

CLASSIFICATION: PUBLIC

## GUIDELINES

### PROCUREMENT OF GOODS, WORKS, AND NON-CONSULTING SERVICES

### UNDER IBRD LOANS AND IDA CREDITS & GRANTS

### BY WORLD BANK BORROWERS

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Paragraph 3.18 – **Procurement under loans Guaranteed by the Bank** has been revised to include provisions for payment obligations.

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## Acronyms

BOO	Build, own, operate
BOOT	Build, own, operate, transfer
BOT	Build, operate, transfer
CDD	Community Driven Development
CIF	Cost, Insurance, and Freight
CIP	Carriage and Insurance Paid (place of destination)
CPT	Carriage Paid To (named place of destination)
DDP	Delivered Duty Paid
EXW	Ex works, Ex factory, or Off-the-Shelf
FA	Framework Agreements
FCA	Free Carrier (named place)
FPA	Fiduciary Principles Accord
GNP	Gross National Product
IBRD	International Bank for Reconstruction and Development (World Bank)
ICB	International Competitive Bidding
ICC	International Chamber of Commerce
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
LIB	Limited International Bidding
MDTF	Multi Donor Trust Fund
MIGA	Multilateral Investment Guarantee Agency
NCB	National Competitive Bidding
NGO	Nongovernmental organization
PAD	Project Appraisal Document
PPA	Project Preparation Advance
PPP	Public Private Partnership
PPR	Procurement Post Review
SA	Special Account
SBDs	Standard Bidding Documents
SWAp	Sector Wide Approach
UCS	Use of Country Systems
UN	United Nations
UNDB	United Nations Development Business

## I. INTRODUCTION

### Purpose

1.1 The purpose of these Guidelines is to inform those carrying out a project that is financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD), a credit or grant from the International Development Association (IDA),<sup>1</sup> a project preparation advance (PPA), a grant from the Bank, or a trust fund administered by the Bank and executed by the recipient,<sup>2</sup> of the policies that govern the procurement of goods, works, and non-consulting services<sup>3</sup> required for the project. The Loan Agreement governs the legal relationships between the Borrower and the Bank, and the Guidelines are made applicable to procurement of goods, works, and non-consulting services for the project, as provided in the agreement. The rights and obligations of the Borrower and the providers of goods, works, and non-consulting services for the project are governed by the bidding<sup>4</sup> documents, and by the contracts signed by the Borrower with the providers of goods, works, and non-consulting services, and not by these Guidelines or the Loan Agreements. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

### General Considerations

1.2 The responsibility for the implementation of the project, and therefore for the award and administration of contracts under the project, rests with the Borrower.<sup>5</sup> The Bank, for its part, is required by its Articles of Agreement to “ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations,”<sup>6</sup> and it has established detailed procedures for this purpose. While in practice the specific procurement rules and procedures to be followed in the implementation of a project depend on the circumstances of the particular case, four considerations generally guide the Bank’s requirements:

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<sup>1</sup> Procurement requirements of IBRD and IDA are identical. References in these Guidelines to “*the Bank*” include both *IBRD* and *IDA*, and references to “*loans*” include IBRD loans, as well as IDA credits or grants, grants from the Bank, trust funds administered by the Bank and executed by the recipient, and project preparation advances (PPAs).

References to “*Loan Agreement*” include the legal agreement between the Bank and Borrower, and may include the project agreement between the Bank and project implementing entity.

References to “*Borrower*” include loan, credit, grant, and PPA recipients that execute such projects, and may include sub-borrowers or project implementing entities.

<sup>2</sup> To the extent that the agreement providing for such trust funds to be administered by the Bank does not conflict with these provisions as exceptions, including under the UN Fiduciary Principles Accord (FPA) or a Multi Donor Trust Fund (MDTF) in emergency situations.

<sup>3</sup> References to “*goods*” and “*works*” in these Guidelines include related services such as transportation, insurance, installation, commissioning, training, and initial maintenance. “*Goods*” includes commodities, raw material, machinery, equipment, vehicles, and industrial plant. The provisions of these Guidelines also apply to non-consulting services for which the physical aspects of the activity predominate, are bid and contracted on the basis of performance of a measurable physical output, and for which performance standards can be clearly identified and consistently applied, such as drilling, aerial photography, satellite imagery, mapping, and similar operations. These Guidelines do not refer to consulting (e.g., advisory) services, to which the current *Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers* apply (referred to herein as Consultant Guidelines).

<sup>4</sup> For the purposes of these Guidelines, the words “*bid*” and “*tender*” shall have the same meaning.

<sup>5</sup> In some cases, the Borrower acts only as an intermediary and the project is carried out by another agency or entity. References in these Guidelines to the Borrower include such agencies and entities, as well as Sub-Borrowers under on-lending arrangements.

<sup>6</sup> The Bank’s Articles of Agreement, Article III, Section 5(b); and IDA’s Articles of Agreement, Article V, Section 1(g).

- (a) the need for economy and efficiency in the implementation of the project, including the procurement of the goods, works, and non-consulting services involved;
- (b) the Bank's interest in giving all eligible bidders from developed and developing countries<sup>7</sup> the same information and equal opportunity to compete in providing goods, works, and non-consulting services financed by the Bank;
- (c) the Bank's interest in encouraging the development of domestic contracting and manufacturing industries in the Borrowing country; and
- (d) the importance of transparency in the procurement process.

1.3 Open competition is the basis for efficient public procurement. Borrowers shall select the most appropriate method for the specific procurement. In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods and, where appropriate, for domestic contractors<sup>8</sup> for works under prescribed conditions is the most appropriate method. In most cases, therefore, the Bank requires its Borrowers to obtain goods, works, and non-consulting services through ICB open to eligible suppliers, service providers, and contractors.<sup>9</sup> Section II of these Guidelines describes the procedures for ICB.

1.4 Where ICB is not the most appropriate method of procurement, other methods of procurement may be used. Section III describes these other methods of procurement and the circumstances under which their application would be more appropriate. The particular methods that may be followed for procurement under a given project are provided for in the Loan Agreement. The specific contracts to be financed under the project, and their method of procurement, consistent with the Loan Agreement, are specified in the Procurement Plan as indicated in paragraph 1.18 of these Guidelines.

### **Applicability of Guidelines**

1.5 The principles, rules, and procedures outlined in these Guidelines apply to all contracts for goods, works, and non-consulting services financed in whole or in part from Bank loans.<sup>10</sup> The provisions described under this Section I apply to all other Sections of the Guidelines. For the procurement of those contracts for goods, works, and non-consulting services not financed in whole or in part from a Bank loan, but included in the project scope of the loan agreement, the Borrower may adopt other rules and procedures. In such cases, the Bank shall be satisfied that the procedures to be used will fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently, and that the goods, works, and non-consulting services to be procured:

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<sup>7</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>8</sup> For purposes of these Guidelines, "Contractor" refers only to a firm providing construction services.

<sup>9</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>10</sup> This includes contracts procured by a Procurement Agent or Construction Manager employed by the Borrower under paragraph 3.11 of these Guidelines. The Bank may agree to the use of the public procurement systems of the Borrower's country --referred to as the Use of Country System (UCS)--for procurement under paragraph 3.20 of these Guidelines. In such cases, the Loan Agreement between the Borrower and the Bank shall describe the applicable procurement procedures of the Borrower, and the full application of Section I and any other parts of these Guidelines as may be deemed relevant by the Bank.



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

### **Conflict of Interest**

1.6 Bank policy requires that a firm participating in a procurement process under Bank-financed projects shall not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of a contract.

1.7 A firm shall be considered to have a conflict of interest in a procurement process if:

- (a) such firm is providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and built contract;<sup>11</sup> or
- (b) such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of a firm as a sub-contractor in more than one bid. Only for certain types of procurement, the participation of a Bidder as a sub-contractor in another bid may be permitted subject to the Banks' no objection and as allowed by the Bank's Standard Bidding Documents applicable to such types of procurement; or
- (c) such firm (including its personnel) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; or
- (d) such firm does not comply with any other conflict of interest situation as specified in the Bank's Standard Bidding Documents relevant to the specific procurement process.

### **Eligibility**

1.8 To foster competition, the Bank permits firms and individuals from all countries to offer goods, works, and non-consulting services for Bank-financed projects. Any

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<sup>11</sup> See paragraph 2.4.

conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question.<sup>12</sup>

1.9 In connection with any contract to be financed in whole or in part from a Bank loan, the Bank does not permit a Borrower to deny participation in a procurement process or award to a firm for reasons unrelated to: (i) its capability and resources to successfully perform the contract; or (ii) the conflict of interest situations covered under paragraphs 1.6 and 1.7 above.

1.10 As exceptions to the foregoing paragraphs 1.8 and 1.9:

- (a) Firms of a country or goods manufactured in a country may be excluded if, (i) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods, works, and non-consulting services required, or (ii) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods from, or payments to, a particular country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.
- (b) Government-owned enterprises or institutions of the Borrower's country may participate in the Borrower's country only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not dependent agencies of the Borrower or Sub-Borrower.<sup>13</sup>
- (c) A firm sanctioned by the Bank in accordance with paragraph 1.16(d) of these Guidelines, or the World Bank Group Anti-Corruption policies and sanctions procedures,<sup>14</sup> shall be ineligible to be awarded a Bank-financed contract or to benefit from a Bank-financed contract, financially or in any other manner, during the period of time determined by the Bank.

### **Advance Contracting and Retroactive Financing**

1.11 The Borrower may wish to proceed with the initial steps of procurement before signing the related Bank loan. In such cases, the procurement procedures, including advertising, shall be in accordance with the Guidelines in order for the eventual contracts

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<sup>12</sup> The Bank permits firms and individuals from Taiwan, China to offer goods, works, and non-consulting services for Bank-financed projects.

<sup>13</sup> Other than Force Account units, as permitted under paragraph 3.9. To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government; (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.

<sup>14</sup> For the purpose of this sub-paragraph, the relevant World Bank Group Anti-Corruption policies are set forth in the *Guidelines On Preventing and Combating Fraud and Corruption in Projects financed by IBRD Loans and IDA Credits and Grants*, and in the *Anti-Corruption Guidelines for IFC, MIGA, and World Bank Guarantee Transactions*. The Bank's sanctions procedures are publicly disclosed on the Bank's external website.

to be eligible for Bank financing, and the Bank shall review the process used by the Borrower. A Borrower undertakes such advance contracting at its own risk, and any concurrence by the Bank with the procedures, documentation, or proposal for award does not commit the Bank to make a loan for the project in question. If the contract is signed, reimbursement by the Bank of any payments made by the Borrower under the contract prior to loan signing is referred to as retroactive financing and is only permitted within the limits specified in the Loan Agreement.

### **Joint Ventures**

1.12 Any firm may bid independently or in joint venture either with domestic firms and/or with foreign firms. A joint venture may be for the long term (independent of any particular bid) or for a specific bid. The joint venture shall appoint one of the firms to represent it, and all its members shall sign the contract and be jointly and severally liable for the entire contract. The Bank does not accept conditions of bidding or contracting which require mandatory joint ventures or other forms of mandatory association between firms.

### **Bank Review**

1.13 The Bank reviews the Borrower's procurement procedures, documents, bid evaluations, award recommendations, and contracts to ensure that the procurement process is carried out in accordance with the agreed procedures. These review procedures are described in Appendix 1. The Procurement Plan approved by the Bank<sup>15</sup> shall specify the extent to which these review procedures shall apply in respect of the different categories of goods, works, and non-consulting services to be financed, in whole or in part, from the Bank loan.

