

**GUIDELINES FOR
PROCUREMENT
UNDER
ASIAN DEVELOPMENT BANK LOANS**

APPLICABLE TO LOANS MADE BY THE BANK
FROM ITS ORDINARY CAPITAL RESOURCES
AND SPECIAL FUNDS RESOURCES

NOVEMBER 2004

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I. INTRODUCTION

A. Purpose

1.01 The purpose of these Guidelines is to inform borrowers¹ of the Asian Development Bank and prospective suppliers and contractors of the general principles and procedures which, except as the Bank may otherwise agree, shall be observed in carrying out procurement of goods and works² for Bank-financed projects. These Guidelines apply to procurement under loans from both the Bank's ordinary capital and Special Funds resources, except that procurement under loans from Special Funds resources will be limited to developed member countries which have contributed to such resources and all developing member countries.

1.02 Any additional arrangements agreed upon between the Bank and the borrower regarding the use of the proceeds of the loan may be set out in each case in the Loan Agreement. The relationship between the borrower and the supplier of goods or works is governed by the bidding documents issued by the borrower and the contract concluded between the borrower and the supplier, which shall have been prepared in accordance with these Guidelines and the Loan Agreement.

B. General Considerations

1.03 Although the ultimate responsibility for the procurement of goods and works required for the project rests with the borrower, the Bank, for its part, has the obligation to ensure that the proceeds of its loans are used with due attention to considerations of economy and efficiency. In this connection, four basic principles underlie procurement under Bank loans:

- (a) Subject to the qualification stated in paragraph 1.01 with regard to procurement under loans from Special Funds resources, the proceeds of a loan can be used only for procurement of goods and works supplied from, and produced in, member countries of the Bank, except in any case in which the Board of Directors determines otherwise under Article 14(ix) of the Articles of Agreement of the Bank.
- (b) To help achieve economy and efficiency in procurement, the Bank requires its borrowers to obtain goods and works through international competition unless, in special circumstances, another more appropriate procedure has been agreed upon between the Bank and the borrower.
- (c) As an international cooperative institution, the Bank provides to all its member countries an opportunity to supply the goods and works which are financed by the Bank.

¹ The term "borrower" as used in these Guidelines also refers to the executing agency for the project.

² For the selection and engagement of consultants, see *Guidelines on the Use of Consultants by Asian Development Bank and its Borrowers*.

- (d) Transparency is essential in the procurement process to achieve economy and efficiency and to combat fraud and corruption.

C. Applicability of Guidelines

1.04 Where the project involves several contracts, and the carrying out of one or more of these contracts will not involve the use of the proceeds of a Bank loan, the borrower may adopt its own procurement procedures for the latter contracts provided that the borrower satisfies the Bank that these procedures will fulfill its general obligation to cause the project to be carried out with due diligence and efficiency, and in conformity with sound engineering or other appropriate practices. The Bank's procurement procedures must be followed in respect of any contract in which the proceeds of the loan will be used to finance either the whole or part of the contract.

1.05 The procedures to be followed in order to ensure effective international competitive bidding are described in Chapters II and IV of these Guidelines; Chapter III describes the circumstances under which methods other than international competitive bidding may be employed in the interest of economy and efficiency. The use of any of such methods will usually be provided in the Loan Agreement for the concerned project.

D. Fraud and Corruption

1.06 The Bank's Anticorruption Policy requires Borrowers (including beneficiaries of Bank-financed activity), as well as bidders, suppliers, and contractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, in the context of these guidelines, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of any party in the procurement process or the execution of a contract;
 - (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) "collusive practices" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to influence the action of any party in a procurement process or the execution of a contract;
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;
- (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the Bank-financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

- (d) will sanction a party or its successor, including declaring ineligible, either indefinitely or for a stated period of time, to participate in Bank-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, a Bank-financed contract; and
- (e) will have the right to require that a provision be included in bidding documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors to permit the Bank or its representative to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

1.07 With the specific agreement of the Bank, a beneficiary of Bank-financing may introduce an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the bidding documents. The Bank will accept the introduction of such undertaking at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

1.08 When the contract is to be financed wholly or partly by the Bank, the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions, or other payments, except those shown in the bid, have been given or received in connection with the procurement process or in contract execution.

1.09 The Bank considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a prohibited practice under the Anticorruption Policy. In pursuance of the Anticorruption Policy's requirement that Borrowers (including beneficiaries of Bank-financed activity), as well as bidders, suppliers, and contractors under Bank-financed contracts, observe the highest standard of ethics, the Bank will take appropriate actions to manage such conflicts of interest or may reject a proposal for award if it determines that a conflict of interest has flawed the integrity of any procurement process.

II. INTERNATIONAL COMPETITIVE BIDDING

A. General

2.01 The purpose of international competitive bidding is to provide the borrower with a wide range of choices in selecting the best bid from competing suppliers/contractors and to give to all prospective bidders from eligible source countries adequate, fair, and equal opportunity to bid on goods and works which are being procured under Bank loans. To achieve this, the Bank requires its borrowers to observe certain guidelines in preparing bidding and contract documents and to follow certain procedures in advertising bid invitations and in accepting, opening, and evaluating bids. In addition, draft bidding documents, bid evaluation reports, and proposed awards of contract are subject to prior review and approval by the Bank as stipulated in Chapter IV of these Guidelines.

