

**GUIDELINES FOR PROCUREMENT
UNDER THE EDPF LOAN**

*THE EXPORT-IMPORT BANK OF
KOREA*

CONTENTS

Section	Page
1. Introduction	1
1.1 Purpose	1
1.2 General Considerations.....	1
1.3 Applicability of Guidelines.....	2
1.4 Advance Contracting and Retroactive Financing	3
1.5 Procurement Plan.....	3
1.6 Bank's Review	3
1.7 Eligibility	4
1.8 Misprocurement.....	4
1.9 Fraud and Corruption.....	4
1.10 Conflict of Interest.....	5
1.11 Grounds for Exclusion	6
2. International Competitive Bidding.....	7
A. General	
2.1 Type and Size of Contracts	7
2.2 Single Stage, Two-Envelope Bidding.....	8
2.3 Two Stage, Two-Envelope Bidding.....	8
2.4 Advertising	9
2.5 Prequalification of Bidders	9
B. Bidding Documents	
2.6 Bidding Documents and Terms	10
2.7 References to the Bank	11
2.8 Bid Bonds or Guarantees	11
2.9 Conditions of Contract.....	11
2.10 Language.....	12
2.11 Clarity of Bidding Documents	12
2.12 Standards.....	13
2.13 Use of Brand Names	13

2.14	Currency of Bids and Contracts.....	13
2.15	Price Adjustment Provisions.....	13
2.16	Advance Payments.....	13
2.17	Performance Bond and Retention Money.....	14
2.18	Insurance.....	14
2.19	Liquidated Damages and Bonus Clauses.....	14
2.20	Force Majeure.....	15
2.21	Settlement of Disputes.....	15
C. Bid Opening, Evaluation and Award of Contract		
2.22	Time Interval between Invitation and Submission of Bids.....	15
2.23	Bid Opening Procedures.....	15
2.24	Confidentiality.....	15
2.25	Clarifications or Alteration of Bids.....	16
2.26	Examination of Bids.....	16
2.27	Evaluation and Comparison of Bids.....	16
2.28	Evaluation Report.....	18
2.29	Postqualification of Bidders.....	18
2.30	Rejection of All Bids.....	18
2.31	Notification of Intention to Award.....	19
2.32	Standstill Period.....	19
2.33	Award of Contract.....	20
3.	Other Methods of Procurement.....	20
3.1	Limited Competitive Bidding.....	20
3.2	Shopping.....	21
3.3	Direct Contracting.....	21
SCHEDULE 1. Review by the Bank of Procurement Decision.....		23
SCHEDULE 2. Guidance to Bidders.....		26

Guidelines for Procurement under the EDPF Loan

1. INTRODUCTION

1.1 Purpose

- (a) The purpose of the Guidelines for Procurement under the EDPF Loan (the “**Guideline**”) is to set forth the general principles and procedures to be followed by the Borrower in carrying out the procurement of goods and works (including related services) required for the projects to be financed in whole or in part by the Export-Import Bank of Korea (the “**Bank**”) through the Economic Development Promotion Facility (the “**EDPF**”).
- (b) The term “the Borrower” as used in this Guideline also refers to the Project Executing Agency and the term “services” as used in this Guideline excludes consulting services. Terms not otherwise defined in this Guideline shall have the meanings ascribed to them in the Loan Agreement and the General Terms and Conditions applicable to EDPF Loan Agreements of the Bank.
- (c) The Loan Agreement governs the relationships between the Borrower and the Bank, and this Guideline is made applicable to procurement of goods and works for the Project. The rights and obligations of the Borrower and the suppliers of goods and works for the Project are governed by the bidding documents, and by the contracts signed by the Borrower with the suppliers of goods and works, but not by this Guideline or the Loan Agreement. No party other than the parties to the Loan Agreement shall derive any rights therefrom or have any claim to loan proceeds.

1.2 General Considerations

- (a) The responsibility for the implementation of the Project, and therefore for the award and administration of contracts under the Project, rests with the Borrower.
- (b) The proceeds of the Loan are required to be used with due attention to considerations of economy, efficiency and non-discrimination among those eligible to bid for procurement contracts.

- (c) The Bank considers that in most cases International Competitive Bidding (the “**ICB**”) is the best method for satisfying the requirements regarding procurement of goods and works for the Project stated in Clause 1.2(b) above.
- (d) Under special circumstances and only upon Bank’s prior review and no-objection, the following alternative procurement methods may be used: (i) Limited Competitive Bidding (the “**LCB**”); (ii) Shopping; and (iii) Direct Contracting.
- (e) The procedures to be followed in case of ICB are described in Section 2 of this Guideline; and Section 3 describes the circumstances under which methods other than ICB may be employed in the interests of economy and efficiency.
- (f) The procurement methods and the categories of goods and works shall be agreed in writing by the Bank and the Borrower either prior to or at the stage of the appraisal of the Project, and shall be specified in the Loan Agreement.
- (g) The Borrower shall carry out due diligence on the technical and financial qualifications of Contractors to be assured of their capabilities in relation to the specific contract.