### **Misprocurement**

1.14 The Bank does not finance expenditures under a contract for goods, works, or non-consulting services if the Bank concludes that such contract: (a) has not been awarded in accordance with the agreed provisions of the Loan Agreement and as further elaborated in the Procurement Plan to which the Bank provided no objection; (b) could not be awarded to the bidder otherwise determined successful due to willful dilatory conduct or other actions of the Borrower resulting in unjustifiable delays, the successful bid being no longer available, or the wrongful rejection of any bid; or (c) involves the engagement of a representative of the Borrower, or a recipient of any part of the Loan proceeds, in fraud and corruption as per paragraph 1.16(c). In such cases, whether under prior or post review, the Bank will declare misprocurement, and it is the Bank's policy to cancel that portion of the loan allocated to the goods, works, or non-consulting services that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after obtaining a no objection from the Bank, the Bank may still declare misprocurement and apply in full its policies and remedies regardless of whether of the loan has closed or not, if it concludes that the no objection was issued on the basis of incomplete, inaccurate, or misleading

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<sup>15</sup> See paragraph 1.18.

information furnished by the Borrower or the terms and conditions of the contract had been substantially modified without the Bank's no objection.

## Reference to Bank

1.15 The Borrower shall use the following text<sup>16</sup> when referring to the Bank in procurement documents:

*“[Name of Borrower] has received [or, ‘has applied for’] a [loan] from the [International Bank for Reconstruction and Development] (the “Bank”) in an amount equivalent to US\$\_\_\_, toward the cost of [name of project], and intends to apply a portion of the proceeds of this [Loan] to eligible payments under this Contract. Payments by the Bank will be made only at the request of [name of Borrower or designate] and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the [Loan] Agreement. The [Loan] Agreement prohibits a withdrawal from the [Loan] Account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.<sup>17</sup> No party other than [name of Borrower] shall derive any rights from the Loan Agreement or have any claim to the proceeds of the [Loan].”<sup>18</sup>*

## Fraud and Corruption

1.16 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>19</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>20</sup>
  - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>21</sup>

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<sup>16</sup> To be suitably modified in the case of a credit from IDA or a grant or a trust fund.

<sup>17</sup> IBRD's General Conditions Applicable to Loans and Guarantee Agreements; Article V; Section 5.01 and IDA's General Conditions Applicable to Development Credit Agreements; Article V; Section 5.01.

<sup>18</sup> Substitute “credit,” “International Development Association,” and “Credit Agreement,” as appropriate.

<sup>19</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>20</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>21</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>22</sup>
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>23</sup>
- (v) “obstructive practice” is
  - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s sanctions procedures,<sup>24</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be

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<sup>22</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

<sup>23</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

<sup>24</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank’s sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

awarded a Bank-financed contract; and (ii) to be a nominated<sup>25</sup> sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract;

- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank; and
- (f) will require that, when a Borrower procures goods, works or non-consulting services directly from a United Nations (UN) agency in accordance with paragraph 3.10 of these Guidelines under an agreement signed between the Borrower and the UN agency, the above provisions of this paragraph 1.16 regarding sanctions on fraud or corruption shall apply in their entirety to all suppliers, contractors, service providers, consultants, sub-contractors or sub-consultants, and their employees that signed contracts with the UN agency.

As an exception to the foregoing, paragraphs 1.16(d) and (e) will not apply to the UN agency and its employees, and paragraph 1.16(e) will not apply to the contracts between the UN agency and its suppliers and service providers. In such cases, the UN agencies will apply their own rules and regulations for investigating allegations of fraud or corruption subject to such terms and conditions as the Bank and the UN agency may agree, including an obligation to periodically inform the Bank of the decisions and actions taken. The Bank retains the right to require the Borrower to invoke remedies such as suspension or termination. UN agencies shall consult the Bank's list of firms and individuals suspended or debarred. In the event a UN agency signs a contract or purchase order with a firm or an individual suspended or debarred by the Bank, the Bank will not finance the related expenditures and will apply other remedies as appropriate.

1.17 With the specific agreement of the Bank, a Borrower may introduce, into bid forms for contracts financed by the Bank, 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.<sup>26</sup> 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.

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<sup>25</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

<sup>26</sup> As an example, such an undertaking might read as follows: "We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the [Purchaser] [Employer], as such laws have been listed by the [Purchaser] [Employer] in the bidding documents for this contract."

## Procurement Plan

1.18 The preparation of a realistic procurement plan<sup>27</sup> for a project is critical for its successful monitoring and implementation. As part of the project preparation, the Borrower shall prepare a preliminary procurement plan, however tentative, for the entire scope of the project. At a minimum, the Borrower shall prepare a detailed and comprehensive procurement plan including all contracts for which procurement action is to take place in the first 18 (eighteen) months of project implementation. An agreement with the Bank shall be reached at the latest during loan negotiations. The Borrower shall update procurement plans throughout the duration of the project at least annually by including contracts previously awarded and to be procured in the next 12 (twelve) months. All procurement plans and their updates or modifications shall be subject to the Bank's prior review<sup>28</sup> and no objection before implementation. After loan negotiations, the Bank shall arrange the publication on its external website of the agreed initial procurement plan and all subsequent updates once it has provided a no objection.

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<sup>27</sup> The Procurement Plan, including their updates, shall set forth at a minimum (i) a brief description of goods, works, and/or non-consulting services required for the project for which procurement action is to take place during the period in question; (ii) the proposed methods of procurement as permitted under the Loan Agreement; (iii) any provision for the application of domestic preference in accordance with paragraph 2.55; (iv) the Bank review requirement and thresholds; and (v) the time schedule for key procurement activities, and any other information that the Bank may reasonably require. Large numbers of small and similar contracts may be clubbed. For projects or their components that are demand driven in nature such as Community Driven Development (CDD), Sector Wide Approaches (SWAs), etc. where specific contracts or their time-schedules cannot be identified in advance; a suitable template of the Procurement Plan shall be agreed with the Bank for monitoring and implementation of procurement. If the Project includes the procurement of consulting services, the Procurement Plan should also include the methods for their selection in accordance with the *Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers*.

<sup>28</sup> See Appendix 1.

## II. INTERNATIONAL COMPETITIVE BIDDING

### A. General

#### Introduction

2.1 The objective of International Competitive Bidding (ICB), as described in these Guidelines, is to provide all eligible prospective bidders<sup>29</sup> with timely and adequate notification of a Borrower's requirements and an equal opportunity to bid for the required goods, works, and non-consulting services.

#### Type and Size of Contracts

2.2 The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefor. The most common types of contracts provide for payments on the basis of a lump-sum, unit prices, reimbursable cost plus fees, or combinations thereof. Reimbursable cost contracts are acceptable to the Bank only in exceptional circumstances such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts shall include appropriate incentives to limit costs.

2.3 The size and scope of individual contracts will depend on the magnitude, nature, and location of the project. For projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant<sup>30</sup> and for the works.

2.4 In certain cases, in particular for large industrial and power plants and facilities, the Bank may accept or require a single responsibility contract in which discrete items of equipment and works are grouped into a contract package.<sup>31</sup> A single responsibility contract may be a turnkey contract in which one entity assumes total responsibility to provide an industrial plant or facility fully-equipped and ready for operation (at the "turn of the key").<sup>32</sup> Contracts involving construction, installation or assembly, and related services may also be awarded to contractors under management contracts.<sup>33</sup>

2.5 For a project requiring similar but separate items of equipment or works, bids may be invited under a slice and package procedure that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual

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<sup>29</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>30</sup> For purposes of these Guidelines, "plant" refers to installed equipment, as in a production facility.

<sup>31</sup> Typically, such single responsibility contracts include various plants, equipment, machinery, materials or parts thereof, and include all procurement activities, the supply and assembly and/or installation of equipment, the construction of a complete facility or specialized works to be incorporated in the facility. Such contracts could be a Supply and Installation contract where the Borrower prepares and remains responsible for basic and detailed engineering and design, or a Design, Supply, and Installation contract where the Contractor prepares and is also responsible for the engineering and design.

<sup>32</sup> A turnkey contract is a single responsibility contract based on a "lump-sum" price under which payments are made as per contractual milestones when they are met. For such contracts, usually only the basic design (i.e. the main parameters of the engineering project) is provided by the Employer.

<sup>33</sup> In construction, a Management Contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taking on the full responsibility and risk for price, quality, and timely performance. Conversely, a Construction Manager is a consultant for, or agent of, the Borrower, who does not take on such risks. If financed by the Bank, the Construction Manager shall be selected under the Consultant Guidelines (paragraph 3.11).



contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the Borrower.<sup>34</sup>

## **Two-Stage Bidding**

2.6 In the case of contracts for: (a) large complex facilities awarded as single responsibility (including as turnkey) contracts for the design, supply and installation, or single responsibility contracts for the supply and installation of a facility or plant; (b) works of a complex and special nature; or (c) complex information and communication technology that are subject to rapid technology advances, it may be undesirable or impractical to prepare complete technical specifications in advance. Due to the complex nature of such contracts and in order to avoid deviations from the Borrower's specifications, the Bank may require the use of a two-stage bidding procedure. First, un-priced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents<sup>35</sup> and the submission of final technical and priced bids in the second stage.

## **Notification and Advertising**

2.7 Timely notification of bidding opportunities is essential in competitive bidding. The Borrower is required to prepare and submit to the Bank a General Procurement Notice. The Bank will arrange for its publication in *UN Development Business online (UNDB online)* and on the Bank's external website.<sup>36</sup> The General Procurement Notice shall contain information concerning the Borrower (or prospective Borrower), amount and purpose of the loan, scope of procurement reflecting the Procurement Plan, and the name, telephone (or fax) number, and address(es) of the Borrower's agency(ies) responsible for procurement, and the address of a widely used electronic portal with free national and international access or website where the subsequent Specific Procurement Notices will be posted. If known, the scheduled date for availability of prequalification or bidding documents should be indicated. The related prequalification or bidding documents, as the case may be, shall not be released to the public earlier than the date of publication of the General Procurement Notice.

2.8 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower's country, or in the official gazette, or on a widely used website or electronic portal with free national and international access, in English, French, or Spanish, or at the option of the Borrower, in a national language as defined under paragraph 2.15. Such invitations shall also be published in *UNDB online*. Notification shall be given in

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<sup>34</sup> See paragraphs 2.49 - 2.54 for the bid evaluation procedures.

<sup>35</sup> In revising the bidding documents in the second stage, the Borrower shall respect the confidentiality of the bidders' technical proposals used in the first stage, consistent with requirements of transparency and intellectual property rights.

<sup>36</sup> *UNDB online* is a publication of the United Nations. Subscription information is available from: Development Business, United Nations, GCPO Box 5850, New York, NY 10163-5850, USA (website: [www.devbusiness.com](http://www.devbusiness.com); e-mail: [dbsubscribe@un.org](mailto:dbsubscribe@un.org)). World Bank External Website: [www.worldbank.org](http://www.worldbank.org).

sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.<sup>37</sup> The Bank will arrange the simultaneous publication of all Specific Procurement Notices prepared and submitted by the Borrowers on the Bank's external website.

### **Prequalification of Bidders**

2.9 Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under single responsibility (including turnkey), design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification shall be based entirely upon the capability and resources of prospective eligible bidders to perform the particular contract satisfactorily, taking into account objective and measurable factors, including: (a) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (b) financial position; and, where relevant, (c) capability of construction and/or manufacturing facilities.

2.10 The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. The Borrower shall use the Standard Prequalification Document issued by the Bank with minimum changes as may be necessary and acceptable to the Bank. All such applicants that meet the specified criteria shall be allowed to bid. Borrowers shall inform all applicants of the results of prequalification. As soon as the prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded either at the same time or over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's technical capability and financial resources to meet qualification criteria for the combined contracts. When the time elapsed between the Borrower's decision with regard to the list of prequalified firms and the issuance of bid invitations is longer than 12 (twelve) months, the Bank may require that the a new prequalification process be conducted through re-advertisement. The verification of the information upon which bidders were prequalified, including their current commitments, shall be carried out at the time of the award of contract, along with their capability with respect to personnel and equipment. The award may be denied to a bidder that is judged to no longer meet the required qualification criteria with respect to technical capability and financial resources to successfully perform the contract. If none or very few applicants are found to be prequalified, which would result in a lack of competition, the Borrower may issue a revised prequalification invitation subject to the Bank's prior no objection.

