



Procedures for the Utilization of the Shanghai Municipal Government Funds for Recruitment of Consultants

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CDIA

Cities Development Initiative for Asia

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1 OVERVIEW

The Shanghai Municipal Government (SMG) has provided financial support to CDIA for development of activities in the People's Republic of China. According to the MOU between the parties, those funds will be used for recruitment of consultants as well as for the operation of the CDIA Nodal Office.

Domestic procurement procedures in China have not been in place suited to an arrangement like the CDIA-SMG cooperation. Therefore, the SMG has indicated that the ADB procedures/ principles should be followed in order to safeguard fairness and transparency in the process of consultant recruitment for projects developed in China and supported with SMG funds.

Considering that ADB's procedures have been designed for a much larger and complex international organization, specific procedures have been designed to align with the same principles, but adapted to the circumstances of CDIA's operations in China.

2 PRINCIPLES

ADB's Guidelines on the use of consultants makes use of six main considerations in the process of consultant selection. :

- (a) need for high-quality services,
- (b) need for economy and efficiency,
- (c) need to give all qualified consultants an opportunity to compete in providing the services financed by ADB,
- (d) ADB's interest in encouraging the development and use of national consultants from developing member countries (DMCs),
- (e) need for transparency in the selection process, and
- (f) need for increasing focus on anti-corruption and observance of ethics.

CDIA Nodal Office will follow these principles while procuring consultants for those projects financed by SMG's funds.

3 FAIR COMPETITIVE PRACTICES

Fairness and transparency in the recruitment process require that consulting firms or individual consultants competing for a specific assignment do not derive a competitive advantage from having provided prior consulting services related to the assignment in question. To that end, CDIA or the beneficiary shall make available to all the shortlisted consultants, together with the RFP, all information so as to avoid giving any consulting firm or individual consultant an unfair advantage.

4 ELIGIBILITY

To foster competition, CDIA permits firms and individuals from all ADB member countries to offer consulting services for projects to be financed by SMG, with special consideration for Chinese consultants with sufficient capacity as any other international consultants. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. However, the following considerations will also be taken into account.

- (a) Consultants may be excluded if, 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

People's Republic of China prohibits any payments to any country, person, or entity. Where the People's Republic of China prohibits payments to a particular consultant or for particular goods by such an act of compliance, that consultant may be excluded.

- (b) Government-owned enterprises or institutions in People's Republic of China 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 or divisions of the project proponent.
- (c) As an exception to (b) (ii), when the services of government-owned universities or research centers in People's Republic of China are of unique and exceptional nature, and their participation is critical to project implementation, CDIA may agree on the 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 SMG funding.
- (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.

5 ASSOCIATIONS BETWEEN CONSULTANTS

Consultants may associate with each other in the form of a joint venture or a sub-consultancy agreement to complement their respective areas of expertise, strengthen the technical responsiveness of their proposals, make available a larger pool 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 an association in the form of a joint venture is used, the association will appoint one of the firms to represent the association; all members of the joint venture shall sign the contract and shall be jointly and separately liable for the entire assignment. CDIA shall not require consultants to form associations with any specific firm or group of firms, but may encourage association with qualified national firms.

6 SELECTION OF CONSULTING FIRM

6.1 Quality- and Cost-Based Selection

Consultants shall primarily be selected through a **Quality- and Cost-Based Selection (QCBS)** approach. QCBS is based on the quality of the technical proposal and the cost of the services to be provided. This will be the main source of selection using the other approaches only in special cases as detailed below in sections 6.2 and 6.3.

6.1.1 Terms of Reference

Before the process of recruitment of a consulting firm starts, the objective and scope of the proposed work, and the functions and duties to be assigned to the consultants should be clearly and adequately defined in the Terms of Reference (TOR).

These TOR shall be prepared by the CDIA CMT in consultation with the city applicant/project proponent. These TOR shall be part of the Technical Assistance Agreement between the city applicant and CDIA, which will specify the source of funds to be used.

6.1.2 Advertising

To attract EOIs from consulting firms, CDIA will advertise in an appropriate Chinese journal, newspaper, and website. Whenever possible, it will provide links on the websites of the program's funders and city applicants to the EOI published on the CDIA website. CDIA will invite all companies included in the IDC long-lists of the different funders of CDIA to submit their EOI, but this will not preclude any consulting firm submitting an EOI.

The website will contain not only the advertisement, but also detailed information on the requirements for expertise and the type of project, as well as the forms to be completed with the necessary information by interested firms.

The EOI submission period from advertisement, will be a minimum of 21 calendar days. The actual period for advertisement and receipt of EOI will be sufficient to promote competition and exposure among capable companies.

The TOR may be finalized concurrently during the period for submission of EOI in order to speed up the process.

EOI shall be accepted in electronic format and/or in hard copy as indicated in the request for EOI.

6.1.3 Preparation of Long List of Consultants

Once the EOIs have been submitted, and the TOR finalized in consultation with the city applicant/project proponent, the assigned CDIA CMT member(s) will determine the long-list of companies whose experience and background are prima facie suitable to implement the project as defined in the TOR.

