



# AFRICAN DEVELOPMENT BANK AFRICAN DEVELOPMENT FUND



## **RULES OF PROCEDURE FOR PROCUREMENT OF GOODS AND WORKS**



**TABLE OF CONTENTS**

	<u>Pages</u>
1. <u>INTRODUCTION</u> .....	1
1.1 Definitions.....	1
1.2 Purpose.....	2
1.3 Application.....	3
2. <u>GENERAL</u> .....	4
2.1 Basic Principles .....	4
2.2 Eligibility .....	5
2.3 Mode of Procurement .....	5
2.4 Parallel and Joint-financing.....	6
2.5 Type and Size of Contracts .....	6
2.6 Information on Approved Projects .....	7
2.7 Advance Procurement Action .....	8
2.8 Retroactive Financing .....	8
2.9 Joint Ventures .....	8
2.10 Bank Review .....	8
2.11 Misprocurement .....	9
2.12 Fraud and Corruption.....	9
2.13 Reference to the Bank .....	
3. <u>INTERNATIONAL COMPETITIVE BIDDING</u> .....	10
A. Nature, Advertisement, Prequalification and Invitation to Bid.....	10
3.1 Nature and Procedure.....	10
3.2 Advertisement and Notification.....	10
3.3 Invitation to Bid .....	10
3.4 Prequalification of Bidders .....	11
B. Bidding Documents .....	12
3.5 General .....	12
3.6 Language .....	13
3.7 Clarity of Bidding Documents.....	13
3.8 Specifications and Standards .....	14
3.9 Origin of Goods and Services .....	14
3.10 Evaluation Factors.....	14
3.11 Preference Allowances .....	14
3.12 Pricing.....	15
3.13 Price Adjustment.....	15
3.14 Insurance and Transportation .....	16
3.15 Currency of Bids .....	16
3.16 Currency of Payment .....	17
3.17 Terms and Methods of Payment .....	17
3.18 Submission of Bids.....	18
3.19 Alternative Bids .....	18
3.20 Validity of Bids .....	18
3.21 Bid Securities .....	18
3.22 Conditions of Contract .....	18
3.23 Guarantees and Performance Bonds.....	18
3.24 Liquidated Damages and Bonus Clauses .....	19
3.25 Sub-contracts .....	19
3.26 Joint Ventures or Consortia .....	19

3.27	Force Majeure.....	19
3.28	Settlement of Disputes and Governing Law.....	20
C.	Issue and Delivery of Bidding Documents.....	20
3.29	Issue of Bidding Documents.....	20
3.30	Bid Period.....	21
3.31	Delivery of Bids.....	21
D.	Bid Opening, Evaluation and Award of Contract.....	22
3.32	Bid Opening Procedures.....	22
3.33	Clarification of Bids.....	22
3.34	Confidentiality of Procedures.....	22
3.35	Examination of Bids.....	22
3.36	Evaluation and Comparison of Bids.....	23
3.37	Domestic and Regional Preferences.....	24
3.38	Post-qualification of Bidders.....	25
3.39	Extension of Validity of Bids.....	25
3.40	Award of Contract.....	25
3.41	Return of the Bid Bonds.....	26
3.42	Rejection of Bids.....	26
4.	<u>OTHER FORMS OF PROCUREMENT</u> .....	28
4.1	Limited International Competition.....	28
4.2	National Competitive Bidding.....	28
4.3	International Shopping.....	29
4.4	National Shopping.....	30
4.5	Force Account.....	30
4.6	Direct Purchase.....	31
4.7	Procurement Agents.....	32
4.8	Inspection Agents.....	32
4.9	Procurement in Loans to Financial Intermediaries.....	32
4.10	Procurement on Non-Project Lending (Structural and Sectoral Adjustment Loans) Intended to Finance Import Programs.....	33
4.11	Procurement Under BOT and Similar Private Sector Arrangements.....	33
4.12	Community Participation in Procurement.....	34
APPENDIX I:	<u>ELIGIBILITY CRITERIA</u> .....	35
1.1	Eligibility of the Bidder.....	35
1.2	Eligibility of the Goods, Works and Related Services.....	36
APPENDIX II:	<u>ADVANCE PROCUREMENT ACTION (APA)</u> .....	37
2.1	Limiting the Scope for Advance Procurement Action.....	37
2.2	Safeguards.....	38
2.3	Bank Approval Process.....	38

APPENDIX III: <u>PREFERENCE ALLOWANCES</u> .....	39
3.1 Domestic and Regional Preferences .....	39
3.2 Eligibility for Domestic Preference .....	40
3.3 Domestic Margin .....	40
3.4 Eligibility for Regional Preference.....	41
3.5 Regional Margin .....	42
3.6 Evaluation and Comparison of Bids Involving Domestic and Regional Preference .....	42
3.7 Granting of Domestic Preference .....	42
3.8 Granting of Regional Preference .....	43
APPENDIX IV: <u>REVIEW BY THE BANK OF PROCUREMENT DECISIONS</u> .....	46
4.1 Scheduling of Procurement .....	46
4.2 Review by the Bank .....	46
4.3 Amendments, Modifications or Extensions .....	47
APPENDIX V: <u>GUIDANCE TO BIDDERS</u> .....	48
5.1 Purpose .....	48
5.2 Responsibility for Procurement .....	48
5.3 Bank's Role .....	48
5.4 Information on Bidding .....	48
5.5 Bidder's Role .....	49
5.6 Confidentiality .....	49
5.7 Action by the Bank .....	49
5.8 Disbursements .....	50

# 1. **INTRODUCTION**

## 1.1 **Definitions**

1.1.1 Wherever used in these Rules of Procedure the following terms shall have the following meanings, unless the context otherwise specifies or requires.

1. "ADB" shall mean the African Development Bank.
2. "ADF" shall mean the African Development Fund.
3. "NTF" shall mean the Nigeria Trust Fund.
4. "Bank" shall mean the ADB, ADF, NTF and any or all, as the case may be. In general these three institutions are referred to as "The African Development Bank Group", and wherever decisions are concerned the word "Bank" shall relate to the Management of the Institution.
5. "Bid Period" shall mean the period between the date of publication of the invitation to bid and the closing date for the submission of bids.
6. "Bid validity period" shall mean the period of time subsequent to the closing date for submission of bids for which the bid price and the conditions of the bid are not subject to any change by the bidder.
7. "Board of Directors" shall mean the Board of Directors of the ADB or ADF as the case may be.
8. "Executing Agency" shall mean the organization made responsible for the implementation of a project or programme financed by the Bank.
9. "Eligible member countries" or member countries shall mean:
  - (a) in the case of the ADB, the member countries of the ADB ;
  - (b) in the case of the ADF, the member countries of ADB and State Participants of the ADF.
10. "Cofinancing" shall mean an arrangement whereby the Bank and one or more cofinanciers other than the Borrower finance the same project, whether on a joint or on a parallel basis.
11. "Joint-financing" shall mean an arrangement whereby the Bank and one or more cofinanciers other than the Borrower finance the same project or the same packages of a project under one set of procurement rules.
12. "Parallel-financing" shall mean an arrangement whereby the Bank and one or more cofinanciers other than the Borrower finance separate packages of the same project, or separate packages of the same part of a project, each under its own procurement rules.

13. "Lowest bid" shall mean the lowest price offered for a given contract.
14. "Lowest evaluated cost bid" shall mean a bid which is determined to be the most economic after evaluating all terms and conditions of the bid.
15. "Procurement" shall mean any process of acquiring goods, works and related services such as: transportation, insurance, installation, training, maintenance and other similar services required for the implementation of a project excluding consultancy services.
16. "Regional member country" shall mean an African State which has acquired membership in the ADB.
17. "State Participant" shall mean State Participant of the ADF.
18. "Regional Contractor or Supplier" shall mean a contracting company or supplier whose legal constitution is in accordance with the laws of a regional member country in which it must have its registered office and undertake the majority of its activities and, the majority of its share capital, as far as the ownership thereof is or can be publicly known, is owned by nationals of regional member countries.
19. For the purposes of these Rules the words "bid" and "tender" shall have the same meaning.

## **1.2 Purpose**

1.2.1 The purpose of these Rules is to inform those carrying out a project that is financed in whole or in part by a loan from the African Development Bank or the African Development Fund, of the arrangements to be made for procuring the goods and works (including the related services) required for the project. The Loan Agreement governs the legal relationships between the Borrower and the Bank, and the Rules are made applicable to procurement of goods and works for the project, as provided in the Agreement. The rights and obligations of the Borrower and the providers of goods and works for the project are governed by the bidding documents, and by the contracts signed by the Borrower with the providers of goods and works, and not by these Rules or the Loan Agreements. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to the loan proceeds.

1.2.2 The use of these Rules is intended to enable Borrowers to acquire high quality goods and works at the most favorable price compatible with the conditions governing the Bank's loans.

## **1.3 Application**

1.3.1 These Rules are intended to be applicable where the proceeds of a loan from the Bank are to be used to finance the supply of goods and/or the provision of services

in the form of works for the implementation of a Bank financed project or programme. They replace the previous rules adopted by the Boards of Directors of the Bank on 15 June 1989 in Abidjan and some of the provisions of which have been modified or amended.

1.3.2 These Rules are not intended to apply to procurement by Borrowers of the services of consultants. For the process of acquiring such services by Borrowers, the Bank's "Rules of Procedure for the Use of Consultants" shall apply.

1.3.3 The present Rules apply to all procurement of goods, works and the related services undertaken within the framework of financing through other sources of funds managed by the Bank, except where the protocol of Agreement between the Bank and the source of funds concerned requires a specific procedure.



## **2. GENERAL**

### **2.1 Basic Principles**

2.1.1 The Agreement establishing the ADB requires that the proceeds of any loan be used with due attention to considerations of economy and efficiency<sup>1</sup>. Therefore, as a matter of policy, the Bank requires that there should be international competitive bidding for the procurement of goods and works needed for the implementation of projects financed with loans from the Bank, except where the Boards of Directors decide otherwise.

2.1.2 Although the Bank normally finances only part of the cost of contracts under projects and programs, it requires that in most cases a system of international competitive bidding be used in purchasing any goods and in contracting for works needed to implement any of the projects or programs wholly or partially financed with its loans. Furthermore, the Bank requires that any other bidding procedures and contract awards which may be used for procurement of goods and works on projects and programs wholly or partially financed by the Bank should be subject to conditions acceptable to the Bank, consistent with its policies and the purpose for which the loan is being granted. On the other hand, for contracts not financed by it, the Bank shall be satisfied that the procedures to be used will fulfil the Borrower's obligations to cause the project to be carried out diligently and efficiently.

2.1.3 The responsibility for the execution of the project, and therefore for the award and administration of contracts under the project, rests with the Borrower. The Bank is, however, 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". The procurement policy of the Bank is generally guided by four basic considerations:

- (a) the need for economy and efficiency in the implementation of projects including the provision of related goods and services ;
- (b) the Bank's interest as a cooperative institution in giving all eligible contractors and suppliers from developed and developing countries equal opportunity to compete in the supply of goods and works financed by the Bank;
- (c) the Bank's interest, as a development institution in encouraging the development and participation of contractors and suppliers from regional member countries of the Bank; and
- (d) the importance of transparency in the procurement process.