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<sup>37</sup> See paragraph 2.44.

## **B. Bidding Documents**

### **General**

2.11 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods, works, and non-consulting services to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders and bid data sheet; form or letter of bid; form of contract; conditions of contract, both general and particular; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. If a fee is charged for the bidding documents, it shall be reasonable and reflect only the cost of their typing, printing or publishing in an electronic format, and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. The bidding documents for works may indicate the estimated total cost of the contract, but shall not indicate detailed Borrower's cost estimates such as priced bills of quantities. The Borrower may use an electronic system to distribute bidding documents, provided that the Bank is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of Bidders to the bidding documents. Guidance on critical components of the bidding documents are given in the following paragraphs.

2.12 Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address project-specific conditions. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the Bank's SBDs. When no relevant SBDs have been issued, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to the Bank.

### **Validity of Bids and Bid Security**

2.13 Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Borrower to complete the comparison and evaluation of bids, and obtain all the necessary approvals within the Borrower's entity and the Bank's no objection to the recommendation of award (if required in the Procurement Plan) so that the contract can be awarded within that period.

2.14 Borrowers have the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents<sup>38</sup> and shall remain

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<sup>38</sup> The format of the bid security shall be in accordance with the SBDs and shall be issued by a reputable bank or financial institution, such as an insurance, or bonding or surety company, selected by the bidder. If the security is issued by a financial institution that is located outside the country of the Borrower, such financial institution shall have a correspondent financial institution located in the country of the Borrower to make it enforceable. Bidders shall be allowed to submit bank guarantees directly issued by the bank of their choice located in any eligible country.

valid for a period (generally 4 (four) weeks beyond the validity period for the bids) sufficient to provide reasonable time for the Borrower to act if the security is to be called. Bid securities shall be released to unsuccessful bidders once the contract has been signed with the winning bidder. In place of a bid security, the Borrower may require bidders to sign a declaration accepting that if they withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents, the bidder will be suspended for the period of time specified in the bidding documents from being eligible to bid for any contract with the entity that invited bids.

## **Language**

2.15 Prequalification and bidding documents shall be prepared in one of the following languages, selected by the Borrower: English, French, or Spanish. In addition to one of the above languages, the Borrower has the option to issue translated versions of these documents in another language which should either be: (a) the national language of the Borrower; or (b) the language used nation-wide in the Borrower's country for commercial transactions, hereinafter both are called the "National Language".<sup>39</sup> If these documents are issued in two languages, firms shall have the option to submit their prequalification application or bid, as the case may be, in any one of the two languages in which these documents are issued. The contract signed with the winning bidder shall always be written in the language in which its bid was submitted, which shall be the one that governs the contractual relations between the Borrower and the bidder. If the contract is signed in the National Language, the Borrower shall provide the Bank with an accurate translation of the contract in English, French, or Spanish when submitting the original contract in accordance with Appendix 1. Bidders shall neither be required nor permitted to sign contracts in more than one language.

## **Clarity of Bidding Documents**

2.16 Bidding documents shall be so worded as to permit and encourage international competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.

2.17 The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or

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<sup>39</sup> The Bank shall be satisfied with the language to be used. The Borrower shall take full responsibility for the correct translation of the documents in the National Language. In case of any discrepancy with the documents in English, French, or Spanish, the text in the latter shall prevail.  
If the Borrower has more than one National Language and a national law requires official acts to be issued in all national languages, the Borrower shall use one National Language in the prequalification or bidding documents, and may issue translated versions in the other languages.

otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc. are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

2.18 All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. Borrowers shall provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with Borrower representatives to seek clarifications (in person or online). Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank (in hard copy or sent electronically). All modifications of bidding documents, including with regard to additional information, clarifications, and corrections of errors, shall be sent to each recipient of the original bidding documents and all bidders on record in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. Any modification to the bidding documents shall be introduced in the form of an addendum. If necessary, the deadline shall be extended. The Bank shall receive a copy (in hard copy or sent electronically) and be consulted for issuing a no objection when the contract is subject to prior review.

### **Standards**

2.19 Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the Borrower shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

### **Use of Brand Names**

2.20 Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified. Before the Borrower issues bidding documents for specific goods with a brand name that does not have any equivalent, especially for Information Technology Systems, it shall submit to the Bank for review and no objection a comprehensive justification, including grounds of compatibility with existing systems and previous investments in the branded item.

## Pricing

2.21 Bids for goods shall be invited on the basis of CIP<sup>40</sup> (place of destination) for all goods manufactured abroad and to be imported. Bids for goods that were previously imported shall be invited on the basis of CIP (place of destination) separately indicating the actual amount of customs duties and import taxes already paid. Bids for goods manufactured in the Borrower's country shall be invited on the basis of EXW<sup>41</sup> (ex works, ex factory, or off-the-shelf) plus cost of inland transportation and insurance to the place of destination. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source.<sup>42</sup> Where 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 quote for these services.

2.22 In the case of single responsibility (including turnkey) contracts, the bidder shall be required to quote the price of the installed facility or 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, operation, etc. Unless otherwise specified in the bidding documents, a turnkey contract price shall include all duties, taxes, and other levies.<sup>43</sup>

2.23 Bidders for works and non-consulting services shall be required to quote unit prices or lump sum prices for the performance of the works or non-consulting services, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labor) from any eligible source so that they may offer their most competitive bids.

## Price Adjustment

2.24 Bidding documents shall state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 (eighteen) months, but shall be included in contracts which extend beyond 18 (eighteen) months. The bidding documents for contracts of shorter duration may also include a similar provision for price adjustment

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<sup>40</sup> Refer for further definitions to the current *Incoterms 2010*, or as revised from time to time, published by the International Chamber of Commerce (ICC), 38 Cours Albert 1<sup>er</sup>, 75008, Paris, France. CIP is carriage and insurance paid to (named place of destination). This term may be used irrespective of the mode of transport, including multimodal transport. CIP term is for custom duties and other import taxes unpaid, payment for which is the responsibility of the Borrower, either for goods previously imported or that will be imported. For previously imported goods, the quoted CIP price shall be distinguishable from the original import value of these goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which will be paid by the purchaser.

<sup>41</sup> 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 offered in the bid. Manufactured goods include assembled goods.

<sup>42</sup> See paragraphs 1.8, 1.9, and 1.10.

<sup>43</sup> Goods in bids for turnkey contracts may be invited on the basis of DDP (named place of destination) and Bidders should be free to choose the best arrangement between imported goods or goods manufactured in the country of the Borrower, in the preparation of their bids.

when future local or foreign inflation is expected to be high. However, it is standard practice to obtain firm prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed.

2.25 Prices shall be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component. The formula(e) and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formulae, to avoid incorrect adjustment. Under exceptional circumstances, bidding documents may provide for price adjustment on the basis of documentary evidence (including actual invoices) provided by the Supplier or Contractor.

### **Transportation and Insurance**

2.26 Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. For all contracts, usually an All Risk form of policy shall be specified. For goods and for single responsibility contracts, the indemnity payable under transportation insurance shall be at least 110% (one hundred ten percent) of the CIP price of the goods to be imported in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For large construction or supply and install projects with several contractors on a site, a “wrap-up” or total project insurance arrangement may be obtained by the Borrower, in which case the Borrower shall seek competition for such insurance under procedures acceptable to the Bank if the cost of insurance is to be financed by the Bank.

2.27 As an exception, if a Borrower does not wish to obtain insurance coverage through the contract, and wishes to make its own arrangements or to reserve transportation and insurance to national companies or other designated sources, it shall provide evidence satisfactory to the Bank that (a) resources are readily available for prompt payment, in a freely convertible currency among the currencies of payment of the contract, of the indemnities required to replace lost or damaged goods, and (b) risks are adequately covered. In addition, for the import of goods, bidders shall be asked to quote FCA (named place of dispatch) or CPT (named place of destination)<sup>44</sup> prices in addition to the CIP (place of destination) price specified in paragraph 2.21. The selection of the lowest evaluated bid shall be on the basis of the CIP (place of destination) price, but the Borrower may sign the contract on FCA or CPT terms and make its own arrangements for transportation and/or insurance. Under such circumstances, Bank financing shall be limited to the FCA or CPT cost of the contract.

### **Currency Provisions**

2.28 Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the

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<sup>44</sup> *Incoterms 2010* for free carrier (named place) and for carriage paid to (named place of destination), respectively.

contract price will be paid. The following provisions (paragraphs 2.29–2.33) are intended to (a) ensure that bidders have the opportunity to minimize any exchange risk with regard to the currency of bid and of payment, and hence may offer their best prices; (b) give bidders in countries with weak currencies the option to use a stronger currency and thus provide a firmer basis for their bid price; and (c) ensure fairness and transparency in the evaluation process.

### **Currency of Bid**

2.29 Bidding documents shall state that the bidder may express the bid price in any currency. If the bidder wishes to express the bid price as a sum of amounts in different foreign currencies, they may do so, provided the price includes no more than three foreign currencies. Furthermore, the Borrower may require bidders to state the portion of the bid price representing local costs incurred in the currency<sup>45</sup> of the country of the Borrower.

2.30 In bidding documents for works, the Borrower may require bidders to state the bid price entirely in the local currency, along with the requirements for payments in up to three foreign currencies of their choice for expected inputs from outside the Borrower's country, expressed as a percentage of the bid price, together with the exchange rates used in such calculations.

### **Currency Conversion for Bid Comparison**

2.31 The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparing prices, bid prices shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) and stated in the bidding documents. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper for similar transactions on a date selected in advance, with such source and date to be specified in the bidding documents, provided that the date shall not be earlier than 4 (four) weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.

### **Currency of Payment**

2.32 Payment of the contract price shall be made in the currency or currencies in which payment has been requested in the bid of the successful bidder as per paragraph 2.29.

2.33 When the bid price is required to be stated in the local currency but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments shall be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain.

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<sup>45</sup> Hereafter referred to as "*local currency*".



## **Terms and Methods of Payment**

2.34 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods, works, and non-consulting services.

- (a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. The Bank normally requires the use of letters of credit so as to assure prompt payment to the Supplier. In major contracts for equipment and plant, provisions shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.
- (b) Contracts for works shall provide, in appropriate cases for mobilization advances, advances on Contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

2.35 Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods, works, and non-consulting services, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments.

2.36 Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed, and, if so, how the terms will affect bid evaluation.

## **Alternative Bids**

2.37 The bidding documents shall clearly indicate when bidders are allowed to submit alternative bids, how alternative bids should be submitted, how bid prices should be offered, and the basis on which alternative bids shall be evaluated.

## **Conditions of Contract**

2.38 The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the services to be provided, the rights and obligations of the Borrower and of the Supplier or Contractor, and the functions and authority of the Engineer, Architect, or Construction Manager, if one is employed by the Borrower, in the supervision and administration of the contract. In addition to the general conditions of contract, any particular conditions for the specific goods, works, and non-consulting services to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

## **Performance Security and Retention Money**

2.39 Contracts for works and single responsibility contracts shall require security in an amount sufficient to protect the Borrower in case of breach of contract by the Contractor.

This security shall be provided in an appropriate form and amount, as specified by the Borrower in the bidding document.<sup>46</sup> The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works or facilities. A portion of this security shall extend sufficiently beyond the date of completion of the works or facilities to cover the defects liability or maintenance period up to final acceptance by the Borrower. Contracts for works may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security in the form of a Bank security or guarantee after provisional acceptance.

