an official involved in the reform program agrees to work for one (or several) of the companies competing for the contract (or the successful company); and
- a company that has advised on the drawing up of the TOR is invited to tender for the subsequent project.

In other words conflicts of interest arise when the incentives of the advisor are not aligned with the incentives of the government. Two points must be closely observed when managing conflicts of interest. First, the government must ensure that advisors do not have material conflicts, and replace them if they do. Second, if the pool of advisory talent (particularly within the country) is thin and local consultants are required on bids then the government must put in place processes that clearly define conflict, and sensible tests of materiality, as the basis for its decision making.

Problems can arise when there is a requirement for foreign advisors to team up with local advisors, but the latter are few in number. One approach might be to allow the local advisor to associate with several consortia. This raises challenges of a different sort. Under these circumstances, local advisors should not expect to learn the details of each bid on which they are included because of the danger that details will be passed on to competing consortia. Another approach might involve local advisors being hired on a sole-source basis and then requiring the successful advisors to work with the local advisors.

Potential conflicts of interest may be qualified by a test of materiality, where materiality refers to the importance of the work. Where a company's advice is felt to be so material that it will subsequently be prohibited from working for bidders, this needs to be made clear prior to its appointment.

7.4.1 Declaring conflicts

The normal way to identify conflicts of interest is through self-declaration by advisors. Where a conflict exists which has not been declared, competing companies may bring this to the attention of the project manager. All conflicts should be declared. The project manager should then form a view about whether the conflicts are material, and take action accordingly.

7.4.2 Chinese Walls

One approach to avoiding the problem of conflict of interest is through the use of “Chinese walls” to avoid the flow of valuable information from one part of the advisory company to another. This could help overcome the problem that there is often a limited number of people who can provide specialist advice on specific topics, and many of them work in the same companies.

While in theory Chinese walls should minimize the risks of conflicts of interest, in practice, government officials ought to consider how realistic it is to expect these to operate effectively. If they feel that this mechanism is not strong enough to prevent potential conflicts of interest, or the appearance of conflicts, then they should not proceed with appointing advisors on this basis. Officials may wish to check the extent to which advisory companies have internal written protocols or codes of practice to enforce Chinese walls. As a general rule, larger companies will be more capable of adopting a Chinese walls’ approach than smaller ones. Companies with good reputations will have stronger incentives to make this work.

Chinese walls are not efficient where there are very obvious conflicts. However, they may be appropriate where a firm provides a smaller, specialist input. Where government officials rely on Chinese walls to prevent conflicts of interest, they should be aware that there may still be a risk of an outside perception that conflicts of interest exist. This perception could undermine the PPI reform as much as the presence of real conflicts of interest.

Recommendation 7.12: Project managers should establish a system for identification of conflicts of interest at the start of the process. Advisors and staff in the project management unit should be required to declare any conflicts. Where conflicts are material, advisors and staff should be ineligible for appointment.

Recommendation 7.13: Chinese wall arrangements should be limited in their use and carefully vetted by the government.

7.5 Corrupt relationship between advisor and government

Irrespective of how transparent the selection mechanism is for hiring advisors, there is always the possibility of corruption. Ultimately corruption will manifest itself in an award of the contract to a company or individual for reasons other than they are the best-qualified proponent. Corruption in the process of selecting and hiring advisors might arise when:

- a member of the selection panel has an undeclared interest in one (or more) particular advisor bidding for the contract;

- one of the potential advisors is privy to information that will put them at an advantage during the tendering; and/or
- one of the potential advisors proposes to advise the government in a particular way because they have been encouraged to do so by the future operators.

The key to minimizing the risk of corruption is the establishing of clear rules and procedures to be followed throughout the process of hiring advisors. For example, it would be desirable to have procedures in place to allow government officials to declare any gifts that they have received from potential advisors or bidders for the project. It might also be appropriate to have a code of practice that sets out any restrictions on companies or individuals that wish to bid for the contract and behaviour during the tendering process. In addition, most of the donor agencies have strict guidelines for ensuring that corrupt practices are prevented and, if uncovered, severely punished (e.g., prohibiting the company in question from any future work). They also often have a list of qualified companies/individuals who are eligible to undertake consultancy work for the agency in question. Many of these lists are publicly available.

Useful reading

Trivedi, P., *How to Implement Privatisation Transactions*, Routledge 2000

McFee, R. *Incentives in Government Contracting*, University of Toronto Press, 1988

Dufwenberg, M. and Gneezy, U. *Procurement and Information Feedback*, University of Stockholm Discussion Paper, March 2000.

8. Paying advisors for their advice

Outline of Module

What this Module does:

As indicated in Module 7, the appointment of advisors should generally follow a competitive tendering process. This module considers the ways in which advisors can be remunerated once they have been selected. In particular, it looks at the appropriate mix of success fees, time and material contracts and fixed fee contracts. The module also covers ways of rewarding innovation and discusses the issue of how risks should be allocated and contracts structured.

Who should read this Module:

This module should be read by managers of major reforms who are involved in design or negotiation of major contracts with advisors. This group of officials ranges from middle level civil servants located in the PPI unit or office heavily involved in recruiting advisors right through to senior officials who might be required to approve and sign contracts, as well as officials with financial and procurement responsibilities.

Substantial funds are spent on advisors. Managers of major reforms need to consider how best to structure those contracts to maximize value for money. This module describes a number of different approaches, and the situations under which they are appropriate.

8.1 Fixed fee contracts

For the purposes of PPI projects, the majority of advisors - economists, engineers and perhaps legal advisors - will normally be retained on contracts which either give them a fixed fee for delivering specific outputs, or which pay them on a time and materials basis for providing specific inputs.

The main risks in purely advisory contracts relate to the cost of the services and the quality of the output. Fixed fee and time and materials contracts allocate those risks differently. Fixed fee payments place the majority of risk related to costs on the advisors and, as a result, there will be an incentive for advisors to take short cuts on quality, with associated risks for the government.

Because fees are fixed, after the contract is won the company or consortium may have an incentive to reduce inputs against levels they had originally planned. They can do so by reducing the time input, or using lower cost staff, or by reducing 'out-of-pocket expenses' such as travel costs to increase the profit margin. These incentives to reduce inputs need to be offset by an ability to enforce quality standards.

The greatest difficulty under fixed fee contracts is therefore assessing quality. There are a number of ways of strengthening the government's ability to assess quality.

Governments could:

- **Rely on companies with a high reputation** All purchasers of advisory services face the same problem: that there are many providers of services, but it takes

time to assess the quality of the advice they provide. The normal response in markets of this sort is to rely on reputation as a signalling device, perhaps through the use of Past Performance References (PPRs). Where companies have a high reputation, they have more to lose if quality is low.

- **Rely on lead advisors** Where lead advisors have strong incentives to deliver, they will also want to ensure that sub-consultants perform promptly and well. However care should be taken to avoid potential conflicts of interest. In particular, sub-contractors often see lead advisors, rather than the government, as the client and this could lead to a lack of clarity in sub-contractors' objectives.
- **Use peer review** The market for advisory services is highly competitive. Another firm can be retained to review the quality of what has been produced. This normally requires relatively little time or expense. It cannot be used to fine-tune quality (since fine differences could be explained by difference of approach among the two companies). It can be used to ensure that low quality advice is not being provided, or important issues completely missed. However, the competitive nature of firms may raise the risk of undue criticism. Moreover, an outright condemnation of work from a peer reviewer can undermine the public confidence in a project and delay project implementation. As a result, peer review is often provided by donor agencies or governmental peers so as to guarantee objectivity.
- **Hire two firms to perform the same task** Where advisors' input could be crucial to the success or failure of the proposed reform, governments might consider using two sets of advisors to undertake the same task. For example, this might be an option where asset valuations are needed.

All of these potential quality control mechanisms are of lesser importance than careful selection and contract monitoring. A fixed fee contract works best when if output is clearly defined, quality can be measured and the advisor can control the risks associated with delivering the output. This is likely to be the case for most of the advisors outlined in Module 3, with the possible exception of the financial and legal advisors.

Recommendation 8.1: Fixed fee contracts should be used where the output is clearly defined and measurable. They may be combined with control mechanisms to enhance quality standards.

8.2 Time and material contracts

Time and materials contracts transfer cost risk to the government. Therefore, they need to be matched with systems for managing total fee costs and quality of output. However, the incentives to maintain high quality are greater than under fixed fee contracts. Companies have incentives to put more resources, especially more senior ones, onto the job and this will often result in higher quality.

Time and materials contracts are generally awarded for assignments in which the total input is difficult to define at the stage when the project is bid. This tends to be true of activities that come late on in the transaction. For example, the amount of legal

drafting will not be clear until other stages of the project are completed and will be affected by the response of the bidders to the proposed contract.

There are only a limited number of ways to manage cost risks. Possibilities include:

- Agreeing in advance to a reduction in unit fee rates if the volume of work exceeds an agreed level. Companies are often willing to accept lower fee rates for jobs which give them a large volume of work in a short period of time.
- Agreeing in advance to a cap or ceiling on the total billings. While this approach limits government risk, final cost may be difficult to anticipate and the consultant will be incentivized to bill up to the cap.
- Seeking, where possible, to transform open-ended time and materials contracts into fixed fee contracts for particular outputs. It may be possible to define new outputs and agree a cost for meeting them as the transaction proceeds.
- Ensuring that the time spent is carefully monitored for each individual team member and approved by the project manager – for example advisors might be required to provide an hourly breakdown of the time devoted to individual tasks or a monthly invoice that is subject to mutual agreement. This requirement for careful, detailed monitoring imposes additional costs in itself.

In practice, as major transactions near finalization it may prove very difficult to put any of these mechanisms in place to limit costs. It may also be difficult to know who performed each task and to determine the work undertaken by each team member. However, both investors and the government have an incentive to reach financial closure as rapidly as possible. Hence real time constraints may limit the total cost of any open-ended time and materials contracts.

Recommendation 8.2: Officials should use time and material contracts where it is difficult to determine the exact range of outputs that will be required. Nevertheless, as far as possible, the TOR for work undertaken on a time and materials basis should attempt to detail the proposed time and material input.

Although termed ‘time and material contracts’ many technical assistance contracts are de facto fixed fee contracts. Much of the work may be undertaken offshore and it is not possible to assess who is doing it or how long it takes. In practice, the firm gets paid provided the output is delivered to acceptable quality by the due date. At the same time, in appearance, they are time and materials contracts because bidders are required to build their cost proposals based on time inputs of individual staff; related fee rates; and other costs.

This has a number of advantages. If quality is not easy to assess, then inputs by appropriately qualified staff may be one proxy. Gross divergence from agreed inputs can then be monitored. The individuals named also have an interest in preserving their personal reputation. The contracts also make it easier to negotiate further work, since fee rates have been agreed upon.

Recommendation 8.3: Where advisors are paid for output (and so apparently a fixed fee), details of their proposed inputs will assist contract management.

8.3 Bonus and success fees

Contract theory shows that risks should be allocated to the party best able to manage them. Payment of success fees is the most usual form of substantial risk transfer under advisory contracts. As the term implies success fees result in advisors being paid a fee based on a successful outcome. The definition of a successful outcome may have a number of dimensions reflecting monetary values (such as the market value of a transaction or level or tariffs) or non-monetary objectives, such as the completion of a transaction by a particular time.

Success fees may be a lump sum, a share of the sale or some other value, or a share of value above a target level. In addition to the success fee, it may be appropriate to accompany the contingent payment with a retainer. The balance between the two will reflect the extent to which the government wishes to incentivize their advisors, and the extent to which a successful outcome is under their control. Common estimates for the size of success fees are in the range 0.2% to 3% of the transaction value, depending on the country concerned, the size of the transaction and the market conditions.

8.3.1 Measuring success fees

Success fees are appropriate when:

- it is possible to measure and quantify success in meeting government objectives;
- when success is at least partly related to the efforts of the advisors involved; and
- when it does not generate a conflict of interest.

Within advisory services, success fees are usually reserved for the successful completion of a PPI transaction (e.g., sale of a government owned company). By that stage it is generally possible to measure success in dollar terms, and success fees give an incentive to increase sale revenues. The value of other advisory work cannot normally be measured directly.

It is a mistake to base advisors' incentives on sale revenues at an early stage. In general, governments have objectives that are not purely financial. The structure for private sector participation should reflect those broader objectives. Once that structure is in place, the government's objectives may become more purely financial – to maximize sale revenues (or minimize required subsidies) within an agreed framework.

The power sector provides a clear example. Many electricity reforms to-date have created several generation companies, and introduced competition in generation, as a way of protecting consumer interests. However, sale value of generation assets would be higher if competition were not encouraged, and if a smaller number of generating companies (or only one) had significant market power. Introducing an incentive based on sale value for advisors' remuneration at too early a stage runs the risk that the government's objective of increasing competition is neglected, as it does not increase sale value (and is likely to reduce it).

Recommendation 8.4: Success fees should generally be limited to the final transaction stage of advice. By that time the government's objective is to bring the project to financial closure. Success fees should not be introduced before the broad structure of sector reform has been determined.

8.3.2 Restricting the use of success fees

Success fees should be reserved for advisors whose efforts will have a significant impact on sale value or other definable government objectives. The bankers handling the sale are the most directly concerned. Bankers can affect sale value by:

- working to attract a large number of qualified bidders; and
- by ensuring the transactions team delivers appropriate and timely information to bidders.

The largest trade sale in the world to date was during the Victorian power sector reforms and demonstrates the ability of bankers to generate interest in a sale and increase the revenue to the government. Commenting on the power sales during the sale period, the Treasurer of Australia wrote:

*“...trade sales were vigorously contested. Buyers who at first asked ‘what is this business worth?’ were by the close of bids asking ‘what do we have to do to win’.”*¹⁰

Bankers played a major role in achieving that shift in bidder attitudes, assisted by a process with a high degree of transparency and disclosure. The strong preference of the government for fully financed bids enabled close adherence to the timetable indicated in advance, also increasing confidence.

More generally, a handful of other key advisors may also play a role in changing attitudes. Legal advisors tend to be heavily involved in final negotiations with bidders. Non-banking financial advisors may also be influential.

The decision of which advisors should be provided with incentives through success fees needs to be taken separately for each transaction. This decision should be reached by asking the following sorts of questions:

- Is success or failure of the project directly related to the performance of advisors?
- Are there risks that could affect the outcome which are beyond the control of advisors?
- Will the lead contractor be able to extract the best performance from their sub-contractors in the absence of success fees?

If the answers to any of these questions is ‘yes’, then officials should think carefully about using success fees.

Recommendation 8.5: Success fees should be reserved for the small number of advisors whose efforts can have a significant impact on value.

8.3.3 Alternative approaches to structuring success fees

Success fees need to give advisors incentives to improve the result through increasing their efforts. That requires a decision on two parameters: the measure of value against which advisors will be rewarded and the structure of the incentive. The basis for such a decision is an estimate of what result is achievable, and what more could be achieved through increased effort.

¹⁰ “The politics of privatisation in Victoria”, Alan Stockdale, in Privatisation International, November 1999.

Sale of the Victoria Plantations Corporation

Australia's Victorian Plantations Corporation (VPC) was a state owned enterprise. VPC owned and managed 108,000 hectares of softwood plantations and 7,000 hectares of hardwood plantations, covering an area of around 166,000 hectares. In 1998 the Government of Victoria began preparing to sell VPC. Independent estimates of market value were A\$177 to A\$246 million, depending on the discount rate used.

Total advisory costs for the sale were around A\$7million. A transaction advisor was retained at an estimated cost of A\$4million. The transaction advisor was entitled to a further performance bonus of A\$0.5million provided that the sale was finalized no later than March 1999 and the sale proceeds exceeded A\$350million. Hence the definition of success that was used had two dimensions to it – time and money.

The sale of the business was announced in November 1998. Total sale proceeds were A\$550million.

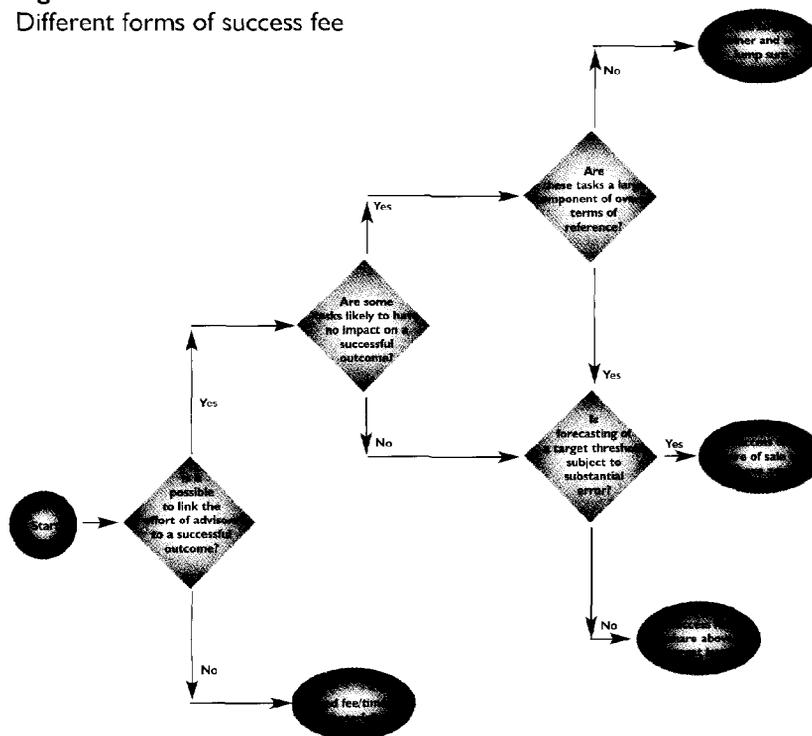
Source: General Report on Ministerial Portfolios, May 1999

Achieving a target above a certain value

One approach to establishing the basis for success fees was discussed in relation to the sale of the Victoria Plantations Corporation. A financial model can be used to estimate possible market values, based on discounted future cash flows. It is important that this estimation is carried out by independent experts; in other words, advisors who have nothing to gain from forecasting any particular valuation. The transaction advisor is then given an incentive to exceed the original valuation or expected payment.

Figure 8-1

Different forms of success fee



Unfortunately, as the example illustrates, forecasting is not an exact science and hence the approach generates the risk that the fees to advisors will reflect forecasting errors rather than their efforts to increase the market value. Notwithstanding this risk, however, a target approach has the merits of being defensible and establishing appropriate incentives, so far as can be done with limited information before the sale.

Achieving a positive sale value

An alternative to setting a target is to offer bidders a share of sale value¹¹ above zero, rather than sale value above a target. This approach requires less analysis. The disadvantage is that the asset or business being sold may well have a positive value that could be realized regardless of effort by the advisor. If they perform poorly they are still receiving a substantial payment. In theory this should be reflected in the bid price (advisors will bid less in fees if they expect to receive more in bonuses). In practice, it may prove harder to defend following the sale.