1.3 Applicability of Guidelines

- (a) This Guideline applies to all procurement of goods and works to be financed by the proceeds of the Loan. The application of the Guideline to a particular project financed by the Bank shall be stipulated in the Loan Agreement between the Bank and the Borrower.
- (b) For the procurement of those goods and works not financed out of the proceeds of the Loan, the Borrower may adopt its own procurement procedures. In such cases the Bank should be satisfied that the procedures to be used shall fulfill the Borrower's obligations to cause the Project to be carried out diligently and efficiently.
- (c) If the application of the Guideline in full or in part is prohibited under the laws and regulations of the Borrower’s country, the Borrower undertakes to inform the Bank of these by written notice as soon as reasonably

possible and before any contract award. After the notice to the Bank, the Borrower and the Bank may agree to make exceptions.

- (d) The Guideline is also intended to apply to a project co-financed by one or several other development partners. However, in such an event, a prior arrangement between the different co-financiers may determine the applicable rules of eligibility and the procurement procedures. Under such circumstances, the rules defined jointly with other development partners may, in all or in part, replace the Guideline.

1.4 Advance Contracting and Retroactive Financing

- (a) In certain circumstances, advance contracting, whereby the Borrower signs a contract before the signing of the related Loan Agreement may be acceptable in the interests of more rapid and efficient execution of the Project. The procurement procedures shall be in accordance with this Guideline in order for the eventual contracts to be eligible for the financing by the Bank, and the normal review process by the Bank shall be followed.
- (b) A Borrower undertakes such advance contracting at its own risk, and any concurrence of the Bank with the procedures, documentation or proposal for award does not commit the Bank to make a loan for the Project in question. The reimbursement by the Bank of any payments made by the Borrower under the contract prior to the Effective Date of the Loan Agreement is referred to as "Retroactive Financing," and is only permitted within the limits specified in the Loan Agreement.

1.5 Procurement Plan

The Borrower shall prepare and furnish the Procurement Plan to the Bank for obtaining the Bank's no objection. The Procurement Plan shall specify contract package, method of consultant selection and procurement of goods, works and non-consulting services and procurement schedule, etc. The Borrower shall submit the Procurement Plan before the signing of the Loan Agreement and update annually or as needed throughout the duration of a project.

1.6 Bank's Review

The Bank reviews the Borrower's procurement procedures, documents, bid evaluations, award proposal and contracts to ensure that the procurement process is properly carried out. These review procedures are described in Schedule 1

attached hereto. The Loan Agreement shall specify the extent to which these review procedures shall apply in respect of the different categories of goods and works to be financed out of the proceeds of the Loan.

1.7 Eligibility

All procurement of goods, works and non-consulting services is eligible for the Loan regardless of the nationality of the contractors (including subcontractors) and the country of origin of goods, works and non-consulting services. In other words, the Bank permits firms from all countries to offer goods, works and non-consulting services for the Loan.

1.8 Misprocurement

The Bank does not finance expenditures for goods and works which have not been procured in accordance with the Guideline. In such cases, the Bank shall declare misprocurement, and it is the policy of the Bank to cancel or demand early repayment in full or in part of the amount of the loan allocated to the goods and works that have been misprocured. The Bank may, in addition, exercise other remedies provided for under the Loan Agreement. Even once the contract is awarded after obtaining the Bank's no objection, the Bank may still declare misprocurement if it concludes that the no objection or the notice of satisfactory resolution was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower or the terms and conditions of the contract modified without the Bank's no objection.

1.9 Fraud and Corruption

It is the Bank's policy to require that borrowers (including beneficiaries of the Loan from the Bank), as well as bidders, suppliers, and contractors under contracts financed through the Loan, observe the highest standards of ethics during the procurement and execution of such contracts, in compliance with the international consensus on anti-corruption, the "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" of the Organization for Economic Cooperation and Development (OECD). In pursuance of this policy, the Bank shall:

- (a) reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

- (b) declare a firm ineligible, for a period determined by the Bank, to be awarded a contract financed through the Loan if it at any time determines that the firm has engaged in corrupt, fraudulent practices or any other integrity violations in competing for, or in executing, a contract financed by an EDPF and/or EDCF loan;
- (c) recognize a firm as ineligible to be awarded a contract financed through the Loan if the firm is debarred under the cross debarment decision by Multilateral Development Banks. Such period of ineligibility shall be equated to the debarment period decided by the Multilateral Development Banks. The Borrower shall confirm the eligibility of bidders, taking the decisions of Multilateral Development Banks into full account;
- (d) recognize a firm as ineligible to be awarded a contract financed through the Loan if the firm has been convicted by a final court decision by the national authorities in the Borrower's country or in the Republic of Korea, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract;
- (e) recognize a firm as ineligible to be awarded a contract financed through the Loan if the firm is being listed for sanctions by the United Nations or United States; and
- (f) cause the Borrower to include in the bidding documents and EDPF-financed contracts, a provision which clearly states that the contractors will permit the Bank to carry out an inspection of their accounts and records relating to the procurement process and performance of the contract and to have them audited by auditors appointed by the Bank.