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<sup>1</sup>. "The Bank shall make arrangements to ensure that the proceeds of any loan made or guaranteed by it are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency". See Agreement establishing the African Development Bank, Article 17.1(h) ; see also Agreement establishing the African Development Fund, January 1981, Article 15, paragraph 5. Reference is made here also to the requirements of Article 38 of the Agreement establishing the African Development Bank.

## 2.2 Eligibility

2.2.1 The proceeds of any loan, investment or other financing undertaken in the ordinary operations of the Bank shall be used for procurement of goods and works, including the related services, provided by bidders<sup>2</sup>, both from eligible member countries. Bidders from non member countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from eligible member countries. Any waiver to this rule will be in accordance with the Articles 17.1.d of the Agreement Establishing the African Development Bank and 15.4(a) of the Agreement Establishing the African Development Fund.

2.2.2 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 pre-qualification, if required, to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a Borrower to disqualify any bidder for such reasons.

2.2.3 As exceptions to the foregoing :

- (a) A firm which has been engaged by the Borrower to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works (other than a continuation of the firm's earlier consulting services) for the same project . 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 build contract<sup>3</sup>.
- (b) Government-owned enterprises in the Borrower's country may participate only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. No dependent agency of the Borrower or Sub-Borrower under a Bank financed project shall be permitted to bid or submit a proposal for the procurement of goods or works under the project<sup>4</sup>.

## 2.3 Mode of Procurement

2.3.1 Procurement of goods, works and related services under the Bank's loans shall be made through international competitive bidding (paragraph 2.1.1) as defined in Chapter 3 of these Rules. However, subject to the Bank's prior approval, other forms of procurement (Chapter 4) could be agreed upon by the Borrower and the Bank, whenever it can be established that this is done with due regard for transparency, economy and efficiency in the implementation of the project.

<sup>2</sup> Bidders could be natural persons, enterprises, joint ventures or partnerships. The eligibility criteria in each case are given in the Appendices under Appendix I.

<sup>3</sup> See paragraph 2.5.5

<sup>4</sup> Other than Force Account Units, permitted under paragraphs 4.5.1 and 4.5.2.

2.3.2 The proposal of modes of procurement and the corresponding rules of procedure as well as the categories of goods and works and the packages to which they apply shall be discussed at the time of project appraisal, finalized during loan negotiations, and specified in the Loan Agreement between the Bank and the Borrower and in the President's Memorandum to the Boards of Directors.

## **2.4 Parallel and Joint-financing**

Where the Bank is financing on a parallel or joint basis with other sources of finance, the following shall apply:

- (a) Where the Bank finances on a parallel basis with other financiers, the Bank's Rules of Procedure for procurement shall apply to the components financed solely by the Bank, unless other financiers accept to apply the Bank's Rules.
- (b) Where the Bank finances on a joint basis with financiers, other than the Borrower, it will require as a condition for its financing that its own Rules of Procedure apply, unless the Board of Directors authorizes a waiver.

## **2.5 Type and Size of Contracts**

2.5.1 The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefore. The most common types of contracts provide for payments on the basis of a lump sum, unit prices, or combinations thereof.

2.5.2 For bidding purposes, projects being financed by the Bank may be divided into parts and sections in accordance with the magnitude, nature and location of the works and/or goods to be procured. However, sub-divisions should be of such an appropriate size as to foster widespread competition.

2.5.3 Where a variety of works and equipment is required, the works and the supply and installation of different major items of plant and equipment will normally be procured separately.

2.5.4 Where similar but separate works or items of equipment are required, these may be procured either separately or in groups in order to attract the interest of both smaller and larger bidders in order to maximize competition. To this end, contractors or suppliers would be allowed to bid for individual packages or for groups of similar packages at their option.

2.5.5 In certain cases, such as special processes, closely integrated manufacturing, or works of a special nature, the Bank may accept or require a turnkey contract under which the design and engineering, the supply and installation of equipment and the construction of a complete industrial plant or works are provided under one contract. Alternatively, the Borrower may remain responsible for the design and engineering, and invite bids for a single responsibility contract for the supply and installation of all goods

and works required for the project component. Design and build, and management contracting<sup>5</sup> contracts are also acceptable where appropriate.

2.5.6 The Bank requires that detailed engineering of the works or goods to be provided, including the preparation of technical specifications and other bidding documents, should precede the invitation to bid. However, in the case of turnkey contracts or contracts for large complex and very specialized industrial projects, it may be undesirable to prepare technical specifications in advance. In such cases, the Borrower may seek technical specifications and design through competition.

## **2.6 Information on Approved Projects**

2.6.1 After the approval of a loan by the Board of Directors, :

- (a) the Bank will prepare and issue an announcement (press release) containing general information on the approved project;
- (b) the Borrower shall prepare a General Procurement Notice (GPN) containing the description and nature of the project or programme, the type of goods and the extent of the services required for the works, an indication of the modes of procurement chosen and procedures to be followed as well as any restrictions attached thereto and the date and probable period for the invitation to bid. The GPN shall state whether or not prequalification is required; it shall give the name and address of the executing agency or the procurement agency, as appropriate. The contents of the GPN shall be agreed between the Borrower and the Bank during Loan Negotiation. The Borrower shall maintain a list of responses to the GPN. The GPN shall be updated annually for all outstanding procurement.

2.6.2 The announcement shall be given to the Press. The General Procurement Notice shall be transmitted to the Bank which will publish it in the "Development Business"<sup>6</sup> journal of the United Nations at least one month before any advertisement and notification of call for bids in respect of the project is made.

2.6.3 In order to encourage and facilitate the participation of sub-contractors and suppliers in contracts, the Borrower shall make available to interested parties, the list of potential bidders that have purchased bidding documents and, where prequalification is being followed, the list of prequalified bidders.

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<sup>5</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, but does not take on the risks. (If financed by the Bank, the services of the construction manager should be procured under the "Rules of Procedure for the Use of Consultants").

<sup>6</sup> Development Business is a publication of the United Nations Department of Public Information, UN Plaza, New York, New York, 10017, USA.

## **2.7 Advance Procurement Action**

2.7.1 In exceptional circumstances, where it is clearly shown that early contracting of goods or works would be a favorable and important factor in the timely completion of the project, the Borrower may, with the prior approval of the Bank, be authorized to issue invitations to bid or to prequalify or even, in exceptional cases, to issue a letter of intent to the selected contractor without signing the related contracts, before the approval of the project to be financed. In such a case, the Bank will require that the bidding or prequalification documents be approved by it before they are issued, and that the requirements for public advertisement and notification of the bid invitation as described in paragraph 3.2, be followed.

2.7.2 The Bank's approval of such advance procurement action will not in any way commit the Bank to approve the project subsequently. The limitations, safeguards and the Bank's approval process are outlined in Appendix II. Potential bidders shall also be fully informed by the Borrower of the implications of Advance Procurement Action.

## **2.8 Retroactive Financing**

The reimbursement by the Bank of any payments made by the Borrower under a given contract signed, after approval by the Board and prior to the signature of the Loan Agreement is referred to as retroactive financing by the Bank and is only permitted within the limits specified in the Loan Agreement.

## **2.9 Joint Ventures**

Suppliers and contractors in the Borrower's country are encouraged to participate in the procurement process since the Bank encourages the development of domestic industry. They may bid independently or in joint venture with foreign firms, but the Bank will not accept conditions of bidding which require mandatory joint ventures or other forms of mandatory associations between domestic and foreign firms.

## **2.10 Bank Review**

2.10.1 The Bank shall review 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. However, in some specific instances where the contract amounts are very small and the Executing Agency of the Borrower has proven capacity and experience in the application of the Bank's procurement rules, this prior review may negatively affect project implementation. Accordingly, under such conditions the Board of Directors may, in the course of approval of the project, authorise post review for such selected contracts. These review procedures are described in Appendix IV. The Loan Agreement shall specify, taking into account the nature of the activity, the extent to which these review procedures shall apply in respect of the different categories of goods and works to be financed in whole or in part from the Bank loan.

2.10.2 Bidding documents which are subject to prior review and that have not been approved by the Bank will not be considered as sufficient and adequate to satisfy the Bank's rules of procedure for procurement and accordingly the Bank may cancel the process and require retendering .

## **2.11 Misprocurement**

2.11.1 The Bank does not finance expenditures for goods and works which have not been procured in accordance with the agreed procedures in the Loan Agreement, and it is the policy of the Bank to cancel that portion of the loan allocated to the goods and works that have been misprocured<sup>7</sup>.

2.11.2 The Bank may in addition, exercise other remedies under the Loan Agreement, including cancellation of the whole loan. Cancellation of the whole loan shall be considered in cases where the project comprises one major component and several minor dependent ones, which cannot exist without the major component, and that major component has been misprocured. On the other hand, 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.

## **2.12 Fraud and Corruption**

2.12.1 It is the Bank's policy to require Borrowers (including beneficiaries of Bank loans and grants), as well as bidders/suppliers/contractors/concessionaires under Bank-financed projects, programmes and studies, to observe the highest standards of ethics during the procurement and the execution of contracts under such projects, programmes and studies. In pursuance of this policy, the Bank requires that Borrowers shall include in bidding documents, provisions against corrupt practices.

2.12.2 The Bank defines, for the purposes of these provisions, the terms set forth below as follows:

- (i) "corrupt practice" means the offering, giving receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution, and includes, inter alia, bribery and extortion or coercion which involve threats of injury to person, property or reputation; and
- (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders or between bidders and Borrower (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels.

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<sup>7</sup>

See also Appendix 5.3

2.12.3 The Bank will, following its own investigation and determination in accordance with its procedures:

- (a) reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (b) cancel the portion of the loan or grant allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan or Grant during the procurement or the execution of that contract; and
- (c) declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a Bank-financed contract. A firm declared ineligible by the Bank in accordance with this sub-paragraph shall be ineligible to be awarded a Bank-financed contract during the period of time determined by the Bank.

2.12.4 The Bank reserves the right, where a firm has been found by a national or international entity to have engaged in corrupt or fraudulent practice, to declare that such a firm is ineligible, for a stated period of time, to be awarded a Bank-financed contract.

2.12.5 The Bank will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers and contractors to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank.

2.12.6 In addition to the requirements set forth in Sub-clauses 2.12.1 to 2.12.5, with the specific agreement of the Bank, a Borrower may set forth in bid forms for large contracts financed by the Bank, an undertaking of the bidder to observe<sup>8</sup>, in competing for and executing a contract, the Borrowing country's laws against fraud and corruption, including bribery as listed in the bidding documents. The Bank will accept the introduction of such undertaking, at the request of the Borrower, provided it is satisfied that:

- (i) the requirement of such undertaking is part of an anti-corruption programme initiated in the Borrowing country; and
- (ii) such requirement shall apply, within a timetable agreed between the Bank and the Borrowing country, to all similar public procurement.

## 2.13 References to the Bank

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<sup>8</sup> For instance, such an undertaking could read as follows: " We hereby 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."