2.40 In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a security in an appropriate and reasonable amount to protect against nonperformance of the contract. The security shall, if required, also cover warranty obligations and any installation or commissioning requirements in accordance with the applicable SBD.

### **Liquidated Damages and Bonus Clauses**

2.41 Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works, or failure of the goods, works, and non-consulting services to meet performance requirements would result in extra cost, or loss of revenue, or loss of other benefits to the Borrower. Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of benefit to the Borrower.

### **Force Majeure**

2.42 The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

### **Applicable Law and Settlement of Disputes**

2.43 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration in a neutral venue has practical advantages over other methods for the settlement of disputes. Therefore, the Bank requires that Borrowers use this type of arbitration in contracts for the procurement of goods, works, and non-consulting services unless the Bank has specifically agreed to waive this requirement for justified reasons such as equivalent national regulations and arbitration procedures, or the contract has been awarded to a bidder from the Borrower's country. The Bank shall not be named arbitrator or be asked

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<sup>46</sup> The format of the performance security shall be in accordance with the SBDs and shall be issued by a reputable bank or financial institution, such as an insurance, or bonding or surety company, selected by the bidder. If the security is issued by a financial institution located outside the country of the Borrower, such financial institution shall have a correspondent financial institution located in the country of the Borrower to make it enforceable. Bidders shall be allowed to submit bank guarantees directly issued by the bank of their choice located in any eligible country.

to name an arbitrator.<sup>47</sup> In case of works contracts, supply and installation contracts, and single responsibility (including turnkey) contracts, the dispute settlement provision shall include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

### **C. Bid Opening, Evaluation, and Award of Contract**

#### **Time for Preparation of Bids**

2.44 The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 6 (six) weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than 12 (twelve) weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or in person. Borrowers may also use electronic systems permitting bidders to submit bids by electronic means, provided the Bank is satisfied with the adequacy of the system, including, inter alia, that the system is secure, maintains the integrity, confidentiality, and authenticity of bids submitted, and uses an electronic signature system or equivalent to keep bidders bound to their bids. The deadline and place for receipt of bids shall be specified in the invitation to bid.

#### **Bid Opening Procedures**

2.45 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly<sup>48</sup> thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The Borrower shall open all bids received by the deadline for bid submission at the designated place stipulated in the bidding documents, irrespective of the number of bids received by such deadline. At the bid opening, the Borrower shall neither discuss the merits of any bid nor reject any bid. Bids shall be opened in public; bidders or their representatives shall be allowed to be present (in person or online when electronic bidding is used). The name of the bidder and total amount of each bid, and of any alternative bids, if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened, and a copy of this record shall be promptly sent to the Bank and to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.

#### **Clarifications or Alterations of Bids**

2.46 Except as otherwise provided in paragraphs 2.63 and 2.64 of these Guidelines, bidders shall not be requested or permitted to alter their bids, including through any

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<sup>47</sup> It is understood, however, that officials of the International Centre for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

<sup>48</sup> To allow sufficient time to take the bids to the place announced for public bid opening.

voluntary increase or decrease in bid prices, after the deadline for receipt of bids. The Borrower shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by an electronic system satisfactory to the Bank.<sup>49</sup>

### **Confidentiality**

2.47 After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of the award of contract.

### **Examination of Bids**

2.48 The Borrower shall ascertain whether the bids (a) meet the eligibility requirements specified in paragraph 1.8, 1.9, and 1.10 of these Guidelines, (b) have been properly signed, (c) are accompanied by the required securities or required declaration signed as specified in paragraph 2.14 of the Guidelines, (d) are substantially responsive to the bidding documents, and (e) are otherwise generally in order. If a bid, including with regard to the required bid security, is not substantially responsive, that is if it contains material deviations from or reservations to the terms, conditions, and specifications in the bidding documents, it shall not be considered further. The bidder shall neither be permitted nor invited by the Borrower to correct or withdraw material deviations or reservations once bids have been opened.<sup>50</sup>

### **Evaluation and Comparison of Bids**

2.49 The purpose of bid evaluation is to determine the cost to the Borrower of each bid in a manner that permits a comparison on the basis of their evaluated cost. Subject to paragraph 2.58, the bid with the lowest evaluated cost,<sup>51</sup> but not necessarily the lowest submitted price, shall be selected for award.

2.50 The bid price read out at the bid opening shall be adjusted to correct any arithmetical errors. Also, for the purpose of evaluation, adjustments shall be made for any quantifiable non-material deviations or reservations. Price adjustment provisions applying to the period of implementation of the contract shall not be taken into account in the evaluation.

2.51 The evaluation and comparison of bids shall be on CIP (place of destination) prices for the supply of imported goods<sup>52</sup> and EXW prices, plus cost of inland transportation and insurance to the place of destination, for goods manufactured within the Borrower's

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<sup>49</sup> See paragraph 2.44.

<sup>50</sup> See paragraph 2.50 regarding corrections.

<sup>51</sup> See paragraph 2.52.

<sup>52</sup> Borrowers may ask for prices on a CIF basis (and bids compared on that same basis) only when the goods are carried by sea and the goods are not containerized. CIF shall not be used for anything other than sea transport. In the case of manufactured goods, it is unlikely that the choice of CIF will be appropriate, because these goods are usually containerized. CIP can be used for any mode of transport, including sea and multimodal transport.

country, together with prices for any required installation, training, commissioning, and other similar non-consulting services.<sup>53</sup>

2.52 Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors may be taken into consideration including, among others, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety, and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall be, to the extent practicable, expressed in monetary terms in the evaluation provisions in the bidding documents.<sup>54</sup>

2.53 Under works and turnkey contracts, contractors are responsible for all duties, taxes, and other levies,<sup>55</sup> and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor, the value of early completion to the Borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

2.54 The Borrower shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of contract. Borrowers shall provide as a minimum all information required in the Standard Form of Bid Evaluation Report issued by the Bank in addition to other information the Bank deems relevant.

### **Domestic Preferences**

2.55 At the request of the Borrower, and as stipulated in the agreed Procurement Plan and set forth in the bidding documents, a margin of preference may be provided in the evaluation of bids for:

- (a) goods manufactured in the country of the Borrower when comparing bids offering such goods with those offering goods manufactured abroad; and
- (b) works in member countries below a specified threshold of GNP<sup>56</sup> per capita, when comparing bids from eligible domestic contractors with those from foreign firms.

2.56 Where preference for domestically manufactured goods or for domestic contractors is allowed, the methods and stages set forth in Appendix 2 to these Guidelines shall be followed in the evaluation and comparison of bids.

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<sup>53</sup> The evaluation of bids shall not take into account: (a) customs duties and other taxes levied on imported goods quoted CIP (which are exclusive of custom duties); (b) sales and similar taxes levied in connection with the sale or delivery of the goods

<sup>54</sup> Exceptionally, relative weight may be given when specifications cannot be precisely defined or factors other than price cannot always be expressed in monetary terms such as may occur for the procurement of complex information technology and textbooks.

<sup>55</sup> Unless bidding documents specify otherwise for some turnkey contracts (see paragraph 2.22).

<sup>56</sup> Gross national product as defined annually by the Bank.

### **Extension of Validity of Bids**

2.57 Borrowers shall complete evaluation of bids and the award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary no objections, and award the contract. In the case of fixed price contracts, requests for second and subsequent extensions may be permissible only if the Borrower has provided an appropriate mechanism as provided in the Bank's relevant SBD to adjust the quoted price of the winning bidder to reflect any increase in the cost of inputs for the contract over the period of extension. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension. If the bidding documents require a bid security, bidders may exercise their right to refuse to grant such an extension without forfeiting their bid security and are hence disqualified, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

### **Postqualification of Bidders**

2.58 If bidders have not been prequalified, the Borrower shall determine whether the bidder whose bid has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the bid. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, the bid shall be rejected. In such an event, the Borrower shall make a similar determination for the next-lowest evaluated bidder.

### **Award of Contract**

2.59 The Borrower shall award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to offer the lowest evaluated cost.<sup>57</sup> A bidder shall neither be required nor permitted, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

### **Publication of the Award of Contract**

2.60 The Borrower shall ensure that the procedure for publication of the award of contract as specified in paragraph 7 of Appendix 1 is followed.

### **Rejection of All Bids**

2.61 Bidding documents usually provide that Borrowers may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or all bids are not substantially responsive, or no bidder meets the specified qualification criteria, or the bid

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<sup>57</sup> Referred to as “lowest evaluated bidder” and “lowest evaluated bid”, respectively.

price of the lowest evaluated winning bid is substantially higher than the Borrower's updated estimated cost or available budget. Lack of competition shall not be determined solely on the basis of the number of bidders. Even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison to market values. If all bids are rejected, the Borrower shall review the causes justifying the rejection of all bids and make appropriate revisions to the bidding documents<sup>58</sup> before re-inviting bids. The revision of qualification criteria may be justified only when they were set too stringently.

2.62 If for justified reasons, re-advertisement is not practical or the rejection is due to all of the bids being nonresponsive, new bids may be invited, with the prior no objection of the Bank, from the initially prequalified firms, or, in the absence of prequalification, from all firms that purchased the initial bidding documents. Exceptionally, when justified, the Bank may agree to re-invite only those firms that submitted bids in the first instance.

2.63 All bids shall not be rejected and new bids invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the Borrower's updated cost estimates by a substantial margin, the Borrower shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. Alternatively, the Borrower may negotiate with the lowest evaluated bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require rebidding.

2.64 The Bank's prior no objection shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

### **Debriefing by the Borrower**

2.65 In the publication of the award of contract referred to in paragraph 2.60 and paragraph 7 of Appendix 1, the Borrower shall specify that any bidder who wishes to ascertain the grounds on which its bid was not selected, should request an explanation from the Borrower. The Borrower shall promptly provide in writing an explanation of why such bid was not selected. If a bidder requests a debriefing meeting, the bidder shall bear all their costs of attending such a debriefing meeting.

## **D. Modified ICB**

### **Operations Involving a Program of Imports<sup>59</sup>**

2.66 Where the loan provides financing for a program of imports, ICB with simplified advertising and currency provisions may be used for large-value contracts, as defined in the Loan Agreement.<sup>60</sup>

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<sup>58</sup> Such revisions may relate to the scope or conditions of contract, or minimum post qualification criteria (in the absence of prequalification), or the design and specifications, etc. or a combination thereof.

<sup>59</sup> Also see paragraph 3.12.

2.67 The simplified provisions for notification of ICB procurement do not require a General Procurement Notice. Specific Procurement Notices shall be inserted in at least one newspaper of national circulation in the Borrower's country (or in the official gazette, if any, or on a widely used website or electronic portal with free national and international access) in addition to *UNDB online* and the Bank's external website. The period allowed for submission of bids may be reduced to 4 (four) weeks. Bidding and payment may be limited to one currency widely used in international trade.

### **Procurement of Commodities**

2.68 Market prices of commodities, such as grain, animal feed, cooking oil, fuel, fertilizer, and metals, fluctuate depending upon the demand and supply at any particular time. Many are quoted in established commodity markets. Procurement often involves multiple awards for partial quantities to assure security of supply and multiple purchases over a period of time to take advantage of favorable market conditions and to keep inventories low. A list of prequalified bidders may be drawn up to whom periodic invitations are issued. Bidders may be invited to quote prices linked to the market price at the time of or prior to the shipments. Bid validities shall be as short as possible. A single currency in which the commodity is usually priced in the market may be used for bidding and payment. The currency shall be specified in the bidding document. Bidding documents may permit telexed or faxed bids or bids submitted by electronic means, and in such cases either no bid security is required, or standing bid securities valid over a specified period of time have been submitted by prequalified bidders. Standard contract conditions and forms consistent with market practices shall be used.

