

PROCUREMENT POLICY GUIDELINES AND PROCEDURES FOR THE JUDICIAL REFORM SUPPORT PROJECT

SC ADMINISTRATIVE CIRCULAR NO. 60-2003, November 18, 2003

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1. OBJECTIVES

1.1.

To ensure the effective implementation of the Judicial Reform Support Project (JRSP) through the timely procurement of Goods, Works, and Services;

1.2

To guide the concerned Supreme Court Offices in their respective roles in the procurement process;

1.3

To prescribe the allowed lead times for each procurement activity; and

1.4

To be able to monitor and resolve bottlenecks and problem areas in the procurement process

2. DEFINITION OF TERMS

For purposes of this JRSP Procurement Guidelines, the following terms or words and phrases shall mean or be understood as follows:

2.1

Bidding Documents - refer to documents issued by the JRSP-BAC as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the Goods, Works, and Services to be provided.

2.2

Bid - refers to a signed offer or proposal to undertake a contract submitted by a supplier, manufacturer, distributor, contractor or consultant in response to and in consonance with the requirements of the Bidding Documents.

2.3

Competitive Bidding - refers to a method of procurement which is open to participation by any interested party and which consists of processes and lead times as stipulated in the appendices 1 to 7 of this Administrative Circular.

2.4

Consulting Services - refer to services for infrastructure and other types of projects or activities of the Court requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the Court to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.

2.5

Goods - refer to all items, supplies, materials and general support services, except consulting services and works.

2.6

JRSP-BAC- refers to the Judicial Reform Support Project - Bids and Awards Committee as referred to under Section 6 of this Administrative Circular.

2.7

Procurement - Refers to the acquisition of Goods, Works and Consulting Services by the Procuring Entity.

2.8

Works - refer to the construction/rehabilitation of existing Halls of Justice (HOJ).

3. SCOPE

3.1

This Administrative Order applies to the procurement of all types of works, goods, and services in the implementation of the JRSP.

4. RESPONSIBILITY AND ACCOUNTABILITY

4.1

Responsibility for the efficient and timely administration of Administrative Circular is vested on the Supreme Court's Program Management Office (PMO), the JRSP Bids and Awards Committee (JRSP-BAC), and all other offices whose functions are within the scope of this Administrative Circular. This responsibility carries with it corresponding accountability of officials involved.

4.2

Monitoring and reporting compliance to this Administrative Circular is the responsibility of the PMO.

4.3

All JRSP procurement activities shall be done through, or with the assistance of the PMO. The Project Implementation Monitoring and Evaluation Group of the PMO (PMO-PIMEG) will manage the specific procurement activities, and track their baseline schedule and actual progress. The Program Director of the PMO will be responsible for the overall monitoring of the procurement process, particularly, the notification of the lagging activities and the responsible offices.

4.4

Official communication with the World Bank concerning procurement issues and activities shall be coursed

through the Program Director for final review and recommendation to the Chief Justice or the Judicial Reform Program Executive Committee (JRP-EXECOM), as the case may be.

4.5

The Project Implementation and Procurement Structure showing the relationships and communication/coordination flow with other offices and the Bank is in Appendix 1 of this Administrative Circular.

5. LEGAL FRAMEWORK

5.1

These Guidelines are formulated in fulfillment of a major legal commitment of the Government of the Philippines (GOP) with the World Bank (WB) and therefore, have the force and effect of a legal instrument for compliance of all concerned with the implementation of the JRSP. The provisions of these guidelines are basically premised and substantially based on, and in some parts or instances, literally quoted or drawn from:

5.1.1

JRSP LOAN AGREEMENT. The Loan Agreement executed by and between the GOP and the WB on October 2, 2003 shall govern the legal relationship between the Bank and the Supreme Court as the Project's Implementing Agency. The terms and conditions set forth therein for the procurement of goods, works and consulting services shall be observed in consonance with the Bank Guidelines.

5.1.2

BANK GUIDELINES

5.1.2.1

For Works and Goods procurement, the Guidelines: Procurement under IBRD Loan and Credits, January 1995, revised January and August 1996, September 1997 and January 1999 shall be used.

5.1.2.2

For the selection of Consultants, the Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised in September 1997, January 1999 and May 2002 shall be used.

5.1.2.3

More recent provisions and amendments of Bank Guidelines may be applicable subject to prior notice and clearance by the Bank.

5.1.3

REPUBLIC ACT NO. 9184 (An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes) and its Implementing Rules and Regulations (IRR).

5.2

In case of conflict, the Loan Agreement and the World Bank Guidelines take precedence over Government Guidelines.

6. THE BIDS AND AWARDS COMMITTEE

6.1

Composition. Pursuant to the provisions of Section 11[1] of R.A. 9184, the JRSP-Bids and Awards Committee (JRSP-BAC) is hereby created to be headed by the Court Administrator as Chairman, a Deputy Court Administrator as Vice-Chairman, and the following as members: Head of the Fiscal Management and Budget Office, Head of the Office of the Administrative Services, Technical Working Chair of the Committee on the Halls of Justice, Head of the Management Information System Office, and the Deputy Program Director of the Program Management Office.

Unless sooner removed for cause, the members of the JRSP-BAC shall have a fixed term of one (1) year reckoned from the date of appointment renewable at the discretion of the Chief Justice of the Supreme Court (Chief Justice). In case of resignation, retirement, separation, transfer, reassignment or removal, the replacement shall serve only for the unexpired term: Provided, That in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes, a member shall be suspended or removed by the Chief Justice.

6.2 Functions. The JRSP-BAC shall have the following powers and functions:

- 1) Advertise and/or post the invitation to bid;
- 2) Conduct pre-procurement and pre-bid conferences;
- 3) Determine the eligibility of prospective bidders;
- 4) Receive bids;
- 5) Conduct the evaluation of bids;
- 6) Undertake post-qualification proceedings;
- 7)

Recommend award of contracts to the Chief Justice or his duly authorized representative: Provided, That in the event the Chief Justice shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC;

- 8) Recommend the imposition of sanctions as provided in Section 9.3 of this Administrative Circular,
- 9) Perform such other functions as may be necessary.

6.3

JRSP-BAC Secretariat. There is hereby created a Secretariat to assist the JRSP-BAC in the conduct of its functions. It will serve as the main support unit of the Committee. It shall be headed by the Director of the PMO-PIMEG, with two (2) technical staff and one (1) administrative staff from the PMO as members.

7. APPROVING AUTHORITY FOR JRSP CONTRACTS

7.1

The Authorized Approving Officials for all JRSP contracts (goods, works and services) shall be in accordance with the following thresholds:

(i) Above P10.0M

-

Supreme Court En Banc

(ii) Above P1.0M up to P10.0M

-

Chief Justice

(iii) P1.0M and below

-

Program Director

7.2

For payment of contracts on goods, works, and services procured under the JRSP, the Authorized Officials to approve and authorize payment shall be in accordance with the following thresholds:

(i) Above P10.0M

-

Supreme Court En Banc

(ii) Above P1.0M up to P10.0M

-

Chief Justice

(iii) P1.0M and below

-

Program Director

8. METHODS OF PROCUREMENT AND PROCEDURES

8.1 GOODS AND WORKS

Except as provided in section 8.1.2 of this Administrative Circular, goods and works shall be procured under contracts awarded in accordance with the provisions of Section II of the World Bank Guidelines on Procurement under IBRD Loans and IDA Credits (hereafter refer to as Bank Guidelines; Section II is on International Competitive Bidding, see Annex A) and paragraph 5[2] of Appendix 1 thereto.

8.1.1 International Competitive Bidding

The following provisions shall apply to goods and works to be procured under contracts awarded in accordance

with the provisions of the above paragraph.

1. Grouping of Contracts

To the extent practicable, contracts for works shall be grouped in bid packages estimated to cost \$500,000 equivalent or more each, and contracts of goods shall be grouped in bid packages estimated to cost \$200,000, equivalent or more each.

2. Preference of Domestically Manufactured Goods

The provisions of paragraph 2.54 and 2.55 of the Bank Guidelines (see paragraphs 2.54 and 2.55 of Annex A) and Appendix 2 thereto (see Annex B) shall apply to goods manufactured in the territory of the Borrower.

3. Notification and Advertising

The Invitation to pre-qualify or bid for each contract estimated to cost \$10,000,000 equivalent or more shall be advertised in accordance with the procedures applicable to large contracts under paragraph 2.8 of the Bank Guidelines (see paragraph 2.8 of Annex A).

8.1.2 Other Procurement Procedures

1. National Competitive Bidding

Goods estimated to cost less than \$200,000 equivalent per contract, up to an aggregate amount not to exceed \$300,000 equivalent, and works estimated to cost less than \$500,000 equivalent per contract, up to an aggregate amount not to exceed \$3,000,000 equivalent, may be procured under contracts awarded in accordance with the provisions of paragraph 3.3[3] and 3.4[4] of the Bank Guidelines.

2. National Shopping

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$100,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraph 3.5[5] and 3.6[6] of the Bank Guidelines.

8.1.3 Review by the Bank of Procurement Decisions

1. Procurement Planning

Prior to issuance of any invitations to bid for contracts, the proposed procurement plan for the Project shall be furnished to the Bank for its review and approval, in accordance with the provisions of paragraph lot Appendix 1 to the Bank Guidelines (see paragraph 1 of Annex C). Procurement of all goods and works shall be undertaken in accordance with such procurement plan as shall have been approved by the Bank, and the provisions of said paragraph 1.

2. Prior Review

With respect to each contract for works estimated to cost the equivalent of \$500,000 or more and each contract for goods estimated to cost of \$500,000 or more procedures set forth in paragraph 2 and 3 of Appendix 1 to the Bank Guidelines shall apply (see paragraphs 2 and 3 of Annex C).

3. Post Review

With respect to each contract not governed by paragraph 2 of this part, the procedures set forth in paragraph 4 of Appendix 1 to the Bank Guidelines shall apply (see paragraph 4 of Annex C).

In executing the procurement process, the appropriate Bank's Standard Bidding Documents will be used. The processes and flowcharts of NCB ICB and National Shopping are detailed in Appendices 2, 3 and 4

respectively of this Administrative Circular.

8.2 EMPLOYMENT OF CONSULTANTS

8.2.1 Quality-and Cost-based Selection

Except as otherwise provided in Section 8.2.2 of this Administrative Circular, consultants' services shall be procured under contracts awarded in accordance with the provisions of Section II of the Bank Guidelines on Selection and Employment of Consultants (hereafter refer to as Consultant Guidelines; Section II is on Quality And Cost-Based Selection, see Annex D), and the provisions of paragraph 3.13 through 3.18 thereof applicable to quality-and cost-based selection of consultants (see Annex E).

