



SADC PROJECT PREPARATION AND DEVELOPMENT FACILITY (PPDF)

**Southern African Development Community
Project Preparation and Development Facility**

Guidelines (Rules) for the Procurement of Services¹

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¹Adapted from the African Development Bank Rules and Procedures for the Use of Consultants.
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Acronyms

DBSA	Development Bank of Southern Africa
CQS	Selection Based on Service providers' Qualifications
ITSP	Instructions to Service providers
LOI	Letter of Invitation
NGO	Non-government Organization
PID	Project Information Document
PPDF	Project Preparation and Development Facility
QBS	Quality-Based Selection
QCBS	Quality- and Cost-Based Selection
RFP	Request for Proposal
SADC	Southern African Development Community
SSS	Single-Source Selection
TOR	Terms of Reference
UN	United Nations



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I. Introduction

Purpose

- 1.1 The purpose of these Rules is to define the policies and procedures for the procurement of services for project preparation initiatives that are financed in whole or in part by Financing² from the "PPDF" The following services might be relevant:
 - Appointment of technical experts to carry out project preparation activities; i.e. feasibility studies, Environmental and Social Impact Assessment (E&SIA); transaction advisor of services, technical design, tender documents, institutional arrangements, etc.; and
 - Capacity development support to Beneficiary.
- 1.2 The Financing Agreement governs the legal relationship between the Beneficiary and the PPDF, and the Rules apply to the selection and employment of service providers for the project, as provided in the Financing Agreement. The rights and obligations of the Beneficiary³ and the service provider are governed by the specific Request for Proposals (RFP)⁴ issued by the Beneficiary and by the contract signed by the Beneficiary and the service provider. No party other than the parties to the Financing Agreement shall derive any rights there from or have any claim to proceeds of the Financing.

General Considerations

- 1.3 The Beneficiary is responsible for preparing and implementing the project, and therefore for procuring the required services from providers, and awarding and subsequently administering the contract. While the specific rules and procedures to be followed for procuring services from providers depends on the circumstances of the particular

²"Financing" shall mean any grant provided by the PPDF or other funds administered by this entity.

³In some cases, the Beneficiary acts only as an intermediary, and the project is carried out by another agency or institution.

⁴See Appendix 2.



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case, five main considerations guide the PPDF's policy on the selection process:

- a) the need for high-quality services,
- b) the need for economy and efficiency,
- c) the need to give all qualified service providers an opportunity to compete in providing the services financed by the PPDF,
- d) the PPDF's interest in encouraging the development and use of national and regional service providers, and
- e) the need for transparency and equity in the selection process.

1.4 The PPDF considers that, in the majority of cases, these considerations can best be addressed through competition among qualified short-listed firms, selected on the basis of an open process. The selection of the successful bidder is based on the quality of the technical proposal and, where appropriate, on the cost of the services to be provided. Sections II and III of these Rules describe the different methods of selection of service providers that are acceptable for the PPDF and the circumstances in which they are appropriate. Since Quality- and Cost-Based Selection (QCBS) is the most commonly recommended method, Section II of these Rules describes in detail the procedures for QCBS. However, QCBS is not the most appropriate method of selection for all cases; therefore, Section III describes other methods of selection and the circumstances in which they are more appropriate.

1.5 Funding provided by the PPDF will be utilised in regional integration infrastructure initiatives. Participating Beneficiary countries should specify who the lead country will be and therefore also the Beneficiary of the funding. Procurement legislation in the lead country must provide for the relevant regulatory framework in addition to the Rules. However, where there is conflict between the Procurement legislation of the lead country and these Rules, these Rules shall prevail. The Rules should be viewed as the minimum requirements that will be augmented by the procurement legislation of the Beneficiary. The particular methods that may be followed for the selection of service providers under a given project are provided for in the Procurement Plan.⁵

⁵ See article 1.23



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Applicability of the Rules

1.6 The procedures outlined in these Rules apply to all contracts for consulting services financed in whole or in part from PPDF grants or trust funds implemented by the beneficiary. In procuring consulting services not financed from such sources, the Beneficiary may adopt other procedures. In such cases, the PPDF shall satisfy itself that: (a) the procedures to be used will result in the selection of service providers who have the necessary professional qualifications; (b) the selected service provider will carry out the assignment in accordance with the agreed schedule; and (c) the scope of the services is consistent with the needs of the pre-investment project works.

Conflict of Interest

1.7 PPDF policy requires that service providers provide professional, objective, and impartial advice and at all times hold the Beneficiary's interests paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Service providers shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Beneficiary. Without limitation on the generality of the forgoing, service providers shall not be hired under the circumstances set forth below:

- (a) Conflict among consulting assignments: Neither service providers nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the service providers.
- (c) Relationship with Beneficiary's staff: Service providers (including their personnel and sub-service providers) that have a business or family relationship with a member of the Beneficiary's staff (or of the project implementing agency's staff, or of a beneficiary of the Financing) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the PPDF



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Secretariat throughout the selection process and the execution of the contract.

Unfair Competitive Advantage

- 1.8 Fairness and transparency in the selection process require that service providers or their affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Beneficiary shall make available to all the short-listed service providers, together with the Request For Proposals, all information that would in that respect give a service provider a competitive advantage.

Eligibility

- 1.9 The PPDF permits firms and individuals from the region and the rest of the world to offer consulting services for PPDF funded projects. However, should a cooperating partner restrict its eligibility to a limited number of countries, RFP would clearly indicate it and which countries are not eligible.
- 1.10 As exceptions to the foregoing:
- a) Service providers may be excluded if: (i) as a matter of law or official regulations, the Beneficiary's country prohibits commercial relations with the service provider's country, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Beneficiary's country prohibits any payments to any country, person, or entity.
 - b) Government-owned enterprises or institutions in the Beneficiary's country may participate only if they can establish that they: (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Beneficiary or Sub-Beneficiary.
 - c) As an exception to (b), when the services of government-owned universities or research centres in the Beneficiary's country are of unique and exceptional nature, and their participation is critical to project implementation, the PPDF Secretariat may agree on the



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hiring of those institutions on a case-by-case basis. On the same basis, university professors or scientists from research institutes can be contracted individually under PPDF Financing.

- d) Government officials and civil servants may only be hired under consulting contracts, either as individuals or as members of a team of a consulting firm, if they: (i) are on leave of absence without pay; (ii) are not being hired by the agency they were working for immediately before going on leave; and (iii) their employment would not create a conflict of interest (see paragraph 1.7).
- e) A firm declared ineligible by the PPDF in accordance with subparagraph (d) of paragraph 1.21 of these Rules or in accordance with the PPDF Anti-Corruption and Fraud policies shall be ineligible to be awarded a PPDF-financed contract during such period of time as the PPDF shall determine.

Methods of Procurement and Regional Preference

1.11 International Competitive Bidding shall be the main method of procurement. Under certain strict conditions, other alternative methods of procurement can be used. However this requires the explicit prior approval of the PPDF Steering Committee. For such approvals to be granted by the PPDF Steering Committee, the following criteria have to be met: a) presence of qualified bidders on the local market sufficient to provide for adequate competition, b) no interest is to be expected from international bidders due to the type and limited volume of the services, c) volume does not exceed US\$ 200,000. However, if foreign firms express interest and demonstrate their suitability, they shall be considered.