1.10 Conflict of Interest

A firm shall be considered to have a conflict of interest if:

- (a) the firm is providing goods, works, or non-consulting services resulting from, or directly related to, consulting services that it provided for the preparation or implementation of a project, or where such services were provided by an affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers), which together are performing the contractor's obligations under a turnkey or design and

built contract. To make it clear, in the case of a turnkey or design and build contract, consultants hired to provide consulting services for the preparation or implementation of a project (or any of its affiliates), can be a contractor whose obligation is only providing consulting services, other than providing goods, works or non-consulting services;

- (b) the firm (including its personnel) has a close business or family relationship with a professional staff of the Borrower, or of the Project Executing Agency, or of a recipient of a part of the Bank's financing, or any other party representing or acting on behalf of the Borrower who:
 - (i) is directly or indirectly involved in the preparation of the bidding documents or contract specifications, and/or the evaluation process of such contract; or
 - (ii) would be involved in the execution or supervision of such contract, unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; and
- (c) the firm does not comply with any other conflict of interest situation as specified in the Bank's Standard Bidding Documents relevant to the specific procurement process.

Based on the "One Bid Per Bidder" principle, which is to ensure fair competition, the firm (or an affiliate that directly or indirectly controls, is controlled by, or is under common control with the firm) shall not be allowed to submit more than one bid. The firm (including its affiliate), if acting in the capacity of a sub-contractor in one bid, may participate in other bids, only in that capacity.

A firm having any other form of conflict other than (a) through (c) of this Clause shall also be disqualified.

1.11 Grounds for Exclusion

- (a) EDPF-financed contract shall not be awarded to a bidder if, on the date of submission of an application or of a bid or a proposal or on the date of award of a contract, a bidder:
 - (i) is a firm stated in Clause 1.9;

- (ii) is a firm who has a conflict of interest stated in Clause 1.10;
 - (iii) is bankrupt, is being wound up or ceasing its activities, is having its activities administered by the courts, has entered into receivership, or is in any analogous position;
 - (iv) has been subject to a contract termination fully settled against the bidder due to significant and/or persistent failure to comply with the bidder's contractual obligations during contract performance, unless dispute resolution is still pending or has not confirmed a full settlement against the bidder;
 - (v) has not fulfilled the bidder's fiscal obligations on payments of taxes in accordance with the legal provisions of either the Borrower's country or the country where the bidder is constituted; or
 - (vi) has created false documents or has committed misrepresentation in documentation requested by the Borrower during the procurement process of the Project.
- (b) The Borrower has a sole responsibility for informing bidders about the exclusion criteria stated in Clause 1.9 through 1.11 by explicitly addressing the exclusion criteria in the bidding document and evaluating a bidder by the exclusion criteria at the earliest possible stage.

2. INTERNATIONAL COMPETITIVE BIDDING

A. General

2.1 Type and Size of Contracts

- (a) Contracts may be awarded on the basis of unit prices for work performed or items supplied, or on a lump-sum price or cost-plus-fees basis, or by a combination thereof for different portions of the contract, depending on the nature of the goods or works to be provided. The bidding documents shall clearly state the type of contracts selected.
- (b) The size and scope of individual contracts shall depend on the magnitude, nature and location of the Project. For projects requiring a variety of works and equipment, separate contracts generally are awarded for the works and

for the supply and/or installation of different major items of plant and equipment.

- (c) In appropriate cases, e.g. where special processes or closely integrated manufacturing are involved, the Bank may allow turnkey contracts under which the engineering, supply of equipment, and the construction of a complete plant are provided through a single contract.

2.2 Single Stage, Two-Envelope Bidding

- (a) A single-stage, two-envelope bidding procedure shall be adopted for procurement of works, machinery or equipment if complete technical specifications are prepared in advance. Under the single-stage, two-envelope bidding procedure, technical proposals and financial proposals will be requested to be submitted simultaneously, but in two separate envelopes.
- (b) Technical bids will be opened first for review in order to determine if the technical bid conforms to the technical specifications. The conformity of the technical bid to the technical specifications is a pre-condition for opening of the financial bid. In other words, a financial bid of a bidder will be opened only if the technical bid of the same bidder has been determined to conform to the technical specifications.
- (c) Financial bids will be opened publically, and the bidders or their representatives are allowed to be present when the financial bids are opened. Opening of financial bids shall follow the procedures stipulated in Clause 2.23. Evaluation of financial bids shall be consistent with Clause 2.27. If a bidder's technical bid has been determined not to conform to the technical specifications, the bidder's financial bid shall promptly be returned unopened to the bidder concerned. The adoption of aforementioned procedures must be agreed by the Bank and the Borrower.

2.3 Two Stage, Two-Envelope Bidding

A two-stage bidding procedure may be adopted for technically complex contracts, such as turn-key projects, which cannot make precise technical specifications in advance. Under this procedure, bidders will first be invited to submit technical proposals without prices on the basis of the minimum operating and performance requirements. After technical and commercial clarifications and adjustments,

followed by amended bidding documents, the bidders will be invited to submit final technical bids and financial bids in the second stage. The use of this procedure must be agreed by the Bank and the Borrower.

2.4 Advertising

On all contracts subject to ICB, invitations to prequalify or to bid shall be advertised in at least one newspaper of general circulation (in an English language newspaper if possible) in the Borrower's country. Copies of such invitations (or the advertisement therefor) shall also be sent promptly to the Bank.