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<sup>60</sup> Procurement of smaller contracts is normally carried out in accordance with procedures followed by the private or public entity handling the imports, or other established commercial practices acceptable to the Bank, as described in paragraph 3.13.



### III. OTHER METHODS OF PROCUREMENT

#### General

3.1 This Section describes the methods of procurement that can be used where ICB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate<sup>61</sup> or in the case of paragraph 3.20, when the Bank has agreed to the use of the public procurement system of the Borrower country. The Bank's policies with respect to margins of preference for domestically manufactured goods, works, and non-consulting services contracts do not apply to methods of procurement other than ICB. Paragraphs 3.2 to 3.5 and paragraph 3.7 describe the generally used methods in descending order of preference and the remaining paragraphs describe the methods used in specific circumstances.

#### Limited International Bidding

3.2 Limited International Bidding (LIB) is essentially ICB by direct invitation without open advertisement. It may be an appropriate method of procurement where (a) there is only a limited number of suppliers, or (b) other exceptional reasons may justify departure from full ICB procedures. Under LIB, Borrowers shall seek bids from a list of potential suppliers broad enough to assure competitive prices, such list to include all suppliers when there are only a limited number. Domestic preferences are not applicable in the evaluation of bids under LIB. In all respects other than advertisement and preferences, ICB procedures shall apply, including the publication of the award of contract as indicated in paragraph 7 of Appendix 1.

#### National Competitive Bidding

3.3 National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Borrower, and may be the most appropriate method of procurement of goods, works, and non-consulting services which, by their nature or scope, are unlikely to attract foreign competition. To be acceptable for use in Bank-financed procurement, these procedures shall be reviewed and modified<sup>62</sup> as necessary to assure economy, efficiency, transparency, and broad consistency with the provisions included in Section I of these Guidelines.<sup>63</sup> NCB may be the most appropriate method of procurement where foreign bidders are not expected to be interested because (a) of the size and value of the contract, (b) works are scattered geographically or spread over time, (c) works are labor intensive, or (d) the goods, works, and non-consulting services are available locally at prices below the international market.

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<sup>61</sup> Contracts shall not be divided into smaller units in order to make them less attractive for ICB procedures; any proposal to divide a contract into smaller packages shall require the prior no objection of the Bank.

<sup>62</sup> Any such modification shall be reflected in the Loan Agreement. The Bank may agree, if requested by the Borrower, that bidding documents under NCB procedures include a clause rendering ineligible for Bank financing a firm, or an individual, of the Borrower country that is under a sanction of debarment from being awarded a contract by the appropriate judicial authority of the Borrower country and pursuant to its relevant laws, provided that the Bank has determined that the firm, or the individual, has engaged in fraud or corruption and the judicial proceeding afforded the firm or the individual adequate due process.

<sup>63</sup> This method is distinct from those under the UCS Piloting Program described in paragraph 3.20.

NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

3.4 The complete text of advertisement shall be published in a national newspaper of wide circulation in the National Language as defined under paragraph 2.15, or in the official gazette, provided that it is of wide circulation, or on a widely used website or electronic portal with free national and international access. The Borrower may publish a shorter version of the advertisement text, including the minimum relevant information, in the national press provided that the full text is simultaneously published in the official gazette or on a widely used website or electronic portal with free national and international access. Notification shall be given to prospective bidders in sufficient time to enable them to obtain relevant documents. Bidding documents may be issued in the National Language. The currency of the country of the Borrower is generally used for the purposes of bidding and payment. In addition, the bidding documents shall provide clear instructions on how bids should be submitted, how prices should be offered, and the place and time for submission of bids. Adequate response time for the preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the awards of contract shall be objective and made known to all bidders in the bidding documents and not be applied arbitrarily. The comparison of all bids and the award of contract may be based on the total cost at destination including all taxes and duties. The procedures shall also include public opening of bids, publication of results of evaluation and of the award of contract as per paragraph 7 of Appendix 1. Borrowers shall have an effective and independent protest mechanism in place allowing bidders to protest and have their protests handled in a timely manner. If foreign firms wish to participate in NCB they shall be allowed to do so on the prevailing NCB terms and conditions that apply to national bidders.

## **Shopping**

3.5 Shopping is a procurement method based on comparing price quotations obtained from several suppliers (in the case of goods), from several contractors (in the case of civil works), or service providers (in the case of non-consulting services) with a minimum of three, to assure competitive prices, and is an appropriate method for procuring limited quantities of readily available off-the-shelf goods or standard specification commodities of small value, or simple civil works of small value<sup>64</sup> when more competitive methods are not justified on the basis of cost and efficiency. If the Borrower has been unable to obtain at least three quotations, it shall provide the Bank with the reasons and justification why no other competitive method could be considered and obtain a no objection before proceeding on the basis of the only responses already received. Requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile, or by electronic means. The evaluation of quotations shall

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<sup>64</sup> For the purpose of Shopping, and procurement from UN agencies under paragraph 3.10(c) of these Guidelines, a small value contract should normally not exceed US\$100,000 for off-the-shelf goods and commodities and US\$200,000 for simple civil works. Thresholds applicable to each project are defined in the Procurement Plan.

follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

### **Framework Agreements**

3.6 A Framework Agreement (FA) is a long-term agreement with suppliers, contractors and providers of non-consulting services which sets out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the agreement. FAs are generally based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.<sup>65</sup> FAs may be permitted as an alternative to the Shopping and NCB methods for: (a) goods that can be procured off-the-shelf, or are of common use with standard specifications; (b) non-consulting services that are of a simple and non-complex nature and may be required from time to time by the same agency (or multiple agencies) of the Borrower; or (c) small value contracts for works under emergency operations. The Borrower shall submit to the Bank for its no objection the circumstances and justification for the use of an FA, the particular approach and model adopted, the procedures for selection and award, and the terms and conditions of the contracts. FAs shall not restrict foreign competition, and should be limited to a maximum duration of 3 (three) years. FA procedures applicable to the project are those of the Borrowers that have been deemed acceptable by the Bank, and shall be described in the Loan Agreement. Maximum aggregate amounts for the use of an FA shall be set in the procurement plan in accordance with risks and in no case higher than the applicable NCB maximum aggregate amounts, and shall be agreed with the Bank. FAs shall follow all guiding principles and procedures of NCB under paragraphs 3.3 and 3.4, including but not limited to the procedures for advertisement, fair and open competition, an effective and independent protest mechanism, and transparent bid evaluation and selection criteria. Publication of award of the FA shall follow the procedure described in paragraph 7 of Appendix 1.

### **Direct Contracting**

3.7 Direct contracting is contracting without competition (single-source) and may be an appropriate method under the following circumstances. The Borrower shall submit to the Bank for its review and no objection a sufficiently detailed justification, including the rationale for direct contracting instead of a competitive procurement process and the basis for recommending a particular firm in all such cases, except for contracts below a threshold defined on the basis of risks and the scope of the project, and set forth in the Procurement Plan.

- (a) An existing contract for goods, works, and non-consulting services, awarded in accordance with procedures acceptable to the Bank, may be extended for additional goods, works, and non-consulting services of a similar nature. The Bank shall be

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<sup>65</sup> Borrowers have adopted different models of FAs under different names. The three most commonly used models, based on closed or open, one-stage or two-stage, competition methods, are: (i) "Closed FA" based on predefined criteria including for the award of "call offs", signed with one or multiple suppliers/contractors and not permitting new entrants during the duration of the agreement; (ii) "Closed FA" with a restriction on new entrants but conducted in two stages: a first stage to select more than one supplier/contractor, and a second stage when call-offs are decided through competition among suppliers/contractors selected at the first stage and the award is made to the lowest evaluated bidder based on the offered priced and delivery conditions; and (iii) "Open FA" also following a two-stage approach as per the above model, but without any restrictions on the participation of new entrants.

satisfied in such cases that no advantage could be obtained by further competition and that the prices on the extended contract are reasonable. Provisions for such an extension, if considered likely in advance, shall be included in the original contract;

- (b) standardization of equipment or spare parts, to be compatible with existing equipment, may justify additional purchases from the original Supplier. For such purchases to be justified, the original equipment shall be suitable, the number of new items shall generally be less than the existing number, the price shall be reasonable, and the advantages of another make or source of equipment shall have been considered and rejected on grounds acceptable to the Bank;
- (c) the required equipment is proprietary and obtainable only from one source;
- (d) the procurement of certain goods from a particular supplier is essential to achieve the required performance or functional guarantee of an equipment or plant or facility;
- (e) in exceptional cases, such as, but not limited to, in response to natural disasters and emergency situations declared by the Borrower and recognized by the Bank; and
- (f) in circumstances that are in accordance with the provisions of paragraph 3.10 for procurement from UN Agencies.

3.8 The procedure for the publication of the award of contract is described in paragraph 7 of Appendix 1.

### **Force Account**

3.9 Force Account, which are works such as construction and installation of equipment and non-consulting services carried out by a government department of the Borrower's country using its own personnel and equipment,<sup>66</sup> may be the only practical method of procurement under specific circumstances. The use of Force Account requires that the Borrower sets maximum aggregate amounts for the use of Force Account, to which the Bank shall give its no objection, and applies the same rigorous quality checks and inspection as for contracts awarded to third parties. Force Account shall be justified and may only be used, after Bank no objection, under any of the following circumstances:

- (a) quantities of construction and installation works that are involved cannot be defined in advance;
- (b) construction and installation works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) construction and installation works are required to be carried out without disrupting ongoing operations;
- (d) risks of unavoidable work interruption are better borne by the Borrower than by a contractor;

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<sup>66</sup> A government-owned construction unit that is not managerially, legally, or financially autonomous shall be considered a Force Account unit. "Force Account" is otherwise known as "direct labor", "departmental forces", or "direct work".

- (e) specialized non-consulting services such as aerial surveys and mapping, as a matter of Borrower's law or official regulations for consideration such as national security, can only be carried out by specialized branches of the government; or
- (f) urgent repairs to prevent further damages, requiring prompt attention, or works to be carried out in conflict-affected areas where private firms may not be interested.

### **Procurement from United Nations Agencies**

3.10 There may be situations in which procurement directly from agencies<sup>67</sup> of the UN, following their own procurement procedures may be the most appropriate method of procurement:

- (a) of small quantities of off-the-shelf goods, primarily in the fields of education and health;
- (b) of health-related goods for the treatment of humans and animals, including vaccines, drugs and pharmaceuticals, preventive health and contraceptive devices, and biomedical equipment, provided that: (i) the number of suppliers is limited; (ii) the UN agency is uniquely or exceptionally qualified to procure such goods and related incidental non-consulting services, if any; and (iii) the Borrower uses the standard form of Agreement between a Borrower and a UN agency for the procurement of supplies and provision of certain services agreed by the Bank;
- (c) of small value contracts (as defined in footnote 64) for works of a simple nature when the UN agencies act as contractors, or directly hire small contractors, and skilled or unskilled labor; or
- (d) in exceptional cases, such as in response to natural disasters and emergency situations declared by the Borrower and recognized by the Bank.

### **Procurement Agents and Construction Managers**

3.11 Where Borrowers lack the necessary organization, resources, and experience, Borrowers may wish (or be required by the Bank) to employ, as their agent, a firm specializing in handling procurement. Construction Managers may be employed in a similar manner for a fee, e.g., to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new construction in emergency and post-conflict situations, or where large numbers of small contracts are involved, or when the capacity of the Borrower is limited. The Procurement Agent or Construction Manager shall follow all the procurement methods provided for in the Loan Agreement and as further elaborated in the Procurement Plan approved by the Bank on behalf of the Borrower, including the use of Bank SBDs, review procedures, and documentation. This

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<sup>67</sup> An agency of the United Nations refers to the United Nations departments, specialized agencies and their regional offices (e.g., the PanAmerican Health Organization - PAHO), funds and programmes.  
The Borrower shall submit to the Bank for its no objection a full justification and the draft form of agreement with the UN agency.

also applies in cases where UN agencies act as Procurement Agents. The Borrower shall include capacity-building measures in the contract, as agreed with the Bank.<sup>68</sup>

### **Inspection Services**

3.12 Pre-shipment inspection and certification of imports is one of the safeguards for the Borrower, particularly where the country has a large import program. The inspection and certification usually covers quality, quantity, and reasonableness of price. Imports procured through ICB procedures shall not be subject to price verification, but only verification for quality and quantity. However, imports not procured through ICB may additionally be subjected to price verification. Physical inspection services may also be included. The inspection service providers are ordinarily paid for on a fee basis levied on the value of the goods. Costs for certification of imports shall not be considered in the evaluation of bids under ICB.