Advance Contracting and Retroactive Financing

1.12 In certain circumstances, such as to accelerate project implementation, the Beneficiary may, with the PPDF Steering Committee's approval, wish to proceed with the selection of service providers before the



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related Financing Agreement is signed. This process is referred to as advance contracting.⁶ In such cases, the selection procedures, including advertisement, shall be in accordance with these Rules, and the PPDF Secretariat shall review the process used by the Beneficiary. A Beneficiary undertakes such advance contracting at its own risk, and any "no objection" issued by the PPDF Secretariat with regard to the procedures, documentation, or proposal for award does not commit the PPDF to provide Financing for the project in question. If the contract is signed, reimbursement by the PPDF of any payments made by the Beneficiary under the contract prior to signing of the Financing Agreement is referred to as retroactive Financing and is only permitted within the limits specified in the Financing Agreement.

Associations between Service Providers

1.13 Service providers may associate with each other in the form of a joint venture or of a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals and make available bigger pools of experts, provide better approaches and methodologies, and, in some cases, offer lower prices. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. If the Beneficiary employs an association in the form of a joint venture, the association should appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Once the short list is finalized, and Requests for Proposals (RFP) are issued, any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of the Beneficiary. Beneficiaries shall not require service providers to form associations with any specific firm or group of firms.

⁶See Appendix 4.



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Review, Assistance, and Monitoring

- 1.14 The PPDF Secretariat reviews the Beneficiary's hiring of service providers to satisfy itself that the selection process is carried out in accordance with the provisions of these Rules. The review procedures are described in Appendix 1.
- 1.15 The Beneficiary is always responsible for the preparation, implementation and operation of all procurement contracts. The Beneficiary is the Contracting Authority that carries out the entire tender procedure, concluding the contracts and supervising their fulfilment as the contracting party. Under special circumstances, and in response to a written request from the Beneficiary, the PPDF Secretariat may, in individual cases, carry out part or all of the selection procedure and select a service provider on behalf of the Beneficiary. For this purpose, following approval of the Steering Committee, the PPDF Secretariat signs an agency contract with the Beneficiary stating the extent and details of the services to be performed by the PPDF Secretariat. This work is free of charge. It generally ends when the consultancy contract is signed by the Beneficiary.
- 1.16 The Beneficiary is responsible for supervising the service providers' performance and ensuring that they carry out the assignment in accordance with the contract. Without assuming the responsibilities of the Beneficiary or the service providers, the PPDF Secretariat shall monitor the work as necessary to satisfy them that it is being carried out according to appropriate standards and is based on acceptable data. As appropriate, the PPDF Secretariat may take part in discussions between the Beneficiary and service providers and, if necessary, may help the Beneficiary in addressing issues related to the assignment. If a significant portion of project preparation work is being carried out in the service providers' home offices, the PPDF Secretariat may, with the Beneficiary's agreement, visit these offices to review the service providers' work.

Misprocurement

- 1.17 The PPDF does not finance expenditures for consulting services if the service providers have not been selected or the services have not been contracted in accordance with the agreed provisions of the Financing Agreement. In such cases, the PPDF Secretariat will declare



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misprocurement, and it is the PPDF's policy to cancel that portion of the Financing allocated to the services that have been misprocured. The PPDF Secretariat may, in addition, exercise other remedies provided for under the Financing Agreement. Even once the contract is awarded after obtaining a "no objection" from the PPDF Secretariat, the PPDF Secretariat may still declare misprocurement if it concludes that the "no objection" was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Beneficiary, or that the terms and conditions of the contract had been modified without the PPDF Secretariat's "no objection".

References to the PPDF and PPDF Secretariat

- 1.18 The Beneficiary shall use the following language when referring to the PPDF in the RFP and contract documents:

"[Name of the Beneficiary] has received [or, 'has applied for'] a grant from the PPDF in the amount equivalent to US\$___, toward the cost of [name of project], and intends to apply a portion of the proceeds of this grant to eligible payments under this Contract. Payments by the PPDF will be made only at the request of [name of Beneficiary or designate] and upon approval by the PPDF Secretariat, and will be subject, in all respects, to the terms and conditions of the Financing Agreement. No party other than [name of Beneficiary] shall derive any rights from the Financing Agreement or have any claim to the proceeds of the grant.

Training or Transfer of Knowledge

- 1.19 If the assignment includes an important component for Training or Transfer of Knowledge to Beneficiary staff or national service providers, the TOR shall indicate the objectives, nature, scope, and goals of the training program, including details on trainers and trainees, skills to be transferred, time frame, and monitoring and evaluation arrangements. The cost for the training program shall be included in the service provider's contract and in the budget for the assignment.



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Language

1.20 For practical reasons, the RFP, the contracts and the proposals shall be prepared in one of the three (English, French, and Portuguese) SADC official languages depending on the language proficiency of the Beneficiary.

Similarly, the service provider shall have the obligation to only use the language selected by the Beneficiary among the three official languages of SADC. However, for each contract, the Beneficiary will prepare a summary chart including the main contract data in English.

Fraud and Corruption

1.21 It is the PPDF's policy to require that Beneficiaries of PPDF Financing, as well as service providers and their subcontractors under PPDF-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the PPDF Secretariat:

- a) defines, for the purposes of this provision, the terms set forth below as follows:
 - i. "Corrupt Practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii. "Fraudulent Practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii. "Collusive Practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv. "Coercive Practices" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;



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- b) will reject a proposal for award if it determines that the service provider recommended for award has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices in competing for the contract in question;
 - c) will cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Beneficiary or of a beneficiary of the Financing were engaged in Corrupt, Fraudulent, Collusive, or Coercive Practices during the selection process or the execution of that contract, without the Beneficiary having taken timely and appropriate action satisfactory to the PPDF to address such practices when they occur;
 - d) will sanction a service provider, including declaring such firm ineligible either indefinitely or for a stated period of time, to be awarded a PPDF-financed contract if the PPDF Secretariat at any time determines that the service provider has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive or Coercive Practices in competing for, or in executing, a PPDF-financed contract; and
 - e) will have the right to require that, in contracts financed by the PPDF, a provision be included requiring service providers to permit the PPDF Secretariat to inspect their accounts and records and other documents relating to the submission of proposals and contract performance and to have them audited by auditors appointed by the PPDF Board of Trustees.
- 1.22 The RFP requires that the service provider include in its proposal a Declaration of Undertaking that it will observe, in competing for and executing the contract, the country's laws against fraud and corruption (including bribery).

Procurement Plan

- 1.23 As part of the preparation of the project, the Beneficiary shall prepare and, before negotiating the Financing Agreement, furnish to the PPDF



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Secretariat for its approval a Procurement Plan⁷ acceptable to the PPDF Secretariat setting forth: (a) the particular contracts for consulting services required to carry out the totality of the project (or if this is not possible, at least the first 18 months of project implementation); (b) the proposed methods for selection of services by providers; and (c) the related PPDF review procedures.⁸ The Beneficiary shall update the Procurement Plan annually or as needed throughout the duration of the project. The Beneficiary shall implement the Procurement Plan in the manner in which it has been approved by the PPDF. The Procurement Plan should be drawn up taking cognisance of these Rules.

⁷The PPDF Secretariat will disclose the initial Procurement Plan to the public after the related financing has been approved in a General Procurement Notice to be prepared by the Beneficiary; additional updates may be disclosed after the PPDF has approved them.