2.5 Prequalification of Bidders

- (a) Prequalification is in principle necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information and technology and contracts to be let under turnkey. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources.
- (b) Prequalification shall be based entirely upon the capability of prospective bidders to perform the particular contract satisfactorily, taking into account their:
 - (i) experience and past performance on similar contracts;
 - (ii) capability with respect to personnel, equipment and plant; and
 - (iii) financial position.
- (c) The invitation to prequalify for bidding on specific contracts shall be advertised and notified as described in Clause 2.4 above.
- (d) The scope of the contract and a clear statement of the requirements for prequalification shall be provided to prospective bidders wishing to be considered for prequalification. Every such bidder who meets the specified criteria shall be allowed to bid. The Borrower shall inform all applicants of the results of prequalification.
- (e) As soon as prequalification is completed, the bidding documents shall be made available to the qualified prospective bidders. 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.

- (f) In respect of environmental and social standards, the Borrower shall consider the Bank's commonly related policy.

B. Bidding Documents

2.6 Bidding Documents and Terms

- (a) Bidding documents shall contain 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 shall vary with the size and nature of the proposed bid package and contract, they shall generally include the following: invitation to bid; instructions to bidders; evaluation criteria; form of bid; form of contract; conditions of contract, both general and special; drawings; technical specifications; bill of quantities; the type(s) of security required or acceptable; and necessary appendices.
- (b) 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.
- (c) If a fee is charged for the bidding documents, it shall be reasonable and reflect the cost of their production and shall not be so high as to discourage qualified bidders. Guidelines on the principal components of the bidding documents are given in the following paragraphs.
- (d) The Borrower shall use the appropriate bidding documents which are internationally recognized and acceptable to the Bank. The Bank recommends the Borrower to use the Standard Bidding Documents (the "SBDs") issued by the international development institutions such as the World Bank, the Asian Development Bank, etc. However, the SBDs shall be modified in accordance with the requirements of the Loan Agreement and this Guideline, and subject to the Bank's review.
- (e) The obligations of the contractual parties, which include in particular the scope of supplies and the place of delivery, liability and warranty

obligations, and public charges and levies to be borne by the bidder, shall be clearly and unequivocally defined in the procurement conditions.

2.7 References to the Bank

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

“*[Name of the Borrower]* has received (or in appropriate cases ‘has applied for’) a loan from the Export-Import Bank of Korea through the Economic Development Promotion Facility in the amount of [●] (Loan Amount) toward the cost of *[Name of the Project]*, and intends to apply a portion of the proceeds of this loan to payments under the contract for which this invitation to bid is issued.

The terms and conditions of the contract and payments therefore by the Bank shall be subject in all respects to the terms and conditions of the Loan Agreement, including ‘Guidelines for Procurement under the EDPF Loan’. Except as the Bank may specially otherwise agree, no party other than *[Name of the Borrower]* shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.”

2.8 Bid Bonds or Guarantees

A bid bond or any other bidding guarantee may be required to secure the validity of the bid within the period specified in the invitation to bid. However, it shall not be set too high to discourage suitable bidders. The bidding documents shall specify the type and amount of the bid bond or bidding guarantee and release thereof.

2.9 Conditions of Contract

- (a) 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 the contractor or supplier, and the functions and authority of the engineer or architect, if one is employed by the Borrower, in the supervision and administration of the contract. The general conditions of contract may be drafted along the lines of internationally applied standard contracts in accordance with the nature and scope of the supplies and services to be awarded. In addition to the general conditions of contract, any special conditions appropriate to the nature and location of the Project shall be included.

- (b) The conditions of contract shall provide a balanced allocation of risks and liabilities between the Borrower and the contractor or supplier.
- (c) The environment, social or safety issues may be emphasized for the implementation of the project, and the relevant measures may be specified in the contract.

2.10 Language

Bidding documents shall be prepared in English. If any other language is to be used in the bidding documents, a full English translation shall be incorporated in those documents and, in this case, it shall be stipulated which language prevails.

2.11 Clarity of Bidding Documents

- (a) Bidding documents shall describe clearly and precisely the works to be done or goods to be supplied, the place and period of delivery or installation, the warranty and maintenance requirements, and other pertinent terms.
- (b) The technical specifications shall describe all essential features of the item(s) to be procured and shall state that any non-conformity to these essential features would render the bid as substantially unresponsive. Drawings shall be consistent with the text of the technical specifications. Where drawings are inconsistent with the text of the specifications, the priority order shall be what is specified in the conditions of contract used.
- (c) Bidding documents shall indicate the methods, terms and conditions of bid evaluation, as well as the factors or bases (including those unquantifiable in monetary terms and the specific weights to be given) to be taken into account in comparing bids. If the Borrower reserves its right to compare bid prices based on single item or a group of items or as a total package, this shall be stated in the bidding documents.
- (d) Any additional information, clarification, and/or modification of specifications shall be notified promptly to all those who requested the original bidding documents. When original specifications are modified due to reasons on the Borrower's side, notification of those modifications shall be immediately sent to all the bidders, using an addendum. Additional time

for submission of the bids shall be allowed to the bidders if the change is considered to be major/substantial.

2.12 Standards

If particular national or other standards with which equipment or materials must comply are cited, bidding documents shall state that equipment or materials meeting other internationally accepted standards which ensure equivalent or higher quality than the standards specified shall also be accepted.