Type and Size of Contracts

2.02 Contracts may be awarded on the basis of unit prices (for works performed or goods supplied) or of a lump sum price, or a combination of both for different portions of the contract, depending on the nature of the goods or works involved. The manner of awarding contracts shall be stated early in the bidding documents.

2.03 To the extent possible, procurement shall be carried out in such a way that each bid package or contract would be of such size as to attract international competition. The size and scope of individual contracts will depend on the magnitude, nature, and location of the project.

2.04 For projects requiring both construction works and supply and erection of equipment, separate contracts are normally awarded for these items. Where a number of similar but separate construction works or items of equipment are involved, bids shall be invited under alternative contract options wherein contractors or suppliers, small and large, would be allowed to bid for individual contracts or for a group of similar contracts at their option, and all bids and combination of bids shall be evaluated simultaneously to determine the bid or combination of bids offering the most advantageous offer.

2.05 In appropriate cases, e.g. where special processes or closely integrated manufacturing are involved, the Bank may allow turnkey contracts under which the engineering, supply of equipment, and the construction of a complete plant are provided through a single contract. In the case of turnkey contracts or contracts for large complex industrial projects, it shall be desirable to use a two-stage bidding procedure (see paragraph 2.47).

Advertisement and Notification

2.06 All eligible member countries of the Bank shall be appropriately notified of opportunities to bid. Invitations to bid shall be advertised in the Bank's "ADB Business Opportunities" as well as in a newspaper of general circulation in the borrower's country (at least in one English language newspaper, if available). A copy of the invitation to bid shall be submitted to the Bank for approval and for publication in the "ADB Business Opportunities" in accordance with the provisions of the Loan Agreement.

2.07 For large or specialized contracts, the Bank may additionally require that the invitation to bid and/or procurement notices be advertised in well-known technical magazines or trade publications, or in newspapers of wide international circulation, in sufficient time to enable prospective bidders to prepare and submit bids.

Prequalification of Bidders

2.08 Prequalification of bidders is required for most civil works contracts, turnkey contracts, and contracts for the supply of expensive and technically complex equipment, to ensure that only technically and financially capable firms will be invited to submit bids. Prequalification shall be based entirely upon the ability of the interested firm to perform the particular work satisfactorily, taking into account: (i) relevant experience and past performance; (ii) capabilities with respect to personnel, equipment, and plant; and (iii) financial position.

2.09 Invitations to prequalify shall be advertised and notified in accordance with the procedures described in paragraphs 2.06 and 2.07. The scope of works, abbreviated specifications, and a clear statement of the requirements for prequalification shall be provided to all those who have indicated their desire to be considered for prequalification. Generally, a minimum period of 60 days shall be allowed for the submission of prequalification applications. There shall be no limits on the number of firms to be prequalified, and all firms found capable of performing the work satisfactorily in accordance with the approved prequalification criteria shall be prequalified and invited to submit bids.

2.10 Where bidders have been prequalified, the invitations to bid and the bidding documents shall be transmitted directly to the prequalified bidders.

Advance Procurement Action

2.11 In cases where it is clearly shown that early contracting of goods or works would be a crucial and important factor in the timely completion of the project, issuance of invitations to bid or to prequalify may, with the prior approval of the Bank, be allowed before the approval of the project to be financed. In such a case, the Bank will require that the draft bidding or prequalification

documents be approved by the Bank before they are issued, and that the requirements for public advertisement and notification of the bid or prequalification invitation as described in paragraphs 2.06 and 2.07, be followed. Such advance procurement action will not in any way commit the Bank to approve the project subsequently.

B. Bidding Documents

General

- 2.12 (a) Bidding documents shall contain provisions appropriate to give effect to the requirements of these Guidelines with any particular modifications or departures agreed upon between the Bank and the borrower.
- (b) It is essential that the bidding documents provide all the information necessary for bidders to prepare responsive bids. While the detail and complexity of these documents vary depending upon the kind of goods to be procured and the size of the contract, they shall normally include the following: invitation to bid; instructions to bidders; bid form; conditions of contract, both general and special; technical specifications; bill of quantities and drawings; schedule of prices; and necessary appendixes, proforma bid securities and performance securities.
- (c) Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by the Bank. Any particular modification or departure from the SBDs to address country-specific or project-specific issues shall be minimal, consistent with the requirements of these Guidelines and subject to Bank approval. All such modifications or departures shall be introduced only through Instructions to Bidders and Special Conditions of Contract/Conditions of Particular Application. Where no relevant SBDs have been issued by the Bank, the borrower shall use other internationally recognized bidding documents acceptable to the Bank, and conforming to the extent possible to the Bank's SBDs.

Reference to Bank

- 2.13 When the contract is to be financed wholly or partly by the Bank, reference shall be made to the Bank in the bidding documents along the lines of the following language:

" . . . (name of borrower) . . . has received a loan from the (ordinary capital resources or Special Funds resources) of the Asian Development Bank toward the cost of (name of project), and it is intended that the proceeds of this loan will be applied to payments under the contract (contracts) for which this invitation to bid is issued. The terms and conditions of the contract (contracts) and payments therefore by the Asian Development Bank will be subject in all respects to the terms and conditions of the Loan Agreement, including the "Guidelines for Procurement Under Asian Development Bank Loans." Except as the Bank may specifically otherwise agree, no party other than (name of borrower) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds."