If the Borrower wishes to refer to the Bank in procurement documents, the following language shall be used:

The (name of the Borrower) has received (or in appropriate cases 'has applied for') a loan from the African Development Bank or the African Development Fund in various currencies equivalent to UA ... towards the cost of (name of the project), and intends to apply a portion of the proceeds of this loan to eligible payments under this contract. Payments by the African Development Bank or Fund will be made only at the request of (name of Borrower or designate) and upon approval by the African Development Bank or Fund, and will be subject, in all respects, to the terms and conditions of the Loan Agreement. No party other than (name of Borrower) shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.



### **3. INTERNATIONAL COMPETITIVE BIDDING**

#### **A. Nature, Advertisement, Prequalification and Invitation to Bid**

##### **3.1 Nature and Procedure**

International Competitive Bidding (ICB) is a method for the procurement of goods and services requiring notification to the international community. Its objective is to provide potential bidders from all eligible member countries with timely and adequate notification of a Borrower's requirements and an equal opportunity to bid; and it is carried out by open advertisement addressed to suppliers or contractors inviting them to bid.

##### **3.2 Advertisement and Notification**

3.2.1 The Borrower shall be required to advertise the invitation to bid in the form of the Specific Procurement Notice (SPN) for any particular contracts under ICB, in at least one newspaper of general circulation in the Borrower's country and in the "Development Business" published by the United Nations. The invitation to bid shall be notified to local representatives of eligible member countries (e.g. embassies, consulates, and trade offices in the Borrower's country) and to those eligible potential bidders who have expressed interest in response to the General Procurement Notice.

3.2.2 For large or specialized contracts the Bank may additionally require that the invitation to bid be advertised in well-known technical magazines or trade publications, or in newspapers of wide international circulation.

3.2.3 The notification of the invitation to bid shall be done at the same time as the advertisement in the local newspaper. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses. The Borrower shall report to the Bank on how the invitation to bid has been published.

3.2.4 Details concerning the extent of the advertisements shall be discussed between the Bank and the Borrower and specified in the Loan Agreement. The Borrower shall ensure that the publication of the invitation to bid in the different media is coordinated accordingly.

##### **3.3 Invitation to Bid**

3.3.1 The invitation to bid shall be issued by the Borrower and advertised in conformity with section 3.2 of these rules.

3.3.2 The invitation to bid shall be prepared by the Borrower. If requested the Bank will assist in its preparation. Invitations shall contain: a brief description of the goods or scope of the works; an indication of the conditions for obtaining the documents; date for invitation to bid; bid closing as well as bid opening date, hour and place; name and

complete address of the executing agency; any restrictions on procurement in terms of eligibility; and the source of financing.

3.3.3 The Borrower shall send the draft text of the invitation to the Bank for comment and approval, and shall incorporate into the final text of the invitation, prior to publication, any amendments agreed with the Bank.

3.3.4 Invitations which are issued without prior approval by the Bank may not be considered as sufficient and adequate to satisfy the Bank's requirements, and consequently the Borrower will be requested to issue new invitations to bid.

### **3.4 Prequalification of Bidders**

3.4.1 The Bank will require prequalification for large or complex contracts or turnkey contracts to ensure, in advance of bidding, that invitations to bid are confined to capable firms. For suppliers of goods or equipment, prequalification may be required where quality and/or performance is of primary importance, and/or suppliers' back-up and maintenance services are critical.

3.4.2 The need for and advisability of prequalification shall be discussed between the Bank and the Borrower at the time of appraisal, and details agreed upon at the time when the loan is being negotiated. In the case of advance procurement action, agreement between the Bank and the Borrower shall be reached at the appropriate time and stipulated in the Loan Agreement.

3.4.3 The invitation to prequalify shall be prepared by the Borrower<sup>9</sup> or at its request with the assistance of the Bank and shall be advertised in conformity with section 3.2 of these rules. Details concerning the extent of the advertisement shall be discussed between the Bank and the Borrower and specified in the Loan Agreement. The Borrower shall ensure that the publication of the invitation to bid in the different media is coordinated accordingly. Invitations shall indicate the conditions for obtaining the documents and contain the scope of the works, abbreviated specifications and a clear statement of the requirements and the criteria for qualification. The date and place for latest delivery of requests for prequalification shall also be included. A minimum period of 45 days shall be allowed for the submission of prequalification applications.

3.4.4 Where the Bank does not participate in the preparation of the invitation, the Borrower shall be under obligation to send to the Bank, for comment and approval, the draft text of the invitation, and to incorporate any amendments agreed with the Bank into the final text of the invitation. At the time of the issue of the invitation the Bank shall receive a copy of the notice of advertisement.

3.4.5 Invitations which are issued without prior approval by the Bank and which do not satisfy the Bank's rules will not be considered valid.

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<sup>9</sup>. The Bank has prepared a Standard Prequalification Document for use by its Borrowers, where appropriate.

3.4.6 When prequalification is undertaken, the Bank requires that qualification of bidders by the Borrower shall be based upon the capability and resources of the applicants to perform the particular work satisfactorily, taking into account their:

- (a) experience and past performance on similar contracts;
- (b) knowledge of local working conditions in developing countries;
- (c) capabilities with respect to personnel, equipment and construction or manufacturing facilities;
- (d) financial position; and
- (e) current commitments.

3.4.7 Applications received for prequalification shall be analyzed, by the Borrower, using the criteria for qualification explicitly stated in the invitation to prequalify, and an evaluation report shall be prepared recommending a list of firms to be considered as prequalified. This report shall be submitted to the Bank for approval and shall indicate the criteria used as well as the justification for the choice made, in respect of the retained and the non-retained firms.

3.4.8 There shall be no limits on the number of firms to be prequalified, and all firms found capable of performing the work satisfactorily in accordance with the approved prequalification criteria shall be prequalified.

3.4.9 A joint venture of firms may prequalify by combining the capabilities and past experience of each of them. Firms which have been individually prequalified may form a joint venture in order to submit a joint bid. On the other hand, firms which have prequalified as partners in a joint venture shall not be allowed to submit individual bids.

3.4.10 Firms meeting the prequalification criteria and approval by the Bank shall be so notified by the Borrower and invited to bid. The notification shall indicate the terms and conditions under which bid documents shall be obtained as well as the date, hour and place for latest delivery of bids by the bidder, and of the bid opening. Other applicants that have not been successful in the prequalification shall be accordingly informed, by the Borrower, within one week after receipt of the Bank's "no objection" to the prequalification.

3.4.11 Verification of the information provided in the submission for pre-qualification shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

## **B. Bidding Documents**

### **3.5 General**

3.5.1 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for goods and works 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; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; 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 cost 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 printing and delivery to prospective bidders, and shall not be so high as to discourage qualified bidders. Guidance on critical components of the bidding documents is given in the following paragraphs.

3.5.2 Borrowers shall use the appropriate *Standard Bidding Documents (SBDs)* issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address country and project specific issues. 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. Where no relevant standard bidding documents have been issued, the Borrower shall use other internationally recognized standard conditions of contract and contract forms acceptable to the Bank.

3.5.3 The Borrower shall send to the Bank, for comment and approval, the draft text of the bidding documents and to incorporate any amendments agreed with the Bank, into the final text, as indicated in paragraph 3.5.2. Bidding documents that have not been approved by the Bank shall not be considered as sufficient and adequate to satisfy the Bank's rules of procedure for procurement. Consequently, such procurement may not, in principle, be eligible for Bank financing.

### **3.6 Language**

Prequalification and bidding documents shall be prepared in one of the two languages, English or French. A statement shall be included in the bidding documents stating which of the above two languages English or French is the governing language.

### **3.7 Clarity of Bidding Documents**

3.7.1 Bidding documents shall be worded in such a manner as to permit and encourage international competitive bidding and shall set forth as clearly and precisely as possible, the work to be accomplished, 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 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.

3.7.2 Drawings shall be made according to established international standards, in a clear and unambiguous manner and be consistent with the text of the technical specifications, and an order of precedence between the two, shall be specified.

### **3.8 Specifications and Standards**

3.8.1 Specifications mentioned in bidding documents shall be based on relevant characteristics and shall make reference to performance requirements, and not to brand names, catalogue numbers, or types of equipment of a specific manufacturer. If it becomes necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added.

3.8.2 The specifications shall permit the acceptance of offers of alternative equipment, articles or materials that have similar characteristics and that provide performance and quality at least equal to those specified.

3.8.3 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.

### **3.9 Origin of Goods and Services**

Bidding documents shall indicate that the supply of goods and services within the framework of Bank financed loans is limited to goods and services originating from eligible member countries. The Bank requires information concerning the country of origin of the goods and services it finances, and bidding documents shall require the supplier or contractor to provide the necessary information.

### **3.10 Evaluation Factors**

Bidding documents shall mention and describe all the factors and criteria which shall be taken into account in evaluating bids. Generally, only quantifiable factors shall be taken into consideration. However, if there are factors non-quantifiable in monetary terms which are expected to be taken into account, then the method and terms of quantification of those factors shall be described.

### **3.11 Preference Allowances**

Bidding documents shall clearly indicate any preference allowances which may be granted by the Borrower, the information required to establish the eligibility of a bid for such a preference, and the methods and stages that will be followed in the evaluation and comparison of such bids.

### **3.12 Pricing**

3.12.1 Bids for goods shall be invited on the basis of CIF (port of destination), or CIP (place of destination)<sup>10</sup> for all goods offered from abroad, and EXW<sup>11</sup> (ex works, ex factory or off-the-shelf) for locally-available or manufactured or assembled goods, including those previously imported. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source. Where inland transportation, installation, commissioning or other similar services are required to be performed by the bidder, as in the case of "supply and installation" contracts, the bidder shall be required to quote for these services, in addition.

3.12.2 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operations, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.<sup>12</sup>

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

### **3.13 Price Adjustment**

3.13.1 Bidding documents shall contain a clear statement on whether prices quoted by bidders may be fixed or subject to adjustment (upwards or downwards) on the occurrence of specified events over which the contractor or the supplier has no control and which are likely to affect the prices of major cost constituents of the contract, such as labour, imported materials, equipment, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 months, but shall be included in contracts which extend beyond 18 months. However, it is normal commercial 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. 3.13.2 Prices may 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 or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable) 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

<sup>10</sup>. Refer to INCOTERMS 1990 for further definitions. Published by the International Chamber of Commerce, 38 Cours Albert 1er, 75008 Paris, France. CIF is cost, insurance and freight for maritime transportation. CIP is cost, carriage and insurance in the case of multimodal transportation. Both terms are for duty unpaid, payment for which is the responsibility of the Borrower.

<sup>11</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, or the prior import of the equipment, offered in the bid.

<sup>12</sup>. Borrowers may prefer to exclude customs duties on imported equipment from the bid prices, since these are difficult to ascertain or, alternatively, to include a "provisional sum" for reimbursement of actual costs.

correction factor shall be applied in the formula, to avoid incorrect adjustment. Price adjustment shall be computed separately for each currency of payment.

3.13.2 Prices may 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 or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable) 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 formula, to avoid incorrect adjustment. Price adjustment shall be computed separately for each currency of payment.