6.1.4 Preparation of Shortlist of Consultants

From the long list of consultants five or six companies will subsequently be invited to participate in the bidding based on the TOR. CDIA shall give first consideration to those firms expressing interest that have the most relevant qualifications. Shortlists shall comprise as wide geographical spread as possible, with at least one firm from People's Republic of China. Shortlists comprising a smaller number of firms will be possible in special circumstances, for example, when only a few qualified firms have expressed interest in the specific project. For the purpose of establishing the shortlist, the nationality of a firm is that of the country in which it is registered or incorporated and, in the case of a joint venture, the nationality of the firm appointed to represent the joint venture.

6.1.5 Preparation and Issuance of the Request for Proposals (RFPs)

The RFP includes:

- letter of invitation;
- instructions to consultants, including a data sheet and evaluation criteria;
- technical proposal standard forms;
- financial proposal standard forms;
- TOR; and
- standard form of contract.

CDIA shall send RFPs to consultants on the shortlist by means of an electronic system or in any other way that ensures the receipt of these documents. 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 shortlisted consultants to the RFP.

The RFP period shall be a minimum of 21 calendar days, depending on the complexity of the assignment to be undertaken.

6.1.6 Receipt of Proposals

Firms shall be required to submit technical and financial proposals in separate sealed envelopes at the same time. Any proposal received after the closing time for submission of proposals will be returned unopened, and no amendments to the technical or financial proposals will be accepted after the deadline.

Proposal may be received in electronic format or as required by the TOR and instruction to the bidders.

6.1.7 Evaluation of Technical Proposal

The evaluation shall be based on evaluation criteria defined in the instructions to bidders. The technical proposal shall account for a minimum of 75% of total scoring weight, while a maximum of 25% of the scoring weight will be reserved for the financial proposal.

After the technical quality is evaluated, firms whose technical proposals do not meet the minimum qualifying score of 700 points out of a possible 1,000 points, or otherwise are considered non-responsive to the invitation requirements, will be advised and their financial proposals will be returned unopened.

The total score shall be obtained by adding the weighted technical and financial scores which will be described in the RFP notice this will determine the overall ranking of the bidders' proposals. The actual weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality.

6.1.8 Negotiations

CDIA shall then negotiate a contract with the first ranked firm. Negotiations will include discussions of the TOR, the methodology, personnel schedule, the city applicant/project proponent's counterpart facilities and the quantities of cost items in the firm's financial proposal. However, these discussions will not substantially alter the TOR attached to the invitation. The selected firm will not be allowed to substitute experts, 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.

Proposed unit rates for remuneration shall not be altered and other expenses shall not be negotiated since unit rate cost has been a factor in the selection process. Successful negotiations conclude with signing of the contract. Financial negotiations shall include clarification of the consultant's tax liability in the People's Republic of China (if any) and how this tax liability has been or would be reflected in the contract. If the borrower and the firm cannot reach agreement, CDIA may terminate the negotiations and start negotiations with the next ranked firm until an agreement is reached.

6.1.9 Publication of the Award of Contract

After the award of contract CDIA shall publish on its website: the names of all consultants who submitted proposals and the name of the winning consultant and the contract sum.

6.1.10 Debriefing

In the publication of award of contract CDIA shall specify that if any consultant who submitted a proposal wishes to ascertain the reasons why its proposal was not selected, such consultant may request an explanation. CDIA shall promptly provide an explanation as to why its proposal was not selected.

6.1.11 Rejection of All Proposals and Re-invitation

CDIA may reject all proposals only if all proposals are technically non-responsive (because they have major deficiencies in complying with the TOR) and/or financially non-responsive (if the costs are substantially higher than the budget estimate).

In the latter case, the feasibility of increasing the budget, or scaling down the scope of the services with the firm should be investigated. The new process may include revising the RFP (including the shortlist) and the budget. These revisions shall be agreed internally within the CDIA CMT.

6.1.12 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process until the publication of the award of contract.

6.2 Consultants' Qualifications Selection (CQS)

This selection method may be used for small assignments where (i) highly specialized expertise is required for the assignment and recruitment of "boutique" consulting firms that provide depth of expertise in specific areas is contemplated; (ii) recruitment time is critical and the assignment is, typically, short-term; (iii) few consultants are qualified; and (iv) the preparation and evaluation of competitive proposals is not justified.

CDIA shall (i) prepare the TOR, (ii) request amplified EOLs and information on the consultants' experience and competence relevant to the assignment, (iii) establish a shortlist of at least three firms, and (iv) select the firm with the most appropriate qualifications and references based on the EOLs. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract. Should negotiations fail, CDIA shall start negotiations with the next ranked firm until an agreement is reached.

6.3 Single-Source Selection (SSS)

Generally, Single-Source Selection (SSS) 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, SSS shall be used only in exceptional cases. The justification for SSS shall be examined in the context of the overall interests of the client and the project, and CDIA's responsibility to ensure economy and efficiency and provide equal opportunity to all qualified consultants. SSS may be appropriate only if it presents a clear advantage over competition: (i) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph), (ii) in emergency cases, such as in response to disasters, (iii) for very small assignments, or (iv) when only one firm is qualified or has experience of exceptional worth for the assignment.

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 new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, CDIA shall ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished, which shall then be negotiated. If the initial assignment was not awarded on a competitive basis, or if the downstream assignment is substantially larger in value, a competitive process acceptable to SMG shall normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest. SMG will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.



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