⁸See Appendix 1.



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II. Quality- and Cost-Based Selection (QCBS)

The Selection Process

- 2.1 QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment. A range of (70% - 80%) for the technical proposal and (30% - 20%) for the financial proposal is advised. The actual weights to be allocated to the technical and financial proposals will be reflected in the RFP.
- 2.2 The selection process shall include the following steps:
- a) preparation of the TOR (Terms Of Reference);
 - b) preparation of the cost estimate and budget;
 - c) preparation of the Request For Expressions of Interest (also called Specific Procurement Notice);
 - d) publication of the Request for Expressions of Interest;
 - e) preparation of the short list of service providers;
 - f) preparation and issuance of the RFP [which should include: the Letter of Invitation (LOI); the Instructions to Service Providers (ITSP); the TOR, the Declaration of Undertaking; the Standard Form of Contract; formats for technical proposal; and formats for financial proposals];
 - g) receipt of proposals (technical and financial) ;
 - h) evaluation of technical proposals: consideration of quality;
 - i) public opening of financial proposals;
 - i) evaluation of financial proposals;
 - j) final evaluation of quality and cost; and
 - k) negotiations and award of the contract to the selected service provider.



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Terms of Reference (TOR)

2.3 The Beneficiary shall be responsible for preparing the TOR for the assignment. TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The scope of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the service providers' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable service providers to estimate the required resources. TOR shall list the services necessary to carry out the assignment and the expected outputs. However, TOR should not be too detailed and inflexible, so that competing service providers may propose their own methodology and staffing. TOR shall permit equal access to tenderers and be non-discriminatory. Firms shall be encouraged to comment on the TOR in their proposals. The Beneficiary's and service providers' respective responsibilities should be clearly defined in the TOR.

Cost Estimate (Budget)

2.4 Preparation of a well thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Beneficiary's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment, etc.). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used) and (b) reimbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.

Advertising

2.5 For all projects, the Beneficiary is required to prepare and submit to the PPDF Secretariat a draft General Procurement Notice in which he shall include a list of expected consulting assignments to obtain Expressions of Interest. The PPDF Secretariat will arrange for its publication on the



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SADC and DBSA *Internet Websites*., The Beneficiary shall advertise a Specific Procurement Notice requesting for Expressions of Interest for each contract for service providers in at least one newspaper of national circulation in the Beneficiary's country. The Beneficiary may also publish this notice in the official gazette, an electronic portal with free access, an international newspaper, a technical magazine, the UN Development Business on line, and/or Development Gateway Market Websites. In addition, for individual contracts expected to cost more than US\$ 200,000 the Specific Procurement Notice shall be advertised on SADC and DBSA *Internet Websites*. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage service providers from expressing interest. Not less than 30 days from date of posting on SADC and DBSA *Internet Websites* shall be provided for responses, before preparation of the short list.

Short List of Service Providers

- 2.6 The Beneficiary is responsible for preparation of the short list. The Beneficiary shall give first consideration to those firms that demonstrate their suitability for the assignment by submitting the appropriate documents. After these documents have been assessed, a maximum of six⁹ applicants will be chosen who appear best qualified to perform the consultancy services required under the contract. The PPDF Secretariat may agree to short lists comprising a smaller number of firms in special circumstances, for example, when only a few qualified firms have expressed interest for the specific assignment or when the size of the contract does not justify wider competition. However, once the PPDF Secretariat has issued a "no objection" to a short list, the Beneficiary shall not add or delete names without the PPDF Secretariat's approval.
- 2.7 The documents submitted by the applicants must give proof of their financial resources and general professional expertise, their experience and sector and regional knowledge; they must also provide evidence of an adequate personnel structure. The documents should outline, briefly and concisely, the relevant works performed over the last five (5) years and summarize the applicant's qualifications and experience. A legally-

⁹In any case, the maximum number should not exceed six firms.



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binding signed Declaration of Undertaking from the applicants shall be included in these documents.

- 2.8 In the pre selection process, only those applicants better fulfilling the selection criteria published with the Request for Expression of Interest (EOI) will be considered. When the number of received EOIs is insufficient, the Beneficiary may directly solicit interest from qualified firms based on its own knowledge, The pre selection of suitable service providers will be made using an assessment table.
- 2.9 Those applicants will be pre selected who achieve at least 70 % of the points to be allocated. If more than six applicants achieve that total, the six with the highest number of points will be pre selected. The pre selection requires the approval of the PPDF Secretariat. For this purpose the Beneficiary will send the PPDF Secretariat the assessment report on the pre selection and all the supporting documents in due time.
- 2.10 Once the PPDF Secretariat has confirmed the pre selection result, the Beneficiary will inform the applicants of the results of the pre selection. Upon request of an applicant, the Beneficiary can briefly state the main reasons for the non selection of the application. However, no details on the pre selection procedure or information on other applicants will be disclosed. There is no right of appeal for the applicants beyond the rights provided for in the financial agreement supporting the project. The pre selected applicants will additionally be informed about the other pre selected consulting firms.

The criteria for assessment will be as follows:

Evidence of experience gained in the last 3 years:	40
Experience in handling similar projects	15
Experience under various working conditions in developing countries	5
Experience of region or country, preferably in the same sector	20
Suitability for this specific project:	60
Assessment of available technical knowledge specific to this project	15
Assessment of the personnel structure in regard to the tasks expected	30
Assessment of the key personnel in permanent employment and always available to monitor the team and provide back-up services from the	



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home office	10
The form of the application documents: are they complete and related to the project?	5
Total:	100

Preparation and Issuance of the Request for Proposals (RFP)

2.11 The RFP shall include: (a) a letter of invitation, (b) instructions to service providers, (c) the TOR, (d) the Declaration of Undertaking, (e) formats for technical proposal and formats for financial proposals, and (f) the standard form of contract. Beneficiaries shall use the applicable standard RFP issued by the PPDF Secretariat with minimal changes acceptable to the PPDF Secretariat, as necessary to address project-specific conditions. Any such changes shall be introduced only through the RFP data sheet. Beneficiaries shall list all the documents included in the RFP. The Beneficiary may use an electronic system to distribute the RFP, provided that the PPDF Secretariat is satisfied with the adequacy of such system. If the RFP is distributed electronically, the electronic system shall be secure to avoid modifications to the RFP and shall not restrict the access of short-listed service providers to the RFP.

Letter of Invitation (LOI)

2.12 The LOI shall state the intention of the Beneficiary to enter into a contract for the provision of services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

Instructions To Service Providers (ITSP)

2.13 The ITSP shall contain all necessary information that would help service providers prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process, indicating the evaluation criteria and factors and their respective weights, and stating the minimum passing quality score. The ITSP shall indicate an estimate of the level of key staff inputs (in staff time) required of the service providers or the total budget, but not both. Service providers, however, shall be free to prepare their own estimates of staff time to carry out the assignment



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and to offer the corresponding cost in their proposals. The ITSP shall specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award, PPDF Secretariat review, and finalization of contract negotiations. A detailed list of the information that should be included in the ITSP is provided in Appendix 2.

Contract

2.14 Section IV of these Rules briefly discusses the most common types of contracts. Beneficiaries shall use the Standard Form of Contract issued by the PPDF Secretariat with minimum changes, acceptable to the PPDF, as necessary to address specific country and project issues. Any such changes shall be introduced only through the options offered in italics included in the PPDF's Standard Form of Contract. This form of contract covers the majority of consulting services. When this form is not appropriate, Beneficiaries shall use other contract forms acceptable to the PPDF.