Language

- 2.14 Under the Articles of Agreement of the Bank, the working language of the Bank is English and therefore bidding and other relevant documents, including advertisements, shall be prepared in English. Where more than one language is used, the English version shall prevail.

Clarity of Bidding Documents

- 2.15 To encourage international competitive bidding, bidding documents shall describe clearly and precisely the works to be done or the goods to be supplied, the place and period of delivery

or installation, the warranty and maintenance requirements, and other pertinent terms. The technical specifications shall describe all the essential features of the item(s) to be procured and shall state that any nonconformity to these essential features would render the bid as substantially nonresponsive. Drawings shall be consistent with the text of the technical specifications. If alternative bids are acceptable, this shall be expressly stated. The bidding documents shall indicate the methods, terms and conditions of bid evaluation, as well as the factors to be taken into account in comparing bids.

2.16 Any additional information, clarification, correction of errors or alteration in bidding documents shall be provided to all those who have received the original documents. In the event of any substantive amendments to the bidding documents, adequate time shall be allowed for bidders to make any necessary changes in their bids in response to such amendments. A period of 30 days is considered adequate for this purpose where the changes involved are substantial.

Bid Security

2.17 A bid security may be required to secure the validity of the bid within the period specified in the invitation to bid. However, it shall not be set too high to discourage suitable bidders. The amount shall reflect the borrower's reasonable assessment of the amount of loss it will suffer in the event of bid withdrawal or the bidder's refusal to sign the contract. Two percent of the bid price would generally be considered as fair and reasonable. The bid security, at the bidder's option, shall be in the form of a certified check, a letter of credit or a bank guarantee from a reputable bank. Bid securities shall be returned to the unsuccessful bidders as soon as the successful bidder has been selected.

Conditions of Contract

2.18 The contract shall contain general conditions which will cover, inter alia, definition of the scope of work to be performed or the kind of goods to be supplied, the rights and obligations of the borrower and the contractor or supplier, and the powers and authority of the engineer or architect who may be employed by the borrower in the administration of the contract, payment terms (including advances to be made, if any), provision for securities, retention money, price adjustment clauses, insurance, and liquidated damages. In addition to the customary general conditions, special conditions appropriate to the nature of the goods or works or the project shall be included.

Standards

2.19 If particular standards to which equipment or materials must comply are cited, the specifications shall state that goods meeting other authoritative standards, which ensure an equal or higher quality than the standards mentioned, will also be accepted.

Use of Brand Names

2.20 Specifications shall be based on performance requirements, and reference to brand names, catalogue numbers or the like shall be avoided unless this is deemed necessary to ensure inclusion of certain essential features. In such a case, the reference shall be followed by the words "or equivalent" and the specifications shall permit offers of alternative goods which provide performance and quality at least equal to those specified.

Sources of Procurement

2.21 Bidding documents shall state that payments from the proceeds of Bank loans will be limited, in the case of loans from ordinary capital resources, to goods produced in, and services supplied by, member countries of the Bank, and in the case of loans from Special Funds resources, to goods produced in, and services supplied by, developed member countries which have contributed to such resources and all developing member countries.

Pricing

- 2.22 (a) Bids for goods shall be invited on the basis of CIF³, or CIP³ for all goods offered from abroad, and EXW⁴ for locally available or manufactured or assembled goods, including those previously imported. Where inland transportation, installation, commissioning or other similar services are required to be performed by the bidder, as in the case of "supply and installation" contracts, the bidder shall be required to provide a separate quotation for these services.
- (b) If a borrower wishes to reserve transportation and insurance for the import of goods to domestic companies or other designated sources, bidders shall be asked to quote FOB³ or CFR³ prices in addition to the CIF or CIP prices specified in subparagraph (a) above. Selection of the lowest evaluated bid shall be on the basis of the CIF or CIP price, but the borrower may sign the contract on FOB or CFR terms and make its own arrangement for transportation and/or insurance.
- 2.23 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance and operation. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.
- 2.24 Bidders for civil works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes and other levies. Bidders shall be allowed to obtain all inputs from any eligible sources so that they may offer the most competitive bids.

Currency Provisions

Currency of Bid

- 2.25. (a) The currency or currencies in which the bid price may be stated shall be indicated in the bidding documents. Bidding documents shall normally require the bidders to state the bid price either in the bidder's own currency or in an international trading currency specified in the bidding documents.
- (b) Where a bidder expects to incur some expenditures in currencies other than its own in producing the goods to be supplied, the bid price may also be expressed partly in such other currencies to the extent expenditures are estimated to be incurred in those other currencies.
- (c) If some of the contract expenditures are to be incurred in the borrowing country, that portion of the bid price estimated to cover such expenditures shall be expressed in the borrower's currency.
- (d) In the case of civil works, the bidding documents may require the bidder to state the bid price entirely in the borrower's currency. In such cases, the bidder shall be allowed to indicate its foreign exchange needs in percentages of the bid price.