### **3.14 Insurance and Transportation**

The bidding documents shall state precisely the types of insurance to be provided by the successful bidder and shall indicate the kinds of risks insured against, the liabilities to be covered, and the duration of the insurance. In contracts for the supply of goods on CIF or CIP basis, marine insurance and transportation are left to be arranged, by the supplier, from any eligible member country as part of the contract. Where goods are supplied on FOB basis and marine insurance and transportation are arranged by the Borrower separately, the Bank, if called upon to finance such insurance and transportation, will require to be satisfied that these services are procured from an eligible member country. Further the Bank will require that no undue restrictions have been placed on the procurement of such insurance and transportation and that due attention has been paid to considerations of economy and efficiency.

### **3.15 Currency of Bids**

3.15.1 Bidding documents shall state that the bidder may express the bid price in his country's currency or, at his option, in a currency widely used in international trade. A bidder who expects to incur expenditures in more than one currency and wishes to be paid accordingly shall state the respective portions of his bid price in each such currency. Alternatively, the bidder may express the entire bid price in one currency and indicate the percentages of the bid price required to be paid in other currencies and the exchange rates used in the calculations.

3.15.2 In the bidding documents for the supply and/or installation of equipment, the Borrower may require bidders to state the portion of the bid price representing local costs in the Borrower's currency.

3.15.3 In bidding documents for works, the Borrower may require bidders to state the bid price entirely in the Borrower's currency along with the requirements for foreign currency payments expressed as a percentage of the bid price for each such foreign currency. Each bidder shall specify the exchange rates he has used in such calculations. Alternatively, the Borrower may require bidders to use exchange rates specified in the bidding documents.

### **3.16 Currency of Payment**

3.16.1 Payment of the contract price shall be made in the currency or currencies in which the bid price is stated in the bid of the successful bidder.

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

### **3.17 Terms and Methods of Payment**

3.17.1 Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works.

- (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 use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision 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, advance on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the contractor's obligations under the contract.

3.17.2 The percentage of the total payment to be made in advance upon signature of the contract for mobilization expenses as well as any other advances to be made, as for example for materials delivered to the site for incorporation in the works, shall be clearly stated in the bidding documents.

3.17.3 The bidding documents shall likewise contain the terms of any security which may be required for advance payments as well as the modalities for their recovery and the terms and conditions under which the security shall be released.

3.17.4 Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms would be allowed and, if so, under what circumstances. The method of payment shall take into account the available procedures for withdrawals of the proceeds of the loan, as described in Appendix 5.8.

### **3.18 Submission of Bids**



In the Instruction to Bidders, the bidding documents shall specify in each case how the bids shall be sealed, marked and packaged.

### **3.19 Alternative Bids**

If alternative bids are acceptable, these shall be expressly stated in the instruction to bidders. If a bidder wishes to propose deviations to a noncritical requirement, or propose an alternative solution, the bidder shall quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted. Only the alternative bid of the substantially responsive lowest evaluated cost bidder shall be considered.

### **3.20 Validity of Bids<sup>13</sup>**

The validity period required for bids shall be specified in the invitation to bid. Bids shall be valid for such a period as to enable the Borrower to complete the comparison and evaluation of bids, review the recommendation of award with the Bank and obtain all the necessary approvals and be in a position to notify the successful bidder and finalize a contract.

### **3.21 Bid Securities**

The form of bid may require bid securities or other bid guarantees, but they shall not be set so high as to discourage suitable bidders nor too low as not to discourage bidders with too little financial strength to back up their bid properly.

### **3.22 Conditions of Contract**

Conditions of Contract shall cover, inter alia, definitions, the contractor's general obligations, provisions for bonds, indemnities and insurance, liquidated damages and bonus for completion ahead of schedule, percentage of payments to be retained, termination, advances to be made and how payment is to be made for services rendered. When appropriate, the conditions of contract shall also cover duties and responsibilities of the engineer, arrangements for engagement of labor, special risks, variation orders, and any special situation at the site of the work. Terms governing taxation and import duties shall also be included.

### **3.23 Guarantees and Performance Bonds**

3.23.1 Bidding documents for civil works shall include some form of security to guarantee that the work will be continued in case of failure of performance by the contractor. This security shall take the form of a performance bond, or bank guarantee, at the Borrower's option. The amount of the security shall depend on the nature and magnitude of the work. It shall be sufficient, however, to protect the Borrower in case of breach of contract by the contractor.

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<sup>13</sup> See also paragraphs 3.39.1, 3.39.2, and Appendix 4.2 (d)

3.23.2 A separate security shall also ensure the maintenance of the works for a given period of time after commissioning. This is usually done by retention money or bank guarantee, and subject to the conditions stated in para. 3.23.1. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

3.23.3 For the supply of goods, the supplier or manufacturer shall be required to provide a performance security (bank guarantee), depending on the market conditions and commercial practice for the particular type of goods, to guarantee performance and warranty obligations. Such guarantee shall be in a reasonable amount and should normally be valid during the warranty period of the equipment.

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

3.24.1 Provision for liquidated damages clauses shall be contained in the contract to compensate for delays in completion which may result in extra cost, loss of revenues, or inconvenience to the Borrower.

3.24.2 Provision may also be made for a bonus to be paid to contractors for completion of contracts ahead of times specified in the contract when such earlier completion would be of benefit to the Borrower.

### **3.25 Sub-contracts**

Where any services may be sub-contracted, the sub-contract shall include all the conditions applicable to the main contractor or supplier including the specific procurement requirements of the Bank. The rights and obligations of the sub-contractor are governed only by the sub-contract. The sub-contractor has no status under these Rules.

### **3.26 Joint Ventures or Consortia**

In the event that the contract is undertaken by a joint venture, consortium or group of contractors, the joint venture or consortium agreement and the contract shall require joint and several liability. Joint ventures or Consortia shall not include sources of supply of goods and services that are not qualified under these rules.

### **3.27 Force Majeure**

The contract shall contain clauses stipulating that failure on the part of the parties to perform any of their obligations under the contract shall not be considered a default in the performance of such obligations insofar as such failure is the result of an event of Force Majeure. Force Majeure shall be defined in the general conditions of contract.

### **3.28 Settlement of Disputes and Governing Law**

3.28.1 The conditions of contract shall include provisions dealing with the applicable law and the forum for the settlement of disputes. International commercial arbitration may have practical advantages over other methods for the settlement of disputes. Borrowers are, therefore, encouraged to provide for this type of arbitration in contracts for the procurement of goods and works. The Bank shall not be named arbitrator or be asked to name an arbitrator<sup>14</sup>.

3.28.2 In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators, which are designed to permit a speedier dispute settlement.

## **C. Issue and Delivery of Bidding Documents**

### **3.29 Issue of Bidding Documents**

3.29.1 Subject to the payment of a reasonable and non-refundable fee to cover the cost incurred for its preparation, bidding documents shall be issued to prospective bidders in cases where there is no prequalification and only to qualified bidders if a prequalification procedure is used.

3.29.2 Borrowers shall dispatch the bidding documents to requesting parties which apply in conformity with the corresponding terms contained in the notification of prequalification or the invitation to bid, by the most expeditious route, at the bidders' risk.

3.29.3 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 the Borrower's representatives to seek clarifications. Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank. Where any additional information, clarification, correction of errors or alterations of bidding documents is required, it shall be sent promptly to all those who had requested the original bidding documents, and in the form of addenda which will become part of the said documents. If need be, and with the Bank's approval, the closing date shall then be extended.

3.29.4 Questions related to the issue of bidding documents shall be discussed between the Bank and the Borrower and agreement reached at the appropriate time and specified in the Loan Agreement.

### **3.30 Bid Period**

<sup>14</sup> It is understood, however, that officials of the International Centre for Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

3.30.1 Although the time allowed for preparation of bids shall depend on the magnitude and complexity of the procurement sought, the Bank will require that at least 60 calendar days from the date of publication of the invitation to bid shall be allowed for the bid period. Where large works are involved, at least 90 calendar days from the date of publication of the invitation to bid, shall be allowed to enable prospective bidders conduct investigations at the site before submitting their bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits. In determining the bid period, the date of the availability of bidding documents to bidders shall be taken into consideration. Where the issue of the invitation to bid appears in several newspapers and/or other media, the date of publication in the Development Business Journal of the United Nations shall be considered as the starting date for the bid period.

3.30.2 Particulars concerning the bid period shall be agreed upon between the Bank and the Borrower at the appropriate time or at the time the loan is being negotiated. The agreed bid period shall be mentioned in the invitation to bid or in the notification of qualification.

3.30.3 Once the bid period has been set and advertised, it shall not be changed, except in exceptional circumstances. In no case shall it be shortened and only in exceptional circumstances may it be extended with the prior approval of the Bank provided such action can be proved to be solely in the interest of better competition, fairness in the treatment of potential bidders and economy for the Borrower. Any extension of the bid period shall be done reasonably in advance of the closing date and promptly communicated to all those who requested the bidding documents.

### **3.31 Delivery of Bids**

3.31.1 Bids shall be delivered, by mail or by hand, to the address, within the time limit and in the form and manner indicated in the invitation to bid and stipulated in the bidding documents.

3.31.2 Where bid bonds or other bid securities have been provided for and so stated in the bidding documents, these shall be delivered not later than the closing date and time for the deposit of the bids in the amounts and in the form and manner stipulated.

3.31.3 Only bids received within the time limit announced in the invitation shall be eligible for consideration. Bids received after the time stipulated in the bidding documents shall not be considered.

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

### **3.32 Bid Opening Procedures**

3.32.1 The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly<sup>15</sup> thereafter, and shall be announced, together with the place for the bid opening, in the invitation to bid. The Borrower shall open all bids at the stipulated time and place. Bids shall be opened in public; that is, bidders or their representatives shall be allowed to be present. The Bank shall always be informed in advance of the date of bid opening.

3.32.2 The name of the bidder, the bid prices and total amount of each bid, and of any alternative bids if they have been requested or permitted, any discounts, withdrawals, shall be read aloud and recorded when opened and a copy of this record shall be promptly sent to the Bank. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered, and they shall be returned unopened.

3.32.3 If pre-qualification procedures have not been used, the qualification data and the technical proposal should be considered first before going on to the financial proposal.

### **3.33 Clarification of Bids**

After the bids have been opened, no bidder shall be permitted to alter his bid. But clarifications not changing the substance and or price of the bid may be requested by the Borrower. Requests for clarification and the bidders' responses shall be made in writing.

### **3.34 Confidentiality of Procedures**

Information relating to examination, tabulation clarification and evaluation of bids and recommendations concerning awards shall not be communicated to any person or persons not officially concerned with the procedures, after public opening of bids and before the announcement of the award of contract to the successful bidder.

### **3.35 Examination of Bids**

3.35.1 Following the bid opening, a preliminary examination of the bids shall be carried out. The Borrower shall ascertain whether material errors in computation have been made in the bids, whether the bids are substantially responsive to the bidding documents, whether the required guarantees and securities have been provided, whether the documents have been properly signed, and whether the bids are otherwise generally in order.

3.35.2 A substantially responsive bid is one which is deemed to conform to all the terms and conditions of the bidding documents without material deviations or reservations. The Borrower's determination of a bid's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence.

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<sup>15</sup>. To allow sufficient time to take the bids to the place announced for public bid opening.