Lump sum or sliding scale?

The structure of the incentive can be a lump sum, as in the Victorian Plantations example given. Alternatively, advisors can be given a sliding scale. This would give them a share in sale proceeds, or in sale proceeds above a target figure where the share is increased the more the advisor exceeds the target.

In theory, advisors should reflect the expected value of success fees in their bids. However, estimating sales value and thus success fees is difficult, particularly at the early stages of a project. Bidders may attach little value to the probability of sales value (and success fees) at the top end of the scale. It may therefore be desirable to taper incentives, or to put a cap on the total level of success fees when considering large success fee payments. It should also be noted, that sliding scales may be doubly punitive in circumstances where failure occurs for factors beyond the control of advisors.

Balancing a retainer with a success fee

Generally the range of tasks that transaction advisors will need to undertake will comprise two groups. There will be those tasks that have a direct bearing on the outcome and those which need to be performed for the transaction to be completed, but will have little or no influence on the outcome. Where this occurs, it may be desirable to accompany the success fee with a retainer. The balance between the two will reflect the extent to which the range of tasks that the advisors undertake will impact on a successful outcome.

Recommendation 8.6: Success fees should give advisors an incentive to increase sales value or meet other government objectives. The appropriate structure will vary from case to case but should consider the achievable transaction goal, the relationship of the incentive to better sales performance, and the nature of any cap on the total fee.

8.3.4 And they can sometimes be used for sale of loss-making franchises

Where governments are selling assets, bidders will pay for the rights to the future profit stream associated with those assets. However, as discussed in other modules, governments may also be trying to increase private sector participation in loss making sectors. For a variety of reasons, governments may have a policy of particular services being run at a loss. The losses involved could be reduced if the rights to

operate the service and earn the revenues are competitively tendered. Examples include the competitive franchising of water services and of public transport.

In theory, the incentive for advisors can be structured in the same way. If effort by advisors can increase revenue from the sale of a profitable entity, it can also reduce losses from tendering out a loss making service. In the same way, that incentive could be based upon an improvement over the losses the government currently incurs, or over an informed estimate of the subsidy likely to be required if the franchise is tendered out. A key challenge of this approach is that loss-making services may often be characterized by cross-subsidies and hence it will be difficult to estimate the overall level of subsidies for a sector at any point in time.

Recommendation 8.7: Success fees for the sale of loss-making franchises can provide similar incentives to improve the financial outcome for government.

8.3.5 Success may not just relate to the financial result

The most direct incentive is financial: whether to increase revenues or reduce losses. It is also possible to provide bonuses if specified outputs are delivered by a target date. Since transactions have clear milestones and it is often politically important to reach them by particular dates, advisors may be provided with incentives to stick to timetable. For example, transactions may need to be completed before an election. If timing is particularly important, this can be reflected in advisors' contracts. Bonuses can be offered for on time (or early) delivery of outputs on the critical path for the reform and transaction. However, in general advisors should be provided with sufficient incentive to deliver projects on time by the refusal of the government to pay their basic fees if the output is not produced, regardless of the payment structure.

8.4 Combination contracts

In addition to the main payment structures identified above, other forms of payment are possible which combine some or all of the above. For example, one combination might include a fixed fee to undertake those tasks that are easily definable, together with payments on a time and materials basis for additional tasks not specified in the initial TOR. As discussed, that is often the de facto result of many technical assistance contracts. Legal advisors may also have a mix of defined outputs, and an open-ended response to legal issues that arise late in the transaction.

8.5 Indefinite quantity contracts

Indefinite quantity contracts (also termed framework or drawdown contracts) refer to contracts in which an individual, company or consortium is hired for a specified, usually medium-term (e.g., 3-5 years), period to undertake tasks as and when the need arises. In other words, the specific workload is unknown at the outset, and all that is known is that advice is likely to be needed in a particular area.

In some cases government may be required to use Indefinite Quantity Contracts (IQCs) if they receive funds from certain donor agencies (most notably USAID, TACIS and PHARE). However, if governments are under no requirement to use IQCs, there may still be a case for considering their use anyway.

IQCs are usually signed because it is anticipated that this advice will have three particular characteristics:

- it will be required at short notice—making a lengthy competitive bidding process unacceptable;
- each individual piece of advice will be relatively small - making an expensive competitive bidding process inefficient - although added together the amount of advice is substantial;
- the general nature of all of the components of the assignment can be anticipated allowing a broad evaluation of the amount of advisory input that will be required.

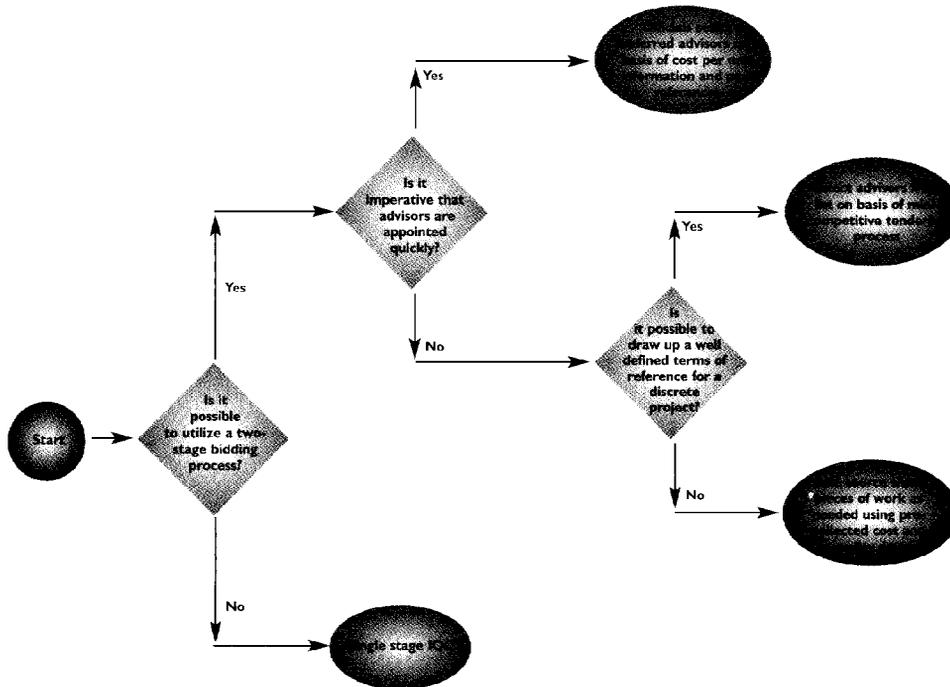
A combination of these three factors may mean that it is worth considering holding a competitive process to select a suitable advisor or set of advisors who can then be called upon when needed.

The process for deploying IQCs varies from agency to agency. A key factor which often differs across agencies is the extent to which different agencies use multiple rounds to determine which advisors are to be awarded contracts on this basis.

Some agencies (eg USAID) have multiple selection rounds before awarding IQCs. For example, at the start of a major reform, a government or agency may draw up a list of firms which will be invited to tender for specific projects over a period of time. The list itself will have been devised on the basis of a competitive tendering process, but also when the need for advisory services arises, firms on the shortlist may be asked to submit a brief proposal. If a multiple round process is to work effectively then the short list should be very small (preferably no more than three companies) otherwise the chance of winning enough projects to maintain interest is remote. Alternatively the shortlisting process should allow the government to invite a selection of advisory companies on the list to submit a proposal. Since the whole point of the indefinite quantity contract is to avoid having to go through the competitive tendering process each time a small job is required, the only way this process will work is if it is clear and transparent.

Others agencies have a more condensed single-round process where pieces of work are sole-sourced to one advisor (or advisory firm) that has been selected competitively at the start of a reform. This approach may be appropriate where advice is required at short notice, where the value of individual contracts is small or where the market for suitably qualified advisors is thin.

Figure 8-2
Different approaches to IQCs



Hence IQCs provide agencies with the flexibility to sole source or hold a quick competition as appropriate. However, by locking-in one set of advisors over a considerable period of time such contracts raise a number of issues that must be addressed.

The main issues are:

- How will companies be selected?
- Will individual companies or pre-formed consortia be selected?
- Will a short-list of companies be maintained or one company selected for each required speciality?
- Will a formal contract be signed with the advisory company(ies) for the entire period or for each project as they arise?

8.5.1 Selection for IQCs: firm and individual capability

As with any other bidding process, the selection of the advisory firm or consortium to undertake the contract can involve any of the combinations of technical and financial criteria as outlined in Module 7 (see Section 7.1.2). However, the long term, undefined nature of these contracts provide particular challenges. Most notably, since it is not known how often or for what precise tasks advisors will be called upon, they may not be able to submit assurances that specific individuals will be available, a work plan, a methodology or a fixed total price¹².

¹² Under some indefinite quantity contracts potential advisors will be able to present a methodology. For example, if a country is creating many regulatory offices (say, in each of many states) then an indefinite quantity contract may be signed so that as each state reforms the potential advisors are called in to set up the regulatory office. Under these conditions, it is possible for the companies to submit a detailed methodology covering how they would set up a regulator.

Consequently, evaluation must typically be based on the general capabilities of the companies in the area under question and the cost per advisor per hour of using their advice. However, the choice of consultancies based on unit price may result simply in the cheapest advisors being appointed—hence the desire for combining price and quality.

An important question that must be considered is whether the selection will be based solely on the company credentials or on those of individuals as well. In typical contracts, selection is weighted towards the individuals because they will be the ones actually undertaking the work. However, the uncertainties of indefinite quantity contracts (both in terms of the specific expertise required and whether specific individuals will be available in 2 or 3 years time) argues in favor of shifting the weighting towards company capabilities.

If naming individuals is favored (e.g., if there is a desire to ensure that a specific person with a particular skill is available) it is important to recognize that the long time period and unknown activation dates means that advisory firms may always be able to credibly claim that the requested individual is not available. Therefore, it is important to include in the contract clauses that allow the unit price to be adjusted according to the advisor who actually does the work and to ensure the work is to the quality that is expected of the person originally requested. Another method of trying to ensure that individuals named by the company in the original proposal remain active is to ensure that the company believes there is sufficient money available to make it worthwhile. If they anticipate that they can receive a substantial amount of money as long as the right people are available when called upon, there is greater incentive to provide those people.

Assessing the quality of companies and individuals in this field is difficult. When no specific job is being offered and the nature of the work is hard to anticipate in most cases there is no technical quality that can be assessed (at least in the first round of the bidding process for IQCs). Consequently, more general measures of capability must be evaluated, including:

- **Depth of experience** Both academic and practical – with greatest weight being placed on operations undertaken in the last few (say, 3-5) years. Over a long term contract it is unlikely that the same few individuals will be available. Consequently, this criterion should evaluate not just the individual CVs put forward, but also the depth of experience in the company to make sure it could perform even if these individuals are unavailable.
- **Breadth of experience** The range of sectors, countries and problems that the advisors have tackled is important since the advisors are likely to be called upon to look into a wide range of issues that touch upon their core speciality.
- **Success of activities** Has the company undertaken similar assignments in the past and were they successful? Past Performance References (PPRs) might be sought, although they ought to be treated with some caution. Successful past experience may be hard to verify and poor performance may not necessarily be the fault of the advisor.

8.5.2 Controlling costs

As identified above, the main problem with using price to establish the preferred company is that since there is no known output to be priced, the only measure available to use is the unit price - i.e. the hourly cost of individual advisors broken down by salary and overheads. However this information is of limited value because it is not clear how advisory firms will build a team when the time comes to undertake a specific project. Nor will the lowest priced advisors necessarily provide the best value for money. Consequently many agencies that use IQCs assign a lower weight to price proposals at the first round of the process for awarding IQCs than they do for fixed budget assignments or for when soliciting second round proposals for specific projects.

A further consideration arises because, over the length of such a long contract, prices will rise and people are unlikely to accept being paid the same amount per hour or per day at the beginning of the contract as they will at the end, which may be 5 years later. Three main options are available:

- **Use of multipliers** Agencies accept that annual salary increases will occur and establish constant multipliers, based on salaries, that will be applied for the period of the contract.
- **Internalization of price increases** Agencies accept that annual salary increases will occur but force the company to internalize these in their bids (i.e. they may bid their unit prices higher than their current rates but lower than they will be by the end of the contract so that over the entire contract they receive the appropriate average rate).
- **Benchmarking** Agencies allow an external benchmark to determine fee increases, i.e. use a widely published index. One benchmark that could be used would be announced increases in fee rates for a professional group (e.g., lawyers, management consultants) as an average over the top ten companies. An alternative might be the retail price index in the firm's home country. A further option might be comparison against the rates that are quoted in data bases of individual consultants. If this approach is adopted it is imperative that the index be a public publication which neither party can influence and both agree is readily identifiable¹³.

Finally, it is important to recognize that over such a long period, staff may be promoted—increasing their fee rates. There are two main approaches that can be taken in this case:

- Accept the higher fee rate in order to continue working with the same individual; or
- Maintain the agreed fee rate and use a different individual—i.e. someone at the same level as the previous person prior to their promotion.

One approach to avoid problems with promotion is to agree a set of fee rates for different levels of people, rather than for specific individuals. In other words, agree that any Partner or Director will be paid US\$X per day, any Manager US\$Y per day and any consultant US\$Z per day. The government can then request the mix of

¹³ In addition, a clause should be included in the contract informing both participants about the appropriate procedure should the index discontinue publication or change the definition of its coverage during the contract.

personnel it requires for each assignment and pay accordingly without worrying about specific individuals. The agency must only be careful that the firm is not promoting individuals or changing their titles simply to increase their rates.

8.5.3 Use of individual companies vs consortia

Another issue that must be addressed is whether the preliminary IQC bidding process should be based around individual companies bidding for specific work areas (e.g., legal, economic, technical, financial) or consortia that are able to deliver the whole range of skills.

There are two main advantages of asking advisory companies to propose individually for projects that might arise and require their specific skills:

- the government can select the best companies in each area rather than consortia that are likely to include a mixture of higher and lower quality companies; and
- the government avoids excluding strong individual companies which are unable to form relations with a consortium.

However, consortia also have important advantages:

- companies who have already established a protocol to collaborate as a consortium may be better able to coordinate the best approach to any given project; and
- the job of determining the appropriate group of advisors and managing that group is internalized within the consortium rather than being a job faced by the task manager in the government.

Under most conditions, the improved coordination among members of a consortium would suggest the latter approach. This option must be weighed against the individual contract's advantage of ensuring that each company has sufficient depth of experience to provide advice over the entire period. If individual company approach is adopted, a couple of further procedures should be considered:

- **Management** The ToR could include the management of the final consortium in the list of tasks. If a suitably qualified company is willing to take on this responsibility then that would remove the risk of co-ordinating the consortium from the government.
- **Communication** Where government retains overall management of advisory contracts for a range of firms, there should be a process for ensuring that the right skills are mobilized for the task in hand.

8.5.4 Different approaches to contracting

Within a single round process advisors can be signed with a variety of contractual approaches, including:

- a permanent retainer that pays them a specific amount every year;
- a time and material contract for each piece of work they undertake;
- through the submission of a brief proposal with an estimate of a lump sum contract; or
- a separate lump sum contract each time a new project arises, possibly using a quick competitive price/CV based process where several advisory companies are placed on a short list.

Since the exact extent and nature of the services to be provided under an IQC are not known at the commencement of the contract, the contract typically specifies a per person/per day unit price for each form of service that might be required over a fixed term. At the end of the term, the contract will expire.

Such contracts are effective in ensuring advice can be made available rapidly without the need for cumbersome procurement procedures. However, they also severely restrict the choice of advisors and may well lead to problems where the actual services required differ substantially from those envisaged when the contract was initially signed. In addition, they create a temptation for the government always to refer to its pre-signed advisors even when the issue that arises is outside their main set of expertise.

Recommendation 8.8: Indefinite quantity contracts should be used with caution, when it is known that upcoming assignments will be too small to merit competitive selection, when it is anticipated that the turnaround for individual assignments will be very quick, and when the projects are spread over a sufficient time period that they cannot be grouped into a single competitively bid contract.

8.6 The phasing of payments for advisors

In general, advisors will seek to be paid up front as far as possible, for cash flow reasons. They may also prefer upfront payment where there is a possibility that the government will default on a payment. On the other hand, it is in the interest of the government to link payments to outputs which must be delivered to requisite standards.

For large projects, lasting more than several months, it would be unreasonable to expect companies to undertake work for which they will not be paid for a long time. Government officials will therefore need to establish a payment or invoice schedule that sets out the points at which the company will receive payments. Where possible it would be desirable to align payments with the completion of specific outputs. Such outputs might not only include delivery of the final product, but also intermediate milestones such as reports, workshops and presentations (also see Module 4 of *Volume I*). It is usual practice that a portion of the payment (and often the largest share) to be reserved until the final output has been signed off.

Where phased payments are adopted, then officials will need to consider the payment profile. As a general rule, the payment schedule should reflect the amount of input that advisors will put into each stage of the work.

An example of a payment schedule is shown in Table 8-1 for a small project involving the training of new regulators.

Table 8-1

Payment schedule for \$50,000 project involving training new regulators

Percentage	Amount (\$)	Milestones
20%	10,000	Delivery of appropriate teaching material to the project officer
30%	15,000	Successful completion of the workshops
50%	25,000	Delivery of an acceptable report setting out consultants' recommendations for further training

For smaller projects, payments after completion of the work is usually sufficient for two reasons: smaller projects will be less likely to have multiple milestones, and the difficulties of cash flow are less likely to be an issue for shorter projects.

Recommendation 8.9: Governments should establish payment structures that broadly reflect the cost of expected inputs, make payment against defined outputs, and retain some leverage for final delivery.

8.7 Standard contractual safeguards will be needed for advisory contracts

As discussed in sections 8.1 to 8.4, the form of payment can be a method of allocating risks to different parties. Fixed price contracts tend to allocate cost-related risks to the contractor, whereas time and material contracts tend to place that risk on the government.

The inclusion of contractual safeguards provides an alternative way of protecting government interests and minimizing its liability. One approach is for the government to draw up a document setting out the general conditions of contract for services. A key issue in contract design is the appropriate allocation of risk across the different parties involved – primarily the government and their advisors, although under some circumstances the government will need to consider the contractual relationship between its lead advisors and advisors' sub-contractors. Where sub-contractors are being used, it is usually the responsibility of the lead contractor to agree a contract with its sub-contractor. However, the main contract may need to ensure that the government is protected against the actions of sub-contractors to prevent, for example, the disclosure of confidential information or conflicts of interest.

The contract that the government draws up is likely to address some or all of the following issues:

- **Confidentiality** Disclosure of confidential information and retention of documentation. Advisors working on confidential issues may be required to adhere to government rules relating to the disclosure of confidential information and to return all copies of confidential information that is provided to them during the course of their work.
- **Receipt of gifts or payment of commission** Advisors will need to be made aware of procedures for informing the government of receipt of gifts or commission.