### **Procurement in Loans to Financial Intermediary Institutions and Entities**

3.13 When the loan provides funds to a financial intermediary institution or entity (or its designated agency) such as an agricultural credit institution, a development finance company, or an infrastructure development fund, to be on-lent to beneficiaries such as individuals, private sector enterprises, small and medium enterprises, or autonomous commercial enterprises of the public sector for the partial financing of subprojects, procurement of goods, works, and non-consulting services is usually undertaken by the respective beneficiaries in accordance with well-established private sector procurement methods or commercial practices that shall be acceptable to the Bank. However, even in these situations, open or limited international or national competitive bidding may be the most appropriate procurement method for the purchase of large single items or in cases where large quantities of like goods can be grouped together for bulk purchasing.<sup>69</sup> When loan funds are on-lent to public sector beneficiaries or for large and complex contracts, consideration shall be given to the use of competitive procurement methods set forth in these Guidelines. If the funds are on-lent for Public Private Sector Partnership (PPP) operations, paragraphs 3.14 and 3.15 below shall apply.

The Project Implementation Document (or Manual) shall describe the basic guiding principles and acceptable procedures applicable to the loan. These principles shall, *inter alia*, include mandatory provisions that beneficiaries of the loan shall not award contracts to their parent or affiliate companies unless there is an established arms-length

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<sup>68</sup> The Consultant Guidelines shall apply for the selection of Procurement Agents and Construction Managers, as well as inspection services providers. The cost or fee of the Procurement Agents and Construction Managers or inspection services providers (see paragraph 3.12) is eligible for financing from the Bank loan, if so provided in the Loan Agreement and in the Procurement Plan, and provided that the terms and conditions of selection and employment are acceptable to the Bank.

<sup>69</sup> The Bank shall review the methods and procedures of procurement and selection of consultants of the private sector and the commercial practices in the country of the Borrower to determine their acceptability. Private sector procedures and practices are not subject to the same oversight as when public funds are used, and are therefore simpler with single-point decision making and require less documentation. The Bank normally accepts only procedures that at least meet national requirements as established by the chamber of commerce, selected and established private sector enterprises, the central bank, or import licensing and customs authorities. There is no need to specify in the Loan Agreements or Procurement Plans thresholds by value of contracts for their use regardless of the adopted specific procurement methods and commercial practices. Given the demand-driven nature of such projects, it may not be always practical to prepare Procurement Plans as per paragraph 1.18, especially when the selection of consultants is conducted by the beneficiaries. Simplified procurement plans, where feasible and practical, should be prepared based on an indicative list of eligible activities to be implemented.

arrangement. The documentation shall define the main responsibilities of financial intermediary institutions and entities (or of their designated agencies) such as: (a) assessing the capacity of the beneficiaries to carry out procurement efficiently; (b) approving acceptable plans for the procurement of goods, works, and non-consulting services, and the selection of consultants as may be applicable; (c) agreeing to supervision and oversight arrangements under each sub-loan (consistently with the provisions under the Bank loan) for the procurement to be carried out by the beneficiaries so as to ensure compliance with the agreed private sector methods and commercial practices under the sub-loans; and (d) maintaining all relevant records for the Bank's post review and audits when requested. The financial intermediary institution or entity (or its designated agency) should satisfy itself with the reasonableness of the price of contracts awarded by the beneficiaries in the particular market through the hiring of an independent entity or auditors, if necessary.

### **Procurement under Public Private Partnership (PPP) Arrangements**

3.14 Where the Bank is participating in financing the cost of a project or a contract procured under PPP arrangements such as a BOO/BOT/BOOT,<sup>70</sup> concessions or similar type of private sector arrangement, either of the following procurement procedures shall be used, as provided for in the Loan Agreement and further elaborated in the Procurement Plan approved by the Bank:

- (a) The concessionaire or entrepreneur under a BOO/BOT/BOOT or similar type of contract shall be selected by the Borrower under open competitive bidding procedures determined acceptable by the Bank,<sup>71</sup> which may include several stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facility offered, the cost charged to the end user, other income generated for the concessionaire or entrepreneur by the facility, and the period of the facility's depreciation. The said concessionaire or entrepreneur selected in this manner shall then be free to procure the goods, works, and consulting and non-consulting services required for the facility from eligible sources, using its own procedures. In this case, the Project Appraisal Document (PAD) and the Loan Agreement shall specify the types of expenditures to be incurred by the said concessionaire or entrepreneur towards which Bank financing will apply.

Or,

- (b) If the said concessionaire or entrepreneur has not been selected in the manner set forth in paragraph 3.14(a) above, the goods, works, or non-consulting services required for the facility and to be financed by the Bank shall be procured in accordance with ICB or LIB procedures for large value procurement as defined in Section II and other appropriate procurement methods determined acceptable by the

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<sup>70</sup> BOO: Build, Own, Operate; BOT: Build, Operate, Transfer; BOOT: Build, Own, Operate, Transfer.

<sup>71</sup> For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems. Open competitive bidding means: 1) international competitive bidding, or 2) national competitive bidding for contracts of an estimated value below thresholds set by the Regional Procurement Managers. In addition, direct invitation such as LIB procedures may be considered. All such procedures shall be subject to Bank review before acceptance.

Bank for smaller value contracts, and for consulting services in accordance with the Consultant Guidelines.

3.15 Notwithstanding the provisions under paragraph 3.14(b), the Bank may accept, in exceptional cases such as small scale expansions of existing systems operated by an incumbent concessionaire or entrepreneur that is either a privately-owned or a government-owned company, and when an open competitive method may not be warranted, the use of the procurement procedures of such company provided that: (i) the entity meets the criteria under paragraph 1.10(b) of these Guidelines; (ii) the Bank determines to be acceptable the procurement capacity and practices and procedures that the entity relies upon as part of its normal business operations; (iii) subject to provisions under paragraph 1.7(a), the entity does not grant any preference or award contracts to their parents or affiliates or controlling shareholders; and (iv) procurement procedures ensure fair competition, economy, efficiency, quality, and transparency. The Bank shall conduct post reviews from time to time during implementation to satisfy itself that the procurement capacity and practices remain acceptable, and that the procurement procedures agreed under the loan were followed.

### **Performance Based Procurement**

3.16 Performance Based Procurement<sup>72</sup>, also called Output Based Procurement, refers to competitive procurement processes (ICB, LIB, or NCB) resulting in a contractual relationship where payments are made for measured outputs instead of the traditional way where inputs are measured. The technical specifications define the desired result and which outputs will be measured including how they will be measured. Those outputs aim at satisfying a functional need in terms of quality, quantity, and reliability. Payment is made in accordance with the quantity of outputs delivered, subject to their delivery at the level of quality required. Reductions from payments (or retentions) may be made for lower-quality level of outputs and, in certain cases, premiums may be paid for higher quality level of outputs. The bidding documents do not normally prescribe the inputs, nor a work method for the Contractor. The Contractor is free to propose the most appropriate solution, based on mature and well-proven experience, and shall demonstrate that the level of quality specified in the bidding documents will be achieved.

3.17 Performance Based Procurement (or Output Based Procurement) can involve: (a) the provision of non-consulting services to be paid on the basis of outputs; (b) design, supply, construction (or rehabilitation), and commissioning of a facility to be operated by the Borrower; or (c) design, supply, construction (or rehabilitation) of a facility, and provision of non-consulting services for its operation and maintenance for a defined period of years after its commissioning.<sup>73</sup> For the cases where design, supply, and/or construction are required, prequalification is normally adopted and the use of two-stage bidding as indicated in paragraph 2.6 shall normally apply.

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<sup>72</sup> The use of Performance Based Procurement in Bank-financed projects shall be agreed by the Bank as the result of a satisfactory technical analysis of the different options available and shall be identified in the PAD and incorporated in the Procurement Plan.

<sup>73</sup> Examples of such type of procurement are: (i) for the case of procurement of services: provision of medical services, i.e. payments for specific services, like office visits, or defined laboratory tests, etc.; (ii) for the case of procurement of a facility: design, procurement, construction, and commissioning of a thermal power plant to be operated by the Borrower; (iii) for the case of procurement of a facility and services: design, procurement, construction (or rehabilitation) of a road, and operation and maintenance of the road for 5 (five) years after construction.



## **Procurement under Loans and Payment Obligations Guaranteed by the Bank**

3.18 If the Bank guarantees the repayment of a loan made by another lender, or guarantees the payment of a non-loan related government payment obligation, the goods, works, and non-consulting services financed by said loan or said payment obligation shall be procured with due attention to economy and efficiency and in accordance with procedures which meet the requirements of paragraph 1.5. The Bank may conduct a review of the procurement transactions financed on this basis.

## **Community Participation in Procurement**

3.19 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 (a) call for the participation of local communities and/or nongovernmental organizations (NGOs) in civil works and the delivery of non-consulting services, or (b) increase the utilization of local know-how, goods, and materials, or (c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided that these are acceptable to the Bank. The procedures proposed and the project activities to be carried out by community participation shall be outlined in the Loan Agreement and further elaborated in the Procurement Plan or the relevant Project Implementation Document (or Manual) approved by the Bank and made publicly available by the Borrower. Given the demand-driven nature of Community Driven Development (CDD) projects, it may not always be practical to prepare detailed procurement plans at the time of negotiations as required under paragraph 1.18 for the CDD component of the projects, especially when the procurement of activities or the activities themselves are carried out directly by the community. Simplified procurement plans may be prepared, if practical, based on an indicative list of eligible activities to be implemented.<sup>74</sup>

## **Use of Country Systems**

3.20 The Use of Country Systems (UCS) refers to the use of the procurement procedures and methods contemplated in the public procurement system in place in the country of the Borrower that have been determined to be consistent with these Guidelines and acceptable to the Bank under the Bank's Use of Country Systems Piloting Program<sup>75</sup>.

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<sup>74</sup> CDD projects generally envisage a large number of small value contracts for goods and both non-consulting and consulting services, and a large number of small works scattered in remote areas. Commonly used procurement procedures include Shopping, local competitive bidding inviting prospective bidders for goods and works located in and around the local community, direct contracting for small value goods, works, and non-consulting services, and the use of community labor and resources. The Project Implementation Document (or Manual) as referred to in the Loan Agreement shall describe in sufficient details all procurement arrangements, methods, and procedures including the roles, the responsibilities, and the extent of participation of the community in general (including in certain circumstances community tender committees as may be needed), simplified steps for all applicable methods of procurement, provisions for any technical or other assistance required by the community, payment procedures, and procedures for maintenance of records, simplified forms of contracts to be used, roles and oversight functions of the implementing agency, etc. The Bank's procurement supervision arrangements, including technical and financial reviews and auditing requirements, shall be indicated in the PAD, the Loan Agreement, the simplified Procurement Plan, and the Project Implementation Document (or Manual). The audit scope should cover verification of both quality and quantity of goods, works, and services procured and proper use of funds.

<sup>75</sup> The Piloting Program is described in the Board paper dated March 3 and March 25, 2008 entitled *Use of Country Systems in Bank-Supported Operations: Proposed Piloting Program* (R2008-0036 and 0036 and 0036/1), approved by the Bank's Board of Executive Directors on April 24, 2008.

