

7. Selecting advisors

Outline of this Module

What this Module does:

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

Who should read this Module:

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

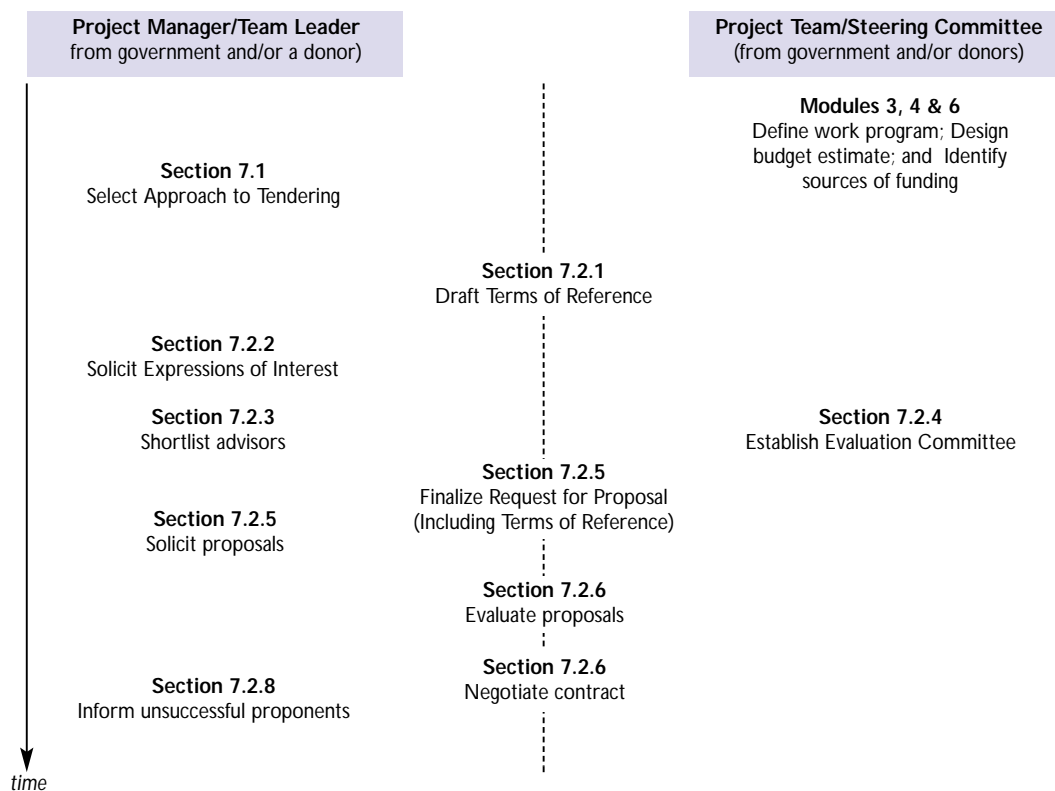
Module 4 in *Volume I* emphasized the importance of carefully defining a project prior to deciding on the form of tendering. After outlining the scope of the project, which should include a careful definition of the project objectives, four main steps were presented:

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

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

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

Figure 7-1
Key steps in the competitive tendering process



7.1 The principles of the tendering process

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

7.1.1 Competitive tendering

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

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

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

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

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

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

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

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

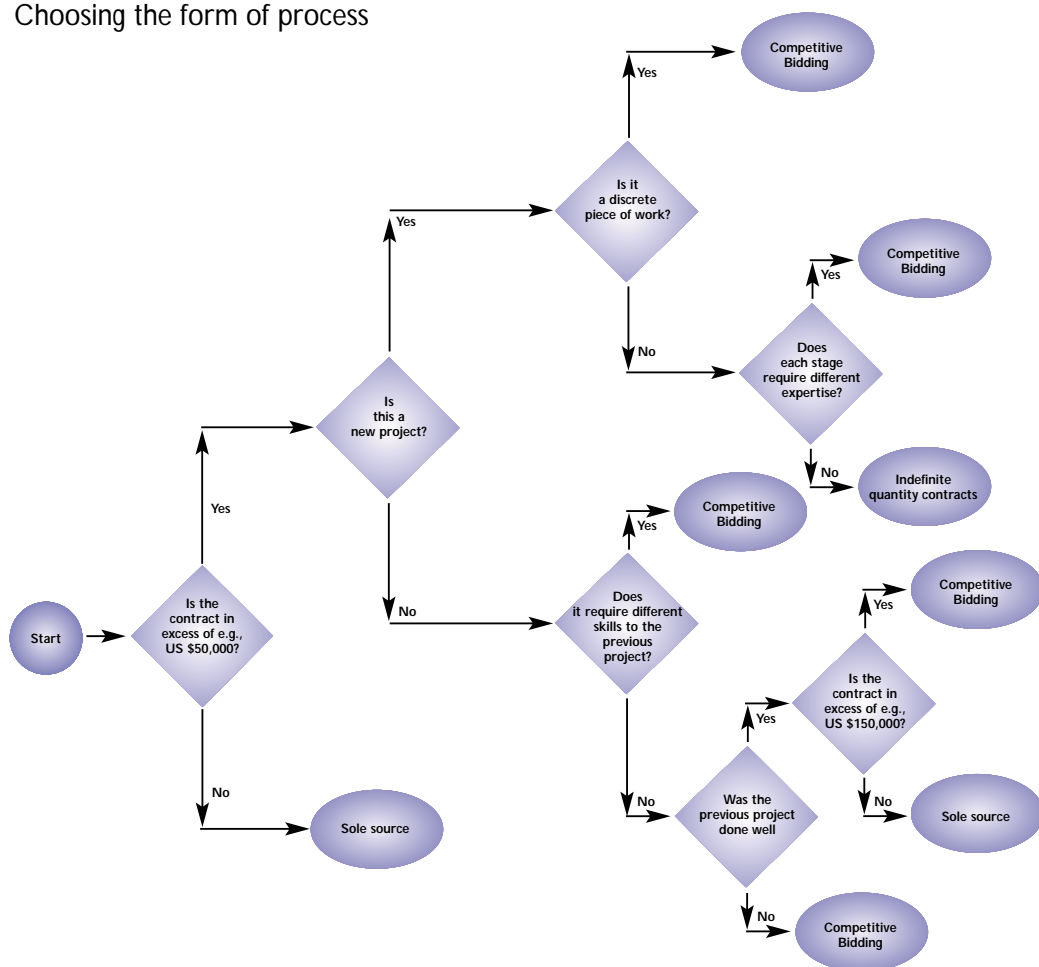
² See Trivedi, P *How to Implement Privatization Transactions*, Routledge, 2000.

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

As well as taking time, the competitive bidding process also requires capable people to organize and participate in the process. Therefore it can be costly in terms of the resources used. Other costs will also be incurred – the cost of advertising, and producing and sending the relevant documentation to potential bidders.

Figure 7-2 presents the decisions required to finalize the form of award process. In deciding whether to proceed with competitive tendering, government officials will need to weigh up the advantages and disadvantages. Whatever decision is reached, it is important that officials are able to justify their decisions.

Figure 7-2
Choosing the form of process

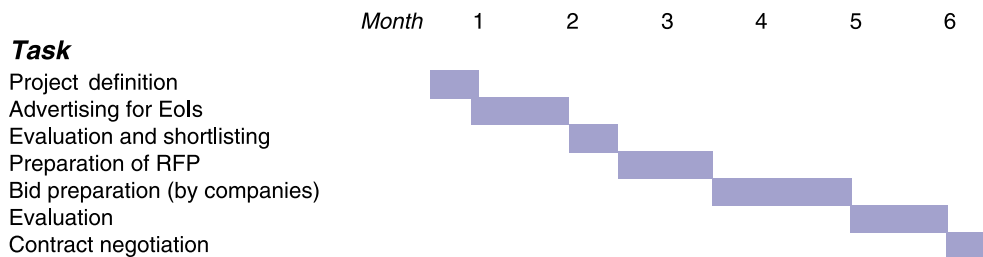


Note: dollar amounts presented in flow chart are indicative only but are based on the lowest dollar amounts acceptable among the main multilateral lending agencies (see *Volume II*).

In addition to the situations described in the figure above, governments may occasionally be faced with emergency crises related to PPI (e.g., contract negotiations following sudden devaluations, natural disasters or debilitating strikes). In these events, it may be appropriate to forego full competitive bidding procedures. Instead the government may choose to solicit proposals from a pre-formed shortlist or even to hire on a sole-source basis depending upon the nature of the crisis.

If it is decided to proceed with a competitive process then it is important to set out each stage of the process, to establish realistic deadlines and then to stick to the timetable. Figure 7-3 presents an indicative timetable.

Figure 7-3
Indicative timeline



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

7.1.2 Approaches to proposal selection

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

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

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

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

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

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

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

Table 7-1

Benefits and constraints of different approaches to evaluating proposals

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

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

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

Advantages and disadvantages of sole-sourcing

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

7.2 Steps in the competitive bidding process

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

7.2.1 Drafting the Terms of Reference (TOR)

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

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

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

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

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

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

Recommendation 7.3: Points should be given for creativity that results in meeting the requirements of the TOR in a more logical, more complete or more effective manner. Lead advisors, if available, should be able to assist in the drafting. Examples of TOR are presented in Annex 1.