- **Merger, takeover or change of control** This would require the advisor to inform the government of any potential changes of ownership. This is important because any changes in ownership can be a potential source of conflict of interest.
- **Termination of contract** The conditions under which the contract can be terminated without notice. Possible grounds for termination include breach of confidentiality agreements by advisors, failure of advisors to meet requisite standards of performance, if the advisors cease to carry on their business or if there is a change of ownership of control.
- **The use of sub-contractors or change of personnel** The advisor might be required to inform the government if new sub-contractors are appointed or individuals other than those named in the team undertake the tasks included in the contract. This is important if substitution of personnel gives rise to conflicts of interest and may be grounds for termination of the contract.
- **Insurance** The contractor's responsibility to take out professional indemnity insurance and under which country's law's it should apply. This is usually the country of the contracting government, although it may differ if the funding sources are grant-giving institutions.
- **Insolvency of the contractor** The conditions under which the contractor needs to inform the government of bankruptcy or insolvency.
- **Arbitration** The process that will be undertaken in the event of a dispute.
- **Exchange rate fluctuations** The contract will normally state the currency that the payments are to be made in and the arrangements for reimbursing expenditures arising in foreign currencies.
- **Payment of local taxes** The contract will need to specify which local taxes will need to be paid and whether the sums invoiced will include taxes.

While the contract between the government and its advisors provides the government with a degree of security, it should only be relied upon as a safeguard of the last resort. Ideally, if problems with advisors occur, these should be discussed openly and settled during the course of the project. Furthermore, even though the contract provides legal protection, in the event of any dispute, it should be born in mind that court settlements can be time consuming and expensive.

Useful reading

HM Treasury, *How to Appoint and Manage Advisers*, Technical Note #3, UK Government, 1999.

McAfee, P., *Incentives in Government Contracting*, University of Toronto Press, 1988.

Stockdale, A., *The politics of privatisation in Victoria*, Privatisation International, November 1999

9. Managing the PPI advisory services

Outline of this Module

What this Module does:

This Module describes the different roles that officials play within the overall process of managing advisors, ranging from those located in the PPI unit in the ministry in charge of privatization to officials in other ministries affected by the reform. The Module also suggests some institutional models for organizing officials.

Who should read this Module:

This Module should be read by officials involved in the overall management of the reform process, and particularly by officials involved in the management of advisors. Officials with responsibilities for setting the overall strategy for PPI reform and those with responsibilities for implementing that reform will need to be aware of the alternative arrangements that available for managing advisors.

The introduction of PPI is likely to require some internal reorganization of the government institutions to reflect the reform. Although this module is primarily concerned with the managing of advisory services for PPI, rather than the management of the PPI process itself, the two matters are strongly related.

This Module addresses four aspects of management of the PPI process. Section 9.1 discusses political structure for co-ordination and communication. Section 9.2 covers the institutional structure for managing the overall process from policy formulation to contract award and through to contract management. Sections 9.3 and 9.4 cover the management of contracts with advisors. Finally, section 9.5 discusses how the performance of advisors can be monitored.

9.1 Structures for political management

A prerequisite for successful PPI is agreement within government over the objectives of the reform and the steps that need to be taken. Many PPI programs have implications far beyond the interests of the immediate sponsor or line ministry (i.e. ministry with a responsibility for a specific sector). Processes are needed to resolve conflicts over reform objectives and mechanisms should they arise. They need to balance adequate political control with rapid decision making. They will need to be based on cabinet, and ministerial committees below cabinet level.

- **Cabinet** Major PPI programs may be of sufficient importance to warrant cabinet consideration. Cabinet processes will differ among countries. A possible approach is for cabinet to consider and endorse the major policy decision that initiates a reform, and legislation to support the reform. Where a major transaction is involved, cabinet should also be informed of the outcome. The timetable for cabinet consideration will have implications for timetables for final outputs by relevant advisors.

- **Ministerial or cabinet committees** Day-to-day management of a major reform will raise issues of sufficient importance to require ministerial consultation and decision but too detailed for full cabinet consideration. Some formalized structure will be needed for the key ministers involved to consult and reach a decision. Cabinet may formally delegate decision making to those ministers, or may delegate a power to recommend and reserve final approval for specific decisions. The composition of a dedicated ministerial committee should involve the key ministers. To avoid substantial delays in making decisions, membership will probably have to be limited.

Public dissatisfaction with the implications of a PPI program can prevent reform. It is important that the government communicates its program to consumers and other stakeholders, and consults with them, to ensure public support.

Most successful major reforms have relied on a key senior minister to act as a champion for reform. The appropriate approach will obviously differ from country to country. However, it is generally essential that communication is managed from one location. This becomes of increasing importance as a transaction nears its end. Investors will be very sensitive to political signals from the government. Only those ministers directly involved will be well informed of the most recent decisions and their implications for the wide group of stakeholders.

In some cases the government may have the necessary in-house resources to manage and organize the process of consultation and publicize the reforms. Where they do not, public relations advisors can offer advice about how to manage the relevant processes. (See *Module 3 of Volume 1*).

In addition, the government needs to demonstrate commitment to the process. There are a number of ways in which it can signal commitment to the process of reform, including the hiring of competent private sector advisors and setting up autonomous reform management units. The announcement of major reforms in publications such as the *Wall Street Journal*, *The Economist* or *Financial Times* is another way of indicating government intent.

Figure 9-1 illustrates the potential parties that might be involved in managing the overall PPI process. Structures for managing the process of political reform – such as cabinet or ministerial committees - will be most likely to be active during the first stage of the PPI process, when policy is being formulated. However, as discussed, it is important that the key messages about the direction and intention of reform programmes are constantly reiterated and hence ministerial involvement will be required throughout subsequent stages of the process. Once the policy direction has been determined, cabinet or ministerial committees will play a less active role and may only be required to convene where decisions regarding changes in policy are required or to receive progress reports on reform and implementation. More generally, after the end of the policy formulation stage management of the PPI process will fall either to a pre-formed PPI unit (or some equivalent) or to a committee made of up officials for that particular initiative. They may receive some support from lead advisors.

Figure 9-1
Management of the PPI process



(Indicative arrangements for management of the PPI process)

Independent unit within government

The independence of the government agency managing the process will help to signal commitment (also see section 9.2). In particular, this will be more likely to hold if the unit:

- has a separate budget allocation that ensures funding over the entire period of the PPI process (i.e. not just for one project but for the reform program);
- is responsible directly to the highest levels of government, at least to the relevant minister and possibly to the head of the Treasury, Finance Ministry or to the head of state; and
- is situated away from other government departments providing it with the ability to operate independently.

Creation of a cabinet level authority in Bolivia

In Bolivia, a Ministry of Capitalization, headed up by a senior cabinet official, was established at the outset of the PPI program for the privatization of state-owned utilities, selected transport systems and mines. In a period of just three years, the Ministry oversaw the privatization of public enterprises in the telecommunications, electricity, railways, airlines, airports and hydrocarbon sectors. The process had strong political support at the highest levels: the Minister of Capitalization was understood to have 24 hour access to the President and to act with the authority of the presidency. Upon completion of the capitalization program, the Ministry was abolished.

Recommendation 9.1: Officials in the center of government should advise ministers on a structure for consultation and decision making. It will be important to define formally the role of cabinet, committees below cabinet, and individual ministers perhaps by presidential decree. It will also be important to communicate effectively with key stakeholders, and to centralize communications as a transaction proceeds.

9.2 Structures for official control

The extent to which reorganization is required depends upon the extent of the PPI reforms. Three broad approaches can be adopted:

- (1) *A centralized approach:* One model is to establish a unit to manage the PPI process located within a central department such as the finance ministry. The functions of such a unit could include:
 - coordination and communication of the reform program;
 - implementing major restructuring;
 - defining regulatory roles and establishing regulatory bodies;
 - preparing relevant legislation; and
 - managing major transactions.
- (2) *A decentralized approach:* Under a decentralised approach, the line ministry would be responsible for the functions outlined above. A dedicated unit would be created within the department for that purpose.
- (3) *A hybrid approach:* Two forms of hybrid approach could be considered. The first is where line ministries or agencies retain responsibility, but a central unit provides best practice advice and guidance on PPI implementation to other ministries. The second is where a dedicated unit is formed from one or more ministries. The ministries concerned would probably include at least the finance ministry and the main line ministry. Ministry and agency participation could reflect the involvement of key ministers.

There is no simple answer to the best approach (see Table 9-1). The main issues to consider when deciding on the structure are how best to use available skills in:

- restructuring and transaction;
- knowledge of the relevant sector; and
- managing relationships with key interests in the sector.

However, these issues can have different implications depending on the particular situation faced. For example, when restructuring and transaction skills are scarce, or when the government is embarking on an intensive program of reform, this is likely to argue for a greater degree of centralization.

Table 9-1
Advantages and disadvantages of PPI management approaches

Approach	Advantages	Disadvantages	Implications for managing advisors
Centralized	<p>Same department has control over whole PPI program—allowing it to understand the bigger picture and to learn from previous experience.</p> <p>Allows development of specialization in contract management.</p>	<p>Expertise within central department may not exist to oversee specialist aspects.</p> <p>Central department may have weaker relationship with key sector bodies.</p>	<p>May need to use sector specialists from line ministries to help manage advisory input. Other government specialists (e.g. economists, lawyers and engineers) will also be required.</p>
Decentralized	<p>Allows those in government who best understand the area or sector to manage the process, and the relationship with key interests.</p>	<p>Line ministry may lack skills in restructuring and transactions.</p> <p>May lose wider view of whole PPI program, and fail to learn from experience.</p>	<p>Mechanisms need to be put in place to ensure that advisors are not ‘captured’ by sectoral interests.</p>
Hybrid	<p>Allows combination of wider view of PPI program with understanding of needs specific to the department in question.</p>	<p>May create tension between the two departments who have opposing objectives. This may be reduced if the relevant ministers are working together.</p>	<p>Potential problems of lack of co-ordination between the two organisations. This may be confusing for the advisors.</p>

When knowledge of the relevant sector is weak, officials may develop contracts that create subsequent problems elsewhere in the sector. For example, toll road contracts frequently protect the developer against competing road developments. If the government attaches importance to particular future developments, this needs to be recognized in the contract design. When the transaction only affects part of a complex sector, this argues for a greater involvement of the relevant ministry, in order to avoid decisions being made which will foreclose subsequent options for further private sector participation in the future.

When relationships with key interests are neglected, reform can be blocked. It is important that relationships with unions, professional bodies, and other key groups in the sector are well managed. The most effective way of handling this will vary substantially from case to case.

Recommendation 9.2: Officials should take into account the implications of specific structures for managing the PPI process for the management of advisory services.

9.3 Organizational decisions

Once the location of the unit(s) is decided, ministers and/or senior officials will need to decide on the:

- appropriate number of staff;
- range of areas where expertise is required;
- need for input from external experts; and
- level of seniority of staff.

The answers to these questions will partly depend upon the scope of the PPI process. The introduction of a single service contract in a single sector would require little or no government reorganization. Full sectoral liberalization could require substantial policy work, new legislation, establishment of a regulator, management of the transactions and coordination of a range of government interests such as related sectors, industrial relations, finance, public works and the environment.

The staffing of the unit will also depend upon the extent to which external advisors are involved in the process of reform. Even where a large part of the process of managing the reform is contracted out to the private sector, there will still be a need for institutional structures to be established. In particular, officials will be required to:

- provide data;
- act as a contact point for the set of officials with whom the advisors will need to speak; and
- take decisions in circumstances where the advisors are faced with choices, or refer major decisions to ministers.

The establishing of a unit can also help facilitate knowledge transfer, particularly if, for example, the advisors work with officials on a frequent basis.

In determining the staffing needs for the unit, identifying the division of labor between officials and advisors provides a useful starting point. Based on this approach, Figure 9-2 and Figure 9-3 show the staff requirements involved in managing two illustrative PPI reforms involving a management contract and a full-scale divestiture.

Figure 9-2 illustrates indicative staffing levels required to organise a management contract. The figure shows that between one and four full time people might be required to manage the process from start to finish. This estimate is based on the assumption that a single (middle level) official would have responsibility for undertaking all of the internal tasks indicated. Additional input might be required from specialist and more senior staff for the purposes of tender evaluation and for contract negotiation. The responsibility for appointing and managing advisors might also fall to the same official, or alternatively the tasks of managing advisors might be allocated to a different person, depending upon the scale of advisory input. The input of administrative, secretarial and accounting/financial staff would be required on an occasional or part-time basis too.

Figure 9-3 illustrates the indicative staffing requirements for a unit managing an entire asset sale. It is envisaged that a much larger full-time core team of staff would be required to undertake the set of internal tasks indicated. This core team would be likely to comprise a project manager (usually a middle level official), a lawyer, an engineer and an economist. Part time input might also be required from staff with

publicity or public relations expertise, financial management and administration skills. A senior official (for example head of the privatization unit) would be required to direct the entire process, though on a strategic rather than a day-to-day basis.

Figure 9-2
Indicative staffing levels required to organize a management contract

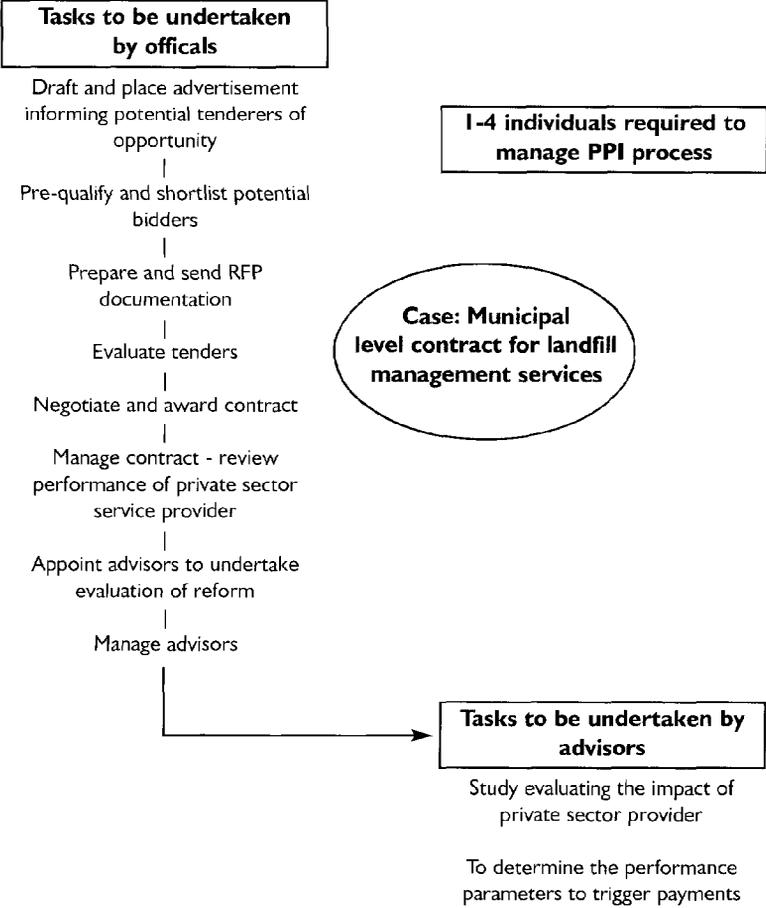
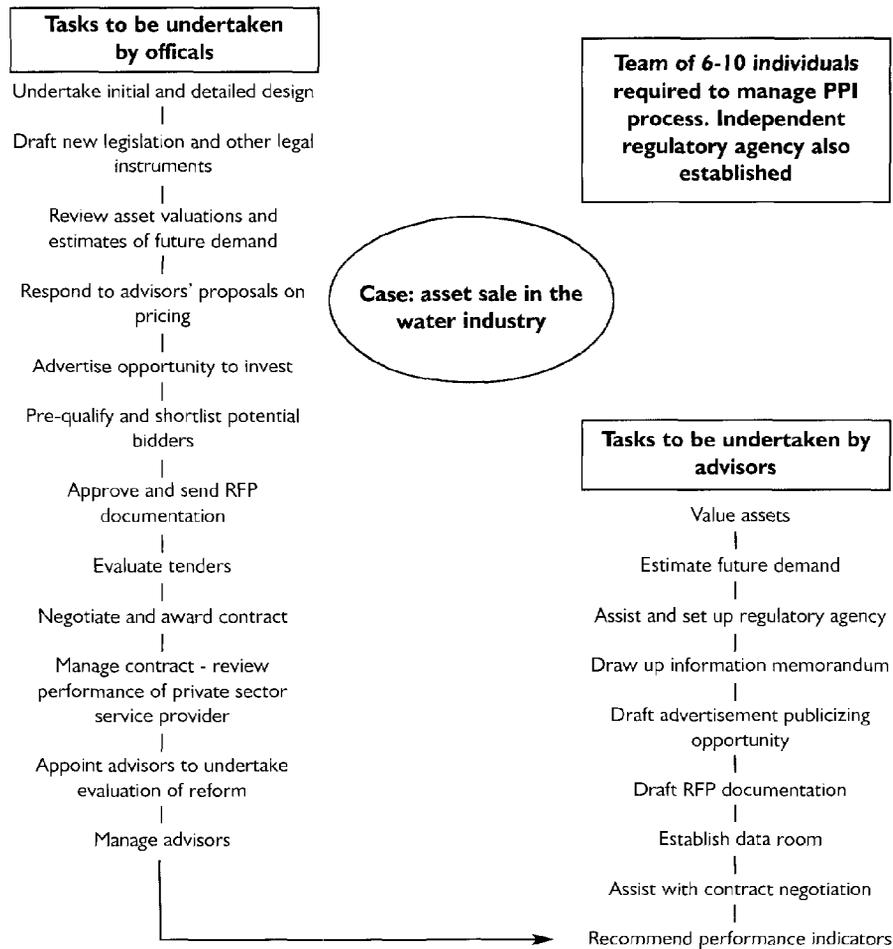


Figure 9-3
Indicative staffing levels required to organize an asset sale



Recommendation 9.3 Decisions about the role, structure and authority of the management unit should reflect the importance of the assignment.

9.4 Management of advisors

Once advisors have been appointed it is crucial that they are managed properly. It is preferable for the task of managing advisors to fall within the remit of the unit or officials involved in the overall PPI reform program or project. The following sections outline the differing roles that officials will play and the resources that will be required for the explicit purpose of managing PPI advisors.

9.4.1 Varying roles of officials

Managing advisors is an important task that can contribute significantly to the success or failure of the reforms. It is important that both the number and the seniority of officials required to manage advisors are not under estimated.

Given the close links between advisory services and the PPI reform program, it would be desirable for the officials managing the advisors to sit within the unit that is charged with managing the overall PPI reform program. Furthermore, payment for advisory services should come from or be authorized by the agency or unit responsible for the PPI project. This is important for the following reasons.