8.2.2 Other Procedures for the Selection of Consultants

1. Quality-based Selection

Services for improving case adjudication and access to justice, and the establishment of an electronic judicial library, under Parts A and C4 of the Project (referring to Schedule 2 of the JRSP Loan Agreement), may be procured under contracts awarded in accordance with the provisions of paragraph 3.1 through 3.4 of the Consultant Guidelines (see Annex F).

2. Selection Based on Consultants' Qualification

Services for strengthening institutional capacity under Part C of the Project (referring to Schedule 2 of the JRSP Loan Agreement), estimated to cost less than \$100,000 equivalent per contract, may be procured under contracts awarded in accordance with the provisions of paragraph 3.1 (see Annex F) and 3.7[7] of the Consultant Guidelines.

3. Single Source Selection

Services for enhancing institutional integrity and for the implementation of a decentralized organization model, under Parts B and C.1 of the Project (referring to Schedule 2 of the JRSP Loan Agreement), may, with the Bank's prior agreement, be procured in accordance with the provisions of paragraph 3.8 through 3.11 of the Consultant Guidelines (see Annex G).

4. Individual Consultants

Services of Individual Consultants for:

(a)

Facilitating change management under Part D.I of the Project (referring to Schedule 2 of the JRSP Loan Agreement), shall be procured under contracts awarded in accordance with the provisions of paragraph 5.1 through 5.3 of the Consultant Guidelines (see Annex H); and

(b)

Enhancing the reform program management under Part D.2 of the Project (referring to Schedule 2 of the JRSP Loan Agreement), may be selected on a sole-source basis in accordance with the provisions of paragraph 5.3 and 5.4 of the Consultant Guidelines (see Annex H), subject to prior approval of the Bank.

8.3 REVIEW OF THE BANK OF THE SELECTION OF CONSULTANTS

8.3.1 Selection Planning

A plan for the selection of consultants, which shall include contract cost estimates, contract packaging, and applicable selection criteria and procedures, shall be furnished to the Bank for its review and approval prior to the issuance to consultants of any requests for proposals. Such plan shall be updated every six months during the execution of the Project, and each such updating shall be furnished to the Bank for its review and approval. Selection of all consultants' services shall be undertaken in accordance with such selection plan (as updated from time to time) as shall be approved by the Bank.

8.3.2 Prior Review

(a)

With respect to each contract for the employment of consulting firms estimated to cost the equivalent of \$100,000 or more, the procedures set forth in paragraphs 2, 3 and 5 of Appendix 1 to the Consultant Guidelines shall apply (see paragraph 2, 3 and 5 of Annex I).

(b)

With respect to each contract for the employment of individual consultants: (i) estimated to cost the equivalent of \$50,000 or more, the report on the comparison of the qualifications and experience of candidates, the terms of reference and the terms of employment of the consultants shall be furnished to the Bank for its prior review and approval; and (ii) to be selected on a sole source basis, the qualifications, experience, terms of reference and terms of employment of the consultants shall be furnished to the Bank for its prior review and approval. The contract shall be awarded only after the said approval shall have been given. The provisions of paragraph 3 of Appendix 1 to the Consultant Guidelines shall apply to such contract (see paragraph 3 of Annex

8.3.3 Post Review

With respect to each contract not governed by Section 8.3.2, the procedures set forth in paragraph 4 of Appendix 1 to the Bank Consultant Guidelines shall apply (see paragraph 4 of Annex I).

In executing the procurement process, the appropriate Bank's Standard Request for-Proposals will be used.

The different processes and flowcharts of the abovementioned selection methods are detailed in Appendices 4 to 7 of this Administrative Circular.

9. STANDARD PROCESSING TIME

9.1

In consonance with the World Bank Guidelines and pertinent provisions of R.A. No. 9184, the Supreme Court hereby mandates observance and adherence to the procurement activities and the corresponding lead times set in the various procurement methods applicable for this Project (see Appendices 2 to 7). Lead times established herein shall be the maximum allowable time per activity.

9.2

In case where the established lead times could not be met, or in case of emergency or unanticipated requirements, the responsible office shall provide written justification for the delay in compliance.

9.3

Sanctions. Supreme Court officials, employees and private individuals who shall fail to comply with the provisions of this Administrative Circular without just cause shall be held liable and subject to sanctions/penalties provided under Articles XXI to XXIII of R.A. 9184 (see Annex J).

9.4

Disciplinary Procedures. On the report of PMO, JRSP-BAC, WB or complaints from any party, the Court's Complaints and Investigation Division shall determine non-compliance/violations by SC/JRSP officials and employees of provisions of this Administrative Order, and impose the appropriate sanctions to be meted out to those found to have violated the herein provisions. The Complaints and Investigation Division shall complete its investigation/evaluation of each case and shall submit its findings/recommendations to the Office of the Chief Justice within thirty (30) days from the date the particular case has been brought to its attention. The Complaints and Investigation Division, in its performance of its duties and responsibilities under this Administrative Circular, may call upon any SC/JRSP officer and personnel to aid it in its investigation/evaluation of specific cases. In this regard, all JRSP-concerned offices are hereby directed to provide assistance whenever called upon by the Complaints and Investigation Division in the performance of its duties and responsibilities as prescribed under this Administrative Circular.

10. OTHER GUIDELINES

10.1

Protest Mechanism. Protests on decisions of the JRSP-BAC shall be resolved in accordance with Article XVII of RA No. 9184 (see Annex K).

10.2

Procurement Packaging. The PMO shall be responsible for procurement packaging. Factors to be considered may include type and nature of the work and goods to be procured, timing of delivery or completion with respect to other relevant contracts and the threshold allowed for the procurement method to be used.

10.3

Procurement Planning. All procurement should be within the approved budget and should be meticulously and judiciously planned by the PMO.

10.4

Procurement Monitoring and Reporting. Procurement Monitoring and Reporting shall be done by the SC/JRSP-BAC as provided in the IRR of RA No. 9184.

11. FORMS

11.1 For Procurement of Works and Goods:

- Guidelines: Procurement under IBRD Loan and Credits (January 1995, revised January and August 1996,

September 1997 and January 1999)

- Standard Pre-qualification Documents, Procurement of Works (September 1999)
- Standard Bidding Documents, Procurement of Works (July 1995, revised 1999.
- Standard Bidding Documents, Procurement of Works, Smaller Contracts (January 1995, with 4 Corrigenda, dated 10/06/96, 01/01/99, 10/21/99 and 01/22/2000)
- Standard Bidding Documents, Procurement of Goods (January 1995, Revised March 2000, January 2001 and March 2002)

11.2 For Procurement of Consultants:

- Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, and January 1999.
- Standard Request for Proposals, Selection of Consultants (July 1997, revised April 1998 and July 1999)
- Sample Form of Evaluation Report, Selection of Consultant (July 1998)

12. EFFECTIVITY

This Administrative Circular takes effect on the first day of December, 2003

Issued this 18th day of November 2003.

(Sgd.) HILARIO G. DAVIDE, Jr.

Chief Justice

[1] Each procuring entity shall establish a single BAC for its procurement. The BAC shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be designated by the head of the Procuring Entity. However, in no case shall approving authority be a member of the BAC.

[2] If a contract awarded under ICB procedures to a local bidder is written in the national language, a certified translation of the contract in either English, French, or Spanish shall be furnished to the Bank together with the conformed copy of the contract. Such certified translations shall also be furnished to the Bank, for any subsequent modifications of such contracts.

[3] National Competitive Bidding (NCB) is the competitive bidding procedure normally used for public procurement in the country of the Borrower, it 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. To be acceptable for use in Bank-financed procurement, these procedures shall be reviewed and modified as necessary to assure economy, efficiency, transparency, and broad consistency with the provision included in section 1 of these Guidelines. NCB may be preferred method of procurement where foreign bidders are not expected to be interested because (i) the contract values are small, (ii) works are scattered geographically or spread over time, (iii) works are labor

intensive, or (iv) the goods or works are available locally at prices below the international market. NCB procedures may also be used where the advantages of ICB are clearly outweighed by the administrative or financial burden involved.

[4] Publication of a General Procurement Notice is not required for NCB, and advertising may be limited to the national press or official gazette. Bidding documents may be in an official language of the country, and local currency is generally used for the purpose of bidding and payment. Adequate response time for preparation and submission of bids shall be provided. The procedures shall provide for adequate competition in order to ensure reasonable prices, and methods used in the evaluation of bids and the award of contracts shall be made known to all bidders and not be applied arbitrarily. If foreign firms wish to participate under these circumstances, they shall be allowed to do so.

[5] Shopping is a procurement method based on comparing price quotations obtained from several Suppliers, usually at least three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities that are small in value. Request for quotations shall indicate the description and quantity of the goods, as well as desired delivery time and place. Quotations may be submitted by telex or facsimile. The evaluation of quotations shall follow sound public or private sector practices of the purchaser. The items of the accepted offer shall be incorporated in a purchase order.

[6] International shopping shall solicit quotations from at least three Suppliers in two different countries. National shopping may be used where the desired goods are ordinarily available from more than one source in the country of the Borrower at competitive prices.

[7] This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the Borrower shall prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment, establish a short list, and select the firm with the most appropriate qualifications and references. The selected firm shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

LIST OF ANNEXES

"A"

International Competitive Bidding (Section 2 of the World Bank Guidelines for Procurement under IBRD Loans and IDA Loans)

"B"

Domestic Preferences (Appendix 2 of the World Bank Guidelines for Procurement under IBRD Loans and IDA Loans)

"C"

Review by the Bank of Procurement Decisions (Appendix 1 of the World Bank Guidelines for Procurement under IBRD Loans and IDA Loans)

"D"

Quality-And Cost-Based Selection (Section 2 of the World Bank Guidelines for Selection and Employment of Consultants)

"E"

Selection of Particular Types of Consultants (Sections 3.13 to 3.18 of the World Bank Guidelines for Selection and Employment of Consultants)

"F"

Quality-Based Selection (Section 3.1 to 3.4) of the World Bank Guidelines for Selection and Employment of Consultants)

"G"

Single-Source Selection (Sections 3.8 to 3.11 of the World Bank Guidelines for Selection and Employment of Consultants)

"H"

Selection of Individual Consultants (Section 5 of the World Bank Guidelines for Selection and Employment of Consultants)

"I"

Review by the Bank of the Selection of Consultants (Appendix 1 to the World Bank Guidelines for Selection and Employment of Consultants)

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LIST OF APPENDICES**"1"**

Project Implementation and Procurement Structure

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Procurement Process and Flow Chart for National Competitive Bidding (NCB)

"3"

Procurement Process and Flow Chart for International Competitive Bidding (ICB)

"4"

Process and Flow Chart for National Shopping

"5"

Process and Flow Chart for Quality and Cost-Based Selection (QCBS)

"6"

Process and Flow Chart for Selection Based on Consultant's Qualifications (SBCQ)

"7"

Process and Flow Chart for Selection of Individual Consultant

ANNEX "A"

II. INTERNATIONAL COMPETITIVE BIDDING

A. General

Introduction

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

Type and Size of Contracts

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

2.3

The size and scope of individual contracts will depend on the magnitude, nature and location of the project. For projects requiring a variety of goods and works, separate contracts generally are awarded for the supply and/or installation of different items of equipment and plant^[1] and for the works.