They may be used by Borrowers in pilot projects that have been approved by the Bank under such Piloting Program.

**APPENDIX 1: REVIEW BY THE BANK OF PROCUREMENT DECISIONS  
AND PUBLICATION OF AWARDS OF CONTRACTS**

**Scheduling of Procurement**

1. The Bank shall review<sup>76</sup> Procurement Plans and their updates that are prepared by the Borrowers in accordance with provisions under paragraph 1.18. They shall be consistent with the Project Implementation Plan, the Loan Agreement, and these Guidelines.

**Prior Review**

2. With respect to all contracts<sup>77</sup> which are subject to the Bank's prior review:
- (a) In cases where prequalification is used, the Borrower shall, before prequalification submissions are invited, furnish the Bank with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents as the Bank shall reasonably request. The report evaluating the applications received by the Borrower, the list of proposed prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower to the Bank for its comments before the applicants are notified of the Borrower's decision, and the Borrower shall make such additions to, deletions from, or modifications in the said list as the Bank shall reasonably request.
  - (b) Before bids are invited, the Borrower shall furnish to the Bank for its comments, draft bidding documents, including the invitation to bid, instructions to bidders, including the basis of bid evaluation and contract award, and the conditions of contract and specifications for the civil works, supply of goods, or installation of equipment, etc., as the case may be, together with a description of the advertising procedures to be followed for the bidding (if prequalification has not been used), and shall make such modifications in the said documents as the Bank shall reasonably request. Any further modification shall require the Bank's no objection before it is issued to the prospective bidders.
  - (c) After bids have been received and evaluated, the Borrower shall, before a final decision on the award is made, furnish to the Bank, in sufficient time for its review, a detailed report (prepared, if the Bank shall so request, by experts acceptable to the Bank), on the evaluation and comparison of the bids received (for each stage in case of two-stage bidding and framework agreements) together with the

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<sup>76</sup> Paragraphs 11 to 15 of Appendix III set forth the actions taken by the Bank in response to communications from bidders, including bidder complaints, and bidder requests for debriefing.

<sup>77</sup> Prior review thresholds are expressed in monetary terms, determined on the basis of assessed risks, and stated in the Procurement Plan for all procurement methods applicable to the Loan. They shall represent the total value of the contract, including all taxes and duties if payable under the contract. For contracts procured on the basis of direct contracting under paragraph 3.7, the Borrower shall furnish to the Bank for its no objection prior to contract execution, a copy of the specifications and the draft contract. The contract shall be executed only after the Bank has given its no objection, and the provisions in paragraph 2(h) of this Appendix shall apply with respect to the executed contract.

recommendations for award and such other information as the Bank shall reasonably request. The Bank shall, if it determines that the intended award would be inconsistent with the Loan Agreement and/or the Procurement Plan, promptly inform the Borrower and state the reasons for such determination. Otherwise, the Bank shall provide its no objection to the recommendation for the award of contract. The Borrower shall award the contract only after receiving the no objection from the Bank.

- (d) If the Borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary internal clearances and Bank no objection, and to make the award, it shall seek the Bank's prior no objection for the first request for extension, if it is longer than 4 (four) weeks, and for all subsequent requests for extension, irrespective of the period.
- (e) If after publication of the award the Borrower receives protests or complaints from bidders, a copy of the complaint, the Borrower's comments on each issue raised in the complaint, and a copy of the Borrower's response shall be sent to the Bank for its review and comments.
- (f) If as result of analysis of a protest the Borrower changes its contract award recommendation, the reasons for such decision and a revised evaluation report shall be submitted to the Bank for no objection. The Borrower shall provide a republication of the contract award in the format of paragraph 7 of Appendix 1 of these Guidelines.
- (g) The terms and conditions of a contract shall not, without the Bank's prior no objection, materially differ from those on which bids were asked or prequalification of contractors, if any, was invited.
- (h) One conformed copy of the contract, and of the advance payment security and the performance security if they were requested, shall be furnished to the Bank promptly after its signing and prior to the submission to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract. When payments for the contract are to be made out of a Special Account (SA), copies of the contract, and the advance payment security and the performance security if they were requested, shall be furnished to the Bank prior to the making of the first payment out of the SA in respect of such contract.
- (i) All evaluation reports shall be accompanied by a summary of the procurement on a form provided by the Bank. The description and amount of the contract, together with the name and address of the successful bidder, shall be subject to public disclosure by the Bank in accordance with paragraph 2(h) above upon receipt of the signed copy of the contract from the Borrower.
- (j) The Borrower shall retain all documentation with respect to each contract during project implementation until two years after the closing date of the Loan Agreement. This documentation would include, but not be limited to: (i) the signed original of each contract and all subsequent amendments or addenda; (ii) original bids, all documents and correspondence related to the procurement and implementation of the contract, including those in support of the evaluation of bids,

and the recommendation for award made to the Bank; and (iii) the payment invoices or certificates, as well as the certificates for the inspection, delivery, completion, and acceptance of goods, works, and non-consulting services. For contracts awarded on the basis of direct contracting, the documentation shall include the justification for using the method, the technical and financial capacity of the firm, and the signed original of the contract. The Borrower shall furnish such documentation to the Bank upon request for examination by the Bank or by its consultants/auditors.

- (k) The Bank may declare misprocurement for any of the reasons provided in paragraph 1.14 of the Guidelines, including if it determines that the goods, works, or non-consulting services were not procured in accordance with the agreed procedures and methods reflected in the Loan Agreement and further detailed in the Procurement Plan to which the Bank gave its no objection, or that the contract itself is not consistent with such procedures. The Bank shall promptly inform the Borrower of the reasons for such determination.

3. *Modifications of the signed contract.* In the case of contracts subject to prior review, before agreeing to (a) a material extension of the stipulated time for performance of a contract; or (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; or (c) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increase the original contract amount by more than 15% (fifteen percent); or (d) the proposed termination of the contract, the Borrower shall seek the Bank's no objection. If the Bank determines that the proposal would be inconsistent with the provisions of the Loan Agreement and/or Procurement Plan, it shall promptly inform the Borrower and state the reasons for its determination. A copy of all amendments to the contract shall be furnished to the Bank for its record.

4. *Translations.* If a contract awarded under ICB procedures is subject to prior review and is written in the National Language,<sup>78</sup> the Borrower has the responsibility to furnish to the Bank an accurate translation of the bid evaluation report and the initialed draft contract in the internationally used language specified in the bidding documents (English, French, or Spanish). An accurate translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

### **Post Review**

5. Procurement Post Reviews (PPRs) are normally carried out by the Bank. The Borrower shall retain all documentation with respect to each contract not governed by paragraph 2 of this Appendix during project implementation and up to two years after the closing date of the Loan Agreement. This documentation would include, but not be limited to, the signed original of the contract and all subsequent amendments or addenda, the bids, the bid evaluation report and the recommendation for award, the payment invoices or certificates, as well as the certificates for inspection, delivery, completion and acceptance of goods, works, and non-consulting services, for examination by the Bank or

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<sup>78</sup> Refer to paragraph 2.15.

by its consultants/auditors. The Borrower shall also furnish such documentation to the Bank upon request. The Bank may declare misprocurement for any of the reasons provided in paragraph 1.14 of the Guidelines, including if it determines that the goods, works, or non-consulting services were not procured in accordance with the agreed procedures and methods reflected in the Loan Agreement and further detailed in the Procurement Plan to which the Bank gave its no objection, or that the contract itself is not consistent with such procedures and methods. The Bank shall promptly inform the Borrower of the reasons for such determination. The Bank may also, depending on risks and the scope of the project (e.g., involving many small value and simple contracts), agree with the Borrower that they appoint independent entities to carry out PPRs, in accordance with terms, conditions, and reporting procedures acceptable to the Bank. In such cases, the Bank will review the reports submitted by the Borrower, and retains its right to directly conduct post reviews during project implementation as may be needed.

### **Change from Post Review to Prior Review**

6. A contract whose cost estimate was below the Bank's prior review threshold indicated in the Procurement Plan shall fall under prior review if the price of the lowest evaluated bidder exceeds such threshold. All related procurement documentation already processed, including the evaluation report and recommendation for award, shall be submitted to the Bank for its prior review and no objection before the award of contract. When, to the contrary, the price of the selected bidder falls below the prior review threshold, the prior review process shall continue. Under certain circumstances, the Bank may require the Borrower to follow a prior review process for a contract below the Bank's prior review threshold in the case of a complaint it has determined to be of a serious nature. Also, when the procurement method requires change due to higher or lower cost estimates than previously assessed, for example from NCB to ICB or inversely, the Procurement Plan shall be modified by the Borrower and submitted to the Bank for review and no objection.

### **Publication of the Award of Contract**

7. The Borrower shall publish information on *UNDB online* for all contracts under ICB and LIB, contracts with concessionaires under PPP arrangements and sub-projects under Loans to Financial Intermediary Institutions and Entities, and all direct contracts, except as hereunder, and in the *National press*<sup>79</sup> for all contracts under NCB, including those awarded under Framework Agreements and under Force Account, and small value direct contracts (see footnote 64). Such publication shall be within two weeks of receiving the Bank's no objection to the award recommendation for contracts subject to the Bank's prior review, and within two weeks of the Borrower's award decision for contracts subject to the Bank's post review. Publications shall include the bid, lot numbers, and the following information, as relevant and applicable for each method: (a) the name of each bidder that submitted a bid; (b) bid prices as read out at bid opening; (c) evaluated prices of each bid that was evaluated; (d) the names of bidders whose bids were either rejected as nonresponsive or not meeting qualification criteria, or not evaluated,

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<sup>79</sup> In a national newspaper of wide circulation and/or in the official gazette provided that it is of wide circulation, or on a widely used website or electronic portal with free national and international access, in the National Language as defined under paragraph 2.15.

with the reasons thereof; and (e) the name of the winning bidder, the final total contract price, as well as the duration and summary scope of the contract. The Bank will arrange the publication of the awards of contract under prior review on its external website upon receipt from the Borrower of a conformed copy of the signed contract and the performance security if applicable in accordance with paragraph 2(h) above.

#### **Due Diligence concerning the Bank's Sanctions Policies and Procedures**

8. When conducting the evaluation of bids, the Borrower shall check the eligibility of bidders from the lists of firms and individuals debarred and suspended, pursuant to paragraph 1.16(d) of these Guidelines and/or paragraph 1.23(d) of the Consultants Guidelines, by the Bank that are posted on the Bank's external website. The Borrower shall apply additional due diligence by closely supervising and monitoring any on-going contract (whether under prior or post review) executed by a firm or individual which has been sanctioned by the Bank after such contract was signed. The Borrower shall neither sign any new contracts nor sign an amendment, including any extension of time for completion or a change or variation order, to an on-going contract with a suspended or debarred firm or individual after the effective date of the suspension or debarment without the Bank's prior review and no objection. The Bank will only finance additional expenditures if they were incurred before the completion date of the original contract or the completion date as revised (i) for prior review contracts, in an amendment to which the Bank has given its no objection, and (ii) for post review contracts, in an amendment signed before the effective date of suspension or debarment. The Bank will not finance any new contract, or any amendment or addendum introducing a material modification to any existing contract that was signed with a suspended or debarred firm or individual on or after the effective date of suspension or debarment.