Receipt of Proposals

2.15 The Beneficiary shall allow enough time for the service providers to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology). During this interval, the firms may request clarifications about the information provided in the RFP. The Beneficiary shall provide these clarifications in writing and copy them to all firms on the short list (that intend to submit proposals). If necessary, the Beneficiary shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly. Any proposal



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received after the closing time for submission of proposals shall be returned unopened. Beneficiaries may use electronic systems permitting service providers to submit proposals by electronic means, provided the PPDF Secretariat is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the confidentiality and authenticity of proposals submitted, uses an electronic signature system or equivalent to keep service providers bound to their proposals, and only allows proposals to be opened with due simultaneous electronic authorization of the service provider and the Beneficiary. In this case, service providers shall continue to have the option to submit their proposals in hard copy.

Evaluation of Proposals: Consideration of Quality and Cost

- 2.16 The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any PPDF Secretariat review and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

- 2.17 The Beneficiary shall evaluate each technical proposal (using an evaluation committee of three or more specialists in the sector), taking into account several criteria: (a) the service provider's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed, and (d) transfer of knowledge if required in the TOR. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The following weights are indicative. The actual percentage figures to be used shall fit the specific assignment and shall be within the ranges indicated below, except with the approval of the PPDF Secretariat. The proposed weights shall be disclosed in the RFP.

Service provider's specific experience: 0 to 10 points

Methodology: 20 to 50 points



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Key personnel:	30 to 60 points
Transfer of knowledge: ¹⁰	10 to 20 points
Total:	100 points

2.18 The Beneficiary shall normally divide these criteria into sub-criteria. For example, sub-criteria under methodology might be *innovation* and *level of detail*. However, the number of sub-criteria should be kept to the essential. The PPDF recommends against the use of exceedingly detailed lists of sub-criteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the service provider. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.19 Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Beneficiary shall review the qualifications and experience of proposed key personnel in their *curricula vitae*, which must be accurate, complete, and signed by an authorized official of the consulting firm and the individual proposed. The individuals shall be rated in the following three sub-criteria, as relevant to the task:

- a) general qualifications: general education and training, length of experience, positions held, time with the consulting firm as staff, experience in developing countries, and so forth;
- b) adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and

¹⁰Transfer of knowledge may be the main objective of some assignments; in such cases, it shall be indicated in the TOR and, only with PPDF prior approval may be given a higher weight to reflect its importance.



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- c) experience in the region: knowledge of the culture, administrative system, government organization, and so forth.
- 2.20 Beneficiaries shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.
- 2.21 At the end of the process, the Beneficiary shall prepare a Technical Evaluation Report of the “quality” of the proposals and, in the case of contracts subject to prior review, submit it to the PPDF Secretariat for its review and “no objection”. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

Evaluation of Cost

- 2.22 After the evaluation of quality is completed and the PPDF Secretariat has issued its no objection, the Beneficiary shall inform the service providers who have submitted proposals, the technical points assigned to each service provider and shall notify those service providers whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and TOR that their financial proposals will be returned unopened after the signature of the contract. The Beneficiary shall simultaneously notify the service providers that have secured the minimum qualifying mark, the date, time, and place set for opening the financial proposals. The opening date shall be defined allowing sufficient time for service providers to make arrangements to attend the opening of the financial proposals. The financial proposals shall be opened publicly in the presence of representatives of the service providers who choose to attend (in person or online). The name of the service provider, the technical points, and the proposed prices shall be read aloud (and posted online when electronic submission of proposals is used) and recorded when the financial proposals are opened. The Beneficiary shall also prepare the minutes of the public opening and a copy of this record shall be promptly sent to the PPDF Secretariat and to all service providers who submitted proposals.



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- 2.23 The Beneficiary shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency selected by the Beneficiary (local currency or fully convertible foreign currency) as stated in the RFP. The Beneficiary shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank of the Beneficiary's country) or by a commercial bank or by an internationally circulated newspaper for similar transactions. The RFP shall specify the source of the exchange rate to be used and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.
- 2.24 For the purpose of evaluation, "cost" shall exclude local identifiable indirect taxes¹¹ on the contract and income tax payable to the country of the Beneficiary on the remuneration of services rendered in the country of the Beneficiary by non-resident staff of the service provider. The cost shall include all service providers' remuneration and other expenses such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

Combined Quality and Cost Evaluation

- 2.25 The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. Except for the type of services specified in Section III, the weight for cost shall normally be 20 to 30 points and the weight for quality 80 to 70 out of a total score of 100. The proposed

¹¹All indirect taxes levied on the contract invoices, at National, State (or Provincial) and Municipal levels.



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weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

Negotiations and Award of Contract

- 2.26 Negotiations shall include discussions of the TOR, the methodology, staffing, Beneficiary's inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.
- 2.27 The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.¹² If this is not the case and if it is established that key staff were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.
- 2.28 Financial negotiations shall include clarification of the service providers' tax liability in the Beneficiary's country (if any) and how this tax liability has been or would be reflected in the contract. As Lump-sum Contracts payments are based on delivery of outputs (or products), the offered price shall include all costs (staff time, overhead, travel, hotel, etc.). Consequently, if the selection method for a Lump-sum contract included price as a component, this price shall not be negotiated. In the case of Time-based Contracts, payment is based on inputs (staff time and reimbursables) and the offered price shall include staff rates and an estimation of the amount of reimbursables. When the selection method includes price as a component, negotiations of staff rates

¹²Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes this risk.



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should not take place, except in special circumstances, like for example, if staff rates offered are much higher than typically charged rates by service providers for similar contracts. Consequently, the prohibition of negotiation does not preclude the right of the Beneficiary to ask for clarifications, and, if fees are very high, to ask for change of fees, after due consultation with the PPDF Secretariat. Reimbursables are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the client wants to define ceilings for unit prices of certain reimbursables (like travel or hotel rates), they should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

- 2.29 If the negotiations fail to result in an acceptable contract, the Beneficiary shall terminate the negotiations with the first ranked bidder and invite the next ranked firm for negotiations. The Beneficiary shall consult with the PPDF Secretariat prior to taking this step. The reasons for termination of negotiations with the bidder need to be explained to the PPDF Secretariat and the Secretariat will document the reasoning and the decision. The service provider shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Beneficiary shall not reopen the earlier negotiations. After negotiations are successfully completed and the PPDF Secretariat has issued its no objection to the initialled negotiated contract, the Beneficiary shall promptly notify other firms on the short list that they were unsuccessful.

Publication of the Award of Contract and Debriefing

- 2.30 After the award of contract, the Borrower shall ask PPDF to publish on the DBSA and SADC *Internet Websites* a Contract Award Notice including the following information: (a) the names of all consultants who submitted proposals; (b) the technical points assigned to each consultant; (c) the evaluated prices of each consultant; (d) the final point ranking of the consultants; (e) the name of the winning consultant and the price, duration, and summary scope of the contract. The same information shall be sent to all consultants who have submitted proposals.

In the publication of contract award, the Beneficiary shall specify that any service provider who wishes to ascertain the grounds on which its proposal was not selected, should request an explanation from the



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Beneficiary. The Beneficiary shall promptly provide the explanation as to why such proposal was not selected, either in writing and/or in a debriefing meeting, at the option of the service provider. The requesting service provider shall bear all the costs of attending such a debriefing.