2.4

For a project requiring similar but separate items of equipment or works, bids may be invited under alternative contract options that would attract the interest of both small and large firms, which could be allowed, at their option, to bid for individual contracts (slices) or for a group of similar contracts (package). All bids and combinations of bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the bid or combination of bids offering the lowest evaluated cost to the Borrower. ^[2]

2.5

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 appropriate. management contracting[3] contracts are also acceptable where appropriate.

Two-Stage Bidding

2.6

Detailed design and engineering of the goods and works to be provided, including the preparation of technical specifications and other bidding documents, normally precede the invitation to bid for major contracts. However, in the case of turnkey contracts or contracts for large complex plants or works of a special nature it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case a two-stage bidding procedure may be used, under which first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage. These procedures are also appropriate in the procurement of equipment which is subject to rapid technological advances, such as major computer and communications systems.[4]

Notification and Advertising

2.7

Timely notification of bidding opportunities is essential in competitive bidding. For projects which include procurement on the basis of ICB, the Borrower is required to prepare and submit to the Bank a draft General Procurement Notice. The Bank will arrange for its publication in Development Business (UNDB).[5] The Notice shall contain information concerning the Borrower (or prospective Borrower), amount and purpose of the loan, scope of procurement under ICB, and the name and address of the Borrower's agency responsible for procurement. If known, the scheduled date for availability of prequalification or bidding documents should be indicated. The Borrower shall maintain a list of responses to the notice. The related prequalification or bidding documents, as the case may be, shall not be released to the public earlier than eight weeks after the date of publication of the notice. The General Procurement Notice shall be updated annually for all outstanding procurement.

2.8

The international community shall also be notified in a timely manner of the opportunities to bid for specific contracts. To that end, invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation in the Borrower's country (and in the official gazette, if any). Such invitations shall also be transmitted to those who have expressed interest in bidding in response to the General Procurement Notice. Publication of the invitations in the Development Business is also encouraged. Borrowers are also strongly encouraged to transmit such invitations to embassies and trade representatives of countries of likely suppliers and contractors. Additionally, for large, specialized or important contracts, Borrowers shall advertise the invitations in Development Business and/or well-known technical magazines, newspapers and trade publications of wide international circulation. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.[6]

Prequalification of Bidders

2.9

Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Prequalification may also be useful to determine eligibility for preference for domestic contractors where this is allowed. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily taking into account their (1) experience and past performance on similar contracts (ii) equipment, and construction or manufacturing facilities, and (iii) financial position.[7]

2.10

The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described in paragraphs 2.7 and 2.8 above. The scope of the contract and a clear statement of the requirements for qualification shall be sent to those who responded to the invitation. All such applicants that meet the specified criteria shall be allowed to bid. Borrowers shall inform all applicants of the results of prequalification. As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. For prequalification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of prequalified firms in such instances shall be updated periodically. Verification of the information provided in the submission for prequalification 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

2.11

The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the 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 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 are given in the following paragraphs.

2.12

Borrowers shall use the appropriate Standard Bidding Documents (SBDs) issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address 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.

Validity of Bids and Bid Security

2.13

Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Borrower to complete the comparison and evaluation of bids, review the recommendation of award with the Bank (if required by the Loan Agreement), and obtain all the necessary approvals so that the contract can be awarded within that period.

2.14

Bid security, in the amount specified in the bidding documents, affording the " Borrower reasonable protection against irresponsible bids, may be required but it shall not be set so high as to discourage bidders. The bid security at the bidder's option, shall be in the form of a certified check, a letter of credit or a bank guarantee from a reputable bank. Bidders shall be allowed to submit bank guarantees directly issued by a bank of their choice located in any eligible country. Bid security shall remain valid for a period of four weeks beyond the validity period for the bids in order to provide reasonable time for the Borrower to act if the security is to be called. Bid security shall be released to unsuccessful bidders once it is determined that they will not be awarded a contract.

Language

2.15 Prequalification and bidding documents shall be prepared in either English, French or Spanish, and shall specify that the text of the contract documents in that language is governing. However, contracts entered into with local bidders (excluding joint ventures between local and foreign firms) may, at the Borrower's option, be in the national language of the Borrower, which shall be the governing language for such contracts. Clarity of Bidding Documents

2.16

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

2.17

The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

2.18

All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. Borrowers shall provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly for those requiring refurbishing existing works or equipment, a pre-bid conference may be arranged whereby potential bidders may meet with the Borrower representatives to seek clarifications. Minutes of the conference shall be provided to all prospective bidders with a copy to the Bank. Any additional information, clarification, correction of errors or modifications of bidding documents shall be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline shall be extended.

Standards

2.19

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

Use of Brand Names

2.20

Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

Pricing

2.21

Bids for goods shall be invited on the basis of CIF (port of destination), or CIP[8] (place of destination) for all goods offered from abroad, and EXW[9] (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.

2.22

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, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies[10]

2.23

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 labor) from any eligible sources so that they may offer their most competitive bids.

Price Adjustment

2.24

Bidding documents shall state either that (i) bid prices will be fixed or (ii) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labor, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within 18 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.

2.25

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.

Transportation and Insurance

2.28

Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For works, a Contractor's All Risk form of policy usually shall be specified. For large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be obtained by the Borrower, in which case the Borrower shall seek competition for such insurance.

2.27

As an exception, if a Borrower wishes to reserve transportation and insurance for the import of goods to national companies or other designated sources, bidders shall be asked to quote FOB (port of shipment) or CFR (port of

destination)[11] prices in addition to the CIF (port of destination) or CTP (place of destination) price specified in paragraph 2.21. Selection of the lowest evaluated bid shall be on the basis of the CIF or CIP price, but the Borrower may sign the contract on FOB or CFR terms and make its own arrangement for transportation and/or insurance. Under such circumstances, disbursements under the Bank loan shall be limited to the FOB or CFR cost. If the Borrower does not wish to obtain insurance cover in the market, evidence shall be provided to the Bank that resources are readily available for prompt payment in a freely convertible currency of the indemnities required to replace lost or damaged goods.

Currency Provisions

2.28

Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract price will be paid. The following provisions (paragraphs 2.29-2.33) are intended to (i) ensure that bidders have the opportunity to minimize any exchange risk with regard to the currency of bid and of payment, and hence may offer their best prices; (ii) give bidders in countries with weak currencies the option to use a stronger currency and thus provide a firmer basis for their bid price; and (iii) ensure fairness and transparency in the evaluation process.

Currency of Bid

2.29

Bidding documents shall state that the bidder may express the bid price in the currency of any member country[12]. If the bidder wishes to express the bid prices as a sum of amounts in different foreign currencies, he may do so, provided the price includes no more than three foreign currencies. Furthermore, the Borrower may require bidders to state the portion of the bid price representing local costs in the currency[13] of the country of the Borrower.

2.30

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

Currency Conversion for Bid Comparison

2.31

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

Currency of Payment

2.32

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

2.33

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

Terms and Methods of Payment

2.34

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 on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the contractors obligations under contract.

2.35

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

2.36

Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms 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 3.

Conditions of Contract

2.37

The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Borrower and of the supplier or contractor, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Borrower, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the project shall be included.

Performance Security

2.38

Bidding documents for works shall require security in an amount sufficient to protect the Borrower in case of breach of contract by the contractor. This security shall be provided by a performance bond or a bank guarantee in an appropriate form and amount, as specified by the Borrower in the bidding document. The amount of the bond or guarantee may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Borrower; alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

2.39

In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a bank guarantee to protect against nonperformance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.

Liquidated Damages and Bonus Clauses

2.40

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

Force Majeure

2.41

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

Applicable Law and Settlement of Disputes

2.42

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[14]. In 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. Bid Opening, Evaluation, and Award of Contract

Time for Preparation of Bids

2.43

The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the Borrower is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand. The deadline and place for receipt of bids shall be specified in the invitation to bid.

Bid Opening Procedures

2.44

The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly[15] thereafter, and shall be announced, together with the place for 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 name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud and 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.

Clarifications or Alterations of Bids

2.45

Except as otherwise provided in paragraphs 2.61 and 2.62 of these Guidelines, bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. The Borrower shall ask bidders for clarification needed to evaluate their bids but shall not ask or permit bidders to change the substance or price of their bids after the bid opening. Requests for clarification and the bidders' responses shall be made in writing.

Confidentiality

2.46

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

Examination of Bids

2.47

The Borrower shall ascertain whether the bids (i) meet the eligibility requirements specified in paragraph 1.6 of these Guidelines, (ii) have been properly signed, (iii) are accompanied by the required securities, (iv) are substantially responsive to the bidding documents, and (v) are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it shall not be considered further. The bidder shall not be permitted to correct or withdraw material deviations or reservations once bids have been opened.[16]

Evaluation and Comparison of Bids

2.48

The purpose of bid evaluation is to determine the cost to the Borrower of each bid in a manner that permits a comparison on the basis of their evaluated cost[17]. Subject to paragraph 2.57, the bid with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be selected for award.

2.49

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

2.50

The evaluation and comparison of bids shall be on CIF or CIP prices for the supply of imported goods and EXW prices for goods offered from within the Borrower's country, together with prices for any required installation, training, commissioning and other similar services.

2.51

Bidding documents shall also specify the relevant factors in addition to price to be considered in bid evaluation and the manner in which they will be applied for the purpose of determining the lowest evaluated bid. For goods and equipment, other factors which may be taken into consideration include, among others, costs of inland transport and insurance to the specified site, payment schedule, delivery time, operating costs, efficiency and compatibility of the equipment, availability of service and spare parts, and related training, safety and environmental benefits. The factors other than price to be used for determining the lowest evaluated bid shall, to the extent practicable, be expressed in monetary terms, or given a relative weight in the evaluation provisions in the bidding documents.

2.52

Under works and turnkey contracts, contractors are responsible for all duties, taxes and other levies[18] and bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable. If time is a critical factor the value of early completion to the Borrower may be taken into account according to criteria presented in the bidding documents, only if the conditions of contract provide for commensurate penalties for noncompliance.