³ Refer to INCOTERMS. CIF is cost, insurance and freight for maritime transportation. CIP is carriage and insurance paid to (named place of destination) in the case of multimodal transportation. FOB is free on board. CFR is cost and freight.

⁴ EXW is ex works, ex factory or off-the-shelf. The EXW price shall include all duties, sales and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment, or the prior import of the equipment, offered in the bid.

Currency of Bid Comparison

- 2.26 (a) For comparison of bids, each bid price shall be valued in terms of a single currency selected by the borrower and stated in the bidding documents. The rates of exchange to be used in such valuation shall be the selling rates officially prescribed for similar transactions and prevailing on the date specified in the bidding documents pursuant to the provisions of sub-paragraph (b) below. Where such official exchange rates are not available, the rates of exchange to be used shall be determined by the borrower in consultation with the Bank.
- (b) The date to be specified in the bidding documents for the purpose of bid comparison in accordance with the provisions of sub-paragraph (a) above shall not be earlier than 30 days prior to the deadline for submission of bids, nor later than the original date for the expiry of bid validity.

Currency of Payment and Exchange Risks

- 2.27 (a) Payments under the contract shall be made in the currency or currencies in which the price has been stated in the successful bid, except where a different arrangement is clearly justified and specified in the bidding documents.
- (b) Where the price is to be paid, wholly or partly, in a currency or currencies other than the currency of the bid, the exchange risk shall not be borne by the contractor or supplier and, to this end, the contract shall provide that amounts payable in a currency or currencies other than that of the bid shall be calculated at the rates of exchange between these currencies specified for the purpose in the bidding documents. Similar provisions shall be made in contracts for civil works where the entire bid price is stated in the borrower's currency [see paragraph 2.25(d)] and the portion of the price representing expenditures in other currencies is to be paid in such other currencies.

Terms and Methods of Payment

2.28 Payment terms shall generally be in accordance with standard international commercial practices and disbursement of the proceeds of the loan shall be made in accordance with the procedures provided in the Bank's "Loan Disbursement Handbook" (as amended from time to time).

Price Adjustment Provisions

2.29 The bidding documents shall clearly indicate whether price adjustments are allowed in the event changes occur in the major cost components of the contract such as labor, equipment, and materials, over which the contractor has no control. Price adjustment provisions are not necessary for simple supply contracts involving short delivery periods. However, for contracts with long delivery or completion periods (generally beyond 12 months), including major civil works contracts, price adjustment provisions shall be provided. Contracts which contain a large commodity component whose price may vary sharply in the short term shall contain a rise and fall clause which protects the borrower or contractor from losses in case of any abrupt changes in price.

2.30 The amount of price adjustment shall be based on changes in the cost of the major components of the contract. The method of adjustment, which shall be indicated in the bidding documents, may provide for adjustments to be made on the basis of documentary evidence provided by the contractor or calculated by the use of a price adjustment formula or formulae. The comparison of bid prices shall be carried out on the basis of base price only.

Advance Payment

2.31 Advances may be made in construction contracts to cover mobilization expenses and the cost of materials delivered to the site for incorporation in the works. The bidding documents shall indicate the basis for determining the amount of advance in each case, time and method of payment, the kind of security required, and the manner of repayment by the contractor. With respect to mobilization advances, the items subject to mobilization shall be described in the bill of quantities and the advance limited to these items.

Performance Security, Retention Money

2.32 Some form of security shall be required in the bidding documents to help ensure that the works will be carried to completion in the case of failure of the contractor to perform under the contract. In civil works, a performance security in the form of a bank guarantee, or cash deposit shall be required of the contractor, the validity of which shall cover the contract period. The amount of the security will depend upon the type and magnitude of the works to be done; normally 10 percent of the contract value is deemed adequate to protect the borrower. In addition, retention

money to ensure compliance by the contractor of its warranty or maintenance obligations may be required in an amount not to exceed 10 percent of the payments. Such retention money will be withheld until the expiration of the warranty or maintenance period. After completion of the works, but before the expiration of the warranty or maintenance period, the retention money may, at the option of the borrower, be replaced with a suitable bank guarantee or other appropriate security.

2.33 For contracts for the supply of goods, a performance security in the form of a bank guarantee or retention money may be required to guarantee the performance of the equipment according to specifications during the warranty period. Although the amount would depend upon market conditions and commercial practice for the particular type of goods, from 5 percent to 10 percent of the contract amount is considered appropriate in most cases.

Insurance and Transportation

2.34 The bidding documents shall state precisely the types of insurance to be provided by the successful bidder and shall indicate the kinds of risks insured against, the liabilities to be covered, and the duration of the insurance. In contracts for the supply of goods on CIF and CIP basis, cargo insurance and transportation are left to be arranged by the supplier as part of the contract. Where goods are supplied on FOB or CFR basis and cargo insurance and/or transportation are arranged by the borrower separately, the Bank, if called upon to finance such cost, will require to be satisfied that no undue restrictions have been placed on the procurement of such insurance and/or transportation and that due attention has been paid to considerations of economy and efficiency. If the borrower does not wish to obtain insurance coverage in the market, evidence shall be provided to the Bank that resources are readily available for prompt payment in a freely convertible currency of the indemnities required to replace lost or damaged goods.

