

Proposed Framework Arrangement by a Third Party Provider ('TPP')

This note stems from ideas generated during an inquiry process of clients and the private sector in respect of the application of the Bank's Guidelines for the Selection of Consultants ('GL'). In a 2004 internal report on the use of the GL by OPCPR, it became apparent that it takes on average 18 months to recruit consultants using the GL and involves a considerable amount of management time and cost for the Bank and the Client. This is partly due to the requirements of the GL but also due to the difficulty faced by beneficiaries in applying them, mainly in terms of capacity. Such effort is not always necessary in the case of the recruitment of consultants for recurrent needs or for simply defined tasks. Further, it provides a serious obstacle to assistance in urgent situations where the purchasers of services do not have the luxury of time.

It should be added that the idea of framework contracts also relies and builds upon the existing provision contained in section 4.5 of the GL which already foresees the use of indefinite delivery contracts. This provision is, of course, for the benefit of beneficiaries who may themselves turn to such mechanisms for procurement in comparable situations. Indeed, this is a modern technique which provides significant efficiency benefits. Beneficiaries may be encouraged and assisted in creating their own frameworks for suitable contracts, although the GL would need to be amended to provide the conditions necessary to ensure that such mechanisms do indeed comply with the GL, both procedurally and in terms of probity and integrity.

The proposal made here does not relate to frameworks maintained by the beneficiaries, however, but to a framework arrangement established and maintained by a TPP for their benefit and, possibly, for the benefit of Bank staff.

1. During the inquiry process identified above, two general requests for assistance were made by clients and the private sector in the context of the problems identified in respect of the application of the Guidelines. These were for the Bank in some way to provide expertise to assist in (i) the drafting of TORs and (ii) the evaluation committees. This must be the starting point but, once the principle is accepted, the mechanism could be used for other services as well. Specialist recurrent services such as road design or environmental assessments could also be suitable.
2. The requests were framed in terms of direct assistance by the Bank, i.e. the direct appointment of such experts. This is clearly not possible or desirable since it would implicate the Bank in the client's decision making process and could potentially incur the Bank's responsibility.
3. It is thus necessary to find a mechanism of addressing the need expressed by the interlocutors without, at the same time, exposing the Bank to any additional liability.
4. The proposed TPP framework arrangement seeks to avoid this through outsourcing, i.e. by ensuring that any consulting services offered to a client are offered only by the consultant firm/individual with whom a framework contract is signed and that those services will be made available to the client through facilitation services (in the form of a framework arrangement) established and operated by a third party provider (in a way similar to the advertising services offered by DG Market).

5. The proposed TPP framework mechanism would operate in the following way:
 - the Bank would, by competitive procedure, contract a third party provider (TPP) to establish and operate a framework arrangement;
 - the TOR would specify the functions to be carried out by the TPP, would indicate that the Bank would play no role in the selection or quality assurance of the consulting firms/experts and would contain wording absolving the Bank of any responsibility for the services to be provided;
 - funding for the contract would ideally come from a Trust Fund (preferably multi-donor);
 - the third party provider (TPP) would then initially establish at least two frameworks, one panel for technical experts to assist with TOR preparation and the other for probity advisers/auditors to assist with evaluation;
 - access to the panels with experts/firms would be on an open and competitive basis based on detailed qualification and experience requirements established and notified in advance;
 - the award of a framework contract to a consultant firm/individual would be for a limited time – a maximum of 3 years but would probably be for at least 1 year - in order to avoid any foreclosure of competition; the framework would be re-competed on a regular basis to maintain (i) the competitive selection and (ii) ensure a suitably qualified pool of consultants;
 - the framework contract would provide an indicative (or fixed) fee structure for experts, depending on the model chosen
 - beneficiaries/clients would be able to call down the expert's/firms' services from the panels with no further open competition since that competition has, by definition, already taken place when setting up the framework;
 - however, beneficiaries may be entitled (depending on the model chosen) to hold a mini-competition among panel members when the precise details of the services to be provided are known (e.g. scope, length, location) where this might affect the overall price;
 - given the scope of the initially proposed frameworks, they would probably need to be sub-divided into different technical sectors and geographical regions;
 - the TPP would establish and maintain/operate the frameworks and ensure that they are up to date through regular re-competition and re-evaluation of the terms of reference.
6. Quality assurance would be maintained by requiring the TPP to appoint another organization to act as monitor (similar to the appointment of an auditor). This monitor would deal with (i) any complaints by experts in respect of non-inclusion in the framework and (ii) any complaint by the clients in respect of the quality of the expert services.
7. In terms of appointing/contracting consulting firms/individuals under a project:
 - the client would be free to select a consultant firm or individual according to the Guidelines or, alternatively, rely on the frameworks which would obviate reliance

on a method of the Guidelines since, by definition, the framework is already competitive¹;

- the decision to use the framework and the choice of firm/expert is entirely in the hands of the client;
 - using the framework, the client would appoint a firm/individual from a panel (call-down) - this might be done according to specific expertise (e.g. dependent on geographical or sector experience), or by some form of rotation which would prevent monopolization. Alternatively, beneficiaries might conduct a mini-competition between framework providers where the precise details of the service to be provided allows room for further competition. The precise models to be used are still to be decided.
 - the consultant appointment would be paid in the context of a loan/credit agreement – it would be one of the contracts under the project;
 - the client signs the contract with the firm/individual and deals with the expert.
8. The pricing would depend on the type of framework chosen. Inclusion on the panel could be on the basis of qualifications and basic fee rate (where expertise is offered at different levels of experience, then this could be done by way of expert category, e.g. junior, senior etc.). This could be fixed or open to amendment. It may be that the client could be encouraged to select 3 experts from the list and carry out a (rapid) mini-competition to determine the fee in respect of the services in question where precise nature of the services to be provided offer scope for such competition, e.g. location of services, length or scope.
9. the TPP framework has many efficiency advantages:
- while such a system implies significant up front costs in setting it up, those will be rapidly recouped by avoiding repeat costs in competing for consultants each time their services are required. The competitive selection takes place once a year or once every 2 or 3 years which implies a hefty cost saving for the beneficiaries. Given the number of beneficiaries, this offers a significant economy of scale;
 - once the competitive selection has taken place (which may take as long as it takes to follow the Guidelines), the selection of consultants from the Panel can take only a matter of days or weeks, providing immense time savings; the continuous re-competition and updating of the system (which clearly must begin before the duration of the panels expires) would mean that these time (and cost) savings will continue uninterrupted;
 - for emergency situations, such a panel offers a fully competitive means of providing experts at short notice and avoids single source selection, even in such situations.

¹ The Guidelines would need to be amended to allow for reliance on competitive frameworks as an alternative method – provided they meet some minimum conditions (which the proposed frameworks would have to meet).