Rejection of All Proposals, and Re-invitation

2.31 The Beneficiary will be justified in rejecting all proposals only if all proposals are non-responsive because they present major deficiencies in complying with the TOR or if they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with the PPDF Secretariat. Before all the proposals are rejected and new proposals are invited, the Beneficiary shall notify the PPDF Secretariat, indicating the reasons for rejection of all proposals, and shall obtain the PPDF Secretariat's "no objection" before proceeding with the rejection and the new process. The new process may include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with the PPDF Secretariat.

Confidentiality

2.32 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the service providers who submitted the proposals or to other persons not officially concerned with the process, until the publication of the award of contract, except as provided in paragraph 2.22 and 2.29.



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III. Other Methods of Selection

General

- 3.1 This section describes the selection methods other than QCBS, and the circumstances under which they are acceptable. All the relevant¹³ provisions of Section II (QCBS) shall apply whenever competition is used. Aside from QBS, other selection methods must abide by the conditions set forth in article 1.11.

Quality-Based Selection (QBS)

- 3.2 QBS is appropriate for the following types of assignments:
- (a) complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the service providers, and for which the client expects the service providers to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies);
 - (b) assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
 - (c) assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).
- 3.3 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical

¹³All provisions of Section II shall be applied with the modifications and suppressions required by the method for selecting service providers used in the specific case. Advertisement for expression of interest is not required when single-source selection is used.



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and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP shall provide either the estimated budget or the estimated number of key staff time, specifying that this information is given as an indication only and that service providers shall be free to propose their own estimates.

- 3.4 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the Beneficiary shall ask the service provider with the highest ranked technical proposal to submit a detailed financial proposal. The Beneficiary and the service provider shall then negotiate the financial proposal¹⁴ and the contract. All other aspects of the selection process shall be identical to those of QCBS, including the publication of the Award of Contract as described in paragraph 2.30 except that only the price of the winning firm is published. If service providers were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in, as in QCBS, to ensure that the price proposal of only the selected firm is opened and the rest returned unopened, after the negotiations are successfully concluded.

Selection under a Fixed Budget (FBS)

- 3.5 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP shall indicate the available budget and request the service providers to provide their best technical and financial proposals in separate envelopes, within the budget. TOR should be particularly well prepared to make sure that the budget is sufficient for the service providers to perform the expected tasks. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the price proposals shall be opened in public and prices shall be read out aloud. Proposals that exceed the indicated budget shall be rejected. The service provider who has submitted the highest ranked technical proposal among the within-budget proposals shall be selected and invited to negotiate a contract. The publication of the Award of Contract shall be as described in paragraph 2.30.

¹⁴Financial negotiations under QBS include negotiations of all service providers' remuneration and other expenses.



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Least-Cost Selection (LCS)

3.6 This method is only appropriate for selecting service providers for assignments of a standard or routine nature (for example audits,) where well-established practices and standards exist. Under this method, a “minimum” qualifying mark for the “quality” is established. Proposals, to be submitted in two envelopes, are invited from a short list. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark¹⁵ are rejected, and the financial proposals of the technically-acceptable proposals are opened in public. The firm with the lowest price shall then be selected and the publication of the Award of Contract shall be as described in paragraph 2.30. Under this method, the minimum qualifying mark shall be established, understanding that all proposals above the minimum compete only on “cost.” The minimum qualifying mark shall be stated in the RFP.

Selection Based on the Service Providers’ Qualifications (CQS)

3.7 This method may be used for small¹⁶ assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the Beneficiary shall prepare the TOR, request expressions of interest and information on the service providers’ experience and competence relevant to the assignment, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

3.8 The Beneficiary shall publish on the SADC and DBSA *Internet Websites* the name of the service provider, to which the contract was awarded, and the price, duration, and scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

¹⁵This method shall not be used as a substitute for QCBS and shall be used only for the specific cases of very standard and routine technical nature where the intellectual component is minor. For this method the minimum qualifying mark shall be 70 points or higher.

¹⁶Monetary thresholds defining “small” shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$ 200,000



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Single-Source Selection (SSS)

- 3.9 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost, lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of the client and the project, and the PPDF's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants.
- 3.10 Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph), (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency, (c) for very small¹⁷ assignments; or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.
- 3.11 When continuity for downstream work is essential, the initial RFP shall outline this prospect, and, if practical, the factors used for the selection of the consultant shall take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Beneficiary shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the Beneficiary, which shall then be negotiated.
- 3.12 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or if the downstream assignment is substantially larger in value, a competitive process acceptable to the PPDF Secretariat shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it

¹⁷Thresholds amounts defining "very small" shall be determined in each case, taking into account the nature and complexity of the assignment, but shall not exceed US\$ 50,000.



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expresses interest. The PPDF Secretariat will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

- 3.13 The Beneficiary shall publish on the SADC and DBSA *Internet Websites* the name of the consultant to which the contract was awarded and the price, duration, and scope of the contract. This publication may be done quarterly and in the format of a summarized table covering the previous period.

Commercial Practices

- 3.14 In the case of loans on-lent by a financial intermediary to private sector enterprises or autonomous commercial enterprises in the public sector, the Sub-Beneficiary may follow well-established private sector or commercial practices that have been determined by the PPDF to be acceptable to it. Consideration shall also be given to the use of competitive procedures outlined earlier, particularly for large assignments

Selection of Particular Types of Service Providers

- 3.15 *Selection of Specialized Agencies as Service Providers.* Specialized Agencies may be hired as the service providers, where they are qualified to provide technical assistance and advice in their area of expertise. However, they shall not receive any preferential treatment in a competitive selection process, except that Beneficiaries may accept the privileges and immunities granted to Specialized Agencies and their staff under existing international conventions and may agree with Specialized Agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the PPDF Secretariat. To neutralize the privileges of Specialized Agencies, as well as other advantages such as tax exemption and facilities, and special payment provisions, the QBS method shall be used. Specialized Agencies may be hired on a single-source selection basis if the criteria outlined in paragraph 3.10 of these Rules are fulfilled.
- 3.16 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially



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because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Beneficiary and the PPDF Secretariat are satisfied with their qualifications. If NGOs have specific expertise, that should be tested under open tender. For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely NGOs. If so, the QCBS procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, non-profit status, local knowledge, scale of operation and reputation.

- 3.17 *Auditors.* Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS, with cost as a substantial selection factor (40 to 50 points) or by the “Least-Cost Selection” outlined in paragraph 3.6. For very small¹⁸ assignments CQS may be used.

¹⁹ See footnote 18.



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IV. Types of Contracts and Important Provisions

Types of Contracts

- 4.1 *Lump Sum Contract.*¹⁹ Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the service providers are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bidding documents, etc. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.
- 4.2 *Time-Based Contract.* This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the service providers required attaining the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overhead, fee (or profit), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the service providers. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and that payments claimed by the service providers are appropriate.

Important Provisions

- 4.3 *Currency.* RFPs shall clearly state that firms are authorized to use any major currency such as USD, GBP, EUR and ZAR in addition to the Beneficiary's currency, and may express the price for their services, in

¹⁹Standard form of *Contract for Provider of Services (Lump Sum Remuneration)*.