## APPENDIX 2: DOMESTIC PREFERENCES

### Preference for Domestically Manufactured Goods

1. The Borrower may, with the agreement of the Bank, grant a margin of preference in the evaluation of bids under ICB procedures to bids offering certain goods manufactured in the country of the Borrower, when compared to bids offering such goods manufactured elsewhere. In such cases, bidding documents shall clearly indicate any preference to be granted to domestically manufactured goods and the information required to establish the eligibility of a bid for such preference. The nationality of the manufacturer or Supplier is not a condition for such eligibility. The methods and stages set forth hereunder shall be followed in the evaluation and comparison of bids.
2. For comparison, responsive bids shall be classified in one of the following three groups:
  - (a) Group A: bids exclusively offering goods manufactured in the country of the Borrower if the bidder establishes to the satisfaction of the Borrower and the Bank that (i) labor, raw material, and components from within the country of the Borrower will account for 30% (thirty percent) or more of the EXW price of the product offered, and (ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing/assembling such goods at least since the time of bid submission.
  - (b) Group B: all other bids offering goods manufactured in the country of the Borrower.
  - (c) Group C: bids offering goods manufactured abroad that have been already imported or that will be directly imported.
3. The price quoted for goods in bids of Groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for goods in bids of Group C shall be on CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.
4. In the first step, all evaluated bids in each group shall be compared to determine the lowest bid in each group. Such lowest evaluated bids shall be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.
5. If as a result of the comparison under paragraph 4 above, the lowest evaluated bid is a bid from Group C, all bids from Group C shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated price of goods offered in each bid from Group C, for the purpose of this further comparison only, an amount equal to 15% (fifteen percent) of the respective CIP bid price for goods to be imported and already imported goods. Both prices shall include unconditional discounts and be corrected for arithmetical errors. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group C shall be selected as per paragraph 4 above.



6. No margin of preference shall apply to turnkey contracts for the supply of a number of discrete items of equipment as well as assembly, installation, and/or construction as defined in paragraph 2.4 of Section II.<sup>80</sup> However, with the Bank's no objection, bids for turnkey contracts may be invited and evaluated on the basis of DDP<sup>81</sup> (named place of destination) prices for goods manufactured abroad.

7. In the case of single responsibility (other than turnkey) contracts for large industrial plants and facilities as defined in paragraph 2.4 of Section II, the margin of preference shall not be applied to the whole package but only to the locally manufactured equipment. Equipment offered from abroad shall be quoted CIP and equipment offered locally shall be quoted EXW. All other components, such as design, construction, local transportation, and insurance to the place of destination, assembly, installation, and supervision, as applicable, shall be quoted separately. Bids will not be classified into Groups A, B, or C. In the comparison of bids, only the CIP price of each bid of the equipment offered from outside the Borrower's country shall be increased by 15% (fifteen percent). No preference shall be applied for any associated or non-consulting services or works included in the package. The bid determined to be the lowest evaluated in accordance with the bid evaluation criteria including domestic preference, if applicable, and applied as above, shall be selected for award.

### **Preference for Domestic Contractors**

8. For contracts for works to be awarded on the basis of ICB, eligible Borrowers may, with the agreement of the Bank, grant a margin of preference of 7.5% (seven and one-half percent) to domestic contractors,<sup>82</sup> in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall be asked to provide, as part of the data for qualification,<sup>83</sup> such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Borrower and accepted by the Bank, a particular contractor or group of contractors qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.

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<sup>80</sup> This does not refer to the supply of goods with supervision of installation in the same contract which is considered a contract for the supply of goods, and therefore eligible for the application of domestic preference to the goods component.

<sup>81</sup> DDP in *Incoterms 2010* stands for "Delivered Duty Paid" where the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable, any duty for import in the country of destination, and unloading at final destination as part of the turnkey contract. In countries that exempt bidders on imports under contracts financed by the Bank, comparison for bid evaluation purposes shall be made on the basis of non-exemption of duties and taxes on importation of goods manufactured abroad and the bidding documents may indicate that, before contract signature, the purchaser and the winning bidder will identify the amount of taxes payable for importation of the goods offered resulting from that exemption. However, the contract amount to be signed will not include the identified total amount of exempted duties and taxes.

<sup>82</sup> Preference for domestic contractors is applicable only in countries which qualify.

<sup>83</sup> At the prequalification and/or at the bidding stage.

(b) After bids have been received and reviewed by the Borrower, responsive bids shall be classified into the following groups:

- (i) Group A: bids offered by domestic contractors eligible for the preference.
- (ii) Group B: bids offered by other contractors.

9. All evaluated bids in each group shall, as a first evaluation step, be compared to determine the lowest bid, and the lowest evaluated bids in each group shall be further compared with each other. If, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award. If a bid from Group B is the lowest, as a second evaluation step, all bids from Group B shall then be further compared with the lowest evaluated bid from Group A. For the purpose of this further comparison only, an amount equal to 7.5% (seven and one-half percent) of the respective bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each bid from Group B. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group B based on the first evaluation step shall be selected.

## APPENDIX 3: GUIDANCE TO BIDDERS

### Purpose

1. This Appendix provides guidance to potential bidders wishing to participate in Bank-financed procurement.

### Responsibility for Procurement

2. The responsibility for the implementation of the project, and therefore for the payment of goods, works, and non-consulting services under the project, rests solely with the Borrower. The Bank, for its part, is required by its Articles of Agreement to ensure that funds are paid from a Bank loan only as expenditures are incurred. Disbursements of the proceeds of a loan are made only at the Borrower's request. The Borrower submits withdrawal application to the Bank together with required supporting documentation to demonstrate that the funds have been or are being used in accordance with the Loan Agreement and the Procurement Plan.<sup>84</sup> As emphasized in paragraph 1.2 of these Guidelines, the Borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is between the Borrower and the Supplier or Contractor. The Bank is not a party to the contract.

### Bank's Role

3. As stated in paragraph 1.13 of these Guidelines, the Bank reviews the procurement procedures, documents, bid evaluations, award recommendations, and the contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. In the case of major contracts, the documents are reviewed by the Bank prior to their issue, as described in Appendix 1.<sup>85</sup> Also, if, at any time in the procurement process (even after the award of contract), the Bank concludes that the agreed procedures were not followed in any material respect, the Bank may declare misprocurement, as described in paragraph 1.14. However, if a Borrower has awarded a contract after obtaining the Bank's no objection, the Bank will declare misprocurement only if the no objection was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of the bidder, the Bank may impose the applicable sanctions set forth in paragraph 1.16 of these Guidelines.
4. The Bank has published SBDs for various types of procurement. As stated in paragraphs 2.10 and 2.12 of the Guidelines, it is mandatory for the Borrower to use these documents, with minimum changes to address country- and project-specific issues. The prequalification and bidding documents are finalized and issued by the Borrower.

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<sup>84</sup> For additional information about the Bank's disbursement policies and procedures see *The World Bank Disbursement Guidelines for Projects* and *Disbursement Handbook for World Bank Clients* (available on the Bank's website at [www.worldbank.org/projects](http://www.worldbank.org/projects)).

<sup>85</sup> Except in the context of procurement conducted under the UCS Piloting Program described in paragraph 3.20, where all contracts will be subject to the Bank's post review.

## **Information on Bidding**

5. Information on bidding opportunities under ICB may be obtained from the General Procurement Notice and the Specific Procurement Notices as described in paragraphs 2.7 and 2.8 of these Guidelines. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained from the World Bank website<sup>86</sup> as well as from the InfoShop<sup>87</sup>. PADs are also available from the InfoShop and on the Bank's website upon approval of the loan.

## **Bidder's Role**

6. Once a bidder receives the prequalification or bidding document, the bidder should study the documents carefully to decide if it can meet the technical, commercial, and contractual conditions, and if so, proceed to prepare its bid. The bidder should then critically review the documents to see if there is any ambiguity, omission, or internal contradiction, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it should seek clarification from the Borrower, in writing, within the time period specified in the bidding documents for seeking clarifications.

7. The criteria and methodology for selection of the successful bidder are outlined in the bidding documents, generally under Instructions to Bidders and Specifications. If these are not clear, clarification should be similarly sought from the Borrower.

8. In this connection, it should be emphasized that the specific bidding documents issued by the Borrower govern each procurement process, as stated in paragraph 1.1 of these Guidelines. If a bidder feels that any of the provisions in the documents are inconsistent with the Guidelines, it should also raise this with the Borrower.

9. It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to ensure submission of a fully responsive and compliant bid, including all the supporting documents requested in the bidding documents. Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid. If a bidder wishes to propose deviations to a non-critical requirement or propose an alternative solution, it should strictly follow instructions on these aspects given in the Borrower's bidding documents in particular provisions dealing with deviations. Alternative solutions should be offered only when authorized in the bidding documents. Unless the bidding document clearly identified mandatory and non-mandatory technical and commercial requirements, the bidder assumes full responsibility that any deviations or conditions in its bid may be deemed material and result in the rejection of its bid. Once bids are received and publicly opened, bidders will not be required or permitted to change the price or substance of a bid.

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<sup>86</sup> [www.worldbank.org](http://www.worldbank.org).

<sup>87</sup> The InfoShop address is the World Bank address at 1818 H Street, N.W., Washington, D.C. 20433, U.S.A. The Project Database is available at [www.worldbank.org/projects](http://www.worldbank.org/projects).

## **Confidentiality**

10. As stated in paragraph 2.47 of these Guidelines, the process of bid evaluation shall be confidential until the publication of the award of contract. This is essential to enable the Borrower and Bank reviewers to avoid either the reality or perception of improper interference. If at this stage a bidder wishes to bring additional information to the notice of the Borrower, the Bank, or both, it should do so in writing.

## **Action by the Bank**

11. Bidders are free to send copies of their communications on issues and questions with the Borrower to the Bank or to write to the Bank directly, when Borrowers do not respond promptly, or the communication is a complaint against the Borrower. All such communications should be addressed to the Task Team Leader for the project, with a copy to the Country Director for the borrowing country and to the Regional Procurement Manager. Names of Task Team Leaders are available in the PAD.

12. Communications received by the Bank from potential bidders, prior to the closing date for submission of the bids, will, if appropriate, be referred to the Borrower with the Bank's comments and advice for action or response.

13. Communication, including complaints, received from bidders after the opening of the bids, will be handled as follows. In the case of contracts not subject to prior review by the Bank, the communication or its relevant extracts, as deemed appropriate, will be sent to the Borrower for due consideration and appropriate action. The Borrower shall provide to the Bank all relevant documentation for the Bank's review and comments. In the cases of contracts subject to the prior review process, the communication will be examined by the Bank, in consultation with the Borrower. If additional data is required to complete this process, these will be obtained from the Borrower. If additional information or clarification is required from the bidder, the Bank will ask the Borrower to obtain it and comment or incorporate it, as appropriate, in the evaluation report. The Bank's review will not be completed until the communication is fully examined and considered. Communications received from bidders involving allegations of fraud and corruption<sup>88</sup> may warrant a different treatment due to reasons of confidentiality. In such cases, the Bank shall apply due care and discretion in sharing with the Borrower information deemed appropriate.

14. Except for acknowledgment, the Bank will not enter into discussion or correspondence with any bidder during the evaluation and review process of the procurement, until the award of contract is published.

## **Debriefing by the Bank**

15. As stated in paragraph 2.65, if, after notification of award, a bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Borrower. If the bidder is not satisfied with the written explanation given and wishes

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<sup>88</sup> Reporting on suspected fraud and corruption can be done directly to the Bank Integrity Vice Presidency (INT) by email: [investigations\\_hotline@worldbank.org](mailto:investigations_hotline@worldbank.org); through the World Bank website; through the 24-hour hotline operated by a third party; toll free +1-800-831-0463, collect calls +1-704-556-7046 (interpreters are available, anonymous calls accepted); or by contacting INT at the Bank's Headquarter office in Washington D.C.: +1-202-458-7677.

to seek a meeting with the Bank, it may do so by addressing the Regional Procurement Manager for the Borrowing country, who will arrange a meeting at the appropriate level and with the relevant staff. The purpose of such meeting is only to discuss the bidder's bid, and neither to reverse the Bank's position that has been conveyed to the Borrower nor to discuss the bids of competitors.