2.53

The Borrower shall prepare a detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the recommendation is based for the award of the contract.

Domestic Preferences

2.54

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 in the country of the Borrower when comparing bids offering such goods with those offering goods manufactured abroad; and

(b)

works in member countries below a specified threshold of GNP[19] per capita, when comparing bids from eligible domestic contractors with those from foreign firms.

2.55

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

Extension of Validity of Bids

2.56

Borrowers shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract. In the case of fixed price contracts, requests for second and subsequent extensions will be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes in the cost of inputs for

the contract over the period of extension. Whenever an extension of bid validity period is requested, bidders shall not be requested or be permitted to change the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.

Postqualification of Bidders

2.57

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

Award of Contract

2.58

The Borrower shall award the contract, within the period of the validity of bids to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined (i) to be substantially responsive to the bidding documents and (n) to offer the lowest evaluated cost[20]. A bidder shall not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.

Rejection of All Bids

2.59

Bidding documents usually provide that Borrowers may reject all bids. Rejection of all bids is justified when there is lack of effective competition, or bids are not substantially responsive. However, lack of competition shall not be determined solely on the basis of the number of bidders. If all bids are rejected, the Borrower shall review the causes justifying the rejection and consider making revisions to the conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

2.60

If the rejection of all bids is due to lack of competition, wider advertising shall be considered. If the rejection is due to most or all of the bids being non-responsive, new bids may be invited from the initially prequalified firms, or with the agreement of the Bank from only those that submitted bids in the first instance.

2.61

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

substantial reduction in the scope or modification to the contract documents may require rebidding.

2.62 The Bank's prior concurrence shall be obtained before rejecting all bids, soliciting new bids or entering into negotiations with the lowest evaluated bidder.

D. Modified ICB

Quick Disbursement Operations

2.63

Where the loan provides financing for an imports program, as in the case of adjustment operations and other quick disbursement loans, ICB with simplified advertising and currency provisions shall be used for large value contracts, as defined in the Loan Agreement[21].

2.64

The simplified provisions for notification of ICB procurement do not require a General Procurement Notice. Specific Procurement Notices shall be inserted in at least one newspaper of national circulation in the Borrower's country (and in the official gazette if any) in addition to either: (i) Development Business; or (a) a newspaper, periodical or technical journal of wide multinational circulation. The period allowed for submission of bids may be reduced to four weeks. Bidding and payment may be limited to one currency widely used in international trade.

Procurement of Commodities

2.65

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

[1]For purposes of these Guidelines, "plant" refers to installed equipment, as in a productivity facility.

[2]See Paras. 2.48-2.53 for the bid evaluation procedures.

[3]In construction, a management contractor usually does not perform the work directly but contracts out and manages the work of other contractors, taken 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 such risks. (if financed by the Bank, the services of the construction manager should be procured under the Consultant Guidelines.

[4]As opposed to two-stage bidding, the Bank does not accept the two-or three-envelope system in which bidders are required to submit separate qualification, technical, and price proposals at the same time, but which are opened sequentially in separate sessions and evaluated.

[5]Development Business is a publication of the United Nations Department of Public Information, UN Plaza, New York, New York, 1007, U.S.A. A development Business office is maintained at the World Bank, 1818 H Street, N.W., Washington, D.C., 20433, U.S.A.

[6]See para. 2.43.

[7]The Bank has prepared a Standard Prequalification Document for use by its Borrowers, where appropriate.

[8]Refer to INCOTERMS 1990 for further definitions. Published by the International Chamber of Commerce, 28 Cours Alber 1 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.

[9]The EXW price shall include all duties, sales, and otehr 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.

[10]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.

[11]INCOTERMS 1990 for free on board port of shipment, and for cost and freight to port destination, respectively.

[12]Until December 31, 2001, bid prices may also be expressed in the former national currencies of the members countries of the European Monetary Union (the Austrian Schilling, Belgian franc, Finnish markka, French franc, Deutsche mark, Irish pound, Italian lira, Luxemburg franc, Netherlandsguilder, Portugese escudo and Spanish peseta). On January 1, 1990, the euro was substituted for these currencies. From that date these currencies were irrevocably fixed vis-a-vis the euro. Until December 31, 2001, these currencies remain in existence as non-decimal sub-denomination of the euro.

[13]Referred to hereafter as local currency

[14]It is understood, however, that officials of the International Center for Settlement of Investment Disputes (ICSID) shall remain free to name arbitrators in their capacity as ICSID officials.

[15]To allow sufficient time to take the bids to the place announced for public bid opening.

[16]See para. 2.49 regarding corrections.

[17]See para. 2.51

[18]Unless bidding documents specify otherwise for some turnkey contracts (see para. 2.22 and footnote 18).

[19]Gross national product as defined annually by the Bank.

[20]Referred to as "lowest evaluated bidder" and "lowest evaluated bid," respectively.

[21]Other procurement is normally carried out in accordance with procedures followed by the private or public

entity handling the imports, or other established commercial practices acceptable to the Bank.

ANNEX "B"

DOMESTIC PREFERENCES

Preference for Domestically Manufactured Goods

1.

The Borrower may, with the agreement of the Bank, grant a margin of preference in the evaluation of bids under ICB procedures to bids offering certain goods manufactured in the country of the Borrower, when compared to bids offering such goods manufactured elsewhere. In such cases, bidding documents shall clearly indicate any preference to be granted to domestic manufactured goods and the information required to establish the eligibility of a bid for such preference. The nationality of the manufacturer or supplier is not a condition for such eligibility. The methods and stages set forth hereunder shall be followed in the evaluation and comparison of bids.

2.

For comparison, responsive bids shall be classified in one of the following three groups:

(a) Group A: bids offering goods manufactured in the country of the Borrower if the bidder establishes to the satisfaction of the Borrower and the Bank that (i) labor, raw material and components from within the country of the Borrower will account for more than 30 percent of the EXW price of the product offered, and (ii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing/assembling such goods at least since the time of bid submission.

(b) Group B: all other bids offering goods from within the country of the Borrower.

(c) Group C: bids offering the goods from abroad and to be directly imported.

3.

The EXW price quoted by a Group A bidder shall include all duties and taxes paid or payable on the basic materials or components purchased in the domestic market or imported. Similarly, prices quoted by Group B bidders shall include all duties and taxes on components and raw materials. The price quoted by Group A and B bidders shall exclude the sales and similar taxes on the finished product. The price quoted by Group C bidders shall be on CIF or CIP border point or other destination, exclusive of customs duties and other import taxes.

4.

In the first step, all evaluated bids in each group shall be compared to determine the lowest evaluated bid in each. Such lowest evaluated bids shall then be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.

5.

If, as a result of the comparison under paragraph 4 above, the lowest evaluated bid is a bid from Group C, all Group C bids shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated bid price of the imported goods offered in each Group C bid, for the purpose of this further comparison only, an amount equal to: (i) the amount of duties and other related import charges which a nonexempt importer would have to pay for the importation of the goods offered in such Group C bid; or (ii) 15 percent of the CIF or CIP bid price of such goods if said duties and charges exceed 15 percent of such price. If the Group A bid in such further comparison is the lowest, it shall be selected for the award; if not, the lowest evaluated bid from Group C, as determined from the comparison under paragraph 4, shall be selected.

6.

in the case of single responsibility, supply and installation or turnkey[1] contracts in which a number of discrete items of equipment is grouped into one contract package, the preference margin shall not be applied to the whole package but only to the locally-manufactured equipment within the package. Equipment offered from abroad shall be quoted CIF or CIP, and equipment offered locally EXW (free of sales and similar taxes); all other components, such as design, works, installation, and supervision, shall be quoted separately. Bids should not be classified into groups A, B, or C. In the comparison of bids, only the CIF or CIP price in each bid of the equipment offered from outside the Borrower's country shall be increased by the applicable duty and other taxes payable by a non-exempt importer or 15 percent, whichever is less. If duties vary from item to item within a package, the appropriate tariff for each piece of equipment shall apply. No preference shall be applied for any associated services or works included in the package.

Preference for Domestic Contractors

7.

For contracts for works to be awarded on the basis of ICB, eligible Borrowers may, with the agreement of the Bank, grant a margin of preference of 7.5 percent to domestic contractors[2], in accordance with, and subject to, the following provisions:

(a)

Contractors applying for such preference shall be asked to provide, as part of the data for qualification[3], such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Borrower and accepted by the Bank, a particular contractor or group of contractors qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.

(b)

After bids have been received and reviewed by the Borrower, responsive bids shall be classified into the following

groups:

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

(ii) Group B: bids offered by other contractors.

For the purpose of evaluation and comparison of bids, an amount equal to 7 1/2 percent of the bid amount shall be added to bids received from contractors in Group B.

ANNEX "C"

REVIEW BY THE BANK OF PROCUREMENT DECISIONS

Scheduling of Procurement

1.

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 Guidelines 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.

Prior Review

2. With respect to all contracts which, in accordance with the Loan Agreement, are made subject to the Bank's prior review:

(a) In cases where prequalification is used, the Borrower shall, before prequalification submissions are invited, furnish the Bank with the draft documents to be used, including the text of the invitation to prequalify, the prequalification questionnaire, and the evaluation methodology, together with a description of the advertising procedures to be followed, and shall introduce such modifications in said procedure and documents, as the Bank shall reasonably request. The list of prequalified bidders, together with a statement of their qualifications and of the reasons for the exclusion of any applicant for prequalification, shall be furnished by the Borrower to the Bank for its comments before the applicants are notified of the Borrower's decision, and the Borrower shall make such additions to, deletions from or modifications in the said list as the Bank shall reasonably request.

(b) Before bids are invited, the Borrower shall furnish to the Bank for its comments, draft bidding documents, including the invitation to bid; instructions to bidders, including the basis of bid evaluation and contract award; and the conditions of contract and specifications for the civil works, supply of goods, or installation of equipment, etc., as the case may be, together with a description of the advertising procedures to be followed for the bidding (if prequalification has not been used), and shall make such modifications in the said documents as the Bank shall reasonably request. Any further modification shall require the Bank's 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 days, and for all subsequent requests for extension, irrespective of the period.

(e) The terms and conditions of a contract shall not, without the Bank's concurrence, materially differ from those on which bids were asked or prequalification of contractors, if any, was invited.

(f) One conformed copy of the contract shall be furnished to the Bank promptly after its execution 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 with 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.

Modifications

3.

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 percent of the original price, the Borrower shall inform the Bank of the proposed extension, modification, or change order and the reasons therefor. 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.

Post Review

4.

With respect to each contract not governed by paragraph 2, 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 and such other information as the Bank shall reasonably request. Where payments for the contract 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 furnished 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 made on the basis of Statements of Expenditure^[1], for which case all such documents shall be retained by the Borrower for subsequent examination by independent auditors and Bank supervision missions.