3.35.3 After preliminary examination, bids determined as not substantially responsive to the bidding documents shall be rejected. All bids determined to be substantially responsive shall be fully evaluated in accordance with the provisions of section 3.36.

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

3.36.1 The purpose of bid evaluation is to determine the value to the Borrower of each bid in a manner that will provide a meaningful comparison among responsive and responsible bids and the determination of the lowest evaluated cost bid.

3.36.2 Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents. Accordingly, bid evaluation shall be carried out using the criteria explicitly stated in the bidding documents. Bids shall be made comparable among themselves in order to determine the lowest evaluated cost bid. In addition to the bid price, adjusted to correct arithmetical errors, other factors such as the time of completion of execution or the efficiency and compatibility of the equipment, costs of inland transport to the specified site, payment schedule, delivery time, operating costs, the availability of service and spare parts, and related training, safety and environmental benefits, shall be taken into consideration. To the extent practicable, these factors shall be expressed in monetary terms or be given a relative weight in the evaluation provisions in the bidding documents, according to criteria specified in the bidding documents.

3.36.3 Unit rates and prices shall be analyzed to ensure that the bid is realistic. An analysis shall also be made of alternatives submitted in order to assess their technical validity and their cost implications for the Borrower.

3.36.4 The currency or currencies in which the price offered in each bid would be paid by the Borrower, if that bid were accepted, shall be valued in terms of a single currency selected by the Borrower (local currency or fully convertible foreign currency) for comparison of all bids and stated in the bidding documents. The rates of exchange to be used in such valuation shall be the selling (exchange) rates published by an official source (such as the Central Bank) or by a commercial bank or by an internationally circulated newspaper and applicable to similar transactions on a date selected, by the Borrower in advance, such source and date to be specified in the bidding documents provided that such date shall not be earlier than 30 days prior to the deadline for the receipt of bids nor later than the date prescribed in the bidding documents for the opening of bids.

3.36.5 For bid comparison purposes the foreign bid or offered price shall be the CIF or CIP price excluding import duties, consular fees and port taxes, to which will be added port handling charges and any local transport from the port or frontier to the project site. The domestic bid or offered price shall be the delivered price at the project site, with deduction for national sales, consumption and value-added taxes incorporated in the cost of the item or items offered. Once responsive bids have been made comparable they shall be tabulated and evaluated in order to determine the lowest evaluated cost bid.

3.36.6 Under works and turnkey contracts, contractors are responsible for all duties, taxes and other levies<sup>16</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.

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<sup>16</sup>. Unless bidding documents specify otherwise for some turnkey contracts.

3.36.7 A detailed report on the evaluation and comparison of bids, setting forth the specific reasons on which the determination of the lowest evaluated cost bid is based, shall be prepared by the Borrower and addressed to the Bank for approval.

3.36.8 The report to the Bank on the evaluation and comparison of bids shall be accompanied by the three lowest evaluated cost bids.

### **3.37 Domestic and Regional Preferences**

3.37.1 At the request of the Borrower, and under conditions to be agreed under the Loan Agreement and set forth in the bidding documents, a margin of preference may be provided in the evaluation of bids for:

- (a) goods manufactured either in the country of the Borrower (domestic) or in a country which has joined the borrowing country in a regional economic institutional arrangement (regional), when comparing bids offering such goods with those offering goods manufactured abroad; and
- (b) contractors either from the country of the Borrower (domestic) or from member countries which have joined the borrowing country in a regional economic institutional arrangement (regional), when comparing bids from eligible domestic/regional contractors with those from foreign firms.

3.37.2 Where domestic or regional preferences for manufactured goods or for contractors are allowed, the methods and stages set forth in Appendix III to these Rules shall be followed in the evaluation and comparison of bids.

### 3.38 Post-qualification of Bidders

3.38.1 For contracts for which prequalification is not required pursuant to section 3.4 above, information concerning the bidder's relevant experience, financial position, technical staff, and network of after-sales service, if needed, shall be required in the bidding documents. Normally, the information shall be considered during the initial examination of bids and the bid of any bidder who does not satisfactorily meet these requirements shall not be considered for evaluation.

3.38.2 In any case, the Borrower shall always ensure that the bidder whose bid has been evaluated as the lowest evaluated cost bid has the technical and financial capability to perform the contract satisfactorily. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet these requirements, its bid shall be rejected. In such an event, the bidder whose offer has been evaluated as the next lowest shall be scrutinized in a similar manner.

### 3.39 Extension of Validity of Bids<sup>17</sup>

3.39.1 The final award and signing of the contract shall be completed by the Borrower with the Bank's approval within the validity period of the bids which has been stated in the bidding documents so that extensions are not necessary. The validity period of bids shall be extended only in exceptional circumstances. Where an extension of the validity period is considered necessary, it shall be requested in writing before the initial expiration date from all those who submitted bids. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract (Appendix 4.2(d)).

3.39.2 Bidders who are willing to extend the validity of their bids shall neither be required nor permitted to modify the substance of their bids and shall be required to provide a suitable extension for their bid security. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, and the bid securities of bidders who are not willing to extend the validity of their bids shall be returned to them.

### 3.40 Award of Contract

3.40.1 The award shall be made, within the period of bid validity, to the bidder whose bid has been determined to be the "lowest evaluated cost bid", which shall not necessarily be at the lowest offered price, and which meets the appropriate standards of capability and financial resources. Such bidder shall not be required, as a condition of award, to undertake responsibilities or work not stipulated in the bidding documents, or otherwise to modify the bid as originally submitted.

3.40.2 The Bank shall approve the Borrower's bid evaluation and award recommendations. If the Bank determines that the proposed award is not consistent with the terms of its Loan Agreement with the Borrower, it will promptly inform the Borrower of its decision and state the reasons thereof and the contract shall not be eligible for financing by the Bank.

3.40.3 Upon receipt of the Bank's approval the Borrower shall inform the successful bidder and invite him to conclude the contract, within the time period of the validity of bids. The terms and conditions of the

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<sup>17</sup> See also paragraph 3.20 and Appendix 4.2(d)



contract shall not, without the Bank's concurrence, materially differ from those which were included in the bidding documents and on which bids were invited. The signed contract shall be furnished to the Bank promptly after its execution.

3.40.4 A contract which is awarded without the Bank's approval shall not be eligible for Bank financing.

### **3.41 Return of the Bid Bonds**

After concluding a contract and after a performance bond has been deposited by the successful bidder, the Borrower shall be under obligation to inform the unsuccessful bidders. The Borrower shall return the bid bonds or any other bid securities which may have been required in the bidding documents to unsuccessful bidders, within one week after concluding the contract with the successful bidder.

### **3.42 Rejection of Bids**

3.42.1 On examination of bids, a Borrower may reject all bids if no bid is substantially responsive (para. 3.35.2). A Borrower may, with the concurrence of the Bank, also reject all bids or a group of bids if there is sufficient evidence of lack of effective competition or collusion.

3.42.2 In principle a decision to reject all bids shall not be taken in cases where the bid prices are only slightly higher than the original cost estimates. However, Borrowers may, after consultation with the Bank review and reject all bids if the lowest evaluated cost bid exceeds the official estimate by an amount sufficient to provide a reasonable justification for such action.

3.42.3 Where all bids are rejected pursuant to any of the foregoing rules:

- (a) the Borrower shall review the causes justifying the rejection and consider whether revision of the specifications or modifications in the project or both are required before inviting new bids;

- (b) this fact shall be communicated to the Bank together with the justifications and any recommendations for revision of specifications or modifications in the project, as the case may be. The Bank will appraise any effects the proposed modifications may have on the project and will decide in agreement with the Borrower what actions may be necessary; and
- (c) new bids shall be requested from at least all who were invited to submit bids in the first instance and a reasonable amount of time shall be allowed for the submission of the new bids. Where the Bank considers it advisable it may require that the whole bidding procedure be repeated.

#### 4. OTHER MODES OF PROCUREMENT

There are circumstances where ICB would not be the most economic and efficient method of procurement, and where other methods are deemed more appropriate. The particular procurement methods and the categories of goods and works to which they apply shall be determined by agreement between the Bank and the Borrower, and shall be specified in the Appraisal Report, President's Memorandum and Loan Agreement. The Bank's policies with respect to margins of preference for domestic and regional manufactured goods and contractors do not apply to methods of procurement other than ICB. Packages shall not be divided into smaller units in order to make them less attractive for ICB procedures. The more common procurement methods which are generally considered in situations where ICB may not be suitable are set forth in this Chapter.

##### 4.1 **Limited International Competition**

4.1.1 Limited International Competition (LIC) is essentially ICB by direct invitation without open advertisement. It may be an appropriate method where (i) the contract values are small, or (ii) there is only a limited number of suppliers, or (iii) other exceptional reasons may justify departure from full ICB procedures.

4.1.2 Under limited international competition, a list of potential suppliers or contractors, shall be prepared by the Borrower and submitted to the Bank for comments and approval. The list shall contain as wide as possible representations from eligible member countries to assure competitive prices. The procedure to be followed is as specified under sections 3.5 - 3.36<sup>18</sup>.

4.1.3 The Bank, despite the adoption of the system of limited international competition, will issue the General Procurement Notice concerning the project upon approval of the loan and publish it as indicated in section 2.6 of these Rules.

4.1.4 The General Procurement Notice shall indicate that invitations to bid would be addressed by the Borrower only to a limited list of suppliers.

##### 4.2 **National Competitive Bidding**

4.2.1 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 efficient and economical way of procuring goods or works which, by their nature or scope, are unlikely to attract foreign competition. More specifically, NCB may be carried out where:

- (a) character, location or size of the construction works to be undertaken are such that they are unlikely to attract bids from outside the Borrower's country; or
- (b) in cases where bidding is in respect of supply of goods, where the goods are of such value or quantities or character that their supply could not possibly interest suppliers outside the Borrower's country, or where in the supply of such goods the advantages of international competitive bidding would be neutralized by the administrative or financial burden involved; and

<sup>18</sup>

The Bank's procurement review requirements are given in Appendix IV.

there are local contractors or suppliers, or both, sufficiently qualified and in a number sufficient to ensure competitive bidding.

4.2.2 Procurement through NCB is advertised by the Borrower only in the *national* press, and need not be notified to the international community. The extent, the mode and the text of the advertisement shall be agreed upon and be approved by the Bank. The procedure to be followed is as specified under the relevant sections 3.5 to 3.36<sup>19</sup>. The period for preparation of bids shall be not less than 45 days.

4.2.3 Under NCB eligible bidders resident within or from outside the borrowing member country, may submit bids, if they wish to participate.

### 4.3 International Shopping

4.3.1 Shopping is a procurement method based on comparing price quotations obtained from several suppliers, usually at least three, to ensure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value. The Bank may approve for public competition to be invited through request for quotations at international level, where it has been determined that:

- (a) the goods to be procured are so diversified that it would be of no commercial interest for any single supplier to bid for them; or
- (b) the goods are readily available off-the-shelf goods or standard specification commodities; and
- (c) the goods cannot be purchased locally.