Technical proposals

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

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

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

Financial proposals

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

- the daily rates of each team member;
- the time inputs for each team member; and
- a breakdown of reimbursable expenses (e.g., travel costs, hotel costs, meals).

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

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

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

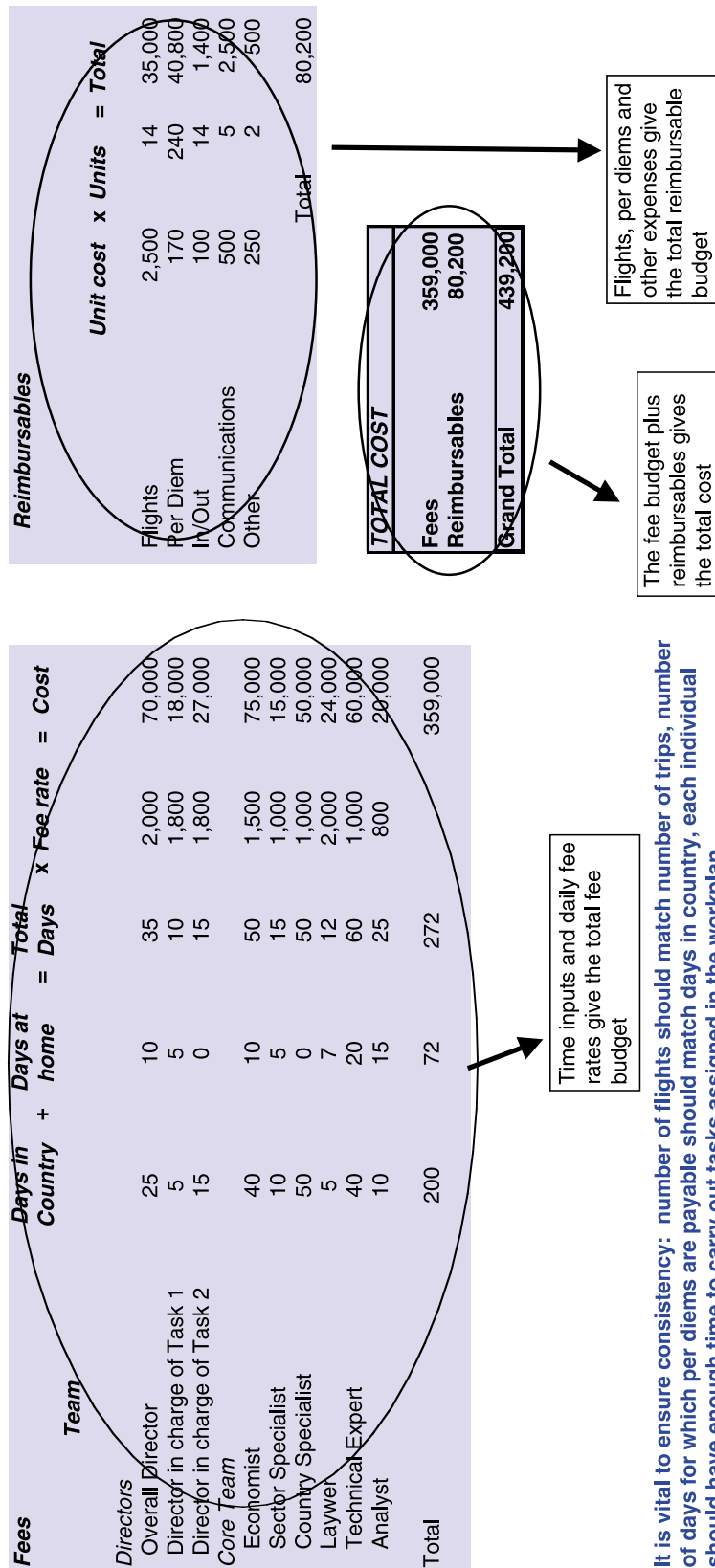
Figure 7-4 provides an indication of the way in which advisory service companies will build up their budgets for a project—analogueous to the way in which the government should build up its budget for a particular project (see Modules 2 and 4).

Combining technical and financial criteria

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

Figure 7-4

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



7.2.2 Shortlisting advisors

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

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

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

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

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

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

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

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

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

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

Recommendation 7.4: Officials will need to decide on the appropriate number of advisors to be included on the shortlist – this will depend upon their capacity to handle proposals, the size and nature of the technical assistance required and the importance of the specific PPI project. In any case, the shortlist should not be less than 3 companies, nor more than 7.