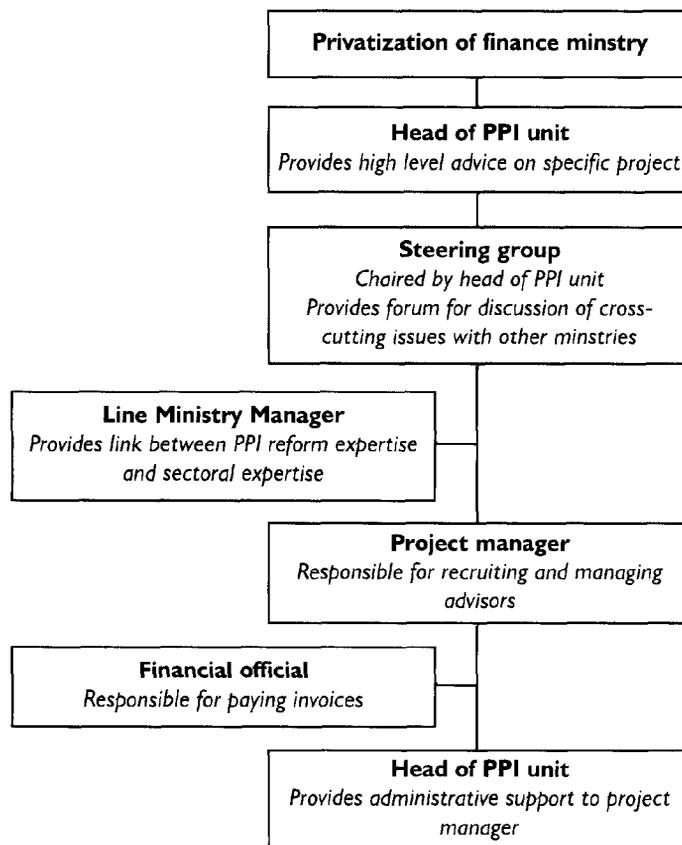
- If the finances for paying for advisory services came from a budget that the agency or unit did not control, payment for advisory services could be withheld for no reason.
- There may be no sense of urgency when paying for advice.
- The agency or unit will have incentives to ensure that they get the best value for money from their advisors.

Managing advisors is likely to require the involvement of a number of officials in varying capacities. At the very least, the different officials will be required to undertake the following roles:

- *Project management* – this is likely to fall to a middle level manager in the unit or line ministry.
- *Provision of senior advice* – this will be likely to fall to a senior level official, perhaps at the level of permanent secretary or minister.
- *Financial monitoring* – this will likely to fall to the finance division of the unit or line ministry.

Figure 9-4

Indicative roles of officials on PPI project



Recommendation 9.4: Management of advisors should be closely integrated with management of the reform program, ideally through colocation of the two activities within the same unit.

9.4.1.1 The project manager

A single person should act as the first point of contact for the advisors and have prime responsibility for the management of and communication with advisors. Depending on the type of contract signed (a single contract signed by a lead company within a consortium or individual contracts with specialist advisors) it may be appropriate to have:

- a single project manager;
- a lead project manager supported by individual project managers with responsibility for each contract with the specialist advisors; or
- a series of individual project managers reporting to an official with overall responsibility of the PPI process.

The project manager will be heavily involved in the management of advisors once they are appointed. It is desirable that they also play an important role in the process of appointment. In view of this, the range of tasks that the project manager will be likely to undertake includes the following:

- **Acting as the lead official** – to coordinate writing the TOR (see Module 4 in *Volume I*) that will eventually form the basis for part of the contract with the advisors and be the point of contact during the hiring process.
- **Coordinating with donors** – to serve as the day-to-day point of contact with lending agencies and trust funds involved with financial the technical assistance, if relevant. This requires detailed knowledge of the agencies' procurement guidelines and obligations for consulting services.
- **Agreeing a timetable with the advisors** – a condition for effective project management of advisors is establishing a feasible timetable over which the work is to be undertaken, together with an unambiguous list of deliverables or outputs.
- **Organizing the appointment of advisors** - as described in Module 7 (see section 7.2.4) this is likely to involve appointment of an evaluation committee.
- **Acting as a first point of contact with the advisors** – it is inevitable that issues will arise which require the advisors to seek clarification from government officials. These should be addressed to the project manager in the first instance. The project manager may then act as a conduit by putting the advisors in contact with other government officials.
- **Communicating the key changes to the advisors** – in a complex PPI process, the advisors' tasks will be affected by decisions that are taken elsewhere in government, perhaps by ministers. It is crucial that advisors are kept informed of these decisions and that others in government are aware of the suggestions being made by the advisors and their implications.
- **Approving payments, additional expenditures and monitoring project expenditure** – while the contract with advisors should make provisions for the sorts of additional expenditure that might be incurred, there may be a need for

the project manager to approve additional expenditures from time to time. Where advisors are not being paid on the basis of a lump sum contract, then the project manager may also be required to monitor the overall cost of advice.

- **Monitoring performance of advisors** – the project manager will be responsible for assuring to senior government and donors that the advisor is performing according to contract. In the case of the advisors' nonperformance the project manager will correct the situation through renegotiation or will notify senior officials if re-tendering appears to be required.

Depending upon the scale of the PPI project or program, the project may have a team of officials providing support. These advisors may be drawn from a wide range of ministries or agencies, providing regional, functional or sectoral expertise.

Recommendation 9.5: In most cases, the project manager should prepare TOR for the advisors, organize their appointment, and act as the first point of contact and channel for communications. The project manager should also control the timetable for deliverables and the budget.

9.4.1.2 Senior officials

Senior officials, although not directly involved in the day-to-day management of advisors, will, nevertheless, play an important role. The range of activities will involve:

- **Justifying the need for advisors as part of the input into the reform process** - this task may involve their early involvement, prior to embarking on the reform, if they need to secure extra funds from the government budget or from donors to pay for advisors.
- **Negotiating with donor agencies** – this task will need to be undertaken right at the start of the reform process. Where funds are secured, senior officials will have an additional role in ensuring that the funds are used in a way that is consistent with the agency's requirements.
- **Making strategic decisions** – about the PPI reform process which will impact on the range of tasks that are to be undertaken by advisors.
- **Liaising with advisors** - (usually via the project manager) if their input is required to take high level decisions as a result of the work undertaken by the advisors.
- **Relaying the recommendations of advisors to ministers and other high level officials** - to ensure that there is a continuous flow of information and that the relevant parties within government participate and sign on to the process.

9.4.1.3 Budget officers

While the project manager will play a role in monitoring and approving expenditures, they will not usually be the ones charged with processing and paying any invoices (although they will sometimes be the official receiving invoices in the first instance). Usually, there will be a need to designate an individual within the finance or accounting division of the administering agency or project implementation unit to ensure that payments are made to the advisors within a specified time. This individual must not relinquish payment unless the project manager is satisfied with the quality of the work.

The budget officer must also be made aware that the budget ought to reflect the timetable, quality and size of the project.

9.4.2 The management team's resource requirements

Managing advisors is a major task. This should be recognized when drawing up the job descriptions of those within the PPI management team. Sufficient time should be allocated to the task, even if more staff have to be recruited to ensure manageable workloads.

It is also important that recognition is given to the need for high caliber personnel to work with advisors. The managers of advisors may be required to absorb large amounts of technical information and to work to tight deadlines. It may be necessary to pay over-and-above normal civil service pay scales to ensure that suitably qualified officials are recruited and retained.

Section 9.3 outlined the bare minimum in terms of the different roles that officials will need to fulfil. Depending upon the form of PPI selected, a more complex team of officials might be required to manage advisors, perhaps cutting across conventional departmental boundaries or comprising staff with the relevant economic, financial, legal, technical and other skills.

Given the complexity and wide range of issues that officials might be required to address when managing advisors, wherever possible continuity of personnel should be ensured, even if this means keeping staff in positions for a longer duration than is normally practised.

In addition to people, the management team may also need to provide office space, bilingual support staff and communications facilities (telephones and internet/email access) to the advisors. It will be important to ensure that the advisors are located in government offices rather than in the offices of the utility, enterprise or entity that is subject to reform. This geographic separation of advisors from the entity concerned serves to reinforce real and perceived independence of the advisors.

Recommendation 9.6: Senior officials should ensure that the management team has adequate resources, and encourage staff continuity.

9.5 Monitoring advisors' performance

Once advisors have been appointed, it is important that they are not simply left to undertake the tasks set out in their TOR. In almost all circumstances there will be a need to monitor the advisors' performance, and to facilitate communication among the government officials charged with project management and the advisory team.

9.5.1 The structure for monitoring

There are several different approaches to monitoring the performance of advisors. The most appropriate will depend upon the size of the contract and the importance of the work that they are undertaking.

Steering group

The most common method of managing the work of advisors is through the appointment of a steering group to manage and monitor the progress and quality of outputs of advisors. This approach is particularly appropriate where a number of advisors with different skill sets have been appointed, or where a wide range of skills is required to judge whether the work of the advisors is of sufficient quality (e.g., during the initial and detailed design stages of the reform). It also provides an effective way of ensuring that all ministries affected by the reform have an opportunity to comment on the work of advisors. Where an evaluation committee has been established as part of the competitive tendering process, then this same group of people might be the best qualified to monitor the work of the advisors.

Specialized unit

Another common approach is the creation of a privatization unit, a semi-independent body headed up by a senior civil servant or non-government official that will oversee the entire PPI process. As emphasized above, it will be vital that this unit has direct access to senior members of government. Therefore, it is important to select as head of the organization someone with sufficient clout that they will have this access.

Lesotho Privatisation Unit

The Government of Lesotho has embarked on a wide ranging reform and privatization program covering everything from infrastructure to abattoirs. In order to coordinate the process, ensure stakeholder support and consistency across the many initiatives, the Government created the semi-autonomous Privatisation Unit. The unit was officially placed under the Ministry of Finance but was located outside the main government offices and had independent funding from the World Bank.

In addition to considering the appropriate form of private sector participation in each of the industries, the Unit was also responsible for hiring advisors to set up the appropriate regulatory frameworks, draft the required outline legislation and undertake the implementation of the programs.

Stealth management

Where the amount of input from advisors is relatively small or specialized then it may not be cost-effective to establish an independent unit. The time and effort required to organize the group may well end up being greater than the value of the actual contract. If this is the case, then the project manager will need to devise mechanisms or procedures for keeping in touch with the service providers. Regular progress reports, either face to face or over the telephone, may offer one way of ensuring that both parties are kept informed.

In some cases it may be that the relevant expertise is not available within government to monitor the work of advisors. Where this arises, it would be desirable to appoint an external advisor (for example an academic or independent advisor) to enable the government to accurately evaluate the reports and recommendations from the external advisor.

Recommendation 9.7: The project manager should establish a management team that reflects the resources available and the complexity of the initiative.

9.5.2 Schedule management

The workplan submitted by the advisors should have a clear description of the outputs to be produced and the timetable under which they are to be submitted. If there are delays to the timetable, then it is important the project manager agrees to a revised timetable with the advisors (Module 4, in *Volume 1*, considers the timetable in more detail). The revised timetable needs to be feasible, and to coincide with the overall timetable for the PPI process. In some cases it may be necessary to revise the outputs to ensure they are feasible within the timetable.

The timetable should include interim outputs. This allows progress to be monitored and creates a series of small deadlines rather than one large one. Interim outputs may be short reports, workshops or presentations by the advisors. Alternatively, they may be drafts of the final report or reports on the progress of the financial or technical advisors in approaching bidders and valuing assets respectively. By structuring the work in this way, the government officials will minimize the risk that the final output fails (e.g., there is no private sector interest in the infrastructure in question) or the final output is unsuitable for the government's needs.

Recommendation 9.8: The project manager should ensure a timetable with phased outputs is agreed upon with advisors.

9.5.3 Importance of open communication

It is important to emphasize the need for interaction among all the stakeholders, including government officials, the advisors and the wider community affected by the reforms. Interaction with stakeholders through seminars and workshops helps to manage the timetable and may provide a series of performance indicators. In addition, they provide opportunities to present the current state of the advisory project to stakeholders and allow them to voice concerns or ask questions about the process which helps to ensure all stakeholders buy into the process. This interaction has the additional benefit of transferring knowledge about PPI to the wider community.

A more general process of consultation with the public can provide a way of generating support for reforms. Publishing consultation papers, and holding domestic road shows and information campaigns, informs stakeholders and can generate support. These may be focused at particular groups, for example at staff working in the companies to be exposed to the rigors of the private sector or consumers, or they may be more general campaigns aimed at generating popular support for the measures.

Recommendation 9.9: The project manager should ensure that there is interaction within government and with stakeholders. This structured communication may be facilitated by the PPI advisors through workshops, seminars, public relation campaigns and publications.

Useful reading

Treasury Taskforce website. *How to Manage the Delivery of Long Term PFI Contracts*. http://www.treasury-projects-taskforce.gov.uk/series_3/technote6/6tech_contents.html

Annex I: Sample Terms of Reference

This Annex provides five sample terms of reference covering different sectors and different types of projects.

(I) Power sector regulation

Privatization of Acadia's Electricity System

Scope of Work for Regulatory Development and Tariff Modeling

Background

Acadia, a small state and former Portean colony with about 1.2 million inhabitants, has decided to privatize its electricity sector. The Department of Energy (DOE) is planning to sell its transmission and distribution assets to strategic, institutional and/or private investors. The new industry structure will allow for the development of IPPs in Acadia to sell electricity to the new utility and directly to major users. There are currently no generation assets in Acadia as the DOE purchases its power from a grid that is interconnected with bordering states. Insufficient power has resulted in load-shedding and pent up demand among Acadia's industrial, tourism and residential communities.

In advance of the transaction, the African Development Bank is managing several areas of technical assistance to strengthen the ability of the state government to conduct the privatization and regulate the privatized entity. Following a business and investment plan already conducted by the firm Sigmund & Pumpkin, the African Development Bank intends to retain a utility economics consulting firm to design an electricity tariff for Acadia and to design and help implement a new regulatory framework for the sector. The following proposal outlines the goal of the project, the purpose of the technical assistance, the work plan and deliverables that should be conducted as part of these studies as well as the bidding criteria that will be used to select the appropriate firm.

Goal of the Privatization

By allowing the private sector to invest in and manage the electric utility, the Department of Energy expects to increase the availability of affordable electricity to the domestic and industrial consumers of Acadia. Reliable access to electricity in turn will lead to increased opportunities for economic development, job creation, and poverty alleviation.

Purpose of the Technical Assistance

The two related objectives of this assignment are to establish a regulatory framework for the electricity sector and to design a sustainable and efficient tariff schedule. To support this objective, the consultant is expected to provide training to local counterparts, allowing them to develop the skills required to assist the future regulator and to share their experience on further power sector reform initiatives throughout the region.

Work Plan

The following section sets out the tasks to be undertaken by a utility consulting firm, in conjunction with an international lawyer, to implement a regulatory framework in

the context of the sector's imminent privatization and then to design a workable tariff for Acadia's electricity sector.

Phase I: Electricity Regulatory Design

In order to develop a regulatory framework that will allow the State of Acadia to monitor and negotiate with a private owner of Acadia's electricity system, the African Development Bank will retain a utility economics consulting firm, in conjunction with a utility lawyer and an Acadian economics consulting firm, to conduct the tasks outlined below:

- a) *Review of Acadia's Regulations (Weeks 1 to 3)*: Review existing regulatory framework as it applies to the Department of Energy (DOE) including the responsibilities and relationships of relevant government entities at different levels, in order to identify the opportunities, issues and constraints that would/could arise with the introduction of private participation in the system/commercial company's activities;
- b) *Review of Regional Regulatory Frameworks (Weeks 1 to 3)*: Review the most relevant regulatory arrangements applicable from other states in the region and other sectors in Acadia; identify lessons learned and evaluate the strengths and weaknesses of the approaches used; review other states' arrangements for multi-sectoral regulation;
- c) *Regulatory Needs Assessment (Weeks 2 to 6)*: For the private participation transaction structure being developed by IFC, assess the need to modify each element of the existing regulatory framework;
- d) *IPP Licensing and Direct Sales Plan (Weeks 4 to 6)*: Suggest a plan for allocating licenses for future IPPs with the State of Acadia, and the permissibility of these IPPs to contract with captive industrial buyers vis-à-vis selling to the grid;
- e) *Recommended Modifications (Weeks 5 to 7)*: Work with the team of international and domestic lawyers to specify ways in which the regulatory framework should be modified to ensure the future viability of the sector, including what types of laws or decrees need to be passed, if any, and what form of new regulatory bodies need to be established; recommend an outline of modifications if framework is to be expanded to include other sectors;
- f) *Allocation of Regulatory Responsibilities and Institutional Design (Weeks 6-10)*: The consultant will define any new regulatory functions and responsibilities and prepare a blueprint for how these would be allocated to existing and/or new entities. This includes defining the institutional arrangements for any new regulatory framework to perform effectively, including staffing, management, operating procedures, salary standards, job descriptions, equipment and other resources required by the regulatory body being established.
- g) *Time Schedule (Weeks 10-11)*: Recommend approval steps and time frame necessary to implement the proposed framework of changes.

**Phase II: Regulatory Seminar and Tariff Design:
(Begins at completion of Phase I)**

- a) *Dissemination (Weeks 1 to 2)*: Prepare and present findings on recommended regulatory structure and the nature of independent regulation to government officials in Acadia. This seminar will be developed in conjunction with the African Development Bank ESMAP and the PSDPP. Contribute findings to any presentation or article material being prepared by ESMAP/PSDPP as part of the African Development Bank's internal dissemination practices.
- b) *Future Training and TA Recommendations (Weeks 1 to 3)*: Prepare recommendations on the requirements for technical assistance support and training for any proposed regulatory institution and how the costs for this and for the day-to-day operations of such institutions will be met. Provide clear indication of role of Acadian-counterparts in future training and regulatory development.
- c) *Review of Current Tariffs (Weeks 1 to 3)*: Review existing and historic tariffs for different categories of customers including an assessment of the extent and reasons for previous non-payment of bills to determine the basis for tariff setting, any cross-subsidies and subsidies given, the relationship between tariffs and costs (marginal vs. average), the tariff adjustment process and treatment of financial and social objectives. In addition, prepare an assessment of the adequacy of existing tariffs to cover estimated costs and support future requirements;
- d) *Demand Forecasting (Weeks 2 to 4)*: With the technical consultant, taking into account existing electricity demand forecasts, convert existing long-term demand forecasts under different sets of assumptions, into forecasts by category of customer and other agreed upon profiles;
- e) *Estimate Future Average Tariffs (Weeks 4 to 8)*: Prepare a projection of a future average cost recovery tariff, according to the tariff structure recommended in the Regulatory component described below. The tariff schedules should be based upon the three capital expenditure scenarios (high, medium and low). This will be used to assist the Government of Acadia in selecting the optimal tariff/expenditure mix. In case industrial users are given the right to purchase directly from IPPs, the tariff model should allow for a sensitivity analysis to determine the impact on the average tariff.
- f) *Propose Tariff Schedules (Weeks 7 to 10)*: Design a tariff schedule that reflects the different customer categories that will be served by the privatized utility. The tariff should take into consideration the poor's ability to pay, the impact of industrial users being served directly by IPPs, and must demonstrate the energy efficiency objectives of tariff setting. Review any elasticity analysis or willingness/ability to pay studies that have been conducted in Acadia to estimate the maximum tariff level consumers could theoretically bear. If such analysis is not available, discuss this issue with key stakeholders to estimate highest practicable level of tariff and feasible time schedule for increasing the tariff, if necessary. Prepare alternative tariff schedules that "soften" any increase in tariffs (by deferring returns, timing expansions, extending the duration of the license, or through any other means available) and present options to Government of Acadia.