4.3.2 When the procurement of goods by the procedure of International Shopping is approved, the Borrower shall be authorized to address itself to suppliers from at least three eligible member countries to seek quotations. The list may include qualified agents of foreign suppliers in the Borrower's country.

4.3.3 The list of the suppliers to be contacted and the bidding documents shall be submitted to the Bank for approval. The Borrower shall, after approval has been obtained, address a request for quotations to all approved suppliers, simultaneously. The request shall describe in clear terms the goods to be acquired, give specifications and quantities, specify the type of packaging required and the mode of delivery; as well as the site of and the expected time for delivery, and indicate the terms for payment and the fact that financing is assured by the Bank. A minimum period of 45 days shall be allowed for the preparation of bids. Quotations shall be requested free of taxes and import duties and they may be submitted by telex or facsimile.

4.3.4 For purchases of value less than UA 50,000, the quotations received by the Borrower shall be analyzed and compared. A report containing the analysis, comparisons and recommendations shall be addressed to the Bank for consideration and approval. For the others, the procedure to be followed, is as specified under the relevant sections 3.5 to 3.36<sup>20</sup>. If in the Bank's view, the quotations received are not

<sup>19</sup> The Bank's procurement review requirements are given in Appendix IV.

<sup>20</sup> The Bank's procurement review requirements are given in Appendix IV.

sufficiently competitive, the Borrower may be requested to address itself to additional suppliers for further quotations.

#### **4.4 National Shopping**

4.4.1 In circumstances similar to those mentioned in paragraph 4.3.1 except that the goods required can be acquired in the borrowing country, the Borrower may, with the approval of the Bank, invite quotations, provided that there is an adequate number of national suppliers and agents of qualified foreign suppliers to ensure competitive prices. To this end, the Borrower shall be authorized to address itself to all qualified national suppliers and agents in the Borrower's country.

4.4.2 The list of national suppliers to be contacted and the bidding documents shall be submitted to the Bank for approval.

4.4.3 A request for quotations shall be addressed by the Borrower to all approved national suppliers and agents, at the same time. The request shall describe in clear terms the goods to be acquired, give specifications and quantities, specify the place and the time for delivery, indicate the terms for payment and the fact that the financing is assured by the Bank. A minimum period of 30 days shall be allowed for the preparation of bids and quotations may be submitted by telex or facsimile. The procedure to be followed is as specified in paragraph 4.3.4. Once the Bank's approval of the report on comparison of quotations is obtained the Borrower shall proceed to make its purchases.

#### **4.5 Force Account**

4.5.1 Force account, that is, construction by the use of the Borrower's own personnel and equipment,<sup>21</sup> may be the only practical method for constructing some kinds of works. Whenever it is evident that force account may be the most efficient and economic way of executing certain works the Bank will not object to the Borrower doing so. The Bank, however, before authorizing the use of this procedure, shall satisfy itself that local organs are adequately staffed, equipped and organized to carry out the works expeditiously and at a reasonable cost.

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<sup>21</sup>. A government-owned construction unit that is not managerially and financially autonomous shall be considered a force account unit. "Force account" is otherwise known as "direct labor", "departmental forces," or "direct work."

4.5.2 The use of force account may be justified where:

- (a) quantities of work involved cannot be defined in advance;
- (b) works are small and scattered or in remote locations for which qualified construction firms are unlikely to bid at reasonable prices;
- (c) work is 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; and
- (e) there are emergencies needing prompt attention.

Details concerning the possibility of undertaking construction works by force account shall be discussed at the time of project appraisal.

#### **4.6 Direct Purchase**

4.6.1 In very exceptional circumstances the Bank may waive altogether any of the forms of public competition prescribed by these rules and authorize that procurement be obtained through direct negotiation between the Borrower and a specified contractor or supplier. Such authorization may be granted and specified in the appraisal report, particularly in the following circumstances:

- (a) Where civil works already satisfactorily under construction are to be extended, and the corresponding contract had been awarded following national or international competitive bidding satisfactory to the Bank.
- (b) Where equipment has already been acquired following international competitive bidding satisfactory to the Bank and additional goods of the same type as those purchased under an existing contract are required.
- (c) Where specific technologies and processes are obtainable only from one manufacturer holding exclusive patents and manufacturing rights.
- (d) Where critical items need to be purchased from a specified supplier to ensure that the output of a process plant shall be guaranteed by the contractor responsible for the process design.
- (e) Where standardization of equipment is essential for economic and technical reasons and it has been proved to the Bank's satisfaction that compatibility of the existing equipment with another make of equipment cannot be established and that there is no advantage in having an alternative supplier.
- (f) Where standardization of spare parts is required so that they may be compatible with existing equipment or spare parts or stock items related to specific and specialized equipment or machinery.
- (g) Where on an on-going project additional items need to be purchased for the completion of implementation.

4.6.2 In the case of contract extension (paragraphs 4.6.1(a) and (b)), the Bank shall be satisfied that the prices on the extended contract are reasonable and competitive and that there is clearly no advantage to further bidding or that any new bidding would be unlikely to receive adequate responses, and the value of the contract extension is less than the original contract value.

4.6.3 For the purpose of these rules standardization (paragraphs 4.6.1(e) and (f)), shall be deemed to be appropriate where the original equipment must be suitable for the purposes of the project being financed and have been acquired at reasonable prices through international competitive bidding satisfactory to the Bank, and provided that the number of the new items to be added is less than the existing value, and cannot be obtained from other sources.

#### **4.7 Procurement Agents**

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 international procurement. The agent shall strictly follow all the procurement procedures outlined in the Loan Agreement on behalf of the Borrower, including use of Bank Standard Bidding Documents, review procedures and documentation. This also applies in cases where UN agencies act as procurement agents. Management contractors may be employed in a similar manner, for a fee to contract for miscellaneous works involving reconstruction, repairs, rehabilitation, and new constructions in emergency situations, or where large numbers of small contracts are involved. If this is a component funded by the Bank, it shall be procured in accordance with the Bank's Rules of Procedure for the Use of Consultants.

#### **4.8 Inspection Agents**

Pre-shipment inspection and certification of imports is one of the safeguards for the Borrower, particularly where the country has a large import programme. The inspection and certification usually covers quality, quantity and reasonableness of price. Costs for certification of imports shall not be considered in the evaluation of bids under ICB.

#### **4.9 Procurement in Loans to Financial Intermediaries**

Where the loan provides funds to an institution such as an agricultural credit institution or a development finance company, to be relented to beneficiaries such as farmers or business firms including private sector enterprises, for the partial financing of sub-projects, the procurement shall be undertaken by the respective beneficiaries in accordance with established commercial practices, acceptable to the Bank. In cases where the financial intermediary is responsible for the procurement of goods and services for the purposes of on-lending in kind, the Bank's Rules shall apply. In such cases the appraisal report or the minutes of the loan negotiation shall indicate in a clear and detailed manner the rules of procedure to be followed, taking into consideration the sizes of the contracts and the ability of the beneficiary in applying specific procedures.

#### **4.10 Procurement on Non-Project Lending (Structural and Sectoral Adjustment Loans) intended to finance Import Programs**

4.10.1 Where non-project lending is intended to finance import programs, such as in the case of structural and sectoral adjustment loans, international competitive bidding shall be used for contracts above

a given threshold value. The advertising requirements may be simplified by not requiring the publication of a General Procurement Notice. The Invitation to Bid shall be inserted in at least one newspaper of national circulation in the Borrower's country in addition to either: (i) Development Business; or (ii) a newspaper, periodical or technical journal of wide multinational circulation. The period allowed for submission of bids may be reduced to four weeks. Bidding documents shall specify a single currency, widely used in international trade, in which the bidder is required to state the bid price.

4.10.2 For other contracts below a given threshold value, procurement shall be 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. These procedures shall be examined during project appraisal, agreed upon by the Bank and the Borrower during negotiations and specified in the Loan Agreement.

4.10.3 The threshold values shall be determined, taking into consideration the economic conditions of the borrowing country, the availability of supply sources within the country and other conditions of the loan. This shall be discussed at loan negotiations and stipulated in the Loan Agreement.

#### 4.11 Procurement under BOT and Similar Private Sector Arrangements

Where the Bank is participating in financing the cost of a project procured under a BOO/BOT/BOOT<sup>22</sup> or similar type of private sector arrangement, either of the following procurement procedures shall be used, as set forth in detail in the Appraisal Report, the President's Memorandum and the Loan Agreement :

- (a) The entrepreneur under BOO/BOT/BOOT or similar type of contract<sup>23</sup> shall be selected under ICB or LIC procedures acceptable to the Bank, 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 facilities offered, the cost charged to the user or purchaser, other income generated for the Borrower or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods, works and services required for the facility from eligible sources, using its own procedures. In this case, the Appraisal Report, the President's Memorandum and the Loan Agreement shall specify the type of expenditures incurred by the said entrepreneur towards which Bank financing will apply: OR
- (b) If the said entrepreneur has not been selected in the manner set forth in subparagraph (a) above, the goods, works or services required for the facility and to be financed by the Bank shall be procured in accordance with ICB or LIC procedures.

#### 4.12 Community Participation in Procurement

Where, in the interest of project sustainability, or to achieve certain specific social objectives of the project, it is desirable in selected project components to (i) call for the participation of local communities

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<sup>22</sup>. BOO: Build, Own, Operate.  
 BOT: Build, Operate, Transfer.  
 BOOT: Build, Own, Operate, Transfer.

<sup>23</sup>. For projects such as toll roads, tunnels, harbors, bridges, power stations, waste disposal plants, and water distribution systems.



and/or nongovernmental organizations (NGOs), or (ii) increase the utilization of local know-how and materials, or (iii) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations, provided these are efficient. The procedures proposed shall be outlined in the Appraisal Report, the President's Memorandum and the Loan Agreement.

## APPENDICES

### APPENDIX I:

#### ELIGIBILITY CRITERIA

The eligibility criteria for participation in the supply of goods, works and related services on Bank-financed projects and loans derives from the requirements of the Agreement Establishing the African Development Bank Article 17.1.d, and the Agreement Establishing the African Development Fund, Article 15.4(a), paragraph 4. The above requirements basically prescribe two types of eligibility criteria :

- (a) The eligibility of the bidder;
- (b) The eligibility of the goods, works and related services.

#### **1.1 Eligibility of the Bidder**

The eligibility of the bidder shall be based on nationality in accordance with the following rules:

- (a) **Natural Persons:** A natural person is eligible if he or she is a national of a member of the Bank or a State Participant of the Fund. Where a person has more than one nationality, such person shall be eligible if the nationality indicated in his or her bid is that of a member of the Bank or State Participant of the Fund.
- (b) **Corporations:** A corporation is eligible if it satisfies the following criteria:
  - i) it is incorporated in a country that is a member of the Bank or State Participant of the Fund;
  - ii) it is a national of a country that is a member of the Bank or State Participant of the Fund as determined by the law of its place of incorporation;
  - iii) it has its principal place of business in a country that is a member of the Bank or State Participant of the Fund.
- (c) **Joint Ventures and Associations:** An unincorporated joint venture, partnership or association shall be eligible if at least 60% of its individual or corporate members satisfy the eligibility requirement for individuals or corporations.