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any such currency(ies). If the service providers wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided the proposal includes no more than three foreign currencies. The Beneficiary may require service providers to state the portion of the price representing costs in the currency of the Beneficiary's country. Payment under the contract shall be made in the currency or currencies in which the price is expressed in the proposal.

- 4.4 *Price Adjustment.* To adjust the remuneration for foreign and/or local inflation, a price adjustment provision shall be included in the contract if its duration is expected to exceed 18 months. Contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.
- 4.5 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Advance payments for mobilization should not exceed 15% of the total contract amount.
- 4.6 Payments shall be made promptly in accordance with the contract provisions. To that end,
- a) service providers can be paid directly by the PPDF Secretariat at the request of the Beneficiary or exceptionally through a Letter of Credit;
 - b) only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the contract; and
 - c) the contract shall provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract; the rate of charges shall be specified in the contract.
- 4.7 *Beneficiary's Contribution.* The Beneficiary may assign members of its own professional staff to the assignment in different capacities. The contract between the Beneficiary and the service provider shall give the details governing such staff, known as counterpart staff, as well as facilities that shall be provided by the Beneficiary, such as housing, office space, secretarial support, utilities, materials, and vehicles. The contract shall indicate measures the service provider can take if any of



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the items cannot be provided or have to be withdrawn during the assignment, and the compensation the service provider will receive in such a case.

- 4.8 *Conflict of Interest.* The service provider shall not receive any remuneration in connection with the assignment except as provided in the contract. The service provider and its affiliates shall not engage in consulting or other activities that conflict with the interest of the client under the contract. The contract shall include provisions limiting future engagement of the service provider for other services resulting from or directly related to the firm's consulting services in accordance with the requirements of paragraph 1.7 of the Rules.
- 4.9 *Professional Liability.* The service provider is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the service provider's liability to the Beneficiary will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that: (a) there must be no such limitation in case of the service provider's gross negligence or wilful misconduct; (b) the service provider's liability to the Beneficiary may in no case be limited to less than a multiplier of the total value of the contract to be indicated in the RFP and in the conditions of the contract (the amount of such limitation will depend on each specific case);²⁰ and (c) any such limitation may deal only with the service provider's liability toward the client and not with the service provider's liability toward third parties.
- 4.10 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the service provider shall propose other staff of at least the same level of qualifications for approval by the Beneficiary.
- 4.11 *Applicable Law and Settlement of Disputes.* The contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. Service providers' contracts shall always

²⁰The Beneficiary is encouraged to secure insurance for potential risks above these limits. Service providers in certain cases will be required to have professional indemnity insurance.



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include a clause for settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Beneficiaries are, therefore, encouraged to provide for this type of arbitration. The PPDF Secretariat shall not be named an arbitrator or be asked to name an arbitrator.



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V. Selection of Individual Service Providers

- 5.1 Individual consultants are used on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.
- 5.2 Individual service providers are selected on the basis of their qualifications for the assignment. Advertisement is not required²¹ and service providers do not need to submit proposals. Service providers shall be selected through comparison of qualifications of at least three candidates (not to exceed six) among those who have expressed interest in the assignment or have been approached directly by the Beneficiary. Individuals considered for comparison of qualifications shall meet the minimum relevant qualifications and those selected to be employed by the Beneficiary shall be the best qualified and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.
- 5.3 From time to time, permanent staff or associates of a consulting firm may be available as individual service providers. In such cases, the conflict of interest provisions described in these Rules shall apply to the parent firm.

²¹ However, in some cases Beneficiaries may consider the advantage of advertising, at their option



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Appendix 1: Review by the PPDF Secretariat of the Selection of Service Providers

Scheduling the Selection Process

1. The PPDF Secretariat shall review the selection process for the hiring of service providers proposed by the Beneficiary in the Procurement Plan to ensure compliance with the Financing Agreement and these Rules. The Procurement Plan shall cover the entire duration of the project. The Beneficiary shall update the Procurement Plan on an annual basis or as needed. Any revisions proposed to the Procurement Plan shall be furnished to the PPDF Secretariat for its prior approval.

Contracts may be the subject of Prior or Post Review by the PPDF Secretariat. The Financing Agreement shall define which procedure shall apply to which contract(s) in function of the nature of the services and the capacity and experience of the Beneficiary. Should the Financing Agreement not include such procedure, the following shall apply:

Type of Consultant	Threshold for Prior Review (Estimated Contract Amount)
Consulting Firm	USD 200,000
Individual Consultant	USD 100,000

Prior Review

2. With respect to all contracts that are subject to the PPDF Secretariat's prior review:
 - (a) Before inviting proposals, the Beneficiary shall furnish to the PPDF Secretariat for its review and "no objection" the proposed cost estimate and RFP (including the short list of service providers). The Beneficiary shall make such modifications to the short list and the other documents as the PPDF Secretariat



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reasonably requests. Any further modification shall require the PPDF Secretariat's "no objection" before the RFP is issued to the short-listed service providers.²²

- (b) After the technical proposals have been evaluated, the Beneficiary shall furnish to the PPDF Secretariat, in sufficient time for its review, a technical evaluation report (prepared, if the PPDF Secretariat shall so request, by experts acceptable to the PPDF Secretariat) and a copy of the proposals, if requested by the PPDF Secretariat. If the PPDF Secretariat determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Beneficiary and state the reasons for its determination; otherwise, the PPDF Secretariat shall issue a "no objection" to the technical evaluation. The Beneficiary shall also request the PPDF Secretariat's "no objection" if the evaluation report recommends rejection of all proposals.
- (c) The Beneficiary may proceed with the opening of the financial proposals only after receiving the PPDF Secretariat's "no objection" to the technical evaluation. When price is a factor in the selection of the service provider, the Beneficiary may then proceed with the financial evaluation in accordance with the provisions of the RFP. The Beneficiary shall furnish to the PPDF Secretariat, for its information, the final evaluation report along with its recommendation of the winning firm. The Beneficiary shall notify the firm that received the highest total score in the final evaluation of its intention to award the contract to the firm and shall invite the firm for negotiations.
- (d) If the Beneficiary receives complaints from service providers, a copy of the complaint and a copy of the Beneficiary's response shall be sent to the PPDF Secretariat for information.

²²In the case of contracts to be awarded under Para. 3.11 where a new competitive process is not practicable, the Beneficiary shall not initiate negotiations without first furnishing to the PPDF for its consideration the required justification and receiving the PPDF Secretariat's "no objection," and shall otherwise follow the requirements of this paragraph 2 in all relevant respects.