Liquidated Damages

2.35 Liquidated damages or similar payments which normally shall not exceed 10 percent of the contract amount shall be stipulated in the bidding documents to provide compensation to the borrower when delays in completion of works or delivery of goods would result in extra cost, loss of revenues, or deprivation of other benefits to the borrower. Provision may also be made for payment of a bonus to a contractor for early completion of the works under the contract when this would benefit the borrower. It is not an accepted practice under Bank-financed contracts to require the contractor or the borrower to indemnify the other party for indirect or consequential damages.

Force Majeure

2.36 The conditions of contract included in the bidding documents shall stipulate that failure on the part of the parties to perform any of their obligations under the contract would not be considered a default if such failure is due to force majeure as defined in the contract.

Settlement of Dispute

2.37 Whenever possible, the conditions of contract shall contain provisions dealing with the applicable law and the forum for the settlement of disputes. It would usually be advantageous to consider international commercial arbitration in contracts for the procurement of goods and works. The Bank, however, shall not be called upon to arbitrate, be named arbitrator or be asked to name an arbitrator.

C. Bid Opening, Evaluation, and Award of Contract

Time Interval Between Bid Invitation and Bid Submission

2.38 The time allowed for preparation and submission of bids will depend to a large extent upon the magnitude and complexity of the contract. The particular circumstances of the project shall also be taken into account. Generally, a minimum period of 60 days for supply contracts and 90 days for civil works and turnkey, including design-build contracts, shall be allowed. When strictly local competition is allowed (see paragraph 3.04), shorter periods may be provided. The deadline for submission of bids may be extended where an extension would result in greater competition. When the bidding period is extended, all those who have been sent or provided with invitations to bid shall be advised.

Bid Opening Procedures

2.39 The date, hour and place for the latest delivery of bids and of the bid opening shall be stated in the invitation to bid. The time for the bid opening shall be the same as for the deadline for delivery of bids or promptly thereafter.⁵ The borrower shall open all bids received at the stipulated time and place. Bids shall be opened in public; that is, bidders and their representatives shall be allowed to be present. Bids delivered after the time stipulated shall be returned unopened. The name of each bidder and the total amount of its bid, including alternative bids, if any, together with any discounts offered, shall be read aloud and recorded, and a copy of this record shall be promptly sent to the Bank.

Extension of Bid Validity

2.40 Every effort shall be made to complete bid evaluation before the expiration of bid validity and the validity of bids shall not be extended, except in exceptional circumstances and with the prior approval of the Bank. When an extension is considered necessary, all those who submitted bids shall be asked to extend their bids. Bidders who are willing to extend the validity of their bids shall neither be required nor permitted to modify the substance of their bids. The bid securities of bidders who are not willing to extend the validity of their bids shall be returned to them.

Clarification or Alteration of Bids

2.41 No bidder shall be permitted to alter its bid after the bids have been opened, but clarifications not changing the substance of the bid may be accepted. The borrower may ask any bidder for a clarification of its bid but shall not ask any bidder to change the substance of its bid.

Confidentiality of Procedures

2.42 No information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall be communicated after the public opening of bids to any person not officially concerned with these procedures before the announcement of the award of a contract to the successful bidder.

Examination of Bids

2.43 Following the opening, it shall be ascertained whether material errors in computation have been made in the bids; whether the bids are substantially responsive to the bidding documents; whether the required securities have been provided; whether the documents have been properly signed; and whether the bids are otherwise generally in order. If a bid is not substantially responsive to the bidding documents or contains inadmissible reservations, it shall be rejected. A technical analysis shall then be made to evaluate responsive bids and to enable bids to be compared.

⁵ To allow sufficient time to take the bids to the place announced for public bid opening.

Evaluation and Comparison of Bids

2.44 Bids which conform to the technical specifications and are substantially responsive to the bidding documents shall be compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which may not necessarily be the lowest priced bid, shall be selected for award.

- 2.45 (a) Bid evaluation must be consistent with the method, terms and conditions set forth in the bidding documents. Apart from price, other relevant factors such as the efficiency of the equipment, including its operating costs, the time of completion of construction or delivery, and the availability of after-sales service and spare parts, shall be taken into account in determining the lowest evaluated bid to the extent and in the manner specified in the bidding documents. These factors shall, whenever possible, be expressed in monetary terms in the evaluation provisions of the bidding documents. Bids shall be compared on the basis of base price without taking into account the provisions for price adjustments. Likewise, customs duties and import taxes on goods to be imported shall be excluded in comparing bids for the supply of goods.
- (b) At the request of the borrowing country and under conditions to be agreed with the Bank and set forth in the bidding documents, a margin of preference may be granted under international competitive bidding to bids for:
- (i) goods to be manufactured in the borrowing country, when comparing them with bids for imported goods; and
 - (ii) civil works to be carried out by eligible contractors from the borrowing country when comparing such bids with bids from foreign contractors.

Where preference for domestic goods or domestic contractors is allowed in accordance with the provisions of the Loan Agreement, the methods and stages set forth in the Loan Agreement for the evaluation and comparison of bids shall be indicated in the bidding documents.