#### **1.2 Eligibility of the Goods, Works and Related Services**

1.2.1 In order to be eligible, the goods to be procured must have been mined, grown or produced in the form in which they are purchased in an eligible member country.

1.2.2 For works contracts which may include civil works, plant construction or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility either as a natural person, or corporation or joint

venture and association. Labour, equipment and materials needed for carrying out the works contract shall be supplied from eligible member countries.

1.2.3 For contracts which have been awarded on the basis of Cost, Insurance and Freight (CIF), bidders shall be free to arrange for ocean and other transportation and the related insurance from any eligible member country. On the other hand, where goods are shipped on FOB basis and the Bank has agreed to finance transportation and insurance separately, which are arranged by the purchaser under a separate contract, the Bank shall be satisfied that the services are supplied from eligible member countries.

**APPENDIX II****ADVANCE PROCUREMENT ACTION (APA) <sup>24</sup>**

In exceptional circumstances, where it is clearly shown that early contracting of goods or works would be a favorable and important factor in the timely completion of the project, the Borrower may, with the prior approval of the Bank, be authorized to issue invitations to bid or to prequalify or even, in exceptional cases, to issue a letter of intent to the selected contractor without signing the related contracts, before the approval of the project to be financed. In authorizing a Borrower to undertake Advance Procurement Action the Bank will take into consideration the limitations, safeguards and follow the approval process indicated below.

**2.1 Limiting the Scope for Advance Procurement Action**

2.1.1 In limiting the scope for advance procurement action it is advisable to start by identifying those project elements which appear suitable for APA.

Preinvestment Studies

2.1.2 Generally, preinvestment studies which are intended to prepare projects for execution are carried out during project preparation and before project appraisal. Where the financing of such studies is not available, either under bilateral grants, technical assistance funds, or alternative sources of financing, it might become necessary to include the cost of such preparatory studies in the project cost. In order to allow for a more rapid execution of the project, advance procurement action for such studies may be required. The preparatory studies referred to here would include: preparation or updating of architectural and detailed engineering design, bidding documents, other studies related to institutional strengthening and project management.

Preliminary work for Project Execution

2.1.3 Advance procurement action may be required for certain preliminary work needed to start project execution. This could be in connection with the construction of access roads, housing for construction workers, purchasing of rights of way and other real property, establishing and staffing the project executing agency.

Work affected by seasonal variations

2.1.4 In cases where it is evident that project work could be affected by the impact of seasonal variations, advance procurement action might be useful in avoiding unnecessary delays in the implementation of the project e.g. rain-fed rice project.

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<sup>24</sup> Advance Procurement Action consists in initiating and processing the procurement, up to the point where bids have been received and evaluated and an award decided upon. It stops short of entering into a contract, to avoid committing the Borrower before Bank funding for operations is issued.

### Equipment with a long manufacturing time

2.1.5 Where the manufacture of an equipment is expected to take some time, advance procurement action could be a useful tool in reducing part of the lead time for the availability of the equipment required, e.g. power generation and telecommunications equipment.

### Timing of Decision on APA

2.1.6 In taking a decision to allow a Borrower to proceed with APA, the Bank is well advised to proceed cautiously. As a matter of policy, with the exception of preinvestment studies, APA should be considered only after project preparation or preappraisal has been completed, in order to ensure that the Bank is satisfied with the overall design of the project and that it has identified appropriate components for its own financing and possible elements which may be acceptable for APA, if the Borrower so requests.

## **2.2 Safeguards**

2.2.1 The following safeguards are recommended for APA and should be clearly indicated and discussed with prospective Borrowers requesting to proceed with APA.

2.2.2 The Borrower shall be fully aware that APA is undertaken at its own risk and does not commit the Bank in any way to give the loan for the project.

2.2.3 The Borrower shall also be fully aware that procurement under APA must have been carried out according to Bank's procedures, if it is to be eligible for Bank financing,.

2.2.4 The Invitation for Bids and the Instruction to Bidders in the case of APA must indicate that the Borrower has applied for a loan from the Bank and that award of contract will be subject to approval of the loan by the Bank.

## **2.3 Bank Approval Process**

2.3.1 The Bank shall review any request for APA made by the Borrower taking into consideration the limitations indicated in the present document (Section 2.2). The decision to allow the Borrower to proceed with APA is delegated to the Operations Vice President.

2.3.2 The Board of Directors shall be advised accordingly through a special status report that APA is being considered for specific project elements. The responsibility for advising the Board of Directors rests with the Operations Vice President.

2.3.3 The Project Appraisal Report shall state the reasons and present justification for APA on specific project elements.

## APPENDIX III

### PREFERENCE ALLOWANCES

#### **3.1 Domestic and Regional Preferences**

3.1.1 Where procurement is made through international competitive bidding, the Borrower may, in agreement with the Bank, grant a margin of preference to domestic manufactured goods and to domestic contractors when evaluating bids and comparing domestic with foreign bids, subject to the conditions specified in these rules.

3.1.2 Similarly, a Borrower may, in agreement with the Bank, grant a margin of preference to goods produced in and services provided by contractors from other regional member countries which have joined the borrowing country in a regional economic institutional arrangement when evaluating bids and comparing those bids with other bids, subject to the conditions specified in these rules.

3.1.3 Any preference granted by the Borrower to domestic manufactured goods and works provided by domestic contractors is deemed to be a domestic preference for the purpose of these rules. Any preference granted by the Borrower to goods manufactured in and works provided by contractors from those regional eligible member countries which have joined its own country in a regional economic institutional arrangement is deemed to be a regional preference for the purpose of these rules.

3.1.4 Domestic preference can be granted by the Borrower only to domestic manufactured goods and domestic contractors as defined in these rules.

3.1.5 Regional preference can be granted by the Borrower to goods manufactured in and contractors from those regional eligible member countries which have joined with its own country in a regional economic cooperation arrangement provided they meet the requirements set out in these rules.

3.1.6 A Borrower wishing to grant either domestic or regional preference, must seek the agreement of the Bank including the applicable margin of preference either at the time of project appraisal or at loan negotiation. In the case of advance procurement action, the Bank's approval should be obtained before any advance procurement action takes place.

3.1.7 Any preference allowances must be announced in the invitations to bid and be clearly indicated in the bidding documents together with the information required to establish the eligibility of a bid for such preferences as well as the methods and stages that will be followed in the evaluation and comparison of such bids.

#### **3.2 Eligibility for Domestic Preference**

3.2.1 For the purpose of applying domestic preferences, goods (including related services) shall be deemed to be domestic manufactured if the manufacturing cost of such goods includes a value-added, net of taxes and duties, in the country of the Borrower equal to at least 20 percent of the ex-factory bid price of such goods.

3.2.2 A contractor is deemed to be domestic if:

- (a) its legal constitution is in accordance with the laws of the borrowing country where it must have its registered office and undertake the majority of its activities<sup>25</sup>; and
- (b) the majority of the capital shares are held by nationals of that country; and
- (c) the majority of the members of the board of directors are nationals of that country; and
- (d) not less than 50 percent of the key personnel are nationals of that country; and
- (e) there is no arrangement whereby any major part of the net profits or other tangible benefits of the domestic contractor will accrue or be paid to persons not nationals of that country or to firms which would not be eligible under this paragraph of these rules.

3.2.3 Where any domestic preference is to be granted, bidders must establish to the satisfaction of the Borrower and the Bank, that their bids are eligible for that preference.

### 3.3 Domestic Margin

The maximum domestic preference margin which the Borrower may grant to bidders eligible for such a preference is as follows:

- (a) manufactured goods and related services<sup>26</sup> - 15%
- (b) construction works - 10%.

### 3.4 Eligibility for Regional Preference

3.4.1 Goods manufactured (including related services) in regional Member countries that have joined the Borrower's country in a regional cooperation agreement designed to foster economic integration by a customs union or free trade area will be eligible for regional preference by the Borrower, if it can be established to the satisfaction of the Borrower and the Bank, that the manufacturing cost of such goods includes a domestic (referred to one country being a party to the agreement) value added equal to at least 20 percent of the ex- factory price indicated in the offer.

3.4.2 Works provided by contractors from regional Member countries that have joined the Borrower's country in a regional cooperation agreement designed to foster economic integration by a customs union or free trade area will be eligible for regional preference by the Borrower if it can be established to the satisfaction of the Borrower and the Bank that:

- (a) the contractor is legally constituted in accordance with the law of a regional member country which is party to the established regional preferential arrangement and has a registered office in that particular country and does business mainly in the same or other countries that are parties to the said regional preferential arrangement<sup>27</sup>;

<sup>25</sup>. This condition applies equally to any member of a joint venture or consortium and to every firm to which it is proposed to sub-contract any part of the works.

<sup>26</sup>. "Services" refers to services as defined in DEFINITION 15 of the present Rules.

<sup>27</sup>. This equally applies to any member of a joint venture or consortium and to every firm which is proposed to sub-contract any part of the

- (b) at least a majority of the capital shares of each of the contracting firms is owned by nationals of countries that are parties to the said regional preferential arrangement;
- (c) the majority of the members of the Board of Directors of each of the contracting firms is constituted by nationals of countries that are parties to the said regional preferential arrangement;
- (d) not less than 50 percent of the key personnel of each contracting firm are nationals of countries that are parties to the said regional preferential arrangement; and
- (e) there are no arrangements whereby any major parts of net profits or other tangible benefits of any of the contracting firms will accrue or be paid to persons not nationals of any of the countries which are parties to the said regional preferential arrangement or to firms that would not be eligible under this paragraph of these rules.

3.4.3 Where any regional preference is to be granted, bidders must establish to the satisfaction of the Borrower and the Bank that their bids are eligible for that preference.

### 3.5 Regional Margin

The maximum regional preference margin that the Borrower may grant to bidders eligible for such preference is as follows :

- |     |   |         |
|-----|---|---------|
| (a) | manufactured goods and related services <sup>28</sup> | - 10%   |
| (b) | construction works                                    | - 7.5%. |

### 3.6 Evaluation and Comparison of Bids Involving Domestic and Regional Preferences

Domestic and regional preferences will be applied in bid evaluation for goods and services to be procured through international competitive bidding in accordance with the following guidelines.

### 3.7 Granting of Domestic Preferences

#### Granting of Domestic Preference for Goods

3.7.1 Where domestic preference is provided, foreign and domestic bids are classified in one of the following two groups:

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works.

<sup>28</sup>.

"Services" refers to services as defined in DEFINITION 15 of the present Rules.



**Group A**, which includes bids offering goods which the respective bidders must have established to the satisfaction of the Borrower and the Bank to contain 20% minimum domestic value-added of the ex-factory price;

**Group B**, which includes all other bids.

3.7.2 In order to determine the lowest evaluated cost bid of each group, all evaluated bids in each group shall first be compared among themselves, subject to paragraph 3.36.5. Such lowest evaluated cost bids shall then be compared with each other and if, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award.

3.7.3 If, as a result of the comparison under para. 3.7.2 above, the lowest evaluated cost bid is a bid from Group B, all Group B bids shall be further compared with the lowest evaluated cost bid from Group A, after adding to the evaluated bid price of the imported goods offered in each Group B bid, for the purpose of this further comparison only, an amount equal to:

- (a) the amount of customs duties and other import taxes which a non-exempt importer would have to pay for the importation of the goods offered in such Group B bid; or
- (b) 15% of the CIF or CIP bid price of such goods if said customs duties and taxes exceed 15% of such price.