- g) *Reconciliation of Recommendations with Other State Tariff Structures (Weeks 10 to 11):* Co-ordinate with on-going African Development Bank funded work on power sector tariff issues in Acadia and attempt to reconcile any inconsistency in outcomes. The consultant should also review the industry and agricultural tariff cost studies that the African Development Bank and the UK's DFID are jointly carrying out elsewhere in the region. If differences can not be reconciled, explain source of difference in written memo form to Government of Acadia and the African Development Bank team.
- h) *Review of Private Contract Document (As document is prepared - 1 week):* Review and comment on relevant sections of the draft private contract document especially as it relates to tariff setting, cross-subsidies, restrictions on immediate cost recovery (through ramped up tariffs, etc.) or any other issues that relate to the expected revenues of the business.

Deliverables

Phase I: Electricity Regulatory Design

Regulatory Review (Week 3):

Brief paper describing the status of the regulatory arrangements that exist in law and in practice in Acadia. Should include discussion of the national requirements for regulation as well as the precedence set in other states.

Regulatory Needs Assessment and IPP Licensing Plan (Week 6):

Description of regulatory or legislative changes required to modify each element of the existing regulatory framework, and specific treatment of impact of IPP policy as described in 4.2.d) above.

Proposed Regulatory Framework (Week 10):

A plan for implementing necessary changes to the regulatory framework in order to ensure the future viability of the sector should be proposed. This should also include the institutional recommendations described in 4.1.f).

Reconciliation of Recommendations with those elsewhere in the region (Week 12):

Memorandum explaining any differences between the proposed regulatory framework and tariff structure and those elsewhere in the region.

Phase II: Tariff Design (Begins after Phase I Completion)

Dissemination (Week 2):

Prepare and offer seminar as discussed in 4.2.a) above.

Future Training and TA Recommendations (Week 3):

Prepare recommendations on the requirements for technical assistance support and training for proposed regulator.

Tariff Structure Review (Week 4):

Brief paper describing the status of the current tariff in Acadia. Should include a discussion of any current willingness and ability to pay analysis conducted to date or the stakeholders' view on acceptable tariff levels.

Results of Tariff Model (Week 9):

The preliminary results of the tariff model should be presented with discussions of the average tariff and alternative “shapes” of the tariff over time.

Proposed Tariff Schedule (Week 10):

A full tariff schedule as discussed in 4.2 f) above should be presented.

Review of Private Contract Document (when contract/license is prepared):

Commentary on tariff-related sections of draft private contract document.

Duration

It is expected that the regulatory analyses will last about 10 weeks and the tariff work about another 11 weeks.

Resources

It is expected that the consulting firm will form a consortium with an Acadian firm. The lead international advisor will provide a project manager with several years experience in the privatization and regulation of electric utilities, as well as two to three staff with regulatory and institutional strengthening experience and one with proven tariff modeling capabilities. The Acadian firm should provide at least one manager and one analyst to work with the lead consultant. On the regulatory component, the consortium will be asked to work with an international utility lawyer, who will be appointed directly by the IFC/CFS. The lawyer will provide input on required changes to the laws of the State of Acadia in order to accommodate the recommendations made by the consulting firm.

Evaluation Criteria for Phase II Work

- Curriculum vitae of proposed staff: 30%
- Firm Experience in Electricity Privatization, Regulation and Tariff Design: 20%
- Relevant Firm Experience in the region: 15%
- Proposed Approach to Capacity Building of Local Counterparts to Provide Future Regulatory and Tariff Development Assistance: 10%
- Proposed Approach (understanding of and elaboration on above Work Plan): 15%
- Proposed Management Plan (time allocations and use of senior staff): 10%

Firm qualifications should include at least the following information: Client name and contact information, dates of assignment, approximate budget, names of staff involved, location of lead office, description of work completed.

Level of Effort

The consultancy is estimated to require approximately 190 persons-days for international consultants and 125 person-days for local consultants. The bidder should present a management plan that delineates, through bar charts, the expected time that each proposed consultant will spend on the project and how much of that time will be spent in Acadia. The bids should also contain fees for each consultant built up from his/her daily rates and the number of days each corresponding consultant is committed to the project. Traveling and other out-of-pocket expenses should be broken out by trip and by consultant. Any additional costs should be included and a total cost for fees and expenses should be provided.

(2) **Multimodal transport strategy**

Nayshinstate Infrastructure Summary Survey

Terms of Reference for Transport Specific Consulting Services

Background

Infrastructure Summary Survey

The Ministry of Transport and Public Works of the Republic of Nayshinstate, with support from the Inter-American Development Bank (IDB), is currently conducting an analysis, called an Infrastructure Summary Survey (ISS), of the current and potential role of the private sector in the Nayshinstate's infrastructure. While many regulatory, legal, financial and institutional issues surrounding private involvement in infrastructure are cross-sectoral, the ISS will address sector specific issues in power, water, telecommunications and transport.

The transport annex of the ISS sets out to summarize the current and potential role of the private sector in all modes of transportation in Nayshinstate. It will combine data collected by the IDB in its latest transport sector strategies with original analysis to be conducted under this consultancy. It is intended that analysis of the transport sectors will be completed and updated by the ISS team in the winter of 1997 supported by inputs from specialized consultants.

Definition of Transport Infrastructure

For the purposes of the Infrastructure Summary Surveys, transport infrastructure eligible for private sector participation is defined according to two major criteria:

- Permanence or immobility of the assets, reflecting the characteristics of a natural monopoly; and
- Reasonable potential for user fees that provide cost recovery of at least operations and maintenance costs, if not capital costs.

Because of the first criterion, ports and airports are analyzed in the ISS whereas shipping lines and airlines are not. Light and heavy rail systems will be analyzed in terms of both track and rolling stock since both components of the business are often owned, managed and operated by one institution. As a result of the second principle, toll roads and bridges in high volume industrial areas and on inter-city routes are considered potential sources of private sector participation, whereas rural and intra-urban roads are not.

Current PPI Arrangements for Transport in the Nayshinstate

To date, the Government of Nayshinstate has acted to involve the private sector in transport in several ways, including BOT projects, a consideration of the privatization of existing assets, franchises and joint-ventures, Build-Lease-Transfer contracts, and two or three concessions or long-term leases.

At first glance, this program seems comprehensive given the scope of alternative schemes being considered and the number of modes of transport that are involved.

However, when viewed project by project it is clear that relatively few initiatives have been implemented and of those underway, the relationship between the government and the private sector does not necessarily represent an optimal division of risk and responsibility.

Objectives of the ISS and the Consultancy

The objectives of the ISS are to assist the private sector to understand what has been accomplished to date in Nayshinstate as part of private sector's role in transport and utility service provision and what opportunities remain for future investment in infrastructure. The ISS will also raise crucial regulatory, legal, institutional and financial issues affecting infrastructure investment so that the Government of Nayshinstate can enact policies which encourage operational efficiency, financial responsibility and economic growth through greater private sector involvement in transport and utilities. The consultancy described herein will support this effort by assisting the ISS team in defining and analyzing the transport-specific opportunities for private sector participation in Nayshinstate and analyzing those issues which impact investment in all modes of transport.

Scope of Work

The transportation related analysis that is to be conducted by the consultant will be carried out under the direction of the transport specialist from the ISS team. Specific work steps will include the following:

Analysis of the roles of municipalities and Local Government Units (LGUs) in implementing BOT and privatization schemes

The following analysis should be conducted for the four or five most active LGUs or local municipalities

- Likelihood of LGU/local municipalities to decentralize themselves from port or airport sector agencies;
- Financial capability of local port or airport to exist as a stand-alone facility;
- Capacity of LGUs/municipality to conduct privatization: (1) Institutional structure of agencies responsible for privatization/greenfield development process for each mode of transport and description of human resource capability (staff sizes and educational backgrounds). (2) Regulatory responsibilities, if any, and capacity of those agencies to carry out regulatory functions, for each mode of transport.
- Existing projects outside of Woodland, the capital city, in all transport infrastructure sectors. Analysis should include: (1) description of type of investment (lease, concession, BOT, privatization, etc.); (2) bidding approach (unsolicited, closed or open "Swiss" challenge, or open competitive bidding); (3) breakdown of equity and financing including role of foreign participants; (4) obligations of investors; (5) risks or guarantees assumed by LGU or other public entities; (6) agreed upon tariff levels; and (7) role of national entity in negotiating or guaranteeing project.
- Relationship of four or five major non-Woodland municipalities/LGU's with corresponding national transport agencies and the impact of this relationship on the likelihood of decentralization.

Review of laws and regulations impacting PSP in transport infrastructure

The consultants will review all laws and decrees that govern PPI in the transport sector as a whole or in each mode of transport. The following matrix provides a basic guideline for the policy and legal issues that need to be addressed.

Point of Analysis \ Sector	Ports	Airports	Heavy Rail	Light Rail	Toll Roads	All Modes
Legal support for increased PSP in transport						
1. Laws and decrees applicable	1.	1.	1.	1.	1.	1.
2. Challenges to any proposed reforms	2.	2.	2.	2.	2.	2.
3. Political and societal support for reforms	3.	3.	3.	3.	3.	3.
4. Other likely or possible future policies	4.	4.	4.	4.	4.	4.
Objectives of PSP initiatives						
1. Primary legislation	1.	1.	1.	1.	1.	1.
2. Other public documents	2.	2.	2.	2.	2.	2.
3. Concerns of non-governmental stakeholders.	3.	3.	3.	3.	3.	3.

The consultants should pay particular attention to laws that restrict entry (for foreigners or any new investors), impact cost recovery or otherwise define tariffs, refer to commercial, political or exchange rate guarantees, or define what is an acceptable investment, either in existing assets or for greenfield projects.

Mapping of institutional relations and processes for privatization

Currently, the Ministry of Finance provides diagrams that map the BOT process in general as well as the privatization process for all sectors of the economy involved with PSD. These diagrams represent the generic de jure process, but do not describe the de facto experiences of bidders for projects in each sector. The consultant is asked to provide diagrams for each sector that demonstrate how the different government agencies and bidders interact, as well as the time schedule and procedures involved with bidding, project approval, selection of firms, and implementation.

Impact of Right of Way issues on private investment opportunities in transport

The consultant will review the Government's commitments to financing and executing Right of Way obligations for privately financed projects in toll roads, light and heavy rail as well as new ports and airports or expansions to existing facilities. This will include potential commitments from proposed projects such as the commuter rail initiative. The analysis will include:

- Review of existing laws and procedures involving involuntary resettlement and a comparison of actual practices with laws and procedures;
- A summary of those projects that are (1) under construction, (2) planned and (3) potential according to resettlement requirements (numbers of families per project; calculation of the costs).
- Description of the impact of Right of Way obligations on financial viability of projects according to (1) ability of Government to finance its commitments; (2) concerns of equity partners/financiers to back projects requiring large Government commitments to resettlement and property claims; and (3) reluctance of lending agencies (multilateral or bilateral) to support projects with debt or guarantees.

Analysis of cost-recovery potential for the Nayshinstate's transport infrastructure

The consultant will analyze historic and current financial information from the transport infrastructure SOEs to determine their ability to cover costs. The focus of the analysis should be on those areas which are currently causing a drain on the finances of the national budget but which could benefit from private sector involvement:

- *Airports*: The financial performance of the major international airports. Focus on sources of revenue (terminal rents, landing fees, parking, warehousing, concessions) and major cost categories, including the status of outstanding investments;
- *Railways*: The financial performance of the rail operator, broken out by cargo services, passenger services, land rentals and non-core businesses;
- *Ports*: Financial performance of the operator, broken out, if possible, by: (1) domestic general cargo/container facilities, (2) international general cargo/container facilities, (3) bulk handling facilities;
- *Toll Roads*: Percentage of Department of Transport's budget and absolute cost of funding maintenance, rehabilitation and expansion of those roads which are being considered for private toll operations; changes in the cost of maintaining the franchises as a result of toll joint-ventures; impact on national and local budgets as a result of future BOT highway, bridge and toll road joint ventures.

Duration and Level of Effort

The duration of the project will be approximately 14 weeks from mobilization of the consultants and it expected to begin within 2 weeks of the contract signature.

The schedule for the work will be negotiated with the consultant, but is expected to include approximately:

- 3 person weeks in the field over a 2 week duration to interview and survey private sector investors and relevant government officials;
- 3 to 4 person weeks of desk work to conduct necessary analysis over a 2 week duration; and
- 1 person week to complete analysis and present written conclusions to IDB ISS team:

Selection Criteria

Firms/consortia are requested to submit both a technical and financial proposals. The selection method will be based on both cost and quality where the final score will be a weighted average of the technical and financial proposal scores. A weight of 90% will be attached to the technical proposal and 10% attached to the financial proposal.

Submission Information

The original and five copies of the technical and financial proposals should be sent to the following address:

The Ministry of Transport and Public Works
Lender Road
Nayshinstate.

All envelopes should be marked for the attention of the Multimodal Transport Strategy unit and should arrive by 1300 hrs, 19th September 2001.

(3) Water regulation

Terms of Reference

*Regulatory Framework for Private Participation in Water and Sanitation
Ceteria Water Sector*

Background

The South Pacific Bank for Reconstruction and Development has prepared a technical assistance (TA) loan (with a small emergency investment component) to be co-financed by the South Pacific Development Bank. The purpose of the loan is to:

- strengthen the recently established water sector regulatory framework;
- improve the managerial and operational efficiency of Ceteria Water And Sewerage Company (WASCO), the public water utility, through private sector participation; and
- improve water supply reliability in the North and the Damsforth system in the South through urgently needed capital investments in the short term, and through the eventual concessioning of the water utility.

Despite years of efforts to improve the performance of the public water company through conventional institutional strengthening programs and twinning arrangements, the water company continues to perform poorly, with unreliable supply of water, low coverage of sewerage, poor financial performance, and low level of capital investment. Considering the large investment backlog and poor operating performance of WASCO, the Government of Ceteria has decided to introduce private sector participation in the water sector through a concession agreement.

In March 1999, the Government of Ceteria passed into law The Water & Sewerage Act which redefines the roles and responsibilities of the public water utility (WASCO) and prescribes a regulatory and operating framework for the development of Ceteria's water sector. While the Water & Sewerage Act is a positive step forward in creating a new operating and regulatory environment for water supply and sewerage services, some ambiguity and inconsistencies will remain until the Law is further defined and the regulatory institutions strengthened. Concerns over the Act's treatment of key regulatory and policy concerns include, but are not limited to, the following themes:

- *Regulatory independence:* The current Act does not include necessary tools for distancing policy makers from the RWSS, and does not provide a secure funding source or access to technical support for regulatory decisions.
- *Policy setting responsibility:* The Act mixes responsibility for sectoral policy making among the regulator, the government and the operator.
- *Environmental and health-related regulatory responsibilities:* Under the current arrangements, the RWSS may be required to assume water resource management responsibilities while responsibility for adherence to water quality standards remains unclear;

- *Concessioning arrangement:* The Act does not define the future role of WASCO, its relationship to the private operator, the governmental signatory of a concession agreement or the principles of private sector provision; and
- *Licensing regime:* The Act does not provide a clear process for the provision of licenses for water sector operators.

Objective

The Objective of the consultant's services is to strengthen Ceteria's regulatory framework in order to facilitate significant and sustainable private sector participation in the water and sewerage sector while protecting the interests of Ceteria's consumers. This objective will be achieved through implementation of the following tasks:

- (a) A review of all relevant laws, statutes, regulations, and licenses related to the respective roles and responsibilities of the Government of Ceteria, the Regulator of Water & Sewerage Services (RWSS) and the Water and Sewerage Company (WASCO), in the interim period before the concession as well as for the period of private sector operation.;
- (b) The design of institutional structures and arrangements that clarify the appropriate roles, responsibilities, staffing needs, funding sources, and legal, statutory, or licensing requirements of the regulator (RWSS), a secretariat (or advisory council) to support the regulator, and the current and future water operator.
- (c) Presentation to the Government of Ceteria describing the legislative and/or administrative measures needed to formalize the regulatory institutions and arrangements that will provide a secure investment environment for the future operator and a fair system of protection for all consumers. This would include recommendations on the need to repeal, amend, expand, clarify and/or modify current primary and enabling legislation, regulations, statutes and licenses;
- (d) Drafting of all laws, regulations, statutes or licenses required to legitimize the appropriate regulatory institutions and arrangements;
- (e) Design of a training program for regulators and secretariat staff that will allow them to fulfill their responsibilities once the concessionaire is in place.

Scope Of Work

Review Of Current Regulatory Framework

The consultants will conduct a thorough review of all relevant laws, regulations, statutes and licenses pertaining to regulation, policy making, operations and private sector participation through the concessioning of WASCO. The review will be carried out in consultation with the legal representative from the Attorney General's Office and the Project Management Unit. The areas that require particular attention include, but are not limited to, the following:

Institutional Roles and Responsibilities:

Regulator of Water & Sewerage Services(RWSS), the current operating company (WASCO), future operating company/companies, and any relevant government ministries. Issues of particular concern include:

- **Regulatory independence:** The consultant will review the legal conditions under which the RWSS commissioners are selected, appointed, removed from office, provided with funding and given access to technical support.
- **Responsibility for sector-wide policy making:** While the Water Act establishes the RWSS as a regulator, it also seems to grant the RWSS an unusual authority to set sector-wide policies¹⁴. The consultant should review the allocation of policy-setting authorities among the RWSS, Ministry, and other relevant government bodies according to the Water and Sewerage Act and other relative legislation in Ceteria.
- **Responsibility for introducing private sector:** The Water Act may be interpreted as granting the RWSS decision-making authority regarding the introduction of private sector participation in water supply and sewerage services¹⁵. The Consultant should clarify the RWSS's role in initiating private sector participation. The Consultant should also clarify if a separate license from the RWSS is required for WASCO's sub-licensees or for the new operator.
- **Responsibility for formulation of tariff formula, level and structure:** The Consultant should clarify the respective roles of the RWSS, the government and the operator in defining the nation's tariff level, formula and structure¹⁶.
- **Service obligation:** The Consultant should clarify the specific service obligations of WASCO¹⁷ as well as the obligations of the future operator;
- **Water resource management and conservation:** The Consultant should clarify the allocation of roles and responsibilities for allocating and regulating water resources and setting conservation standards including the government, the regulator and the operating company's responsibility in conserving, redistributing or otherwise augmenting water resources¹⁸;
- **Quality of service:** The consultant should clarify the current allocation of responsibilities for setting water quality standards, and for monitoring, reporting and enforcing those standards.