2.46 For contracts for which prequalification is not required pursuant to paragraph 2.08, information concerning the bidder's experience (sales record), financial position, technical staff, and network of after-sales service, if needed, shall be required in the bidding documents. Normally, the information will be considered during the initial examination of bids and the bid of any bidder who does not satisfactorily meet these requirements will not be considered for evaluation. In any case, the borrower shall always ensure that the bidder whose bid has been evaluated as the lowest has the technical and financial capability to perform the contract satisfactorily and, if the bidder does not meet these requirements, its bid shall be rejected.

Two-Stage Bidding Procedure

2.47 In order to maximize competition and to facilitate bid evaluation with respect to large and complex contracts where the problem of technically unequal bids is likely to be encountered, a two-stage bidding procedure may be adopted. Under this procedure, bidders shall first be invited to submit technical offers (plus all other bid requirements) without prices, in accordance with specifications which lay down the minimum operating and performance requirements. Each of the unpriced technical bids shall then be discussed between the bidder concerned and the borrower and its consultants, if any, in order to agree on an acceptable technical standard for all bids. After such discussions, the bidders shall be given an opportunity to revise or adjust their proposals to conform to the standards agreed upon. At the second stage, the bidders shall be invited to submit price proposals and these shall be evaluated. For certain types of machinery or equipment, in

which alternative technical processes are possible, the technical specifications and price proposals may be submitted concurrently in separate envelopes. The technical proposals are opened first and reviewed to determine responsiveness to the specifications and whether modifications are necessary. After the technical review has been completed, the price envelopes are then opened for purposes of price comparison. However, when technical modifications are required in any or some bids and consequent price adjustments are necessary, the price proposals affected shall be returned unopened to the bidders concerned and resubmitted within a specified period. Alternatively, the bidders may be requested to submit a supplementary envelope containing a revised price reflecting the changes to the original technical proposal. In such cases, the original and supplementary price envelopes shall be opened at the same time. The use of these procedures must be agreed upon by the Bank and the borrower.

Rejection of All Bids and Rebidding

2.48 Bidding documents usually provide that the borrower may reject all bids. Such rejection is justified when the bids submitted are not substantially responsive, or where there is evidence of lack of competition, or where all bid prices substantially exceed the cost estimate.

2.49 When all bids have been rejected, a rebidding may be called, and the borrower shall request for new bids from all who were supplied with bidding documents in the first instance. However, if there has been a sufficient number of bids in the initial bidding, the borrower may consider inviting bids only from those who have previously submitted bids. If all bids have been rejected because of lack of competition or failure to meet the specifications, the borrower shall examine the causes for rejection and consider, before calling for new bids, revision of the specifications or bidding conditions. Where all bid prices substantially exceed the cost estimates, the borrower may, instead of calling for new bids, and after consultation with the Bank, negotiate with the lowest evaluated bidder for a reduction of the bid price. If no satisfactory contract can be concluded and a rebidding is called, modification of the scope of the contract shall be considered.

Award of Contract

2.50 The award of contract shall be made to the bidder whose bid has been determined to be the lowest evaluated substantially responsive bid and who meets the appropriate standards of capability and financial responsibility. Such bidder shall not be required, as a condition of award, to undertake responsibilities or work not stipulated in the specifications or to modify its bid.

III. OTHER FORMS OF PROCUREMENT

A. Introduction

3.01 As noted in the Introduction in Chapter I, although the Bank normally requires its borrowers to obtain goods and works on the basis of international competitive bidding, there may be special circumstances where other methods of procurement would be more economical and efficient. The circumstances justifying the use of any of such methods shall be reviewed during appraisal of the project, and the appropriate procedures, the categories of goods and works, and the value of individual contracts and the total amount of procurement allowed under each such method, shall be reflected in the loan documents. As in international competitive bidding, the principles of transparency, fairness, equal opportunity, and efficiency and economy, shall be taken into account. The other methods of procurement which are generally considered and the circumstances under which they may be adopted, are given below.

B. International Shopping

3.02 International shopping is employed where the amount of the contract is not large enough to attract foreign suppliers and contractors through the international competitive bidding process. International shopping may also be appropriate where the particular items needed are available

only from a limited number of suppliers, or where early delivery is of paramount importance in carrying out certain works under the project.

3.03 International shopping is subject to the following procedures:

- (a) **Reasonable Competition.** The invitation to bid shall be issued to a reasonable number of contractors or suppliers, as the case may be, which shall be not less than three and from more than one eligible source country and shall, whenever practicable, be advertised in an English language newspaper of general circulation in the borrower's country. The bids or quotations received shall be opened publicly and compared and evaluated as in international competitive bidding.
- (b) **Award of Contract.** Promptly after each contract is awarded, the Bank shall be furnished with three copies of: (i) a summary and evaluation of the bids or quotations received; (ii) a brief justification for making the award (together with the consultants' recommendations, where applicable); (iii) the contract as executed; and (iv) an appropriate certificate of the eligibility of the contract where required by the Bank.