2.13 Use of Brand Names

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

2.14 Currency of Bids and Contracts

Both the bid price and the contract price shall be expressed in the same currency that was used to denominate the loan amount in the Loan Agreement. The currency can be Korean Won, US Dollar, Euro, or other internationally convertible foreign currencies acceptable to the Bank.

2.15 Price Adjustment Provisions

- (a) Bidding documents shall clearly indicate whether price adjustments are allowed in the event that changes occur in the major cost components of the contract such as labor, equipment, and materials. Price adjustment provisions are usually not necessary for simple contracts involving delivery of goods within about a year.
- (b) The specific formula for and ceiling on price adjustment shall be defined in the bidding documents.

2.16 Advance Payments

The percentage of the total payment to be made in advance upon effectuation of the contract for mobilization and similar expenses shall be reasonable and specified in the bidding documents. Other advances, for example, for materials delivered to the site for use in works shall also be defined in the bidding documents. The

bidding documents shall specify the arrangements for any security required for advance payments.

2.17 Performance Bond and Retention Money

- (a) Bidding documents for works shall require security in an amount sufficient to protect the Borrower in case of breach of the 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 in the bidding documents. The amount of the bond or guarantee may vary with the size and nature of the works. Security shall extend sufficiently beyond the estimated date for completion of the works to cover the warranty or maintenance period specified in the contract. Alternatively, a separate security may be obtained for that period.
- (b) In contracts for the supply of goods, the need for performance security shall depend 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 non-performance of the contract. Such guarantee may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations. The guarantees or retention money shall be reasonable in amount.

2.18 Insurance

Bidding documents shall state precisely the types of insurance to be provided by the successful bidder and should indicate the kinds of risks insured against, the liabilities to be covered, and the duration of the insurance.

2.19 Liquidated Damages and Bonus Clauses

Provisions for liquidated damages or similar payments in an appropriate amount shall be included in the bidding documents to provide compensation to the Borrower when delays in completion of works or delivery of goods would result in extra cost, loss of revenues or of other benefits to the Borrower. Provisions may also be made for payment of bonuses to contractors or suppliers for completion of works or delivery of goods ahead of the time specified in the contract when such earlier completion or delivery would benefit the Borrower.

2.20 Force Majeure

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

2.21 Settlement of Disputes

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

C. Bid Opening, Evaluation and Award of Contract

2.22 Time Interval between Invitation and Submission of Bids

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 size and complexity of the contract. Generally, not less than 45 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for bidding. Where large works or complex items of equipment are involved, this period shall be generally not less than 90 days to enable prospective bidders to conduct investigations at the site before submitting their bids. In such cases, the Borrower is recommended to convene pre-bid conferences and arrange site visits.

2.23 Bid Opening Procedures

All bids shall be opened publicly at the date, time and place stipulated in the invitations to bid. Bids received after the time stipulated shall be returned unopened. The name of each bidder and the total amount of each bid shall be publicly read aloud and recorded when opened, and a copy of this record shall be promptly sent to the Bank and to all bidders who submitted bids in time.

2.24 Confidentiality

After the public opening of bids, information relating to the examination, clarification, and evaluation of bids and proposals 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.

2.25 Clarifications or Alteration of Bids

No bidder shall be permitted to alter its bid after the first bid has been opened. The Borrower may ask any bidder for clarification needed to evaluate its bid but shall not ask or permit any bidder to change the substance or price of its bid after the bid opening.

2.26 Examination of Bids

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

2.27 Evaluation and Comparison of Bids

- (a) Bids which conform to the technical specifications and are substantially responsive to the bidding documents will be compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which may not necessarily be the lowest-priced bid, shall be selected for award.
- (b) Bid evaluation shall be consistent with the terms and conditions set forth in the bidding documents. The bidding documents shall 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. Factors which may be taken into consideration include, *inter alia*, the operating costs, the efficiency and compatibility of the equipment, the availability of service and spare parts, the reliability of proposed construction methods, safety, environmental benefits, qualification for training local personnel and minor deviations, if any. Provisions for price adjustment included in a bid shall not be considered as an evaluation factor. To the extent practicable, these factors shall be expressed in monetary terms or given a relative weight in the evaluation provisions of the bidding documents.

- (c) For the purposes of evaluation and comparison of bids for the supply of goods to be procured on the basis of international competitive bidding:
 - (i) Bidders will be required to state in their bids the CIP (place of destination) price for imported goods or the EXW price plus cost of inland transportation and insurance to the place of destination for other goods offered in the bid;
 - (ii) Customs duties and other import taxes levied in connection with the importation or sales and similar taxes levied in connection with the sale or delivery of goods pursuant to a bid shall not be taken into account in the evaluation of that bid; and
 - (iii) The cost of inland freight and other expenditures incidental to the transportation and delivery of the goods to the place of their use or installation for the purposes of the project shall be included, if it is specified in the bidding documents.
- (d) Where contractors are responsible for all duties, taxes and other levies under contracts, bidders shall take these factors into account in preparing their bids. The evaluation and comparison of bids shall be on this basis. Any procedure under which bids above or below a predetermined bid value assessment are automatically disqualified is not permitted.
- (e) This paragraph is only applicable to projects involving the procurement of works. The Borrower shall require the Bidder who submits the lowest evaluated bid price to produce detailed price analyses for any or all items of the bill of quantities, to demonstrate internal consistency of those prices with the proposed construction methods and schedule, under any of the following circumstances:

- (i) The bid is seriously unbalanced or front-loaded in the opinion of the Borrower;¹
- (ii) The bid is significantly lower than the Borrower's estimates; or¹
- (iii) The bid is lower than 80% of the aggregate amount made up of 70% of the consultant's estimates and 30% of the average bid price.²

2.28 Evaluation Report

A detailed report on the evaluation and comparison of bids setting forth the specific reasons on which the determination of the lowest evaluated bid was based shall be prepared by the Borrower or its consultants.

2.29 Postqualification of Bidders

If there has been no prequalification of bidders, the Borrower shall determine whether the bidder whose bid has been evaluated the lowest has the capability and resources to carry out the contract concerned effectively. The criteria to be met shall be set out in the bidding documents, and if the bidder does not meet them, its bid shall be rejected. In such an event, the Borrower shall then make a similar decision regarding the next lowest evaluated bidder.

2.30 Rejection of All Bids

- (a) The bidding documents usually provide that the Borrower may reject all bids. Such rejection is justified when the bids submitted are not substantially responsive, or where there is evidence of lack of competition. However, all bids shall not be rejected and new bids invited on the same

¹ *(Applicable to (i) and (ii)) After the evaluation of the price analyses, the Borrower may, taking into consideration the schedule of estimated contract payments, require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Borrower against financial loss in the event that the successful Bidder under the contract defaults.*

² *(Applicable to (iii)) If the Bidder fails to submit the price analyses to the Borrower or the price analyses by the Bidder is insufficient to justify the bid, the Borrower may reject the bid, except in the following cases: (i) Where the consultant is not employed; (ii) Where a turnkey or design and build method is adopted as a procurement method; (iii) Where the bid evaluation system, which applies a comprehensive assessment of the bid price and technical merits of each bid, is adopted.*

specifications solely for the purpose of obtaining lower prices in the new bids, except in cases where the lowest evaluated bid exceeds the cost estimates by a substantial amount.

- (b) If all bids are rejected, the Borrower shall review the causes justifying the rejection and consider making either revisions of the specifications or modification of the Project (or amounts of work or items called for in the original invitations to bid), or both, before inviting new bids. In special circumstances, the Borrower may, as an alternative to rebidding, negotiate with the lowest evaluated bidder (or, failing a satisfactory result of such negotiation, with the next-lowest evaluated bidder) to try to obtain a satisfactory contract.
- (c) The Bank's prior review and no-objection shall be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the lowest evaluated bidder.

2.31 Notification of Intention to Award

Once the Borrower has decided whom the contract will be awarded to, it shall promptly and simultaneously provide, by quickest means available (e.g., by email), all bidders (or if there has been prequalification of bidders, the qualified bidders) with a written notification of the Borrower's intention to award ("**Notification of Intention to Award**").

2.32 Standstill Period

- (a) In order to allow unsuccessful bidders an opportunity to understand why they were not successful (they may request debriefing), and provide them with an opportunity to submit a complaint about the decision to award the contract, the Borrower shall initiate a Standstill Period for ten (10) business days, which commences on the day following the transmission of the Notification of Intention to Award to all bidders (or if there has been prequalification of bidders, to the qualified bidders) and expires at midnight on the tenth day (unless extended). During this period, the Borrower cannot enter into a contract with the successful bidder.
- (b) A Standstill Period may not apply in the situations where (i) only one bid/proposal was submitted in an open competitive process, (ii) the

Borrower has undertaken direct selection, or (iii) it is an emergency situation that is recognized by the Bank.

- (c) During the Standstill Period, an interested party has three (3) business days (on the receipt of the Notification of Intention to Award) to request a debriefing from the Borrower. The Borrower should provide the debriefing, either in writing and/or in a debriefing meeting, within five (5) business days of receiving the request. If there is a justifiable reason, the Borrower may provide the debriefing later than five (5) business days deadline. If this happens, the Standstill Period is automatically extended to a date that is five (5) business days after the date of the last debrief. All the bidders (or if there has been prequalification of bidders, the qualified bidders) will be promptly notified, by the quickest means available, of the extended Standstill Period. The requesting bidder should bear all the costs of attending such a debriefing.

2.33 Award of Contract

- (a) Upon expiry of the Standstill Period, the Borrower may proceed with award and sign the contract with the successful bidder. The Borrower shall award the contract to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined:
 - (i) to be substantially responsive to the bidding documents; and
 - (ii) to offer the lowest evaluated cost. 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.
- (b) The Borrower does the award of contract by transmitting the notification of award to the successful bidder.

3. OTHER METHODS OF PROCUREMENT

3.1 Limited Competitive Bidding

LCB is essentially competitive bidding by direct invitation without open advertisement, and may be an appropriate method of procurement in cases where (i) the amounts are small, (ii) there are only a limited number of suppliers of the particular goods or services needed, (iii) the Borrower wishes to maintain

reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment, (iv) the Borrower wishes to maintain continuity of services related to goods and services provided under an existing contract, which should have been awarded in accordance with procedures acceptable to the Bank, or (v) other exceptional reasons may justify departure from full ICB procedures under the procedure of the LCB, the Borrower shall seek bids from a list of potential suppliers broad enough to assure competitive prices. In all respects other than advertisement, ICB procedures shall apply.