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- (e) If, as result of analysis of a complaint, the Beneficiary changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to the PPDF Secretariat for no objection. The Beneficiary shall provide a republication of the contract award in the format of paragraph 2.30 of these Rules.
 - (f) After negotiations are completed, the Beneficiary shall furnish to the PPDF Secretariat, in sufficient time for its review, a copy of the initialled negotiated contract. If the negotiated contract resulted in substitution of key staff or any changes in the TOR and original proposed contract, the Beneficiary shall highlight the changes and provide an explanation of why these changes are appropriate and necessary.
 - (g) If the PPDF Secretariat determines that the final evaluation report, recommendation for award, and/or negotiated contract is inconsistent with the provisions of the RFP, it shall promptly inform the Beneficiary and state the reasons for its determination. Otherwise, the PPDF Secretariat shall provide its final “no objection” to the contract award. The Beneficiary shall confirm the award of the contract only after receiving the “no objection” from the PPDF Secretariat.
 - (h) Following contract signature, the Beneficiary shall furnish to the PPDF Secretariat a copy of the final contract before submitting the first application for disbursement under the contract.
 - (i) The description and amount of the contract, together with the name and address of the firm, shall be subject to public disclosure by the PPDF Secretariat upon the Beneficiary’s receipt of the signed copy of the contract.
3. *Modification of the Signed Contract.* In the case of contracts subject to prior review, before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, the Beneficiary shall seek the PPDF Secretariat’s “no objection” to the proposed extension, modification, substitution, waiver, or change. If the PPDF Secretariat determines that



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the proposal would be inconsistent with the provisions of the Financing Agreement and/or Procurement Plan, it shall promptly inform the Beneficiary and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the PPDF Secretariat.

Post Review

4. The Beneficiary is free to carry out the procurement procedure according to the Financing Agreement and these Rules without any intervention of the PPDF Secretariat, except regarding the publication of the Specific Procurement Notice (if required) and the Contract Award Notice. However, the Beneficiary should consult the PPDF Secretariat in case of any doubt regarding the procedure or its results. The Beneficiary shall retain all documentation with respect to each contract not governed by paragraph 2 during project implementation and up to two years after the closing date of the Financing Agreement. This documentation shall include, but not be limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the PPDF Secretariat or by its service providers, except that for contracts awarded on the basis of single-source selection, it shall include the record of justification, the qualifications and experience of the service providers, and the signed original of the contract.
5. Similar to Paragraph 2 (h) of this Appendix, the Beneficiary shall furnish to the PPDF Secretariat, promptly after its signing and prior to delivery to the PPDF Secretariat of the first application for withdrawal of funds from the Financing Account in respect of such contract, one conformed copy of such contract, together with the analysis of the respective bid, and recommendations for award. The Beneficiary shall also furnish any other documentation to the PPDF Secretariat upon request.
6. The PPDF Secretariat shall reserve the right to carry out post review of such documents, at any time before or after the first disbursement, and whenever it determines that the services were not procured in accordance with the agreed procedures, as reflected in the Financing Agreement and further detailed in the Procurement Plan approved by the PPDF Secretariat or that the contract itself is not consistent with such procedures, the PPDF Secretariat shall declare misprocurement as established in Paragraph 1.17 of the Rules. The PPDF Secretariat



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shall promptly inform the Beneficiary the reasons for such determination.

7. Where payments for the contract not governed by paragraph 2 of this Appendix, are to be made out of a Special Account, a copy of the contract, together with the other information required to be furnished to the PPDF Secretariat, shall be forwarded to the PPDF Secretariat prior to delivery to the PPDF Secretariat of the first replenishment application in respect of such contract. These provisions shall not apply to contracts on account of which withdrawals from the Financing are to be on the basis of Statements of Expenditure, for which all such documents shall be retained by the Beneficiary for subsequent examination by independent auditors and PPDF Secretariat supervision missions. The PPDF Secretariat shall, if it determines that the award of the contract or the contract itself is not consistent with the Financing Agreement, promptly inform the Beneficiary and state the reasons for such determination.



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Appendix 2: Instructions to Service Providers (ITSP)

1. The Beneficiary shall use the standard RFPs issued by the PPDF Secretariat, which include the ITSP, covering the majority of assignments. If under exceptional circumstances, the Beneficiary needs to amend the standard ITSP, it shall do so through the technical data sheet and not by amending the main text. The ITSP shall include adequate information on the following aspects of the assignment:
 - (a) a very brief description of the assignment;
 - (b) standard formats for the technical and financial proposals;
 - (c) the names and contact information of officials to whom clarifications shall be addressed and with whom the service providers' representative shall meet, if necessary;
 - (d) details of the selection procedure to be followed, including (i) a description of the two-stage process, if appropriate; and (ii) a listing of the technical evaluation criteria and weights given to each criterion; (iii) the details of the financial evaluation; (iv) the relative weights for quality and cost in the case of QCBS; (v) the minimum pass score for quality; and (vi) the details on the public opening of financial proposals;
 - (e) an estimate of the level of key staff inputs (in staff-months) required of the service providers or the total budget, but not both;
 - (f) an indication of the minimum experience, academic achievement, and so forth, expected of key staff;
 - (g) details and status of any external financing;
 - (h) information on negotiations; and financial and other information that shall be required of the selected firm during negotiation of the contract;
 - (i) the deadline for submission of proposals;
 - (j) currency(ies) in which the costs of services shall be expressed, compared, and paid (see article 4.3);



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- (k) reference to any laws of the Beneficiary's country that may be particularly relevant to the proposed service providers' contract;
- (l) a statement that the firm and any of its affiliates shall be disqualified from providing downstream goods, works, or services under the project if, in the PPDF Secretariat's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (m) the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- (n) a request that the invited firm (i) acknowledges receipt of the RFP and (ii) informs the Beneficiary whether or not it will be submitting a proposal;
- (o) the short list of service providers being invited to submit proposals and whether or not associations between short-listed service providers are acceptable;
- (p) the period for which the service providers' proposals shall be held valid and during which the service providers shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the service providers not to maintain their proposal;
- (q) the anticipated date on which the selected service provider shall be expected to commence the assignment;
- (s) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the Beneficiary;
- (t) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (u) the procedure to handle clarifications about the information given in the RFP; and



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- (v) any conditions for subcontracting part of the assignment.



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Appendix 3: Guidance to Service Providers

Purpose

1. This appendix provides guidance to service providers wishing to provide consulting and professional services financed by the PPDF.

Responsibility for Selection of Service Providers

2. The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the Beneficiary. Supporting evidence that the funds are used in accordance with the Financing Agreement and Procurement Plan shall be submitted with the Beneficiary's disbursement application. Payment may be made: (a) to reimburse the Beneficiary for payment(s) already made from its own resources, or (b) directly to a third party (to the service provider). As emphasized in paragraph 1.3 of these Rules, the Beneficiary is responsible for the selection and employment of service providers. It invites, receives, and evaluates proposals and awards the contract. The contract is between the Beneficiary and the service provider. The PPDF Secretariat is not a party to the contract.

PPDF Secretariat's Role

3. As stated in these Rules (Appendix 1) the PPDF Secretariat, reviews the RFP, the evaluation of proposals, award recommendations, and contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Financing Agreement and further elaborated in the Procurement Plan. For all contracts subject to PPDF Secretariat's prior review, the PPDF Secretariat reviews the documents before they are issued, as described in Appendix 1. Also, if at any time in the selection process (even after the award of contract) the PPDF Secretariat concludes that the agreed procedures were not followed in any substantial respect, the PPDF Secretariat may declare misprocurement, as described in paragraph 1.17. However, if a Beneficiary has awarded a contract after obtaining the PPDF Secretariat's "no objection," the DBSA will declare misprocurement only if the "no objection" was issued on the basis of incomplete, inaccurate,



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or misleading information furnished by the Beneficiary. Furthermore, if the PPDF Secretariat determines that corrupt or fraudulent practices were engaged in by representatives of the Beneficiary or of the service provider, the PPDF Secretariat may impose the applicable sanctions set forth in paragraph 1.21 of the Rules.