C. Local Competitive Bidding

3.04 Local competitive bidding may be allowed in cases where the Bank is satisfied that all of the following are met:

- (i) domestic production or construction facilities are available at reasonable cost, are efficient, and adequate in terms of prompt delivery;
- (ii) it is considered unlikely that foreign contractors and suppliers would be interested in bidding;
- (iii) the procedures to be followed are satisfactory to the Bank;
- (iv) the borrower has specifically requested the adoption of local competitive bidding; and
- (v) local competitive bidding shall not preclude participation by foreign bidders.

D. Direct Purchase/Negotiation or Single Tender

3.05 Direct purchase/negotiation or single tender involves dealing with a particular supplier or a limited number of suppliers and is allowed by the Bank in any one of the following situations:

- (i) when buying small or off-the-shelf items generally valued at less than \$100,000;
- (ii) when standardization is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods;
- (iii) when the equipment is proprietary in character and is obtainable only from one supplier;
- (iv) when critical items are to be procured from specialist suppliers; and
- (v) when the civil works to be undertaken are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will

be more economical and will ensure compatibility of results in terms of quality of work.

E. Limited Tendering or Repeat Order

3.06 Where, after the items originally envisaged for the project have been procured through international competitive bidding, an additional quantity of the same items is urgently needed to meet the requirements of the project and funds are available under the loan for this purpose, the additional items may be procured through limited tendering where it can be shown clearly that no advantage could be gained by adopting international competitive bidding. Under this procedure, bids may be invited only from those who had submitted responsive bids for the earlier order or, if there was a large number of responsive bidders, only from the five lowest responsive bidders. In exceptional cases where there was a small number of responsive bidders for the earlier order and the winning bid was clearly superior to the other bids not only in terms of price but also as regards reliability of equipment, availability of spare parts and after-sales service, and delivery period, the additional items required under the above-mentioned circumstances may be procured instead by placing a repeat order with the supplier who provided the same items previously, provided that no better offer is likely to be received, and that the price to be paid for the repeat order is not more than the original price. Usually, the repeat order shall follow the earlier order within 18 months while the additional quantities shall not exceed 30 percent of the original quantities.

F. Force Account

3.07 Force Account involves the use of the borrower's own work force, equipment and other resources in carrying out civil works. This method is employed when the size, nature, and location of the works make it unsuitable to adopt competitive bidding, and the Bank is satisfied that the construction facilities available are adequate and efficient, and the borrower has the capability to undertake the works expeditiously and at reasonable cost.

G. Purchase of Equipment for Use by Small Private Sub-borrowers

3.08 Procurement of machinery and equipment under loans made available to intermediary institutions (agricultural development banks, cooperatives, fishery organizations) for relending to small private sub-borrowers in the agricultural or fishery sector may, in appropriate cases, be done through direct purchase by the sub-borrower or through centralized procurement by the intermediary institutions, at the option of the sub-borrower. In the case of direct purchase by the sub-borrower, procurement shall be undertaken in accordance with established commercial practices. In the case of centralized procurement, bids shall be called by the intermediary institutions as in international competitive bidding and any interested supplier will be allowed to submit its bid. In such a case, after the bids have been opened, the sub-borrowers will be asked to indicate their orders from among the lowest responsive bids within a range specified in the bidding documents.

H. Procurement Under Loans to Development Financing Institutions

3.09 In the case of loans made by the Bank to development financing institutions (DFIs) for relending to sub-borrowers, the Bank does not insist on international competitive bidding procedures, but will request DFIs, as a matter of its loan administration function (including the approval of individual subloans), to satisfy the Bank that procurement procedures applied by sub-borrowers are appropriate in the circumstances and to ensure that the goods procured are suitable for the project, that the price paid is reasonable, and that fair canvassing has been done in selecting suppliers. Furthermore, the Bank will encourage DFIs to require their sub-borrowers to adopt international competitive bidding procedures where the amount of the investment is unusually large and it would be in the interest of economy and efficiency to follow such procedures.

I. Procurement Under Private Sector Loans without Government Guarantee

3.10 In the case of loans made by the Bank to the private sector without government guarantee, the Bank does not insist on international competitive bidding procedures, but will request borrowers to satisfy the Bank that procurement procedures have been applied in a transparent manner, preferably through competitive bidding procedures, and that the goods and works procured are from eligible member countries and are suitable for the project.

3.11 Where the Bank is participating in financing a BOO/BOT/BOOT⁶ or similar type of project, either of the following procurement procedures shall be used:

- (a) the project sponsor for a BOO/BOT/BOOT or similar type of project shall be selected in a transparent manner, preferably through competitive bidding procedures acceptable to the Bank, which may include several stages in order to arrive at the optimal combination of criteria for the purpose of establishing the most economic and efficient proposal, such as the performance specifications of the facility offered, the cost charged to the user or purchaser, and the period of the facility depreciation. The project sponsor selected in this manner shall then be free to procure the goods and works required for the facility from eligible member countries, using suitable procedures;

or,

- (b) if the project sponsor has not been selected in the manner set forth in subparagraph (a) above, the goods and works required for the facility and to be financed by the Bank, shall be procured from eligible member countries in a transparent manner, through competitive bidding procedures acceptable to the Bank.