Translations

If a contract awarded under ICB procedures to a local bidder is written in the national language,^[2] a certified translation of the contract in either English, French, or Spanish shall be furnished to the Bank together with the

conformed copy of the contract. Such certified translations shall also be furnished to the Bank, for any subsequent modifications of such contracts.

[1]Appendix 3 (Disbursements)

1. The responsibility for the implementation of the project, and therefore for the payment of goods, works and services under the project, rests 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), or (iii) to a commercial bank for expenditures against a World Bank Special Commitment covering a commercial bank's letter of credit.

2. Two widely used procedures with special requirements are Statements of Expenditures (SOEs) and the Special Accounts (SAs). The SOE method is used to reimburse the Borrower when documentation would otherwise be cumbersome or voluminous (for example, expenditures on civil works carried out by force account or payments against small contracts or purchase orders). For withdrawals against SOEs, the Borrower submits a form with details of the expenditures (the SOE form) and retains the actual supporting documentation in the field for subsequent examination by independent auditors and Bank supervision missions.

3. SAs are revolving accounts funded with an advance from a Bank loan for use by the Borrower exclusively to cover the Bank's share of eligible expenses in both local and foreign currencies. The primary objective of the SA is to help the Borrower overcome cash flow problems and speed disbursements. The Borrower makes payments from the account to contractors, suppliers and others when the payment are due. The Bank replenishes the SA regularly upon receipt of a withdrawal application with appropriate supporting documentation from the Borrower. Towards the end of loan disbursements, the Bank initiates a recovery procedure to obtain full documentation for the amount of the outstanding advance.

4. The Loan Agreement and the disbursement letter outline the disbursement procedures to be followed for the loan, including retroactive financing provisions, items eligible for disbursement under the SOE procedure, requirements for the operation of an SA and a minimum application value. The minimum value varies among loans depending on the size of the loan and the nature of the project. Where there is an SA, the minimum value is generally between 10 percent and 33 percent of the total advanced to the SA. The method of payment specified in the bidding documents shall take into account the disbursement procedures applicable to the concerned loan.

5. A complete description of the Bank's disbursement procedures is provided in the Disbursement Handbook.

[2]Refer to para. 2.15

ANNEX "D"

QUALITY-AND COST-BASED SELECTION (QCBS)

The Selection Process

2.1

QCBS uses a competitive process among short-listed firms that takes into account the quality of the proposal and

the cost of the services in the selection of the successful firm. Cost as a factor of selection shall be used judiciously. The relative weight to be given to the quality and cost shall be determined for each case depending on the nature of the assignment.

2.2

The selection process shall include the following steps:

- (a) preparation of Terms of Reference (TOR);
- (b) preparation of cost estimate and the budget;
- (c) advertising
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the Request for Proposals (RFP);
- (i) Letter of Invitation (LOI);
- (ii) Information to Consultants (ITC);
- (iii) proposed contract;
- (f) receipt of proposals;
- (g) evaluation of technical proposals: consideration of quality;
- (h) evaluation of financial proposal;
- (i) final evaluation of quality and cost; and
- (j) negotiations and award of the contract to the selected firm.

Terms of Reference (TOR)

2.3

The Borrower shall be responsible for preparing the TOR for the assignment TOR shall be prepared by a person(s) or a firm specialized in the area of the assignment. The score of the services described in the TOR shall be compatible with the available budget. TOR shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, and so forth, to enable consultants to estimate the required resources. TOR shall list the services and surveys necessary to carry out the assignment and the expected outputs (for example, reports, data, maps, surveys). However, TOR should not be methodology and staffing. Firms shall be encouraged to comment on the TOR in their proposals. The Borrower's and consultants' respective responsibilities should be clearly defined in the TOR.

Cost Estimate

2.4

Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the Borrower's assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories; (a) fee or remuneration (according to the type of contract used) and (b) reimbursables, and further divided into foreign and local costs. The cost of staff time shall be estimated on a realistic basis for foreign and national personnel.

Advertising

2.5

To obtain expressions of interest, the Borrower shall include a list of expected consulting assignments in the General Procurement Notice, which shall be updated annually for all outstanding procurement[1] and shall advertise all contracts for consulting firms in the national gazette or a national newspaper. It may also advertise them on an electronic portal of free access. In addition contracts expected to cost more than US\$ 200,000 shall be advertised in UN Development Business (UNDB on-line). Borrowers may also advertise these contracts in an international newspaper or a technical magazine, seeking "expressions of interest." A copy of the advertisement shall be sent to those who expressed interest in response to the GPN. The Borrower may also contact embassies, professional organizations, or firms that it knows or that are registered in DACON[2]. The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than 14 days from the date of posting on UNDB on-line) shall be provided for responses, before preparation of the short list.

Short List of Consultants

2.6

The Borrower is responsible for preparation of the short list. The Borrower shall give first consideration to those firms expressing interest which possess the relevant qualifications. Short lists shall comprise three to six firms with a wide geographic spread, with no more than two firms from any one country and at least one firm from a developing country, unless qualified firms from developing countries are not identifiable. For the purpose of establishing the short list, the nationality of a firm is that of the country in which it is registered or incorporated. The Bank may ask the Borrower to expand or reduce a short list; however, once the Bank has issued a "no objection" to a short list, the Borrower shall not add or delete names without the Bank's concurrence. Firms that expressed interest, as well as any other firm that specifically so request, shall be provided the final short list of firms.

2.7

The short list may comprise entirely national consultants (firms registered or incorporated in the country), if the assignment is below the ceiling (or ceilings) established in the Loan agreement, a sufficient number of qualified firms (at least three) are available at competitive costs, and competition including foreign consultants is prima facie not justified. However, if foreign firms have expressed interest, they shall not be excluded from consideration.

Preparation and Issuance of the Request for Proposals (RFP)

2.8

The RFP shall include (a) a Letter of Invitation, (b) Information to Consultants, (c) the TOR, and (d) the proposed

contract. Borrowers shall use the applicable standard RFPs issued by the Bank with minimal changes, acceptable to the Bank, as necessary to address country- and project-specific issues. Any such changes shall be introduced only through the RFP data sheet. Borrowers shall list all the documents included in the RFP.

Letter of Invitation (LOI)

2.9

The LOI shall state the intention of the Borrower to enter into a contract for the provision of consulting services, the source of funds, the details of the client and the date, time, and address for submission of proposals.

Information to Consultants (ITC)

2.10

The ITC shall contain all necessary information that would help consultants prepare responsive proposals, and shall bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score. The ITC shall not indicate the budget (since cost is a selection criterion), but shall indicate the expected input of key professionals (staff time). Consultants, however, shall be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC shall specify the proposal validity period (normally 60-90 days). A detailed list of the information that should be included in the ITC is given in Appendix 2.

Contract

2.11

Section IV of these Guidelines briefly discusses the most common types of contracts. Borrowers shall use the appropriate Standard Form of Contract issued by the Bank with minimum changes, acceptable to the Bank, as necessary to address specific country and project issues. Any such changes shall be introduced only through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Bank's Standard Form. These forms of contracts cover the majority of consulting services. When these forms are not appropriate (for example, for preshipment inspection, procurement services, training of students in universities, advertising activities in privatization, or twinning), Borrowers shall use other contract forms acceptable to the Bank.

Receipt of Proposals

2.12

The Borrower shall allow enough time for the consultants to prepare their proposals. The time allowed shall depend on the assignment, but normally shall not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarifications about the information provided in the RFP. The Borrower shall provide these clarifications in writing and copy them to all firms on the short list (who intend to submit proposals). If necessary, the Borrower shall extend the deadline for submission of proposals. The technical and financial proposals shall be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals shall be submitted in separate sealed envelopes. The technical envelopes shall be opened immediately by a committee of officials drawn from the relevant departments (technical, finance, legal, as appropriate), after the closing time for submission of proposals. The financial proposals shall remain sealed and shall be deposited with a reputable public auditor or independent authority until they are opened publicly. Any proposal received after the

closing time for submission of proposals shall be returned unopened.

Evaluation of Proposals: Consideration of Quality and Cost

2.13

The evaluation of the proposals shall be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation, including any Bank reviews and no objection, is concluded. Financial proposals shall be opened only thereafter. The evaluation shall be carried out in full conformity with the provisions of the RFP.

Evaluation of the Quality

2.14

The Borrower shall evaluate each technical proposal (using an evaluation committee of three or more specialists in the sector), taking into account several criteria: (a) the Consultant's relevant experience for the assignment, (b) the quality of the methodology proposed, (c) the qualifications of the key staff proposed, (d) transfer of knowledge, and (e) the extent of participation by nationals among key staff in the performance of the assignment. Each criterion shall be marked on a scale of 1 to 100. Then the marks shall be weighted to become scores. The following weights are indicative, and may be adjusted for specific circumstances. The proposed weights shall be disclosed in the RFP.

Consultant's specific experience: 5 to 10 points

Methodology: 20 to 50 points

Key personnel: 30 to 60 points

Transfer of knowledge:[3] 0 to 10 points

Participation by nationals:[4] 0 to 10 points

Total: 100 points

2.15

The Borrower shall normally divide these criteria into subcriteria. For example, subcriteria under methodology might be innovation and level of detail. However, the number of subcriteria should be kept to the essential. The Bank recommends against the use of exceedingly detailed lists of subcriteria that may render the evaluation a mechanical exercise more than a professional assessment of the proposals. The weight given to experience can be relatively modest, since this criterion has already been taken into account when short-listing the Consultant. More weight shall be given to the methodology in the case of more complex assignments (for example, multidisciplinary feasibility or management studies).

2.16

Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. The Borrower shall review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the Consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of

specified individuals, it may be desirable to conduct interviews. The individuals shall be rated in the following three subcriteria, as relevant to the task:

(a)

general qualifications: general education and training, length of experience positions held, time with the consulting firm as staff, experience in developing countries, and so forth;

(b)

adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and

(c)

experience in the region: knowledge of the local language, culture, administrative system, government organization, and so forth.

2.17

Borrowers shall evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and shall be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

2.18 At the end of the process, the Borrower shall prepare an evaluation report of the "quality" of the proposals. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets, shall be retained until completion of the project and its audit.

Evaluation of Cost

2.19

After the evaluation of quality is completed, the Borrower shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the RFP and TOR, indicating that their financial proposals will be returned unopened after completing the selection process. The Borrower shall simultaneously notify the consultants that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals. The opening date shall not be sooner than two weeks after the

notification date. The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend. The name of the consultant, the quality scores, and the proposed prices shall be read aloud and recorded when the financial proposals are opened, and a copy of this record shall be promptly sent to the Bank. The Borrower shall prepare the minutes of the public opening.