Identification of Obstacles for PSP:

The Consultant will review Ceteria's relevant laws and statutes (including the Public Utilities Act, the Water and Sewerage Act of 1999, and any relevant corporation, investment, property or tax laws or statutes) and identify any provisions or gaps that may present obstacles to the successful concessioning of WASCO.

¹⁴ See Articles 3 and 4.

¹⁵ See Articles 6 and 35.

¹⁶ See Articles 4 (b) and 32.

¹⁷ See Article 13.

¹⁸ See Article 9 (1)(2)

Review of Interim License for the Operations of WASCO:

The Consultant will review the interim license for WASCO's operations to determine any flaws or gaps which could be remedied quickly and to identify any obstacles the interim license may create for the future concessioning program.

Institutional Design of the Regulator and Definition of Roles and Responsibilities

Definition of the Regulatory Roles and Responsibilities:

The Consultant will define essential roles and responsibility of the regulatory bodies necessary for successful oversight of the water sector. The Consultant should recommend the RWSS's responsibilities with regard to:

- Determining and monitoring the operator's tariff setting procedure;
- Setting, advising or responding to policy makers on appropriate performance criteria including service coverage, quality standards, environmental standards and customer relations;
- Collecting information and monitoring the operator's performance;
- Imposing sanctions for non-performance;
- Arbitrating disputes that may arise between the operator and its customers;
- Allocating water resources: The Consultant should recommend amendments to current practice where the RWSS issues water use licenses for those abstracting water within control areas while no licenses are required for abstraction of water outside of controlled area.

Design of the Regulator's Organizational Structure:

The Consultant will define the organizational structure of the RWSS and related bodies to ensure its independence and accountability in performing the responsibilities determined in the task above. The Consultant should make specific recommendations on:

- Appropriate use of a secretariat or advisory body to provide commissioners with support in all technical matters;
- Funding sources, i.e., the options for funding the work of RWSS through license fee paid operator and/or direct levies on customers. This should include estimates for the budget requirements of the RWSS and its secretariat;
- Appointment criteria based on professional expertise and absence of conflict of interest;
- Job descriptions for each member of the Regulator and its Secretariat;
- Composition of the Regulator and its Secretariat;
- Fixed and staggered tenures and transparent rules on the removal of regulators;
- Competitive salaries for Secretariat;
- Transparent and timely decision making processes;
- Consultation procedures such as public hearings with relevant stakeholders;
- Dispute resolution mechanisms;
- Independent audits of the RWSS's annual activities.

The institutional design should be inclusive of the potential for eventually transferring some degree of regulatory responsibility—particularly that assigned to the Secretariat—to a regional regulatory body. The analysis for the potential of regional regulation should include the need for power regulation, and the potential for multi-sectoral regulation at the regional level.

Recommendations To Improve Current Legal And Regulatory Framework

Identifying the Mechanisms for Regulatory Strengthening:

The consultant will provide recommendations that define i) need for changes to primary legislation; ii) the extent that decrees, statutes or implementing rules and regulations can be used to fill the gaps in the current regulatory structure; and iii) the extent to which clarifications to the framework can be placed inside of licenses, concessions and other contractual tools. In establishing such principles, the Consultant should confer with the legal representative from the Attorney General's Office and consider the current capacity within the relevant ministries and the RWSS to interpret broad principles.

Presentation to Government on Recommended Changes:

Once the review and the institutional design work have been completed, the consultants should present the full recommendations to changes in the regulatory structure to the Government. In order to make perfectly clear the degree to which different tools can be used to correct the regulatory framework, presentation should include summarizing matrices such as the one below:

	Organization and Responsibilities of Current WASCO	Organization and Responsibilities of Future WASCO	Organization and Responsibilities of RWSS	Organization and Responsibilities of Government Agencies	Other Institutions
New primary legislation					
Legislative amendments					
Regulations					
Licenses					
Others Mechanisms					

The presentation must include an analysis of how the recommended regulatory structure could be transferred to a regional body with particular attention to the need for minimizing further legal or statutory changes.

Drafting of Changes to Regulatory Framework

Once the government has agreed on the approach recommended in the Consultant's Presentation, the Consultant will begin drafting all necessary documents, beginning with primary legislation (if required), including:

- Draft necessary amendments to the Water and Sewerage Act of 1999 as well as any other primary legislation;
- Draft necessary implementing rules and regulations to define the roles and responsibilities of the regulator, the operator and other relevant agencies; and
- Outline the main articles of the new operating license and concession agreement for the future concessionaire.

Training Needs Assessment

Assessment of Skill Requirement and Recommendation on Training Options:

The Consultant will determine the skills required to meet the outputs necessary for the regulatory agency; assess what training is required to develop those skills; and provide a series of options for delivering the training.

Since staff are not yet in place for the agency, it is impossible to know exactly what training each staff member will require. Consequently, the consultant should develop a framework that will allow the agency staff to assess their existing skills against the agency's needs and then consider the options for meeting any skills gap.

Options for delivering the training should include international courses, regional and local training plus tailored in-house courses and on-the-job training. Any option should be assessed in terms of the cost-benefit trade-off provided so that agency staff can make appropriate decisions about the most cost-effective way of meeting the skills gap.

Workshops in Ceteria

Workshop for Government and Commissioners:

The Consultant will prepare and present findings on the recommended regulatory structure and the nature of independent and accountable regulation and discuss the training requirements and options with the members of the RWSS and other relevant government officials of Ceteria.

Outputs

The Technical Assistance program described above will result in the following outputs:

Inception Report on the Current Roles and Responsibilities in Ceteria's Water Sector.

Institutional Design Recommendations

Presentation to Government on Recommended Changes to Regulatory Framework

Draft Changes to the Regulatory Framework:

- Draft Amendments to the Water and Sewerage Act of 1999 and any other primary legislation;
- Draft Implementing Rules and Regulations required to establish the recommended regulatory framework;
- Outline of License and Concession Agreements

Report on Training Needs and Options for Regulatory Skill Development: This report will consist of the following:

- Analysis on the skill requirements and training need for the RWSS and its Secretariat; and
- Suggestion on appropriate training options for these bodies.

Workshops in Ceteria:

The Consultant will hold a workshops in Ceteria for commissioners, government officials, key WASCO staff and potential Secretariat staff to present and discuss:

- The role and activities of independent and accountable regulators, skill requirements for such regulation, and available training options; and
- Necessary legislative and administrative changes to ensure the regulators' independence and accountability, as well as the process for transferring the regime to regional regulation.

Management Plan

Qualifications

The assignment is for a team led by a senior utility regulation specialist supported by an international lawyer(s) expert in world standards in water laws and regulations, a local lawyer(s) familiar with workings of Ceteria's legal system and supporting regulatory analyst(s). The regulation specialist should have extensive experiences with designing infrastructure regulatory systems and be familiar with best practices for institutional arrangements for water resource management and the economic regulation of potable water supply. The international lawyer should have expertise in water-related laws. The local lawyers should be familiar with the constitution, administrative laws, and other laws of Ceteria relevant to this assignment.

Levels of Effort

The consultancy is estimated to require approximately 59 person/weeks in total, including 21 person-weeks for senior and junior regulatory specialists, 16 person-weeks for international lawyers, 16 person-weeks for local lawyers, and 6 person-weeks for analytical support and training specialists.

Duration

It is expected that the consultancy will last about 16 weeks.

Proposal structure and scoring criteria

Type of Contract and Budget

As mentioned in the attached Data Sheet, the type of contract will be a Fixed Budget. The maximum budget allowed (including all fees, expenses, taxes and any other cost to the consultant) will be US\$xxxxx. The financial proposal from the firm with the highest scoring technical proposal will be opened at a Public Opening (date to be announced). If the financial proposal has been calculated without error (rates, levels of effort, fees, expenses, per diem, taxes, etc.) and does not exceed the dollar amount above, then that firm will be invited to enter into negotiations with the Government of Ceteria to carryout the consultancy.

Technical Proposal

The Technical Proposal should contain:

- a brief background on the proposed consulting team specifying the degree to which the firms and individuals have collaborated on past assignments;
- a proposed approach or work plan that elaborates and/or improves upon the approach and outline provided in these ToR;
- a management plan that relates the team members to the tasks to be performed and describes each team member's planned contribution to the analysis in person/days in Ceteria and at home and according to task;
- firm qualifications of each corporate member of the consortium;
- full cv's of each individual consultant who is proposed;
- Gantt or bar charts detailing the duration of each task and the involvement of individuals over time.

Financial Proposal

The Financial Proposal should contain:

- Fee breakdown: Daily rates and numbers of days, by task, of each member of the consulting team
- Expenses: All meals, hotel, travel, incidentals, communication, production, facilities and other expenses anticipated for the project;
- Calculation of total cost.

Threshold for opening of Technical bid

Technical Threshold to Reach Opening of Financial Proposal: 80 points

Proposal evaluation

The technical proposal will be scored as follows.

- Proposed Approach (value added of work plan, originality)
15 points (15%)
- Proposed Management Plan (levels of effort, use of key staff, field time, previous experiences working as a team, appropriateness of assignments)
10 points (10%)
- Firm Experience
25 points (25%) of which:
 - Utility/water regulation, legal development 15 points (15%)
 - Small scale systems regulation 5 points (5%)
 - South Pacific experiences 5 points (5%)
- Curriculum Vitae Of Proposed Staff
50 points (50%) of which:
 - Regulatory specialist 20 points (20%)
 - International lawyer 20 points (20%)
 - Local lawyer 10 points (10%)

Consultants will be judged according to their knowledge and expertise in development of a regulatory framework for private participation in water sector; in drafting legislation and administrative orders; in institutional arrangements for water

resource management and water supply; in sectoral and regional regulation; and in training needs assessment.

As a whole, the team will also be judged according to its combined experience and complementary skills in conducting thorough analysis such as that described in these Terms of Reference. This will allow one team member's functional skills or regional experience in the South Pacific, for example, to compensate for other team members who may offer different skills.

Consultants are asked to provide references for all past projects listed on curriculum vitae and in the statement of firm qualifications. All firm qualifications should be seven years old or less.

Submission information

The original and 3 copies of the technical proposal as well as the original and 3 copies of the financial proposal should be sent in separate envelopes to the following address:
Ministry of Finance and Planning
Office of State Reform
12 Dryer Lane
North Island
Republic of Ceteria
Attention: Water regulatory proposal

Proposals must arrive at the Office of State Reform no later than 1500 hours on 1 December 2001.

(4) Power sector reform

Ghoreit: Power Sector Restructuring and PSP Strategy

Preparation of Restructuring & Privatization

Implementation Plan

Terms of Reference for Consultancy Services

Introduction

The Government of Ghoreit is undertaking the structural reform and privatization of its utilities sectors. Substantial reforms have been implemented in telecommunications, with the introduction of a Second National Operator and the impending privatization of the incumbent operator. The next sector due for comprehensive reform is electricity. The Government has been considering options for reform and is now seeking a consulting firm to recommend a specific restructuring program and implementation plan.

Objectives of this Engagement

The goal of this engagement is to develop a realistic privatization Implementation Plan that outlines the most viable long-term structure for Ghoreit's electricity sector. The plan will be based upon a thorough review of existing documentation, meetings with key stakeholders within Ghoreit, site visits to review existing and future facilities, an investors' survey that takes into consideration the market's level of interest and preferred structure, and the international experience of the consulting firm. The Implementation Plan will be presented, discussed, accepted or revised, and approved at a conference in London that includes senior Ghoreitian officials. Following the conference, the consultants will conduct de-briefing meetings with stakeholders in Ghoreit and will prepare terms of reference for other areas of technical assistance and transaction support.

Since the over-all objective of the reform program is to expand affordable and reliable electricity service to Ghoreit's citizenry, the consultancy must take into consideration the implications of the dispersed population and rural communities of Ghoreit. In this context, the right of the state as sole electricity provider, even outside of the main cities, must be considered as part of the privatization process.

Electricity Sector Background

The existing sector is dominated by the state-owned utility, the Ghoreitian Electricity Board (GEB). The vast bulk of the power is provided by a single dam that was built over fifty years ago with a current capacity of 400 MW. The financial and operational performance of GEB has been poor. Current problems include high system losses, low revenue collection rates, high accounts receivable, and poor quality service. Only about 10 percent of Ghoreit's 20 million citizens has access to electricity.

GEB's poor performance, combined with the policy preference for private provision of infrastructure services, has led the Government to examine options for reform, a process which started five years ago.

In addition, the Government has been negotiating with a number of private developers to establish new dams as independent power projects. The technical, financial and environmental analysis and documentation negotiations are at various stages of development.

Scope and Organization of Work

The work will be conducted in several steps outlined below:

Work Plan

Step 1. Ghoreit (Week 1)

Hold discussions with Government staff to discuss prioritization of issues. Focus on determining what is the optimal long-term structure of the sector and what role the private sector can play in the delivery of electricity. Privatization Action Plan will address the following key issues:

- Sequencing of privatization, for commercial operations, transmission, and existing generation
- *Strategy for future generation expansion, by IPPs and at existing sites*
- Costs and benefits of disaggregation
- Likely impact on tariffs of privatization and sectoral restructuring options
- Best approach to privatization for each component or bundled portion of the system (leases, concessions, sale of assets, BOTs)

Step 2. Home office (Week 1)

Review key sectoral documents prior to departure including

- Laws and regulations
- Existing Strategic Plan
- Reform Options Paper
- Load Forecasts and other available technical papers

By middle of first week, leave for Ghoreit

Step 3. Home office (Weeks 1-3)

Conduct Investors' Survey

- Approximately 20 international strategic investors to be interviewed
- 3 page background sheet on sector to be prepared by consultant
- 1 page questionnaire and background sheet to be faxed to investors
- Questions will focus on:
 - Level of interest in investing over-all
 - Level of interest in investing under different industry structures
 - Level of interest in investing given different approach
- Responses shall be tallied, analyzed and presented in Steps 7 & 8.

Step 4. Ghoreit (Weeks 1 - 3)

Interview stakeholders and other consultants

Step 5. Ghoreit (Weeks 2 - 3)

Review facilities

- Existing generating, dispatch and selected distribution sites
- Likely locations for future generating capacity

Step 6. Ghoreit (Weeks 3 - 4)

Review status of current reform initiatives and negotiations

Step 7. Home office (Weeks 4 - 5)

Prepare recommendations in presentation format that address the alternatives available for private sector participation in Ghoreit's electricity sector

Step 8. London or Ghoreit (end Week 5)

Deliver presentation to senior government officials and WB attendees (See Outputs (1) below)

Step 9. London or Ghoreit (Week 6)

Participate in workshop to discuss/agree upon recommended approach

Step 10. Ghoreit (Week 6)

Draw up Implementation Plan for agreed upon approach (See Outputs (2) below)

Step 11. Ghoreit (Week 7-8)

Hold follow-up stake holder meetings to present Implementation Plan and build consensus

Step 12. Home office (Week 6-8)

Draft TORs for next set of technical studies and privatization support (See Outputs (3) below)

Outputs

The key outputs will be (1) the presentation in London on the Recommended Sector Structure and Approach to Privatization; (2) the follow-up Implementation Plan; and (3) the draft Terms of Reference.

(1) Recommended Sector Structure and Approach to Privatization

This presentation will consist of the following components:

- Results of sector review, including:
 - a stakeholders' analysis
 - observations and conclusions from document review
 - observations and conclusions from site visits

- Results of Investors' Survey
- Recommended industry structure
- Recommended approach to privatization

(2) Implementation Plan

The consultant will be responsible for coordinating the outcome from the meetings in London and producing a short and practicable Implementation Plan, that includes the modifications (if any) to their recommended industry structure and approach to privatization, as well as a time schedule for implementation and a matrix of responsibilities.

(3) Draft Terms of Reference

In order to assist the Government to continue with the process of privatization, the consultant will be asked to produce draft terms of reference for the next phases of work. These components will be defined by the approved recommendations and may be grouped differently, but are likely to include the following components:

- Privatization Implementation Consultancy
 - Asset valuations
 - Likely average tariff modeling under different scenarios
 - Drafting of legal changes and contractual documents
 - Transaction support

Aside from these physical outputs, the consultant will be expected to conduct an investor's survey, a number of stakeholder meetings, and to facilitate the finalization of the Implementation Plan as described in the Work Plan above.

Working Arrangements

The consultants will be employed by the Enterprise Development Project and report to the Director of the Privatisation Agency within the Ministry of Finance. The consultant will work closely with the Power Sector Reform team, which is comprised of individuals from the Ministries of Finance, Natural Resources and other key stakeholders. The Privatisation Agency will ensure that the consultant has all necessary information, contacts and meetings needed to perform the assignment.

Level of Effort

Due to the urgent nature of this work, it is envisaged that the small team of consultants with hands-on experience in electricity sector restructuring and privatization will work on this project from mid-June to mid-August 1998. Over the course of 8 to 9 weeks, the contract will provide for approximately 21 man-weeks of consultancy for three individuals. The two senior members of the team will spend considerable time in Ghoreit.

The team should include,

- Project Director with expertise in electricity sector planning, restructuring and privatization
- Senior Project Staff Member with expertise in electricity sector finance and/or operations
- Junior Project Staff Member with experience in utility investor surveying and infrastructure privatization

Evaluation Criteria

Consultants will be selected on the following criteria:

- Curriculum vitae of proposed staff: 50%
- Proposed Approach (elaboration and improvements on above Work Plan): 15%
- Proposed Management Plan (time allocations and use of senior staff): 10%
- Firm Experience in Electricity Sector Privatization and Restructuring: 15%
- Firm Experience in Infrastructure Privatization in the region: 10%

Consultants will be judged according to their knowledge of the issues surrounding electricity industry structure, experience with restructuring and privatizing small to mid-sized systems in developing countries, and operational or financial experience in the power sector. As a whole, the team will also be judged according to its combined experience and complementary skills in conducting quick and thorough electricity sectoral restructuring studies such as that described in this Terms of Reference. This will allow one team member's operational skills, experience working in the region, or surveying experience, for example, to compensate for other team members who may offer different skills.

Consultants are asked to provide references for all past projects listed on curriculum vitae and in the statement of firm qualifications.

Technical Proposal Contents

The Technical Proposal should contain:

- a brief background on the proposed consulting team specifying the degree to which the firms and individuals have collaborated on past assignments;
- a proposed approach or work plan that elaborates on the approach and outline provided in this ToR;
- a management plan that relates the team members to the tasks to be performed and describes each team member's planned contribution to the analysis in person/days and according to task;
- firm qualifications of each corporate member of the consortium;
- full cv's of each individual consultant who is proposed;
- Gantt or bar charts detailing the duration of each task and the involvement of individuals over time.