3.2 Shopping

- (a) Shopping is a procurement method based on comparing price quotations obtained from several suppliers (*in the case of goods*) or from several contractors (*in the case of civil works*), with a minimum of three, to assure competitive prices, and is an appropriate method for procuring readily available off-the-shelf goods or standard specification commodities of small value, or simple civil works of small value.
- (b) Requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery (or completion) time and place. Quotations may be submitted by letter, facsimile or by electronic means. The evaluation of quotations shall follow the same principles as of open bidding. The terms of the accepted offer shall be incorporated in a purchase order or brief contract.

3.3 Direct Contracting

- (a) Direct contracting involves dealing with a particular supplier or contractor and may be an appropriate procurement method in the following situations:
 - (i) Where the Borrower buys small or off-the-shelf items generally valued at less than Five Hundred and Thousand US Dollars (US\$500,000);
 - (ii) Where the Borrower has adequate reasons for wishing to maintain reasonable standardization of its equipment or spare parts in the interests of compatibility with existing equipment;

- (iii) Where the Borrower has adequate reasons for wishing to maintain continuity of services provided under an existing contract awarded in accordance with procedures acceptable to the Bank;
 - (iv) Where the required equipment is proprietary and obtainable only from one supplier;
 - (v) Where the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of his guarantee of performance; and
 - (vi) Where the advantages of ICB, LCB or Shopping would be outweighed by the administrative burden involved due to the size, efficiency or urgency of procurement.
- (b) Before initiating a negotiation with a prospective supplier, the Borrower shall review the capability of the prospective supplier to perform the particular contract satisfactorily, taking into account its (i) experience and past performance on similar contracts; (ii) capabilities with respect to personnel, equipment and plan; and (iii) financial position. The Bank shall be furnished with a copy of the report of such review by the Borrower.

SCHEDULE 1

REVIEW BY THE BANK OF PROCUREMENT DECISION

1. The following provisions set forth standard arrangements of procurement actions taken by the Borrower, in cases where international competitive bidding is required in the procurement of goods or works, which shall be reviewed by the Bank and subject to no-objection. These provisions shall apply to all such cases except as otherwise agreed by the Bank. Procedures for review of contract and its modification shall be subject to the following provisions of General Terms and Conditions Applicable to EDPF Loan Agreement.
2. Prequalification Procedure
 - (a) Prequalification Invitation: The prequalification invitation and all related documents (including the proposed prequalification methodology and criteria) shall show the loan number and shall be subject to the Bank's review and no-objection before they are issued. For this purpose, one copy of the draft prequalification invitation and all related documents shall be submitted to the Bank, for the Bank's review and no-objection.
 - (b) Issue of Prequalification Invitation: As soon as the prequalification invitation has been advertised and notified as required in Clause 2.4 hereof, the Bank shall be furnished with a report including a copy of the prequalification invitation as issued and a copy of the newspaper advertisement as published.
 - (c) Proposal for Prequalification: As soon as the prequalification applications have been evaluated, Bank's review and no-objection shall be obtained to the results of the evaluation before such results are communicated to the applicants for prequalification. For this purpose, the Bank shall, promptly after the evaluation of prequalification application, be furnished with a copy of (i) a list of the applicants for prequalification; (ii) a summary and evaluation of the applications; and (iii) the proposal for prequalification (together with the consultants' recommendations, where applicable).

3. International Competitive Bidding

- (a) Invitation to bid and bidding documents: The invitation to bid and all related bidding documents (including bidding instructions and conditions, specifications, form and conditions of contract) shall show the loan number and shall be subject to the Bank's review and no-objection before they are issued. For this purpose, a copy of the invitation to bid and all related bidding documents shall be submitted to the Bank. The draft bidding documents to be submitted to the Bank for the Bank's review and no-objection, shall show all important conditions of bidding including the proposed bidding period and the proposed delivery period.
- (b) Issue of Invitation to Bid: As soon as the invitation to bid has been advertised as required in Clause 2.4, the Bank shall be furnished with a report including a copy of the invitation to bid as issued and a copy of the newspaper advertisement as published.
- (c) Proposal for Award: As soon as the bids received have been evaluated, Bank's review and no-objection shall be obtained to the proposal for award of contract before a contract is awarded. For this purpose, the Bank shall be furnished with a copy of (i) an account of the public opening of the bids; (ii) a summary and evaluation of the bids; (iii) in case the single-stage two-envelope bidding procedure is adopted, technical bid evaluation report, of which the Borrower shall submit to the Bank before opening financial bids; (iv) the proposal for award (together with the consultants' recommendations, where applicable); (v) a draft contract; and (vi) an appropriate certificate of the eligibility of the proposed contract where required by the Bank. In case the bidding procedure allows for more than one stage, the Bank's review and no-objection of the results of the evaluation at each stage shall be obtained before the results are communicated to the bidder.
- (d) Award of Contract: Promptly after each contract is awarded, the Bank shall be furnished with two copies of the contract as executed. If the final contract proposed to be executed differs substantially from the draft contract previously received the Bank's no-objection, or if any substantial amendment of the contract is proposed after its execution, the proposed changes shall be submitted to the Bank for the Bank's review and no-objection.