2.20

The Borrower shall then review the financial proposals. If there are any arithmetical errors, they shall be corrected. For the purpose of comparing proposals, the costs shall be converted to a single currency selected by the Borrower (local currency or fully convertible foreign currency) as stated in the RFP. The Borrower shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Central Bank), or by a commercial bank, or by an internationally circulated newspaper for similar transactions. The RFP shall specify the source of the exchange rate to be used, and the date of that exchange rate, provided that the date shall not be earlier than four weeks prior to the deadline for submission of proposals, nor later than the original date of expiration of the period of validity of the proposal.

2. 21

For the purpose of evaluation, "cost" shall exclude local taxes, but shall include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses. The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely Proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used shall be described in the RFP.

Combined Quality and Cost Evaluation

2.22

The total score shall be obtained by weighting the quality and cost scores and adding them. The weight for the "cost" shall be chosen, taking into account the complexity of the assignment and the relative importance of quality. Except for the type of services specified in Section III, the weight for cost shall normally be in the range of 10 to 20 points, but in no case shall exceed 30 points out of a total score of 100. The proposed weightings for quality and cost shall be specified in the RFP. The firm obtaining the highest total score shall be invited for negotiations.

Negotiations and Award of Contract

2.23

Negotiations shall include discussions of the TOR, the methodology, staffing, Borrower's inputs, and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology shall be incorporated in "Description of Services," which shall form part of the contract.

2.24

The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the

selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment.[5] If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution shall have qualifications equal to or better than the key staff initially proposed.

2.25

Financial negotiations shall include clarification of the consultants' tax liability in the Borrower's country (if any), and how this tax liability has been or would be reflected in the contract. Proposed unit rates for staff-months and reimbursables shall not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

2.26

If the negotiations fail to result in an acceptable contract, the Borrower shall terminate the negotiations and invite the next ranked firm for negotiations. The Borrower shall consult with the Bank prior to taking this step. The Consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the Borrower shall not reopen the earlier negotiations. After negotiations are successfully completed, the Borrower shall promptly notify other firms on the short list that they were unsuccessful.

Rejection of All Proposals, and Reinvitation

2.27

The Borrower will be justified in rejecting all proposals only if all proposals are nonresponsive and unsuitable either because they present major deficiencies in complying with the TOR, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated in consultation with the Bank. Before all the proposals are rejected and new proposals are invited, the Borrower shall notify the Bank, indicating the reasons for rejection of all proposals, and shall obtain the Bank's no objection before proceeding with the rejection and the new process. The new process may include revising the RFP (including the short list) and the budget. These revisions shall be agreed upon with the Bank.

Confidentiality

2.28

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the award of contract is notified to the successful firm.

[1] The General Procurement Notice is prepared by the Borrower and submitted to the Bank, which will arrange for its publication in United Nations Development Business (UNDB).

[2] Under paragraph 1.15 of the Consultants' Guidelines - The Bank maintains an information system on consultants - Data on CONsultants (DACON). Registration in DACON is not mandatory to be considered for a Bank-financed assignment, nor is DACON a list of preapproved consultants. When firms register with DACON, they provide information that may be useful to Borrower and the bank in the preparation of shortlists and review of qualifications of firms proposed by Borrowers. The Bank does not verify or endorse the information provided. The Bank provides this information to member governments, UN agencies, and other public information bodies upon request, without any charge for the Borrowers and at a cost to others. The Bank may, with the consent of the firms, also provide nonconfidential information to other consultants, interested in seeking associates or partners for assignment.

[3] Transfer of knowledge may be the main objective of some assignments; in such cases, it should be given a higher weight to reflect its importance.

[4] As reflected by nationals among key staff presented by foreign and national firms.

[5] Defining realistic proposal validity periods in the RFP and carrying out an efficient evaluation minimizes the risk.

ANNEX "E"

Selection of Particular Types of Consultants

3.13

Selection of UN Agencies as Consultants. UN agencies may be hired as the consultants, where they are qualified to provide technical assistance and advice in their area of expertise. However, they shall not receive any preferential treatment in a competitive selection process, except that Borrowers may accept the privileges and immunities granted to UN agencies and their staff under existing international conventions and may agree with UN agencies on special payment arrangements required according to the agency's charter, provided these are acceptable to the Bank. Such privileges, as well as other advantages such as tax exemption and other facilities, and special payment provisions, shall be evaluated and neutralized in the cost comparison. UN agencies may be hired on a single-source selection basis if the criteria outlined in Section 3.9 are fulfilled.

3.14

Use of Nongovernmental Organizations (NGOs). NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the Borrower and the Bank are satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list may comprise entirely NGOs. If so, the QCBS procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. Borrowers may select the NGO on a single-source basis, provided the criteria outlined in Section 3.9 are fulfilled.

3.15

Procurement Agents (PAs). When a Borrower lacks the necessary organization, resources, or experience, it may be efficient and effective for it to employ, as its agent, a firm that specializes in handling procurement. PAs are generally paid a percentage of the value of the procurements handled, or a combination of such a percentage and a fixed fee. Such PAs shall be selected using QCBS procedures with cost being given a weight up to 50 percent. The standard contract form^[1] applicable for procurement agencies, with payments based on a percentage of the total procurements and/or staff-month rates, shall be used. When PAs provide only advisory services for procurement and do not act as "agents" and are not paid a percentage fee at all, they shall be selected following the appropriate procedures as for other consulting assignments, specified in these Guidelines.

3.16

Inspection Agents. Borrowers may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the Borrower country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies shall be selected using QCBS procedures giving cost a weight up to 50 percent and using a contract format with payments based on a percentage of the value of goods inspected and certified.

3.17

Banks. Investment and commercial banks, financial firms and fund managers hired by Borrowers for the sale of assets, issuance of financial instruments, and other corporate financial transactions, notably in the context of Privatization operations, shall be selected under QCBS. The RFP shall specify selection criteria relevant to the activity—for example, experience in similar assignments or network of potential purchasers—and the cost of the services. In addition to the conventional remuneration (called a "retainer fee"), the compensation includes a "success fee"; this fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP shall indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee shall be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee as percentage of a predisclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher than recommended in paragraph 2.22 or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP shall specify clearly how proposals will be presented and how they will be compared.

3.18

Auditors. Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They shall be selected according to QCBS, with cost as a substantial selection factor (40-50 points), or by the "Least-Cost Selection¹ outlined in paragraph 3.6.

[1] Under preparation

ANNEX "F"

QUALITY-BASED SELECTION (QBS)

General

3.1 In some circumstances, QCBS is not the most appropriate method for selecting consultants. The particular selection methods and the type of services to which they apply are determined by agreement between the Bank and the Borrower and are specified in the Loan Agreement. This section describes other selection methods and the circumstances under which they are generally appropriate. All the relevant^[1] provisions of Section II (QCBS) shall apply whenever competition is used.

3.2 QBS is appropriate for the following types of assignments:

(a)

complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants, and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multisectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);

(b)

assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and

(c)

assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

3.3

In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope

system). The RFP shall not provide the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only, and that consultants shall be free to propose their own estimates.

3.4

If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS (paragraphs 2.13-2.18), the Borrower shall ask the Consultant with the highest ranked technical proposal to submit a detailed financial proposal. The Borrower and the Consultant shall then negotiate the financial proposal and the contract. All other aspects of the selection process shall be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards shall be built in as in QCBS (paragraph 2.12) to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

[1]All provisions of Section II shall be applied with the modifications and suppressions required by the method for selecting consultants used in the specific case.

ANNEX "G"

SINGLE-SOURCE SELECTION

3.8

Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection, and could encourage unacceptable practices. Therefore, single-source selection shall be used only in exceptional cases. The justification for single-source selection shall be examined in the context of the overall interests of the client and the project, and the Bank's responsibility to ensure economy and efficiency and provide opportunity to consultants from all member countries to the extent possible.

3.9

Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm (see next paragraph), (b) where a rapid selection is essential (for example, in an emergency operation), (c) for very small assignments, or (d) when only one firm is qualified or has experience of exceptional worth for the assignment.

3.10

When continuity for downstream work is essential, the initial RFP shall outline this prospect and, if practical, the factors used for the selection of the Consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired, and continued professional liability of the same Consultant may make continuation with the initial Consultant preferable to a new competition subject to satisfactory performance in the initial assignment. For such downstream assignments, the Borrower shall ask the initially selected

Consultant to prepare technical and financial proposals on the basis of TOR furnished by the Borrower, which shall then be negotiated.

3.11

If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the Bank shall normally be followed in which the Consultant carrying out the initial work is not excluded from consideration if it expresses interest. The Bank will consider exceptions to this rule only under special circumstances and only when a new competitive process is not practicable.

ANNEX "H"

SELECTION OF INDIVIDUAL CONSULTANTS

5.1

individual consultants are normally employed on assignments for which (a) teams of personnel are not required, (b) no additional outside (home office) professional support is required, and (c) the experience and qualifications of the individual are the paramount requirement. When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.2

Individual consultants are selected on the basis of their qualifications for the assignment. They shall be selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the Borrower. Individuals employed by Borrowers shall meet all relevant qualifications and shall be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and, as appropriate, knowledge of the local conditions, such as local language, culture, administrative system, and government organization.

5.3

From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these Guidelines shall apply to the parent firm.

5.4

Individuals may be selected on a sole-source basis with due justification in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) assignments lasting less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment.

ANNEX "I"

REVIEW BY THE BANK OF THE SELECTION OF CONSULTANTS

Scheduling the Selection Process

- The Bank shall review the selection process for the hiring of consultants proposed by the Borrower for the Project to ensure compliance with these Guidelines and the proposed implementation plan and disbursement schedule.

Prior Review

- With respect to all contracts that are subject to the Bank's prior review in accordance with the Loan Agreement:

(a) Before inviting proposals, the Borrower shall furnish to the Bank for its review and "no objection" the proposed cost estimate and RFP (including the short list). The Borrower shall make such modifications to the short list and the documents as the Bank reasonably request. Any further modification shall require the Bank's "no objection" before the RFP is issued to the short-listed consultants.

(b) After the technical proposals have been evaluated, the Borrower shall furnish to the Bank, in sufficient time for its review, a technical evaluation report (prepared, if the Bank shall so request, by experts acceptable to the Bank) and a copy of the proposals, if requested by the Bank. If the Bank determines that the technical evaluation is inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination; otherwise the Bank shall issue a "no objection" to the technical evaluation. The Borrower shall also request the Bank's "no objection" if the evaluation report recommends rejection of all proposals.