Total Points of Technical Proposal: 100

The technical proposal will be scored as follows.

Evaluation Criteria

Consultants will be selected on the following criteria:

- Proposed Approach (value added of work plan, originality)
10 points (10%)
- Proposed Management Plan (levels of effort, use of key staff, field time, previous experience working as a team, permanent staff status, appropriateness of assignments)
15 points (15%)

- Firm Experience
25 points (25%) of which:
 - Utility/power sector regulation, legal development - 15 points (15%)
 - Small scale regulation - 5 points (5%)
 - Regional experience - 5 points (5%)
- Curriculum Vitae Of Proposed Staff
50 points (50%) of which:
 - Regulatory specialist - 20 points (20%)
 - International lawyer - 20 points (20%)
 - Local lawyer - 10 points (10%)

Consultants will be judged according to their knowledge and expertise in development of regulatory framework for private participation in the power sector; in drafting legislation and administrative orders; in institutional arrangements for regulation; and in training need assessment.

As a whole, the team will also be judged according to its combined experience and complementary skills in conducting thorough analysis such as that described in this Terms of Reference. This will allow one team member's functional skills or regional experience, for example, to compensate for other team members who may offer different skills.

Consultants are asked to provide references for all past projects listed on curriculum vitae and in the statement of firm qualifications. All firm qualifications should be seven years old or less.

(5) Rail Sector PSP

Strategy for Pilot PSP in Rail sector

Terms of reference for technical assistance

State Railways of Growthland (SRG)

The State Railways of Growthland (SRG) is the state-owned enterprise with primary responsibility for rail services in Growthland. At present, SRG is directly responsible for services over a network of 5200 km of track. It employs 30,400 staff and serviced 70.2 m passenger and 20.23 m freight ton per annum in 1999. Operating revenue in the financial year ended 1999 was GrDollars 6,342 million. In 1998, SRG provided 3.3 % of the services to passengers using public transport in Growthland (all modes) and 1.8 % of the freight ton carried. Road transport dominates the transport sector with bus and car for passengers and truck for freight leading the way. In 1999, Government spend on maintenance and new roads was GrDollars 49,205 million.

Challenges facing SRG

SRG faces a number of challenges. It is currently operating at a significant annual deficit of approximately GrDollars 4 billion. Fares have been frozen for some time and there is currently no clear policy or funding mechanism to support rail services. It is not currently viewed as a preferred method of travel for passengers nor is it competitive with road hauliers for freight business.

Significant investment is needed in both track and rolling stock in order to improve service quality. Current service levels are deemed poor and are declining. Manning levels and quality of existing personnel are also pressing issues facing the railway. Government does not have the allocated resources to rectify this position.

The Reform Process

In response to these challenges, SRG supported by the Growthland Government and the Regional Development Bank, has instituted a policy of major reforms with the aim of creating a sustainable and customer focused railway service which can contribute effectively to Growthland's wider transport needs. This process commenced with the appointment of advisers in April 1999 to address the short term cash flow crisis facing the SRG. Subsequently, a consortium of specialist advisers was appointed in March 2000 to formulate long term strategy and structural options for reforming SRG and introducing Private Sector Participation (PSP). These advisers completed their work in November 2000. All initiatives under the umbrella policy of reforms are being led by a senior agency called reporting directly to Cabinet called the Office of Economic Reform and Infrastructure Privatization (OERIP). The Transport Committee of the OERIP is overseeing all rail, port, airport, metro and toll road initiatives in close collaboration with the relevant line ministries.

Government is now ready to implement a comprehensive program of restructuring, focusing on the establishment of commercially focused and operated business units and simultaneous piloting of PSP with a focus on implementing significant change within the next two years. As a start, introduction of a pilot program of PSP is scheduled to be implemented within 6 months of year 2002. In order to proceed to fast track PSP immediate restructuring of the whole industry has been identified as the main priority.

Objectives of this Consultancy

The primary objectives of this consultancy are to:

- Identify a core business unit eligible for pilot PSP initiative;
- Set out the plan for conducting the pilot PSP initiative.

Required deliverables are set out in more detail below.

PSP Fast-track Option

As mentioned above, the Growthland Government intends to implement full-fledged PSP as soon as the SRG restructuring is finalized. In order to achieve this goal the Government has decided to pursue a dual track approach to reform. This involves overall restructuring of SRG's businesses with a parallel strategy involving the piloting of certain services for earlier PSP with the medium term goal of introducing full PSP. Fast track introduction of PSP is expected to take place as a priority in a core business defined as rolling stock operations of passengers and or freight, or bundled track and rolling stock operations of a line or segment of SRG.

It is envisaged that the pilot PSP schemes will involve significant risk transfer to the private sector—such as through a concession or sale—whilst delivering efficiency gains on both financial and operational performance.

The Consultant will be required to assess and advise on the selection of fast track candidate business units and to assist SRG to carry out the pilot privatization as part of this phase of the study. This will involve developing transparent selection criteria for selecting the aspects of SRG to be privatized and supporting viability analysis from a financial, commercial, operational and marketing perspective. The output will be a strategy for delivering a significant portion of SRG's above rail business or a key segment into the private sector within 9 months of the completion of this study.

Regulatory and Legal Arrangements

A separate Terms of Reference has been issued for the establishment of a regulatory structure the rail sector of Growthland. It will be the responsibility of the consultant hired under these Terms of Reference to coordinate with the other advisors and ensure that a regulatory arrangement will be delineated that will serve the fast-track privatization program without interfering in the long-term arrangements. This coordination will be facilitated by the Office of Economic Reform and Infrastructure Privatization's Transport Committee.

Outputs

Specific deliverables will include:

- development of selection matrix for identifying fast-track targets;
- support to management in selecting fast-track candidate(s);
- action plan for introduction of PSP;
- framework tender documents, including a preliminary information memorandum;
- timetable for tendering;
- checklist of tender documents; and
- ToR for appointment of transaction advisers to manage tender/concession process.

At the end of this work module SRG should be in the position to launch a tender process at the earliest opportunity for the selected fast-tracked businesses. This module will not involve the actual tendering process which will form the core of the next phase of work to be covered in a separate ToR the formulation of which (with the specific objective of meeting the nine month deadline referred to above) will, however, form part of this assignment.

Management Plan

Qualifications

The assignment is for a team led by a senior rail sector specialist supported by industry financial and operational analyst(s) as well as a PSP specialist. The senior sector specialist should have extensive experiences with defining operational arrangements for railroads and with best practices for institutional arrangements for private operators. The financial analysts and PSP should hold the requisite skills to model the different business units and determine the appropriate unit to be spun-off. The PSP specialist should have extensive experience in the design of privatizations and concessions so as to facilitate the strategy design once the unit has been selected.

Duration and Levels of Effort

It is expected that the consultancy will last about 18 weeks from mobilization to completion. The consultancy is estimated to require approximately 60 person/weeks in total, including 10 person-weeks for the lead sector specialist, 20 person-weeks for operational specialists; 22 person-weeks for financial specialists and 8 person-weeks for the PSP expert.

Proposal Structure and Scoring Criteria

Type of Contract and Budget

As mentioned in the attached Data Sheet, the selection method will be Quality and Cost Based.

After the technical bids have been ranked, all firms/consortia with technical proposals scoring over 80 percent will be invited to participate in the Public Opening of the financial proposals. At that stage, the Financial Scores will be calculated and added to the technical scores according to the following weighting:

- Technical Proposal: 85 %
- Financial Proposal: 15%

If the financial proposal of the firm with the highest combined score has been calculated without error (rates, levels of effort, fees, expenses, per diem, taxes, etc.), then that firm will be invited to enter into negotiations with the Government of Growthland to conduct the consultancy.

Technical Proposal

The Technical Proposal should contain:

- a brief background on the proposed consulting team specifying the degree to which the firms and individuals have collaborated on past assignments;
- a proposed approach or work plan that elaborates and/or improves upon the approach and outline provided in these ToR;
- a management plan that relates the team members to the tasks to be performed and describes each team member's planned contribution to the analysis in person/days in Growthland and at home and according to task;
- firm qualifications of each corporate member of the consortium;
- full cv's of each individual consultant who is proposed;
- Gantt or bar charts detailing the duration of each task and the involvement of individuals over time.

Financial Proposal

The Financial Proposal should contain:

- Fee breakdown: Daily rates and numbers of days, by task, of each member of the consulting team
- Expenses: All meals, hotel, travel, incidentals, communication, production, facilities and other expenses anticipated for the project;
- Calculation of total cost.

Proposal evaluation

The technical proposal will be scored as follows.

- Proposed Approach (value added of work plan, originality)
15 points (15%)
- Proposed Management Plan (levels of effort, use of key staff, field time, previous experiences working as a team, appropriateness of assignments)
10 points (10%)
- Firm Experience
25 points (25%) of which:
 - Rail operations and management 10 points (15%)
 - Financial and operational modeling of railroads 5 points (5%)
 - Privatization experience (in transport, and in region) 10 points (10%)
- Curriculum Vitae Of Proposed Staff
50 points (50%) of which:
 - Lead rail operations specialist 17 points (20%)
 - Operational specialist/s 11 points (20%)
 - Financial specialist/s 11 points (20%)
 - PSP Specialist 11 points (10%)

Submission information

The original and 3 copies of the technical proposal as well as the original and 3 copies of the financial proposal should be sent jointly in separate envelopes to the following address:

Office of Economic Reform and Infrastructure Privatization
Ministry of Finance Complex
Capital City
Republic of Growthland
Attention: Transport Committee: Rail PSP

Proposals must arrive at OERIP no later than 1700 hours on 12 January 2002.

Annex 2: Sample Evaluation Form¹⁹

The evaluation report includes five sections:

- Section I. A Short Report Summarizing the Findings of the Technical Evaluation;
- Section II. Technical Evaluation Report—Forms;
- Section III. A Short Report Summarizing the Findings of the Financial Evaluation;
- Section IV. Financial Evaluation Report—Forms;
- Section V. Annexes:
 - Annex I. Individual Evaluations;
 - Annex II. Information Data Monitoring;
 - Annex III. Minutes of the Public Opening of the Financial Proposals;

The report can be used for all methods of selection though it mainly addresses Quality- and Cost-Based Selection, each section contains a note indicating the data and forms that are to be provided for the other methods of selection.

For complex, specialized assignments, borrowers may wish to obtain assistance from consultants to evaluate proposals. Such consultants or individual consultants may be financed under the relevant loan, credit, or grant.

¹⁹ Based on World Bank evaluation requirements.

CONSULTANT EVALUATION REPORT

Country [insert: name of country]

Project Name [insert: project name]

Loan/Credit No. [insert: loan/credit number]

Title of Consulting Services [insert: title]

Date of Submission [insert: date]

Section I. Technical Evaluation Report—Text²⁰

- 1. Background** Include a brief description, context, scope, and objectives of the services. Use about a quarter of a page.
- 2. The Selection Process (Prior to Technical Evaluation)** Elaborate on information provided in Form IIA.
- Describe briefly the selection process, beginning with the advertising (if required), the establishment of the shortlist, expressions of interest, and withdrawals of firms before proposal submissions. Describe major events that may have affected the timing (delays, complaints from consultants, key correspondence with the Bank, Request for Proposals (RFP), extension of proposal submission date, and so on).
- Use about one-half to one page.
- 3. Technical Evaluation** Describe briefly the meetings and actions taken by the evaluation committee: formation of a technical evaluation team, outside assistance, evaluation guidelines, justification of subcriteria and associated weightings as indicated in the Standard Request for Proposals; relevant correspondence with the Bank; and compliance of evaluation with RFP.
- Present results of the technical evaluation: scores and the award recommendation.
- Highlight strengths and weaknesses of each proposal (most important part of the report).
- (a) **Strengths:** Experience in very similar projects in the country; quality of the methodology, proving a clear understanding of the scope of the assignment; strengths of the local partner; and experience of proposed staff in similar assignments.
- (b) **Weaknesses:** Of a particular component of the proposal; of a lack of experience in the country; of a low level of participation by the local partner; of a lack of practical experience (experience in studies rather than in implementation); of staff experience compared to the firm's experience; of a key staffer (e.g., the team leader); of a lack of responsiveness; and of disqualifications (conflict of interest).
- Comment on individual evaluators' scores (discrepancies).
- Items requiring further negotiations.
- Use up to three pages.

²⁰ Section I applies to Quality- and Cost-Based Selection (QCBS), Quality-Based Selection (Quality-Based), Fixed-Budget Selection (Fixed-Budget), and Least-Cost Selection (Least-Cost). Provide appropriate information in the case of Selection Based on Qualifications (Qualifications) and Single-Source Selection (SS).

Section II. Technical Evaluation Report—Forms ²¹

- Form IIA. Technical Evaluation—Basic Data
- Form IIB. Evaluation Summary—Technical Scores/Ranking
- Form IIC. Individual Evaluations—Comparison (Average Scores)

Form IIA. Technical Evaluation - Basic Data

2.1 Name of country _____

Name of Project _____

2.2 Client:

(a) name _____

(b) address, phone, facsimile _____

2.3 Type of assignment (pre-investment, preparation, or implementation), and brief description of sources

2.4 Method of selection²² : QCBS ____ Quality-Based ____
Fixed-Budget ____ Least-Cost ____
Qualifications ____ Single-Source ____

2.5 Prior review thresholds: US\$ _____

(a) Full prior review US\$ _____

(b) Simplified prior review (notice)

²¹ Section II applies to Quality- and Cost-Based Selection (QCBS), Quality-Based Selection (Quality-Based), Fixed Budget Selection (Fixed-Budget), and Least-Cost Selection (Least-Cost). Supply appropriate data in cases of Selection Based on Qualifications (Qualifications) and Single-Source Selection (Single-Source) in Form IIA.

²² See Guidelines.

2.6 Request for expressions of interest²³:

(a) publication in *United Nations Development Business* (UNDB)²⁴ Yes _____ No _____

(b) publication in national newspaper(s) Yes _____ No _____

(c) number of responses _____

2.7 Shortlist:

(a) names/nationality of firms/associations (mark domestic firms and firms that had expressed interest) 1. _____
2. _____
3. _____

(b) Submission to the Bank for no-objection Date _____

(c) Bank's no-objection Date _____

2.8 Request for Proposals:

(a) submission to the Bank for no-objection Date _____

(b) Bank's no-objection Date _____

(c) issuance to Consultants Date _____

2.9 Amendments and clarifications to the RFP (describe) _____

2.10 Contract:

(a) Bank Standard Time-Based Yes _____

(b) Bank Standard Lump Sum Price adjustment: Yes _____ No _____

(c) other (describe) Yes _____
Price adjustment: Yes _____ No _____

2.11 Pre-proposal conference: Yes _____ No _____

(a) minutes issued Yes _____ No _____

²³ Required for large contracts (see Guidelines).

²⁴ Indicate whether expressions of interest advertised in Web or hardcopy edition of UNDP.

2.12 Proposal submission:	Points
(a) two envelopes (technical and financial proposals)	Yes _____
(b) one envelope (technical)	Yes _____
(c) original submission	Date _____ Time _____
(d) extensions(s)	Date _____ Time _____
2.13 Submission of Financial Proposal	Location _____
2.14 Opening of Technical Proposals by selection committee	Date _____ Time _____
2.15 Number of proposals submitted	_____
2.16 Evaluation committee ²⁵ :	1. _____
Members' names and titles (normally three to five)	2. _____
	3. _____
2.17 Proposal validity period (days):	
(a) original expiration date	Date _____ Time _____
(b) extension(s), if any	Date _____ Time _____
2.18 Evaluation Criteria/subcriteria ²⁶ :	
(a) Consultants' experience	
(i) _____	Weight _____
(ii) _____	Weight _____
(b) methodology	
(i) _____	Weight _____
(ii) _____	Weight _____

²⁵ It is important that evaluators be qualified.

²⁶ Maximum of three subcriteria per criterion.

(c) key staff

(i) individual(s)

(A) _____ Weight _____

(B) _____ Weight _____

(C) _____ Weight _____

(ii) group(s)

(A) _____ Weight _____

(B) _____ Weight _____

(C) _____ Weight _____

(d) training (optional)

(i) _____ Weight _____

(ii) _____ Weight _____

(e) local input (optional)

(i) _____ Weight _____

(ii) _____ Weight _____

Consultants' names

Technical scores

1. _____

2. _____

3. _____

4. _____

2.20 Evaluation report:

(a) submission for no-objection Date _____

Technical Scores/Ranking

Consultants' names	[Insert name of Consultant 1]	[Insert name of Consultant 2]	[Insert name of Consultant 3]	[Insert name of Consultant 4]
Criteria	Scores	Scores	Scores	Scores
Experience				
Methodology				
Proposed staff				
Training				
Local input				
Total score^a				
Rank				

a Proposals scoring below the minimum qualifying score of [number] points have been rejected.

Consultants' Names	[Insert name of Consultant 1]	[Insert name of Consultant 2]	[Insert name of Consultant 3]	[Insert name of Consultant 4]
Criteria	Scores	Scores	Scores	Scores
Experience				
Methodology				
Key staff				
Training				
Local input				
Total				

a. A, B, C, and D = scores given by evaluators; AV = average score, see Annex I(i).

Section III. Financial Evaluation Report—Award Recommendation—Text²⁷

[The text will indicate:

- (a) any issues faced during the evaluation, such as difficulty in obtaining the exchange rates to convert the prices into the common currency used for evaluation purposes;
- (b) adjustments made to the prices of the proposal(s) (mainly to ensure consistency with the technical proposal) and determination of the evaluated price (does not apply to Quality-Based (Quality-Based), Selection Based on Qualifications (Qualifications), and Single-Source Selection (Single-Source));
- (c) tax-related problems;
- (d) award recommendation; and
- (e) any other important information.

Taxes are not taken into account in the financial evaluation whereas reimbursables are.]

²⁷ Applies to QCBS, Fixed-Budget, and Least-Cost. For Quality-Based, Qualifications, and Single-Source provide relevant information as indicated.

Section IV. Financial Evaluation Report—Award Recommendation—Forms

Form IVA. Financial Evaluation—Basic Data

Form IVB. Adjustments—Currency Conversion—Evaluated Prices

Form IVC. QCBS—Combined Technical/Financial Evaluation—Award Recommendation

Form IVD. Fixed-Budget and Least-Cost Selection—Award Recommendation

Form IVA. Financial Evaluation—Basic Data

4.1 Bank's no-objection to technical evaluation report (Quality-Based, Qualifications, Single-Source) Date _____

4.2 Public opening of financial proposals Date _____ Time _____

(a) Names and proposal prices (mark Consultants that attended public opening) 1. _____
2. _____

4.3 Evaluation committee: members' names and titles (if not the same as in the technical evaluation - Quality-Based, Qualifications, Single-Source) _____

4.4 Methodology (formula) for evaluation of cost (QCBS only; cross as appropriate) Weight inversely proportional to cost _____
Other _____

4.5 Submission of final technical/financial evaluation report to the Bank (Quality-Based, Qualifications, Single-Source) Date _____

4.6 QCBS	Consultant' Name	Technical scores	Financial scores	Final scores
(a) Technical, financial and final scores (Quality-Based: technical scores only)	_____	_____	_____	_____
(b) Award recommendation	_____	_____	_____	_____

²⁸ Applies to QCBS, Fixed-Budget, and Least-Cost. For Quality-Based, Qualifications, and Single-Source, provide relevant information as indicated.