3.7.4 If the lowest evaluated cost bid from Group A in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated cost bid from Group B, as determined from the comparison under para. 3.7.2 shall be selected.

#### Granting of Domestic Preference for Construction Works

3.7.5 Foreign and domestic bids are classified in one of the following two groups:

**Group A**, which includes bids submitted by contractors which have established to the satisfaction of the Borrower and the Bank to be eligible for domestic preference; and

**Group B**, which includes all other bids.

3.7.6 In order to determine the lowest evaluated cost bid, all evaluated bids in each group shall first be compared among themselves, subject to paragraph 3.36.6. Such lowest evaluated cost bids shall then be compared with each other and if as a result of this comparison, a bid from Group A, is the most economic, it shall be selected for the award.

3.7.7 If as a result of the comparison under 3.7.6 above, the lowest evaluated cost bid is a bid from Group B, for the purpose of this further comparison only, an amount equal to 10% of the bid price will be added to bids received from contractors in Group B.

3.7.8 If the lowest evaluated cost bid from Group A in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated cost bid from Group B, as determined from the comparison under para. 3.7.6 shall be selected.

### 3.8 Granting of Regional Preferences

#### Granting of Regional Preference for Goods

3.8.1 Where regional preference is granted to goods manufactured in regional Member countries that have joined the Borrower's country in a regional preferential tariff arrangement designed to foster economic integration by a customs union or a free trade area, responsive bids are classified in one of the two groups:

**Group A**, which includes bids offering goods which the respective bidders must have established to the satisfaction of the Borrower and the Bank to be eligible for regional preference; and

**Group B**, which includes all other bids.

3.8.2 In order to determine the lowest evaluated cost bid of each group, all evaluated bids in each group shall first be compared among themselves, subject to paragraph 3.36.5. Such lowest evaluated cost bids shall then be compared with each other and if, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award.

3.8.3 If, as a result of the comparison under para. 3.8.2 above, the lowest evaluated cost bid is a bid from Group B, all Group B bids shall be further compared with the lowest evaluated cost bid from Group A, after adding to the evaluated bid price of the imported goods offered in each Group B bid, for the purpose of this further comparison only, an amount equal to :

- a) the difference between the import duty applicable to such goods when they originate in countries not parties to the preferential tariff arrangement and that which is applicable to those goods when they originate from countries that are parties to the agreement; or
- b) 10% of the CIF or CIP bid price of such goods if the difference indicated under a) above exceeds 10% of such price.

3.8.4 If the lowest evaluated cost bid from Group A in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated cost bid from Group B, as determined from the comparison under para. 3.8.2, shall be selected.

#### Granting of Regional Preference for Construction Works

3.8.5 Where regional preference is granted to goods manufactured in regional Member countries that have joined the Borrower's country in a regional preferential tariff arrangement designed to foster economic integration by a customs union or a free trade area, responsive bids are classified in one of the two groups:

**Group A**, which includes bids submitted by contractors which have established to the satisfaction of the Borrower and the Bank to be eligible for regional preference; and

**Group B**, which includes all other bids.

3.8.6 In order to determine the lowest evaluated cost bid all evaluated bids in each group shall first be compared among themselves, subject to paragraph 3.36.6. Such lowest evaluated cost bids shall then be

compared with each other and if as a result of this comparison, a bid from Group A, is the lowest, it shall be selected for the award.

3.8.7 If as a result of the comparison under 3.8.6 above, the lowest evaluated cost bid is a bid from Group B, for the purpose of this further comparison only, an amount equal to 7.5% of the bid price will be added to bids received from contractors in Group B.

3.8.8 If the lowest evaluated cost bid from Group A in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated cost bid from Group B, as determined from the comparison under para. 3.8.6 shall be selected.

**APPENDIX IV:****REVIEW BY THE BANK OF PROCUREMENT DECISIONS****4.1 Scheduling of Procurement**

The Bank shall review the procurement arrangements proposed by the Borrower, including contract packaging, applicable procedures, and the scheduling of the procurement process, for its conformity with these Rules and proposed implementation program and disbursement schedule. The Borrower shall promptly inform the Bank of any delay, or other changes in the scheduling of the procurement process, which could significantly affect the timely and successful implementation of the project contracts, and agree with the Bank on corrective measures.

**4.2 Review by the Bank**

With respect to all contracts which are made subject to the Bank's prior review, in accordance with Clause 2.10 of these Rules:

- (a) In cases where pre-qualification is used, the Borrower shall, before pre-qualification submissions are invited, furnish the Bank with the draft documents to be used, including the text of the invitation to pre-qualify, the pre-qualification 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 list of pre-qualified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for pre-qualification, 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 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 modifications shall require the Bank's concurrence 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, together with the 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, promptly inform the Borrower and state the reasons for such determination.

- (d) If the Borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary approvals and clearances and to make the award, it should seek the Bank's prior concurrence for the first request for extension, if it is longer than sixty calendar days, and for all subsequent requests for extension, irrespective of the period.
- (e) The terms and conditions of a contract shall not, without the Banks concurrence, materially differ from those on which bids were requested or pre-qualification of contractors, if any, was invited.
- (f) One conformed copy of the contract shall be furnished to the Bank, promptly after its signing and prior to delivery to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract. Where payments for the contract are to be made out of a Special Account (SA), a copy of the contract shall be furnished to the Bank prior to the making of the first payment out of the SA in respect of such contract.
- (g) All evaluation reports shall be accompanied by; (a) the three lowest evaluated cost bids and (b) 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 release by the Bank upon confirmation by the Borrower of contract signing.

#### **4.3 Amendments, Modifications or Extensions**

In the case of contracts subject to prior review, before granting a material extension of the stipulated time for performance of a contract, agreeing to any modification or waiver of the conditions of such contract, including issuing any change order or orders under such contract (except in cases of extreme urgency) which would in aggregate increase the original amount of the contract by more than 15 per cent of the original price, the Borrower shall inform the Bank of the proposed extension, modification, or change order and the reasons therefore. If the Bank determines that the proposal would be inconsistent with the provisions of the Loan Agreement, 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.

#### **4.4 Post Review**

4.4.1 With respect to each contract not governed by Appendix IV paragraph 4.2 above, the Borrower shall furnish to the Bank, promptly after its signing and prior to delivery to the Bank of the first application for withdrawal of funds from the Loan Account in respect of such contract, one conformed copy of such contract, together with the analysis of the respective bids, recommendations for award, any such other information as the Bank shall reasonably request. The Bank shall reserve the right to carry out post review of such documents, at any time before or after the first disbursement, and whenever it determines that the award of the contract or the

contract itself is not consistent with the Loan Agreement, the Bank shall declare misprocurement.

4.4.2 Where payments for the contract not governed by Appendix IV paragraph 4.2, are to be made out of a Special Account, a copy of the contract, together with the other information required to be furnished to the Bank, shall be forwarded to the Bank prior to delivery to the Bank of the first replenishment application in respect of such contract. The Bank shall, if it determines that the award of the contract or the contract itself is not consistent with the Loan Agreement, promptly inform the Borrower and state the reasons for such determination. These provisions shall not apply to contracts on account of which withdrawals from the loan are to be on the basis of Statements of Expenditure, for which case all such documents shall be retained by the Borrower for subsequent examination by independent auditors and Bank supervision missions.

**APPENDIX V:****GUIDANCE TO BIDDERS****5.1 Purpose**

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

**5.2 Responsibility for Procurement**

As emphasized in paragraph 2.1.3 of the Rules, 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.

**5.3 Bank's Role**

5.3.1 As stated in paragraph 2.1.3 of the Rules, the Bank reviews the procurement procedures, bid 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. The documents are reviewed by the Bank prior to their issue, as described in Appendix IV. 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 2.11 of the Rules. 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 the representatives of the Borrower or of the bidder, the Bank may impose the applicable sanctions set forth in paragraphs 2.12 of the Rules.

5.3.2 The Bank has published *Standard Bidding Documents* (SBDs) for various types of procurement. As stated in paragraph 3.5.2 of the Rules, it is mandatory for the Borrower to use these documents, with minimum changes to address country-and project-specific issues. The pre-qualification and bidding documents are finalized and issued by the Borrower.

**5.4 Information on Bidding**

Information on bidding opportunities under ICB may be obtained from the General Procurement Notice and the Specific Invitation to pre-qualify or to bid, as described in paragraphs 2.6 and 3.2 and 3.3 of the Rules. General guidance on participation, as well as advance information on business opportunities in upcoming projects, may be obtained through subscription to the United Nations Development Business (UNDB), and from the Bank's Quarterly Operational Summary of Projects (QOS).



## 5.5 Bidder's Role

5.5.1 Once a bidder receives the pre-qualification 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.

5.5.2 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.

5.5.3 In this connection it should be emphasized that the specific bidding documents issued by the Borrower govern each procurement, as stated in paragraph 1.2 of the Rules. If a bidder feels that any of the provisions in the documents are inconsistent with the Rules, it should also raise this with the Borrower.

5.5.4 It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to assure 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 noncritical requirement, or propose an alternative solution, the bidder should quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted. Once bids are received and publicly opened, bidders will not be required or permitted to change the price or substance of a bid.

## 5.6 Confidentiality

As stated in paragraph 3.34, the process of bid evaluation shall be confidential until the award is notified. 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.

## 5.7 Action by the Bank

5.7.1 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 Director of the Department for the relevant region for the borrowing country, with a copy to the Bank's Unit in charge of procurement monitoring.

5.7.2 References 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.

5.7.3 Communication received from bidders after the opening of the bids 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.

5.7.4 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 award of the contract is notified.

## 5.8 Disbursements

5.8.1 The responsibility for the implementation of the project, and therefore for the payment of goods, works and 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. Supporting evidence that the funds are used in accordance with the Loan Agreement shall be submitted with the Borrower's withdrawal application. Payment may be made (i) to reimburse the Borrower for payment(s) already made from its own resources, (ii) directly to a third party (usually to a supplier or consultant), (iii) to a commercial bank for expenditures against a Special Commitment covering a commercial bank's letter of credit; or (iv) through revolving fund account for small amounts.

5.8.2 The terms of payment are normally specified in the contract. Disbursement under a contract shall be made in the currency or currencies in which the contract price was quoted. If the percentage of payments to be made in other currencies is indicated in the contract, the exchange rates used for the payment should be those indicated in the contract. In drawing up payment terms, the Borrower shall take into account the minimum amounts of the request for disbursement. Such terms must be compatible with the minimum amounts, if necessary, through a grouping of bills. A complete description of the Bank's disbursement procedures is provided in the **Disbursement Handbook**.

5.8.3 In circumstances where a Borrower fails to meet its obligations to the Bank to make timely payments of amounts due in respect of principal, interests and other charges, the Bank will impose sanctions on loan signatures by the Borrower, approval of loans to the Borrower and suspension of disbursement of loans to the Borrower. These degrees of sanctions will be dependent on the duration of the default in payment.