(c) When price is a factor in the selection of a consultant, the Borrower may proceed with the opening of the financial envelopes only after receiving the Bank's "no-objection" to the technical evaluation. The Borrower may then proceed with the financial evaluation in accordance with the provisions of the RFP. The Borrower shall furnish to the Bank, for its information, the final technical and evaluation report along with its recommendation of the winning firm. The Borrower shall notify the firm that received the highest total score in the final evaluation of its intention to award the contract to the firm and shall invite the firm for negotiations.

(d) After negotiations are completed, the Borrower shall furnish to the Bank, in sufficient time for its review, a copy of the initialed negotiated contract. If the negotiated contract resulted in substitution of key staff or any changes in the TOR and original proposed contract, the Borrower shall highlight the changes and provide an explanation of why these changes are appropriate and necessary.

(e) If the Bank determines that the final evaluation report, recommendation for award, and/or negotiated contract are inconsistent with the provisions of the RFP, it shall promptly inform the Borrower and state the reasons for its determination. Otherwise, the Bank shall provide its final "no objection" to the contract award. The Borrower shall confirm the award of the contract only after receiving the "no objection" from the Bank.

(f) Following contract signature, the Borrower shall furnish to the Bank a copy of the final contract before submitting the first application for disbursement under the contract.

(g) The description and amount of the contract, together with the name and address of the firm, shall be subject to public disclosure by the Bank upon the Borrower's confirmation of contract award.

Modifications of Contract

- Before granting a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or

making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, the Borrower shall inform the Bank of the proposed extension, modification, substitution, waiver, or change, and the reasons therefor. 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.

Post Review

- During Project implementation and up to two years after the closing date of the Loan Agreement, the Borrower shall retain all documentation with respect to each contract not governed by paragraph 2 including, but not limited to, the signed original of the contract, the analysis of the respective proposals, and recommendations for award, for examination by the Bank or by independent auditors. The Borrower shall also furnish such documentation to the Bank upon request. 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 that paragraph 1.18 of the Guidelines shall apply and state the reasons for such determination.

Translations

- If a contract is subject to prior review and if national firms were permitted to submit a proposal in the national language, a certified translation of the proposal, evaluation report, and the draft contract in either English, French, or Spanish shall be furnished to the Bank for facilitating the review. Such certified translation shall also be furnished to the Bank for any subsequent modifications of such contracts.

ANNEX "J"

SANCTIONS[1]

Article XXI

PENAL CLAUSE

Sec. 65.

Offenses and Penalties - (a) without prejudice to the provisions of R A No 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act" and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

(1)

Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointment time for the public opening of Bids or other documents.

(2)

Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and warding of contracts beyond the prescribed periods of action provided for the IRR.

(3)

Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take particular action which favors, or tends to favor a particular bidder.

(4)

Splitting of contracts which exceed procedural purchase limits and competitive bidding.

(5)

When the head of the agency abuses the exercise of his power to reject any and all bids.

When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense.

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall permanently disqualified from transacting business with the government.

(b)

Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1)

When two or more bidders agree and submit different Bids as if they are bona fide, when they knew that one or

more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid.

(2)

When a bidder maliciously submits different bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

(3)

When two or more bidders enter into agreement which call upon to refrain from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.

(4)

when a bidder, by himself or in connivance with others employ schemes which tend to refrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the government.

(c)

private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

(1)

Submit eligibility requirement of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the

eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.

(2)

Submit Bidding Documents of whatever kind in nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.

(3)

Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.

(4)

withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

(d)

When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

Sec. 66.

Jurisdiction. - Jurisdiction over the offenses defined under this Article shall belong to the appropriate courts, according to laws existing at the time of the commission of the offense.

ARTICLE XXII

CIVIL LIABILITY

Sec. 67.

Civil Liability in Case of Conviction.-Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under this Act or republic Act No. 3019 shall carry with it civil liability, which may

either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

Sec. 68.

Liquidated Damages.-All contracts executed in accordance with this Act shall contain a provision on liquidated damages which shall be payable in case of breach thereof. The amount thereof shall be specified in the IRR.

ARTICLE XXIII

ADMINISTRATIVE SANCTIONS

Sec. 29.

Imposition of Administrative Penalties.-(a) In addition to the provisions of Articles XXI and XXII of this Act, the Head of the Procuring entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty of suspension for one (1) year for the first offence, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

(1)

Submission of eligibility requirements containing false information or falsified documents.

(2)

Submission of Bids that contain false information or falsified documents, or the concealment of such information in the Bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.

(3)

Allowing the use of one's name, or using the name of another for purposes of public bidding.

(4)

Withdrawal of a Bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

(5)

Refusal or failure to post the required performance security within the prescribed time.

(6)

termination of the contract due to the default of the Bidder.

Refusal to clarify or validate in writing its Bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification.

Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.

All other acts that tend to defeat the purpose of the Competitive Bidding.

(b)

In addition to the penalty of suspension, the Bid security or the performance security posted by the concerned bidder or prospective bidder shall also forfeited.

(c)

The Head of the Procuring Entity may delegate to the BAC the authority impose the aforementioned administrative penalties.

Sec. 70.

Preventive Suspension.- The Head of the procuring entity may preventively any member of the Technical Working Group or the Secretariat, or the it there are strong reasons or prima facie evidence showing that the officials or employees concerned are guilty of the charges filed against them Articles XXI and XXII of this Act or for dishonesty as defined by the Civil Service Laws. In all cases, procedural and substantive due process as mandated by the Constitution and Civil Service Laws, rules and regulations, shall be strictly observed.

Sec. 71.

Lifting of Suspension and Removal of Administrative Disabilities. - Lifting of preventive suspension pending investigation, as well as removal of administrative penalties and disabilities shall be in accordance with the provisions of section 52 and 53, Chapter 6 (Civil Service Commission), Book V of Executive Order No. 292, the Administrative Code of 1987.

[1]Articles 21, 22 and 23 of R.A. 9184.

ANNEX "K"

PROTEST MECHANISM

ARTICLE XVII[1]

Sec. 55.

Protests on Decisions of the BAC.-Decisions of the BAC in all stages of procurement may be protested to the head of the Procuring Entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

Sec 56.

Resolution of Protests.-The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

Sec 57.

Non-interruption of the Bidding Process.-In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

Sec. 58.

Report to regular Court; Certiorari.-Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

[1]R.A. 9184

(see APPENDIX 1 Project Implementation and Procurement Structure)

APPENDIX "2"

PROCUREMENT PROCESS FOR GOODS and WORKS (NCB)

NO.

ACTIVITY

RESPONSIBILITY

LEAD TIME

(Days)

1

Finalize Tender Documents for Bank Review.

The tender document shall include Instruction to Bidders, form and amount of Bid Security, draft contract form, including the Terms and Conditions and form and amount of Performance Security, if applicable, specifications, Bid Form consisting of financial proposal form including Bill of quantities.

Prepares advertisement

The PIMEG prepares the format of the advertisement as it would appear in the newspaper

PIMEG

3

2

Review and approves the Tender Documents

BAC

10

3

Sends Transmittal Letter and Tender Documents to Bank for review and clearance

Program Director

2

4

Review and clears the Tender Documents

World Bank

10

5

Sign Purchase Request (PR) for advertisement

Program Director

2

6

Secure control number for PR, estimates cost for advertisement, approve budget allocation for advertisement.

A considerable lumpsum should be set aside for project advertisement as this amount is not covered by the loan/grant.

AFG

2

7

Advertise in newspaper of national circulation.

The invitation shall contain information concerning the Borrower (in this case Supreme Court), amount and purpose of the loan, scope of procurement under ICB and NCB and the name address of BAC Chairman. The date for submission of bids is also stated.

PIMEG

14

8

Appoint TWG

The BAC Chairman will appoint the TWG members, customarily, on close advice of the PMO and WB. The required expertise of each member should conform to the nature of the project. A special BAC meeting set for approving the post-qualification criteria based on the PMO recommendations.

BAC Secretariat will issue Tender Documents to interested bidders

(OPTIONAL) Conduct Pre-Bid Conference

Pre-bid conference is normally part of BAC meeting where non technical are usually thought up, although some technical matters may also be raised. Minutes of the conference shall be provided to all prospective bidders.

BAC

BAC

5

14

9

Prepare and submit Bids

BIDDERS

45

10

Opening of Bids

BAC, PD, PM, PIMEG, COA Representative, etc

1

11.

Evaluate Bids and Prepares Bid Evaluation Report

TWG

10

12.

Review and approved Bid Evaluation Report

BAC

10

13.

Seek WBs 'No Objection Letter' on lowest evaluated bidder

Program Director

2

14.

Review and clear Bid Evaluation Report and issue No Objection Letter

World Bank

10

15.

Prepares Contract

PIMEG

2

16.

Issue Resolution to Award subject to the authorized approving official for approval

BAC

5

17.

Present Contract to Authorized Approving Official

Program Director/PM/PIMEG

1 sittings

18.

Reviews and approves the contract

Authorized Approving Authority

2 sittings

19.

Contractor signs the contract

BIDDER

2

20.

Issue Notice to Proceed (NTP); Send copy of signed contract to the WB.

The NTP establishes the date of mobilization for the contractor

Program Director

2

21.

Commences

SUPPLIER

7

(see Appendix 2 Flowchart: Procurement Process for Goods and Works (NCB))

APPENDIX "3"

PROCUREMENT OF GOODS AND WORKS (ICB)

NO.

ACTIVITY

RESPONSIBILITY

LEAD TIME

(Days)

1

Finalize the following document

- Draft Bidding Documents
- Draft Advertisement PIMEG (Days)

If contract is above US\$500,000, these document must be submitted to WB for review

Note: Draft General Procurement Notice (To be submitted in advance to WB). WB shall arrange for publication in UNDP.

PIMEG

3

2

Review and clears bidding documents

WB

10

3

Signs Purchase Request (PR) for Advertisement

Program Director

2

4

Secure control number for PR, estimate cost for advertisement, approve budget for advertisement

AFG

2

5

Advertise the Invitation to Bid in at least one newspaper of national circulation.

Transmits invitation to those who have expressed interest in response to the GPN

The Invitation shall contain information concerning the Supreme Court, amount and purpose of loan, scope of procurement under ICB and the name and address of the Office responsible for procurement.

PIMEG**PIMEG**

14

3

6

Appoint TWG

The BAC Chairman will appoint TWG members, customarily, on close advice of the PMO and WB. The required expertise of each member should conform to the nature of the project. A special BAC meeting is set for approving the post -qualification criteria based on the PMO recommendations.

BAC Secretariat will issue Tender Documents to interested bidders.

(OPTIONAL) Conduct Pre-Bid Conference

Pre-bid conference are normally part of BAC meeting where non-technical are usually thought up, but some technical matters may also be raised. Minutes of the conference shall be provided to all prospective bidders.