- (e) Rejection of all Bids: If the Borrower wishes to reject all bids in the circumstances stipulated in Clause 2.30 hereof, the Borrower shall inform the Bank of its reasons, for the Bank's review and no-objection.
- (f) Postqualification of Bidders: If the Borrower considers the lowest evaluated bidder does not meet the criteria required in the bidding documents and wishes to negotiate with the lowest evaluated bidder (or, to negotiate with the next-lowest evaluated bidder if the negotiation with the lowest evaluated bidder was not satisfactory) in order to obtain a satisfactory contract, the Borrower shall inform the Bank of its reasons, for the Bank's review and no-objection.
- (g) Suspension and cancellation: If suspension or cancellation of a procurement process is recommended instead of an award, the Bank's review and concurrence shall be obtained prior to suspension or cancellation of the procurement process.
- (h) Other procedures: If the Borrower wishes to adopt procurement procedures other than ICB, the Borrower shall submit to the Bank a report setting forth the adequate reasons for the procurement procedures the Borrower wishes to adopt.

SCHEDULE 2
GUIDANCE TO BIDDERS

Purpose

1. This Schedule 2 provides guidance to potential bidders wishing to participate in the procurement financed through the Loan.

Responsibility for Procurement

2. The responsibility for the implementation of the project, and therefore for the payment of goods, works, and services under the project, rests solely with the Borrower. The Bank, for its part, is required by the Loan Agreement to ensure that funds are paid from the EDPF 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 and the agreement between the Bank and the Borrower stated in Clause 1.2 shall be submitted with the Borrower's payment application. As emphasized in Clause 1.2, the Borrower is legally responsible for the procurement. It invites, receives, and evaluates bids, and awards the contract. The contract is made between the Borrower and a supplier or a contractor. The Bank is not a party to the contract.

Bank's Role

3. As stated in Clause 1.6, the Bank reviews the procurement procedures, documents, bid evaluations, award recommendations, and the contract to ensure that the process is carried out in accordance with agreed procedures, as required in the Loan Agreement. In the case of major contracts, the documents are reviewed by the Bank prior to their issue, as described in Schedule 1. Also, if, at any time in the procurement process (even after the award of contract), the Bank concludes that the agreed procedures were not followed in any material respect, the Bank might declare misprocurement, as described in Clause 1.8. However, if a Borrower has awarded a contract after obtaining the Bank's "no objection," the Bank will declare misprocurement only if the "no objection" was issued on the

basis of incomplete, inaccurate, or misleading information furnished by the Borrower. Furthermore, if the Bank determines that the bidder recommended for the award has engaged in corrupt or fraudulent practices, the Bank may reject a proposal for award set forth in Clause 1.9.

4. The Bank has recommended Standard Bidding Documents (SBDs) issued by the international development institutions such as the World Bank, the Asian Development Bank, etc., as stated in Clause 2.6. The prequalification and bidding documents are finalized and issued by the Borrower.

Bidder's Role

5. Once a bidder receives the prequalification or bidding document, the bidder shall study the documents carefully to decide if it can meet the technical, commercial, and contractual conditions, and if so, proceed to prepare its bid. The bidder shall then critically review the documents to see if there is any ambiguity, omission, or internal contradiction, or any feature of specifications or other conditions which are unclear or appear discriminatory or restrictive; if so, it shall seek clarification from the Borrower, in writing, within the time period specified in the bidding documents for seeking clarifications.
6. The criteria and methodology for selection of the successful bidder are outlined in the bidding documents, generally under Instructions to Bidders and specifications. If these are not clear, clarification shall be similarly sought from the Borrower.
7. In this connection, it shall be emphasized that the specific bidding documents issued by the Borrower govern each procurement, as stated in Clause 1.1. If a bidder feels that any of the provisions in the documents are inconsistent with the Guideline, it shall also raise this with the Borrower.
8. It is the responsibility of the bidder to raise any issue of ambiguity, contradiction, omission, etc., prior to the submission of its bid, to assure submission of a fully responsive and compliant bid, including all the supporting documents requested in the bidding documents. Noncompliance with critical (technical and commercial) requirements will result in rejection of the bid. If a bidder wishes to propose deviations to a noncritical requirement, or propose an alternative solution, the

bidder shall quote the price for the fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation is accepted. Alternative solutions shall be offered only when authorized in the bidding documents. Once bids are received and publicly opened, bidders shall not be required or permitted to change the price or substance of a bid.

Confidentiality

9. As stated in Clause 2.24, the process of bid evaluation shall be confidential until the publication of contract award. This is essential to enable the Borrower and Bank to avoid either the reality or perception of improper interference. If at this stage a bidder wishes to bring additional information to the notice of the Borrower, the Bank, or both, it shall do so in writing.

Debriefing

10. As stated in Clause 2.32, if, during the Standstill Period, a bidder wishes to ascertain the grounds on which its bid was not selected, it shall address its request to the Borrower.