J. Procurement Under Complementary Financing Schemes and Under Loans Guaranteed by the Bank

3.12 Under complementary financing schemes, and where the Bank guarantees part or all of the debt service of a loan made by a cofinancer(s), the goods and works financed by the loan shall be procured with due attention to economy and efficiency. In such cases, the Bank shall be satisfied that the procedures to be used will cause the project to be carried out diligently and efficiently, and that the goods and works to be procured:

- (a) are from eligible member countries;
- (b) are of satisfactory quality and are compatible with the balance of the project;
- (c) will be delivered or completed in a timely fashion; and
- (d) are priced so as not to affect adversely the economic and financial viability of the project.

K. Community Participation in Procurement

3.13 Where, in the interest of project sustainability or to achieve certain specific social objectives of the project, it is desirable in selected project components to (i) call for the participation of local communities and/or non-governmental organizations (NGOs), or (ii) increase the utilization of local

⁶ BOO : Build, Own, Operate.
 BOT : Build, Operate, Transfer
 BOOT : Build, Own, Operate, Transfer

know-how and materials, or (iii) employ labor-intensive and other appropriate technologies; the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided they are efficient. The procedures proposed shall be outlined in the Loan Agreement.

IV. REVIEW OF BORROWERS' PROCUREMENT ACTIONS

4.01 The following provisions set forth standard arrangements for the review by the Bank of procurement actions taken by borrowers in cases where international competitive bidding is required in the procurement of goods or works. These provisions shall apply to all such cases except as otherwise agreed by the Bank.

A. Bid Packaging

4.02 Before the commencement of any procurement, the borrower shall provide the Bank for approval a list or lists of the goods to be procured, the proposed grouping of these goods, and the proposed number and scope of civil works contracts to be awarded.

B. Prequalification Procedures

4.03 Prequalification of bidders is subject to the following procedures:

- (a) **Prequalification Invitation.** The prequalification invitation and all related documents (including the proposed prequalification methodology and criteria) shall show the loan number and shall be approved by the Bank before they are issued. For this purpose, three copies of the draft prequalification invitation and all related documents shall be submitted to the Bank for approval. The draft prequalification invitation shall show the proposed time for submission of prequalification applications and whether domestic preference will be applied.
- (b) **Issue of Prequalification Invitation.** As soon as the prequalification invitation has been advertised and notified as required in paragraph 2.09, the Bank shall be furnished with a report on the advertising and notification procedures followed. Such report shall show, inter alia, the name of the newspaper in which the invitation was advertised and the date of such advertising. A copy of the prequalification invitation as issued and a copy of the newspaper advertisement as published shall also be enclosed with the report.
- (c) **Proposal for Prequalification.** As soon as the prequalification applications have been evaluated, approval of the Bank shall be obtained to the results of the evaluation before such results are communicated to the applicants for prequalification. For this purpose, the Bank shall, promptly after the evaluation of prequalification applications, be furnished with three copies of (i) a list of the applicants for prequalification; (ii) a summary and evaluation of the applications; and (iii) the proposal for prequalification (together with the consultants' recommendations, where applicable). Copies of any prequalification applications and any information on such applications shall be made available to the Bank upon request.

C. International Competitive Bidding

4.04 International competitive bidding is subject to the following procedures:

- (a) **Invitation to Bid and Bidding Documents.** The invitation to bid and all related bidding documents (including bidding instructions and conditions, specifications, form and conditions of contract) shall show the loan number and shall be approved

by the Bank before they are issued. For this purpose, three copies of the invitation to bid and all related bidding documents shall be submitted to the Bank. The draft bidding documents to be submitted to the Bank for approval shall show all important conditions of bidding including the proposed bidding period and the proposed delivery period.

- (b) **Issue of Invitation to Bid.** As soon as the invitation to bid has been advertised as required in paragraph 2.06, the Bank shall be furnished with a report on the advertising procedures followed. Such report shall show, inter alia, the name of the newspaper in which the invitation was advertised and the date of such advertising. In addition, the report shall list to whom the bidding documents were transmitted; how they were transmitted (locally, by hand or surface mail, and abroad, by air mail); and the date of such transmittal. A copy of the invitation to bid as issued and a copy of the newspaper advertisement as published shall also be enclosed with the report.
- (c) **Proposal for Award.** As soon as the bids received have been evaluated, approval of the Bank shall be obtained to the proposal for award of contract before a contract is awarded or a letter of intent is issued. For this purpose, the Bank shall, promptly after the bid evaluation but at least 30 days prior to expiration of bid validity, be furnished with three copies of (i) an account of the public opening of the bids; (ii) a summary and evaluation of the bids; (iii) the proposal for award (together with the consultants' recommendations, where applicable); (iv) a draft contract or a draft letter of acceptance if such draft differs substantially from the draft previously submitted to, and approved by, the Bank; and (v) an appropriate certificate of the eligibility of the proposed contract where required by the Bank. In case the bidding procedure allows for more than one stage, the Bank's approval of the results of the evaluation at each stage shall be obtained before the results are communicated to the bidders.
- (d) **Award of Contract.** Promptly after each contract is awarded, the Bank shall be furnished with three copies of the contract as executed. If the final contract proposed to be executed differs substantially from the draft contract previously approved by the Bank, or if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for prior approval.