7.2.3 Soliciting Expressions of Interest

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

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

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

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

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

Issues in finding work: local contacts

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

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

Frequently used outlets for advertising include:

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

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

Figure 7.5

Example of a request for an expression of interest

Country: Robinsonia

Project: REGULATION IN THE WATER SUPPLY AND WASTEWATER SECTOR

Sector: Consultants

Product: CONSULTANT SERVICES

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

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

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

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

For Information:

Government of Robinsonia
Cabinet Committee on Sectoral Reform
Watertown, West Island
Robinsonia
Facsimile: 83(8)-141-00

Submit to:

CDIE
PO Box 12
Geneva.
Switzerland
Att: Robinsonia Water Regulation Project

7.2.4 The evaluation committee

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

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

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

Evaluation and Selection Committee

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

Size of the committee

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

Skills of the committee

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

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

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

Transparency of the committee's approach

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

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

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

Stakeholder acceptability

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

Ensuring acceptability

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

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

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

7.2.5 Finalizing the Request for Proposals

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

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

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

7.2.5.1 Letter of invitation

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

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

Some of these issues require further comment.

Forming consortia

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

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

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

Task coverage

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

Proposal format

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

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

Intention to bid

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

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

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

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

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

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

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

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

7.2.5.2 Background information

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

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

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

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

7.2.5.3 Finalizing the Terms of Reference

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

7.2.5.4 Draft contract

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

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

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

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

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

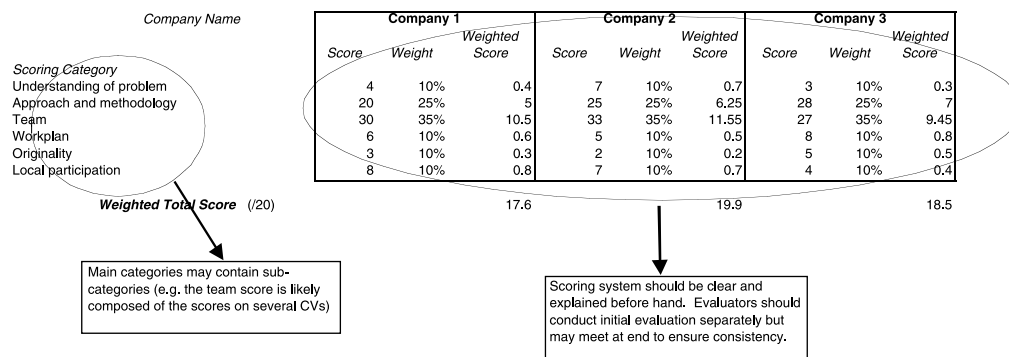
Including a contract allows companies to understand the terms and conditions under which they will be required to operate. It may also shorten the negotiation process with the top ranking company by informing bidders that, unless they object to particular clauses in their proposal, they will be deemed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

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

7.2.6 Evaluating the proposals

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

Figure 7-6
Illustrative scoring sheet



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

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

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

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

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

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

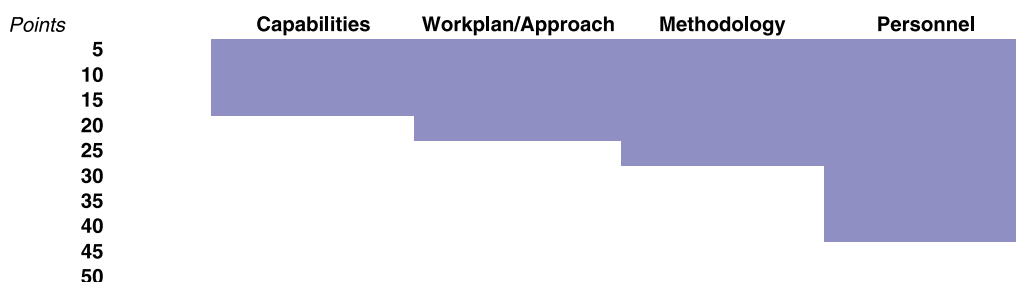
The range of factors (together with an indicative scoring system) which the selection panel might consider when assessing different technical proposals include the following (numbers in brackets provide only indicative measures):

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

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

Figure 7-7

Weighting of categories



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

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

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

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

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

Effect of different approaches to scoring

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

	Evaluator 1	Evaluator 2	Evaluator 3	Average Score
Firm A	18	16	15	16.3
Firm B	16	18	10	14.7
Firm C	20	20	71	5.7

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

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

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

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

Interviewing proponents

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

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

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

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

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

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

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

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

7.2.7 Negotiating the advisory contract

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

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

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

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

7.2.8 Informing unsuccessful proponents

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

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

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

7.3 Advisors' proposal strategies

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

7.3.1 Low bidding

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

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

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

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

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

7.3.2 Downgrading quality of inputs

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

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

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

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

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

7.4 Advisors' conflicts of interest

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

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

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

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

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

7.4.1 Declaring conflicts

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

7.4.2 Chinese Walls

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

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

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

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

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

7.5 Corrupt relationship between advisor and government

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

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

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

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

Useful reading

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

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

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