BAC

5

2

7

Prepare and submit bids Bidders

Bidders

45

8

Opening of Bids

BAC, PD, PM,
PIMEG COA,
BIDDERS, etc.

1

9

Evaluates bids and prepares bid evaluation report

Conduct POST-QUALIFICATION on lowest evaluated bid

TWG

10

5

10

Seek WB 'No Objection Letter from WB' on Lowest Evaluated Bidder (If contract is above US\$500,000) Program Director

Program Director

2

11.

Review and learns Bid Evaluation Report and issue No Objection Letter

WB

10

12.

Prepares Contract

PIMEG

2

13.

Issue Resolution of Award subject to the approval of authorized approving official

BAC

5

14.

Present contract to the authorized approving official for approval

PD, PM, PIMEG

1 sittings

15.

Review and approves the contract

Authorized
approving official

2 Sittings

16.

Supplier signs the contract

Supplier

2

17.

Issues Notice to Proceed (NTP), Send copy of signed contract to Bank

Program Director

2

18.

Commences

Supplier

7

(see Flowchart: Procurement of Goods and Works (ICB))

APPENDIX "4"**NATIONAL SHOPPING PROCESS**

NO.

ACTIVITY

RESPONSIBILITY

LEAD TIME

(Days)

1

Finalize National Shopping Package

The documents consist of Purchase Request,
(complete with estimate, specifications)
Request for Quotation Form and Purchase Order

PIMEG

10

2

Signs Purchase Request Program Director

Program Director

3

3

Secures Control No. for Purchase Request

AFG

2

4

Reviews and signs Request for Quotation

BAC

5

5

Sends Request for Quotations to at least three (3) qualified suppliers

BAC Secretariat

3

6

Prepare and submit quotation

Suppliers

10

7

Opening of Quotations

BAC

1

8

Evaluates Quotations, prepare evaluation report and Abstract of Bids

TWG

5

9

Finalizes Purchase Order and submit it to BAC

PIMEG

3

10

Reviews Evaluation Report, Abstract of Quotations and Purchase Order and issues Resolution of Award

BAC

5

11.

Reviews and approves Resolution of Award Chief Justice

Chief Justice

2

12.

Approves Purchase Order

Authorized Approving Official

2

13.

Sends three (3) copies of the Purchase Order to the Supplier for conforme

PIMEG

3

14.

Signs the Purchase Order and return two (2) copies to the PMO

Supplier

2

15.

Commences

Supplier

7

(see Flowchart: National Shopping)

APPENDIX "5"**CONSULTANT SERVICES-QUALITY AND COST BASED SELECTION (QCBS)****NO.****ACTIVITY****RESPONSIBILITY**

LEAD TIME

(Days)

1

Prepares Advertisement, TOR, RFP, qualification Statement Form, cost estimates.

The PIMEG will prepares and submit the above documents for BAG review.

PIMEG

10

2

Reviews and approves advertisement, TOR, RFP, Qualification Statement Form, cost estimate

BAC

10

3

Signs Purchase Request (PR) for advertisement

Program Director

2

4

Secures control number for PR, estimates cost for advertisement, approve budget allocation for advertisement.

A considerable lumpsum should be set aside for project advertisement as this amount is not covered by the loan/grant

AFG

4

5

Advertise in newspaper of national circulation

The Invitation shall contain information concerning the Supreme Court, amount and purpose of the loan, scope of the contract, name and address of BAC Chairman, The date for submission of proposal is also stated.

PIMEG

14

6

Issue Qualification Statement Form

Only those consultants who have expressed their interest for the work contemplated shall be included in the long list and they will be requested to submit qualification statements

BAC Secretariat

10

7

Accomplish and submit Qualification Statement Form

CONSULTANTS

15

8

Receive, evaluate Qualification Statement Form and prepare shortlist

BAC

15

9

Finalizes RFP (to include list firms included in the shortlist

PIMEG

5

10

Reviews and approves RFP

BAC

10

11.

Send transmittal letter, shortlist and RFP to Bank for clearance (If contract is above US\$100,000

Program Director

2

12.

Review and clears RFP, Shortlist and issue
No Objection Letter

World Bank

10

13.

Send RFP to shortlisted firm

BAC

3

14.

Appoint TWG

The TWG shall appoint TEC members, customarily, on closed advice of the World Bank and PMO. The required expertise of each member should conform to the nature of the contract.

Contract pre-proposal conference

BAC

5

15.

Prepare and submit Technical and Financial Proposals

The time allowed to prepare and submit technical and financial proposal depend on the assignment. During this interval, the firms may request clarification about the information provided in the RFP. The TWG in return shall provide this clarification in writing and copy them to all firms on the short list (who intend to submit proposal).

CONSULTANTS

30-45

16.

Receives and distribute Technical Proposals to TWG members

BAC

2

17.

Evaluates Technical Proposals and prepare Technical Evaluation Report

The technical proposal shall be evaluated taking into account the criteria provided in the RFP

TWG

15

18.

Review and approves Technical Evaluation Report

The report shall substantiate the result of the evaluation and describe the relative strength and weakness of the proposals. All records relative to the evaluation such as mark sheets shall be retained until completion of the project and its audit.

BAC

10

19.

Send Technical Evaluation Report to the Bank (If contract is above US\$100,000)

Program Director

2

20.

Reviews and clears Technical Evaluation Report and issue No Objection letter

World Bank

10

21.

Invites consultants for Financial Proposal Opening

BAC shall notify those consultants whose proposals did not meet the minimum qualifying mark and were considered non-responsive. Their financial proposal will be returned unopened after the completion of selection process. The financial proposal opening shall not be sooner than two (2) weeks after the notification date.

BAC

20

22.

Opening of the Financial Proposals

The financial proposal shall be opened publicly in the presence of representatives of the consultants who wish to attend. A COA representative is usually invited to observe the proceedings. The name of the consultant, quality score, and the proposed price shall be read aloud and recorded when the financial proposal are opened. The minutes of the public opening should be prepared.

BAC, PD, PM, PIMEG, COA representative, TEC, Consultants

1

23.

Evaluates combined Technical and Financial Scores

The quality and cost are independently weighted and the two are added to obtain the total and final score. The Consultants shall be ranked from highest to lowest according to the total score garnered, with the highest score ranked first, the next highest as second and so on down the lowest score who is ranked last. The firm with the highest rank shall be recommended for negotiation.

TWG

5

24.

Reviews and approves final score

TWG

10

25.

Seeks WB for No Objection for Combined Program Director
Final Evaluation Results
(If contract is above US\$100,000)

Program Director

2

26.

Reviews and clears final Evaluation results and issue No Objection Letter

World Bank

10

27.

Invites first-ranked Consultant for negotiation

Five (5) days are allotted for this process in consideration of foreign consultants who will have to travel to attend the contract negotiations in the absence of locally based representatives

BAC

5

28.

Contract Negotiation

BAC, PD, PM, PIMEG, Consultant

10

29.

Issuance of Resolution of Award subject to the approval of the authorized approving official

BAC

5

30.

Send contract to the WB and seek No Program
Objection Letter

Program Director

2

31.

Reviews and clears contract and issue No
Objection Letter

World Bank

10

32.

Present contract to Authorized Approving Program Director
official for approval

Program Director/PM, PIMEG

1 sitting

33.

Reviews and approves the contract

Authorized Approving Official

2 sitting

34.

Consultants signs the contract

Consultant

2

35.

Issues Notice to Proceed (NTP). Send to
Bank copy of signed contract.

PIMEG

2

36.

Commences works

Consultant

7

(see Flowchart: Quality and Cost-Based Selection (QCBS))

APPENDIX "5"

SELECTION BASED ON CONSULTANTS' QUALIFICATIONS (SBCQ) ACTIVITY

NO.

ACTIVITY

RESPONSIBILITY

LEAD TIME

(Days)

1

Prepare SBCQ Procurement Package comprising of: (1) Letter of Intent to procure thru Selection Based on Consultants' Qualification, (2) RFP, (3) Terms of Reference (TOR), cost estimate & budget and Qualification Statement Form

PIMEG

10

2

Endorses procurement package to BAC

Program Director

3

3

Reviews and approves the procurement package and procurement thru SBCQ

BAC

10

4

Request Expression of Interest (EOIs) to attached Qualification Statement Form

BAC

3

5

OPTIONAL: Advertise if necessary

PIMEG

14

6

Prepare and submit EOIs and duly accomplished Qualification Statement Form with the requirements

Consultants

20

7

Receives and evaluates consultants' qualifications and prepare evaluation report and shortlist. Firms will be ranked based on relevant qualifications.

The evaluation report shall substantiate the result of evaluation. All records relative to the evaluation, such as individual mark sheets shall be retained until completion of the project and audit

BAC

15

8

Sends transmittal letter, RFP and the shortlist to the WB for No Objection Letter.

Program Director

2

9

Reviews selection process. Issues No Objection Letter

World Bank

10

10

Send RFP to most qualified consultant

BAC

3

11.

Prepares and submit combined Technical-Financial Proposal

Consultant

20-30

12.

Review Technical-Financial Proposal and Invites selected consultant

BAC

5

13.

Contract Negotiation

BAC, PD, PM, PIMEG

5

14.

Issues Resolution of Award subject to the roval of the authorized approving official

BAC

5

15.

Present contract to Authorized Approving Authority for approval

Program Director, PM, PIMEG

1 sitting

16.

Reviews and approves contract

Authorized Approving Authority

2 sitting

17.

Signs contract

Consultant

2

18.

Issues Notice to Proceed (NTP)

Program Director

2

19.

Commences

Consultant

7

(see Flowchart: Selection Based on Consultants' Qualifications (SCBQ))

APPENDIX "7"

SELECTION OF INDIVIDUAL CONSULTANT

NO.

ACTIVITY

RESPONSIBILITY

LEAD TIME

(Days)

1

Prepares Terms of Reference (TOR), qualification requirements, cost estimate, advertisement, draft contract

PIMEG

5

2

Request BAC to select individual consultant

Program Director

2

3

Reviews the TOR, qualification requirements, budget, and WB approval to hire individual consultant

BAC

5

4

Advertises the proposed consultancy contract

PIMEG

3

5

Prepare and submit CVs

Consultant

7

6

Receives and evaluates CVs. Conduct interview and prepares shortlist

BAC

10

7

Submit shortlist to World Bank for concurrence if contract is more than US\$50,000

Program Director

2

8

Reviews and gives clearance

World Bank

10

9

Signs the contract

Consultant

3

10

Approves the contract and sends signed copy to the WB

Authorizing Approving Official

3

11.

Commences

Consultant

7

(see Flowchart: Selection of Individual Consultant)

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