4. The PPDF Secretariat publishes standard RFPs and contracts for different types of consulting services. As stated in paragraphs 2.11 and 2.14 of these Rules, it is mandatory for the Beneficiary to use these documents, with minimum changes acceptable to the PPDF Secretariat to address project-specific issues. The Beneficiary finalizes and issues these documents as part of the RFP.

Information on Work for Service Providers

5. Information on work for service providers, including a brief description of the nature of services, timing, estimated cost, staff-month, and so forth, will be, in the first instance, included in the General Procurement Notice shall be published on the SADC and DBSA *Internet Websites*. In the case of large-value contracts,²³ this will be followed by a specific notice seeking “expression of interest” on SADC and DBSA *Internet Websites*. The Project Appraisal Report (PAR) will provide yet more detailed information.
6. The Project Information Sheet (PIS) and the Quarterly Operational Summary (QOS) are available on SADC and DBSA *Internet Website*²⁴. The PAR is available after the Financing is approved. SADC and DBSA *Internet Websites* are free of access.

Service Providers' Role

7. When service providers receive the RFP, and if they can meet the requirements of the TOR and the commercial and contractual conditions, they should make the arrangements necessary to prepare a

²³ Contracts expected to cost more than US\$200,000 equivalent.

²⁴ SADC and DBSA *Websites*.



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responsive proposal (for example, visiting the country of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the service providers find in the RFP documents—especially in the selection procedure and evaluation criteria—any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the Beneficiary, in writing, within the period specified in the RFP for seeking clarifications, with a copy to the PPDF Secretariat.

8. In this connection, it should be emphasized that the specific RFP issued by the Beneficiary governs each selection, as stated in paragraph 1.2 of these Rules. If service providers feel that any of the provisions in the RFP are inconsistent with the Rules, they should also raise this issue with the Beneficiary, with a copy to the PPDF Secretariat.
9. Service providers should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key staff submitted with the proposals. The *curricula vitae* shall be signed by the service providers and the individuals and dated. Noncompliance with important requirements will result in rejection of the proposal. Once technical proposals are received and opened, service providers shall not be required nor permitted to change the substance, the key staff, or other aspects of their proposal. Similarly, once financial proposals are received, service providers shall not be required or permitted to change the quoted fee or other aspects of their proposal, except at the time of negotiations carried out in accordance with the provisions of the RFP. If an extension of validity of proposals was the reason that key staff were not available for a company, the service provider must replace key staff with personnel of equivalent or better qualification.

Confidentiality

10. As stated in paragraph 2.32, the process of proposal evaluation shall be confidential until the publication of contract award, except for the disclosure of the technical points as indicated in paragraphs 2.22 and 2.29. Confidentiality enables the Beneficiary and the PPDF Secretariat's reviewers to avoid either the reality or perception of improper interference. If, during the evaluation process, service



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providers wish to bring additional information to the notice of the Beneficiary, the PPDF Secretariat, or both, they should do so in writing.

Action by the PPDF Secretariat

11. If service providers wish to raise issues or questions about the selection process, they may send the PPDF Secretariat copies of their communications with the Beneficiary, or they may write to the PPDF Secretariat directly when the Beneficiary does not respond promptly or when the communication is a complaint against the Beneficiary.
12. Communications received by the PPDF Secretariat from short-listed service providers prior to the closing date for submission of the proposal shall be, if appropriate, referred to the Beneficiary with the PPDF Secretariat's comments and advice, for action or response.
13. Communications that the PPDF Secretariat receives from service providers after the opening of the technical proposals shall be handled as follows. In the case of contracts not subject to prior review by the PPDF Secretariat, any communication shall be sent to the Beneficiary for due consideration and appropriate action. The Beneficiary's response shall be reviewed during subsequent supervision of the project by the PPDF Secretariat staff. In the case of contracts subject to prior review, the PPDF Secretariat shall examine the communication, in consultation with the Beneficiary, and if it needs additional information, shall request it from the Beneficiary. If additional information or clarification is required from the service provider, the PPDF Secretariat shall ask the Beneficiary to obtain it and comment on or incorporate it, as appropriate, in the evaluation report. The PPDF Secretariat's review will not be completed until the communication is fully examined and considered.
14. Besides acknowledging receipt of communications, the PPDF Secretariat shall not enter into discussion or correspondence with any service provider during the selection and review process, until award of the contract is notified.



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Debriefing

15. If after contract award, a service provider wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the Beneficiary as indicated in paragraph 2.30. If the service provider is not satisfied with the explanation given and wishes to seek a meeting with the PPDF Secretariat, it may do so and the Secretariat will arrange a meeting at the appropriate level and with the relevant staff. In this discussion, only the service provider's proposal can be discussed and not the proposals of competitors.



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Appendix 4: Advance Contracting

Introduction

1. In particular instances, or for major projects, when it is clearly demonstrated that the advance award of contracts for the acquisition of consultancy services will be a vital factor for the rapid implementation of the project, the Beneficiary may, with the PPDF Secretariat 's prior "no objection", be authorized to issue the RFPs, and even sign the related contracts, prior to the approval of the project by the Board of Directors. In such cases, the PPDF Secretariat requires the Beneficiary to submit for its "no objection" all the documents and stages of the selection process, in conformity with these Rules.

Timing of Decision on Advance Contracting

2. In general, with the exception of pre-investment studies, Advance Contracting should be considered only after project preparation or appraisal has been completed, in order to ensure that the PPDF Secretariat is satisfied with the overall design of the project, and that it has identified appropriate components for its own financing and possible elements which may be acceptable for Advance Contracting, if the Beneficiary so requests.

Safeguards

3. The following safeguards are recommended for advance contracting and should be clearly indicated and discussed with prospective Beneficiaries requesting to proceed with Advance Contracting:
 - a. The Beneficiary shall be fully aware that advance contracting is undertaken at its own risk and does not commit the PPDF Secretariat in any way to approve the Financing for the project;
 - b. The Beneficiary shall be fully aware that procurement under Advance Contracting, must have been carried out according to PPDF Secretariat 's procedures, if it is to be eligible for PPDF Secretariat Financing; and
 - c. Announcements, in the case of Advance Contracting, must indicate that the Beneficiary has applied for Financing from the PPDF



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Secretariat, and that disbursement, in respect of any contracts signed, will be subject to approval of the Financing by the PPDF Secretariat.



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Appendix 5: Training

Training

1. The strengthening of the national capabilities of executing agencies or agents in the Beneficiary Member State through a transfer of knowledge and skills to local professionals is of key concern to the PPDF.
2. It is based on programs which fall within the framework of the assignment whose principal objective may not necessarily be training and transfer of technology, but which meet requirements related to the principal project or its sector. These programs may provide an opportunity for strengthening the capacity of the counterpart staff involved in the assignment or that of the national staff participating in a joint venture between regional and non-regional service providers.
3. To enable the successful implementation of this programme, the Beneficiary must be convinced of its necessity, and consequently select the necessary qualified professionals to participate in it, and release these professionals for the duration of the programme. The service provider must accept this training function and its inclusion as an obligation which is separate and distinct from the other services and propose corresponding costs and an implementation time-frame.
4. The objectives of the programme must be defined and included in the terms of reference sent to the service providers invited to submit proposals; it will be defined during the negotiations both with regard to trainers, trainees, the skills to be transferred and the time-frame. The PPDF has no objections to the cost being incorporated in the estimated budget for services to be acquired.