4.7 Fixed Budget and Least-Cost	Name	scores	prices	prices
(a) Technical scores, proposal and evaluated prices	-----			
(b) Award recommendation	-----			
(c) Fixed budget best technical proposal within the budget	Name:			
	Name:			
(d) Least Cost: Lowest evaluated proposal above minimum qualifying score	Name:			

Consultants' Names	Proposals' prices ^a		Adjustments ^b	Evaluated price(s)	Conversion to currency of evaluation ^c		Financial scores ^d
	Currency	Amounts (1)	(2)	(3) = (1) + (2)	Exchange rate(s) ^e (4)	Proposals' prices (5) = (3)(4)	(6)

- a. Comments, if any (e.g., exchange rates); three foreign currencies maximum, plus local currency.
- b. Arithmetical errors and omissions of items included in the technical proposals. Adjustments may be positive or negative.
- c. As per RFP.
- d. 100 points to the lowest evaluated proposal; other scores to be determined in accordance with provisions of RFP.
- e. Value of one currency unit in the common currency used for evaluation purposes, normally the local currency (e.g., US\$1 = 30 rupees). Indicate source as per RFP.

²⁹ For Quality-Based, Qualifications, and Single-Source, fill out only up to column 3.

**Form IVC. QCBS — Combined Technical/Financial Evaluation —
Award Recommendation**

	Technical Evaluation			Financial Evaluation		Combined Evaluation	
	Technical scores S(t)	Weighted scores S(t) x T	Technical rank	Financial scores S(f)	Weighted scores S(f) x F	Scores S(t) T + S(f) F	Rank
Award recommendation To highest combined technical/financial score. Consultant's name: _____							

**Form ID. Fixed-Budget and Least-Cost Selection —
Award Recommendation³⁰**

	Fixed-Budget Selection		Least-Cost Selection	
Consultants' names	Technical scores	Evaluated prices	Technical scores	Evaluated prices
Award recommendation	To best technical score with evaluated price within budget. Consultant's name:		To lowest evaluated price above minimum qualifying score. Consultant's name:	

³⁰ Fill in appropriate part of form.

Section V. Annexes³¹

Annex I. Individual Evaluations

Form V Annex I(i). Individual Evaluations

Form V Annex I(ii). Individual Evaluations — Key Personnel

Annex II. Information Data Monitoring

Annex III. Minutes of Public Opening of Financial Proposals

³¹ Annex I applies to Quality-Based, Fixed-Budget and Least-Cost. For Qualifications and Single-Source, it is replaced by a review of the strengths and weaknesses of the proposal, which may be amended by one or several evaluators.

Annex I (i). Individual Evaluations

Consultant's name: _____

Criteria/Sub-Criteria	Maximum Scores	Evaluators					Average Scores
		1	2	3	4	5	
Experience							
-							
-							
-							
Methodology							
-							
-							
-							
Key Staff							
-							
-							
-							
Transfer of Knowledge (Training ^a)							
-							
-							
-							
Participation by Nationals ^a							
-							
-							
-							
Total	100						

a. If specified in the RFP

1. Evaluator's Name: _____ Signature: _____ Date: _____
2. Evaluator's Name: _____ Signature: _____ Date: _____
3. Evaluator's Name: _____ Signature: _____ Date: _____
4. Evaluator's Name: _____ Signature: _____ Date: _____
5. Evaluator's Name: _____ Signature: _____ Date: _____

Annex I(ii) Individual Evaluations—Key Personnel

Consultant's Name: _____

Key Staff Names a	Maximum Scores	General Qualifications ()b	Adequacy for the Assignment ()b	Experience in Region ()b	Total Marks (100)	Scores
Total						

a. Sometimes evaluations are made by groups instead of individuals. Each group (e.g. financial group) has a weight. The group score is obtained by the weighted scores of the members of the group. For example, the score of a group of three individuals scoring a, b, and c would be $ax + by + cz$ with x, y, and z representing the respective weights of the members ($x + y + z = 1$) in this group.

b. Maximum marks as per RFP

Name of Evaluator: _____ Signature: _____ Date: _____

Annex II. Information Data Monitoring

5.1 Loan/credit/grant

- (a) number _____
- (b) date of effectiveness _____
- (c) closing date _____
- (i) original _____
- (ii) revised _____

5.2 General Procurement Notice

- (a) first issue date _____
- (b) latest update _____

5.3 Request for expressions of interest³²:

- (a) publication in *United Nations Development Business* (UNDB) Date _____
- (b) publication in national local newspaper(s) Name of newspaper(s) and date(s) _____

5.4 Did the use of price as a factor of selection change the final ranking?³³ Yes No _____

5.5 Did the use of "local input" as a factor of selection change the technical ranking?³⁴ Yes No _____

³² Required for large contracts (see Guidelines).

³³ Compare technical rank with rank in Form IVC.

³⁴ Figure out technical scores with and without "local input" (Form IIB).

Annex III. Minutes of Public Opening of Financial Proposals³⁵

MINUTES

[The minutes should indicate the names of the participants in the proposal opening session, the proposal prices, discounts, technical scores, and any details that the Client, at its discretion, may consider appropriate.]

All attendees must sign the Minutes.]

³⁵ Annex III applies to QCBS, Fixed-Budget, and Least-Cost.

Annex 3: Format of Technical and Financial Proposals (from World Bank)

Technical Proposal

FROM: _____ TO: _____

Sir/Madam:

Subject: *Hiring of Consultancy Service for*

Regarding Technical Proposal

I/We _____ Consultant/Consultancy firm herewith enclose a Technical Proposal for selection of my/our firm/organization as Consultant for _____

Yours faithfully,

Signature _____

(Authorized Representative)

Full Name _____

Designation _____

Address _____

Firm's References

Relevant Services Carried Out in the Last Five Years which Best Illustrate Qualifications

Using the format below, provide information on each reference assignment for which your firm, either individually as a corporate entity or as one of the major companies within a consortium, was legally contracted.

Assignment Name:		Country:
Location within Country:		Professional Staff Provided by Your Firm:
Name of Client:		No of Staff:
Address:		No of Staff Months:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current USD):
Name of Associated Firm(s), if any:		No of Months of Professional Staff Provided by Associated Firm(s):
Name of Senior Staff (Project Director/Coordinator, Team Leader) involved and functions performed:		
Narrative Description of Project:		
Description of Actual Services Provided by Your Staff:		

Approach Paper on Methodology Proposed for Performing the Assignment:

etc

Comments/Suggestions of Consultant:

On the Terms of Reference (TOR):

- 1.
- 2.
- 3.

etc.

On the data, services and facilities to be provided by the Client indicated in the TOR:

- 1.
- 2.
- 3.

etc.

Format of Curriculum Vitae (CV) For Proposed Key Staff

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm: _____ Nationality: _____

Membership in Professional Societies: _____

Detailed Tasks Assigned: _____

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use up to half a page.]

Education:

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degrees obtained. Use up to a quarter page.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organization, title of positions held and location of assignments. For experience in last ten years, also give types of activities performed and client references, where appropriate. Use up to three-quarters of a page.]

Languages:

[Indicate proficiency in speaking, reading and writing of each language: excellent, good, fair, or poor.]

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, these biodata correctly describe myself, my qualifications and my experience.

Date:

Signature of Staff Member or authorized official from the firm
Day/Month/Year

Name	Position	Reports Due/Activities	Months (in the form of a Bar Chart)												Number of Months		
			1	2	3	4	5	6	7	8	9	10	11	12			
																	Subtotal (1)
																	Subtotal (2)
																	Subtotal (3)
																	Subtotal (4)

Full Time:
Part Time:

Reports Due:
Activities Duration

Yours faithfully,

Signature _____

(Authorized Representative)

Full Name _____

Designation _____

Address _____

Composition of the Team Personnel and the Task which would be assigned to each Team Member

1. Technical/Managerial Staff

Name	Position	Task Assignment

2. Support Staff

Name	Position	Task Assignment

I. Field Investigation

	Monthly Program from date of assignment (in the form of a Bar Chart)											
Items of Work/Activities	1	2	3	4	5	6	7	8	9	10	11	12

2. Completion and Submission of Reports (as indicated under Appendix B enclosed with General Conditions of Contract)

Reports	Date
1. Inception Report	
2. Interim Progress Report	
(a) First Status Report	
(b) Second Status Report	
3. Draft Report	
4. Final Report	

Financial Proposal

FROM: TO:

Sir/Madam:

Subject: Hiring of Consultancy Service for

Regarding Price Proposal

I/We _____ Consultant/Consultancy firm herewith enclose the Price Proposal of my/our firm/organization as Consultant for _____

Yours faithfully,

Signature _____

(Authorized Representative)

Full Name _____

Designation _____

Address _____

Schedule of Summary Price Proposal

Name of Activities	Currency	Amount	
		In Words	In Figures
Total Amount			

Breakdown of Summary Price

For Activity N°: _____ Name: _____

Price Component	Currency	Amount
Remuneration for basic services		
Out-of-pocket expenses		
Computer software cost		
Miscellaneous expenses		
Subtotal		

Note:

The above form is to be filled up separately for each activity mentioned in Appendix 2, page 2 of 7.

Consolidated Summary for Remuneration in Respect of Basic Services

For Activity No: _____ Name: _____

Name	Position	Staff-Months	Monthly Rate	Total Amount Expected to be Paid
Total				

Note:

1. Breakdown of the cost and charges for monthly rates is indicated in Appendix 2, page 5 of 7.
2. This form is to be filled out separately for each activity mentioned in Appendix 2, page 2 of 7.

Out-of-Pocket Expenses

For Activity No: _____ Name: _____

S. No	Nomenclature	Unit	Quantity	Unit Price	Total Amount
1.	Return flights between and	Trip			
2.	Miscellaneous travel expenses	Trip			
3.	Subsistence allowance	Trip			
4.	Local transportation costs				
5.	Office rent/accommodation/clerical asst.				
Total					

Note:

This is to be filled out separately for each activity mentioned in Appendix 2, page 2 of 7.

¹ Local transportation costs are not included if local transportation is being made available by Client. Similarly, in the Project site, office rent/accommodations/clerical assistance costs are not to be included if being made available by Client.

Computer Software Costs
(Inclusive of Licensing of Software)

SI No	Software	Amount
1.		
2.		
3.		
4.		
Total		

Miscellaneous Expenses

For Activity No: _____ Name: _____

S. No	Nomenclature	Unit	Quantity	Unit Price	Total Amount
1.	Communication costs between _____ and _____ (telephone, telegram, telex)				
2.	Drafting, reproduction of reports				
3.					
4.					
5.					
Total:					

Note:

This is to be filled out separately for each activity mentioned in Appendix 2, page 2 of 7.

Glossary

Advisor	An individual or company providing information and/or recommendations
Analysis	The production of a report or statement setting out the underlying reasons for or causes of a particular event or outcome
Bait and switch	The practice of enticing a client by promising the participation of particular individuals and, once the client is committed, switching the promised individuals for others
Billing schedule	Description of when and under what conditions invoices (bills) can be submitted
Bottom line	In financial proposals, the minimum acceptable level
Bribe	Receipt of anything, monetary or otherwise, in return for an action that would otherwise be prohibited
Chinese wall	Measures put in place to prevent the flow of specified information from one individual, or set of individuals, to another individual or set of individuals
Competition	Three main forms: in <i>the market</i> , the normal attempt to attract customers for your good as opposed to another similar good, <i>for the market</i> one off contest to provide services to a particular group, may be repeated at intervals, <i>contestability</i> pressure from potential new entrants. Also <i>yardstick (or comparative)</i> for regional monopolies imposed by only allowing tariffs based on costs of other, similar, companies (e.g., power and water distribution)
Concession	Contractual arrangement that transfers responsibility for asset management and new investment
Concessionary lending	Lending below the prevailing market interest rate for the type of loan in question
Consensus	A generally held point of view
Conflict of Interest	This arises when parties have incentives to behave in most appropriate manner do not exist because of influence from other interests or projects
Consortium	Group of companies—usually with a single lead company and others subcontracted

Consultant	See advisor
Contract	A formal, written agreement that creates legally binding or enforceable obligations on some or all the parties
Corruption	Accepting a bribe (see bribe)
Covenant	Agreement, promise or guarantee, as in a <i>financial covenant</i> requiring a sum of money be set aside as a guarantee for certain actions
Current cost valuation	Value of an asset based on the cost of acquiring the same asset today
Divestiture	To sell a controlling interest
Donor	Agency that lends money at a concessionary rate. Often divided into multilateral, where lending is controlled by many countries, and bilateral, where lending policy is controlled by one country.
Drawdown contract	See Indefinite quantity contract
Due diligence	Investigation and assessment of a potential project or assets
Economic value	Discounted expected net cash flow
Efficiency	Distribution of resources to their most valuable use—generally divided into three types: <i>productive</i> , in which a given output is produced at minimum cost given existing inputs at a point in time; <i>allocative</i> , in which inputs are assigned to activities where they are most useful at a point in time; and <i>dynamic</i> , in which inputs are assigned to their best use over time.
Evaluator	Person marking proposals, bids and other submissions
External Advisor	Advisor from outside the organization (also see Advisor)
Feather-bedding	This occurs when advisors unnecessarily expand the terms of reference
Fee rate	Charge for the time of the advisor, excluding all expenses (see also Per Diem, Reimbursable)
Financial instrument	The transfer of risk, such as long term bonds and insurance

Financial proposal	Sets out the monetary terms required to undertake a project
Fixed fee	A single fee for delivering an output that does not vary (e.g., does not change depending on time it takes to deliver the output or other costs of output)
Framework contract	See Indefinite quantity contract
Grant funds	Funds lent that have no interest payment attached to them and are not to be repaid
Greenfield project	A project built from scratch, i.e., without building on an existing or older similar project (e.g., a new water treatment plant)
Gross Domestic Product (GDP)	Total value of all output produced within a country
Historic cost	Value based on the actual cost of acquiring the existing assets
Hydroelectric	Electricity generation based on the kinetic energy of water
Implementation	Putting in place
Indefinite quantity contract (IQC)	Contract for an unspecified amount of work, usually over a few years
Industry restructuring	Altering the relationship between organizations within a sector (possibly including dividing single organizations into multiple parts)
Infrastructure	The underlying physical structure of a country, often with monopoly elements and usually involving the delivery of goods, people or information. For the purposes of this Toolkit, these include power (electricity generation, transmission and distribution, and gas distribution); sanitation (water, sewerage and solid waste services); telecommunication networks; and transportation (seaports, airports, rail, roads and bridges).
In-house expert	Expert who already works within the organization
Intellectual property	An original idea belonging to an individual or company
International competitive bidding	Selection based on a competition for which companies based outside the host country are eligible

Investor	Company or individual who invests (usually money) into a project in return for future rewards
Invitation to Tender	See Request for proposals
Knowledge transfer	Passing of information from one party to another
Lease	A contractual arrangement in which responsibility for the operation and management of an asset is conferred (see also Contract, Concession)
Letter of invitation	An introduction to an offer to submit a bid
License	A series of legal requirements that must be signed prior to being allowed to participate in a sector (see also Contract)
Loss leader	A project undertaken in the knowledge that it will make a loss, because it will establish the company or individual in the market
Lump sum	See Fixed fee
Management contract	An agreement to manage a company without assuming any responsibility for investment or asset maintenance (see also Lease, Concession)
Market value	Value of an asset, company or idea based on its sale price
Mini-proposal	A brief statement by a company or individual following a shortlisting for a project on a specific topic. May be used instead of a proposal or as a second stage to create a smaller shortlist.
Model	A representation of something on a larger scale
Modern equivalent asset value	Value of an asset based on the cost of replacing it with a modern asset that can perform the same task(s)
Multinational companies	Company with production in more than one country
Natural monopoly	Occurs when the cost of producing a given output decreases as more output is produced within a single firm; used to justify the inefficiency of competition in the market (see also Efficiency, Competition)
Objectives	Goals, aims
Per diem	A daily payment to cover expenses

Performance indicator	A test applied to determine whether expected targets have been met
Policy	A course of action adopted by a government
Pre-qualification	Creation of an initial set of requirements that must be met before a party can bid for the project in question
Private Participation in Infrastructure (PPI)	The introduction of the private sector into the provision of some aspect of infrastructure deliver or services (see Infrastructure, Service contract, management contract, Lease, Concession, Divestiture, Natural monopoly)
Private sector participation (PSP)	Introduction of the private sector to a particular area of the economy
Procurement	To obtain, acquire
Public good	Good for which the benefits of provision cannot be limited to those who pay for its output
Regulator	Individual or agency that oversees a sector—may oversee the economic, technical and legal aspects or some subset of them
Regulatory framework	Legal and economic setting within which a regulator works
Reimbursable	Costs that the advisor can recover from the client
Remuneration	Sum of fee rate and reimbursable expenses (see Fee rate, Reimbursable)
Replacement cost	Value of an asset based on the cost of replacing it
Request for Proposals	A call to submit a proposal for a particular project
Request for tenders	See Request for proposals
Retainer	A fixed fee paid to an advisor for being available to provide advise on a specified issue over a particular period
Risk	Chance
Road show	Presentation of a project or set of assets in a number of cities around the world with the aim of raising interest of awareness of an opportunity (usually an opportunity to invest)

Select	Choose
Service contract	Contract to provide a specific output associated with the operation of a company
Shortlist	A list of individuals or companies allowed to bid for a project
Social goals	Goals generally associated with the distribution of wealth
Sole-sourced	Granting a project, the right to do something or a set of assets to a single party without undertaking a process by which multiple parties can bargain for the right (see International competitive bidding, competition)
Stakeholder	An individual or company with an interest in the issue
Standing charge	A tariff that is independent of the volume consumed
Stranded cost	A cost that cannot be recovered because of a change in market conditions beyond the control of the company in question
Success fee	Payment based on a percentage of the price for which assets (or the right to do something) are sold
Technical assistance	Provision of information and/or advice
Technical proposal	A document setting out the approach that would be adopted to a particular project, along with the individuals and/or companies who would carry out the approach described
Time and materials	Payment based on the amount of time taken to undertake a given task and the cost of the materials used
Track record	Past experience
Transaction cost	The cost of agreeing to undertake something
Transparent	Everyone has access to the same information about the process in question
Unanimous	Everyone in agreement
Up-front costs	Costs, usually fixed, that must be incurred prior to beginning to undertake a project or task

Utility

Company or organization that provides electrical or water services

Value for money

Creation of an outcome (an objective) at minimum cost

PPIAF

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